

# NEWSLETTER

## The Freehold Owners Association (“FHOA”)

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## FREEHOLD MINERAL TAX...A Summer Cliff Hanger

With the tax season behind us for this year it is time to find a few minutes and a comfortable relaxing place – be it the couch in the living room, a lounge in the back yard, beside the pool or sitting on the beach – to immerse oneself in a good book. To save you the trouble of going down to your local book store and searching through aisles upon aisles for that perfect summer read, we have brought one such story to you – right here in this newsletter.



John rocked back in his chair on the veranda, sipping an ice cold glass of lemonade. He couldn't help but empathize with the dog which in desperation to escape the scorching late afternoon sun was seeking refuge in the shade of the big tree only to be pestered by some very persistent crows. John found it curious that the crows, relentlessly diving at the dog, were trying to claim not only the tree as their own but also the shade which it provided.

Molly, sitting next to John on the veranda, smiled as she said, “If those crows were a little more sophisticated they might allow the dog to enjoy a little bit of the shade if the dog were to give the crows something in return”. In considering this thought John had a flashback to a few months ago when he'd received his freehold mineral tax statement from the Alberta Government. John sighed, “If the crows were to impose a ‘shade tax’ the dog would most definitely be

discouraged from using the shade of the tree but on a hot day like today she would grudgingly pay the tax anyways. The crows would then receive a financial benefit from the ‘shade tax’ when in fact they provided no corresponding service - the tree alone provided the shade.”

Seeing the frustration building in John's eyes Molly blurted out, “We're just like the neighbour's dog aren't we? And the Alberta government is like the crows, collecting taxes on our freehold mineral production.” John nodded and they both sat silently for a long while watching the dog paw in frustration as the crows dived around her. John and Molly felt the same sense of injustice with respect to freehold mineral tax as the dog must feel with respect to the shade. Just as the crows neither owned nor created the shade, the government neither owns nor produces freehold minerals. So the government should have no more right to levy a freehold mineral tax than the crows to levy a ‘shade tax’. Molly whispered to John, “You know John, we're only two individual freeholders. What can we do to change government policies?”

Noticing that their son had just driven into the yard, John winked at Molly and they both seized the opportunity to help the dog claim its

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### A Tax on Shade

Kaaaa...kaaaa echoed around the open veranda as the crows re-settled on higher branches, out of reach of the neighbour's dog making its way toward the shade of the large tree.



*right to the shade. Stepping off the veranda, they both made very loud conversation in greeting their son, waiving their arms wildly in the air - a bit to their son's surprise. The crows kaaaa'd and flew away leaving the dog to enjoy her full share of the shade under the tree.*



*Turning to his son, John said, "Son, do you realize that the government of this province levies a freehold mineral tax on the mineral rights which your great grandad passed down to mom and I and which you will inherit. We receive nothing in return for this tax but a copy of the invoice! It seems so unfair. There must be something we can do...to either have the tax repealed or start receiving services in lieu."*

*Draping his arms around his mom and dad, the young man smiled encouragingly and said, "With our votes we are the government and it is just a matter of encouraging all freeholders and their families to vote with us in support of a leader who is open to change".*

### **Fact and Fiction**

Albeit the analogy to the dog and the crows is fictional, the theme is based on fact. The Alberta government does levy a freehold mineral tax on freehold mineral owners' production revenues. The government neither owns the freehold

mineral rights nor uses the tax revenue to provide specific services to freehold mineral owners.

The FACT is that freeholders ought to be provided with specific services in return for the specific tax levied on them. There are many specific services that would be of significant benefit to freeholders including assistance in negotiating freehold leases, help understanding freehold royalty statements, advice on estate planning, and general government and industry representation. Most of these services are currently provided to some extent by the Freehold Owners Association (FHOA). The association is funded by modest fees charged to members and has never received any funding whatsoever from government freehold mineral tax revenue. FHOA's range of services could be enhanced and expanded to the benefit of thousands of freeholders throughout Alberta were FHOA to receive but a small proportion of the millions of dollars collected each year by the Alberta Government through the freehold mineral tax.

### **The Ear Of Government**

If you attended FHOA's Annual General Meeting (AGM) this past May in Red Deer you would have heard PC leadership candidate Jim Dinning talk about his vision for



Alberta - a vision that includes all Albertans.

As Provincial Treasurer during the early 1990's, Jim made some very significant contributions in helping steer our Province through some tough times. He is equally as passionate about responsibly leading our Province as Premier in the 'good times' and in coping with the challenges that undoubtedly lie ahead.

Jim made a point of chatting with as many freeholders as time permitted at the AGM but didn't have as much time as he would have liked to discuss and understand all of our issues and concerns. Jim has since taken the time to meet with a delegation of FHOA board members so as to better understand freehold owner issues and our vision for the Freehold Owners Association. FHOA stands for fairness and encourages its members to support government leaders like Jim who also stand for fairness - as afforded to all, including freeholders.

### **Resolution of Coal Bed Methane Ownership...Another FHOA Initiative**

Many freeholders don't own the full mineral title but instead hold title to "all mines and minerals except coal and petroleum" or "all mines and minerals except coal". It is the exclusion of coal from these mineral titles that is of significant concern to freeholders who own mineral rights in areas where coal bed methane (CBM) is being developed. EnCana Corp. and Fording Coal together own most of the coal rights on these 'split title lands'. Encana and Fording claim that their ownership of coal includes any coal bed methane produced from wells perforated in coal seams on split title lands. Conversely, the freeholders who own the rights to natural gas (all mines and minerals except coal or all

mines and minerals except coal and petroleum) consider CBM to be just another form of natural gas and as such owned by them. British Columbia has passed legislation which provides the owner of natural gas on split title lands with ownership of any CBM produced from the lands. The Alberta Government has also legislated that all CBM produced from wells on Crown lands is owned by the gas owner not the coal owner. Significantly, the Alberta legislation does not apply to freehold lands.

Crown lands offset freehold lands in a checker-board pattern throughout the area between Edmonton and Calgary which has been the focus of CBM development to date. As a consequence of the unresolved CBM ownership dispute, there has been very little CBM development on sections which include split title freehold lands in this area. Crown lands however are being developed at a record pace.

The FACT is that split title freehold lands are currently being drained by wells on offsetting Crown land. Not only is drainage occurring, but freeholders are being denied their right to protect themselves from drainage by the Alberta Energy and Utilities Board (EUB). On May 30, 2006 the EUB effectively put a moratorium on drilling split title freehold lands by refusing to issue licenses for wells on freehold lands where CBM ownership is in dispute, pending the EUB's determination of the legal entitlement to CBM produced from wells on split title land. This EUB Proceeding No. 1457147 is scheduled to be heard on October 16, 2006. In the interim, energy companies that are being denied CBM well licenses on split title lands are declaring Force Majeure with respect to some terms in leases they have signed with freeholders - claiming for example that until the ownership issue is resolved, leases

normally due to expire should continue until the ownership dispute is resolved.

Making the freehold split title problem even worse is that energy companies are now allowed to drill up to four CBM wells on a section and can place all such wells along the north and east fence lines if they wish. As if this wasn't enough, the EUB has proposed that energy companies be allowed to commingle natural gas from conventional sands with CBM from coal seams in these wells. This proposal will dramatically increase drainage of "sterilized" offsetting split-title lands.

This simply is not fair!

FHOA has written to the EUB expressing our concerns with the EUB's commingling proposal. We recently met with EUB staff to discuss these concerns. We are pleased to report that the EUB amended its proposed regulations to require notification of offsetting freehold owners at the same time notice is provided to offsetting well licenses thereby providing the freeholder with the opportunity to determine if there are any actions needed to be taken with respect to the development of their minerals.

FHOA has also sought and been granted leave to intervene in Proceeding No. 1457147.

In FHOA's opinion, the EUB does not have jurisdiction to decide the CBM ownership issue and Proceeding No. 1457147 will merely serve to delay the necessary judicial determination of CBM ownership. Pending such a final judicial determination, the unfair drainage of freeholders whose mineral rights are located in sections which include split title rights can be expected to

continue. FHOA supports a court ruling sooner than later. This is such an important issue that our next newsletter will be dedicated to explaining the split title issue, FHOA's role and our go forward strategy.

If you have split-title mineral rights you are likely to be impacted by the outcome of this ownership dispute - either positively or negatively. We encourage you to get involved and help us fight for your ownership rights. Give us a call or drop us an e-mail - there is strength in numbers!

### Fairness in Action

FHOA always advises freeholders to take their time and understand all lease terms before signing a lease because once signed the lease is legally binding on you. Leases proposed by leasing agents have been structured to fully protect the lessee energy company without reciprocal protection for the freehold lessor. This simply isn't fair!

In an effort to promote fairer leasing practices FHOA developed and issued a new freehold lease standard in late 2005. The FHOA Lease fairly balances the rights of both the freehold owner-lessor and the energy company-lessee. FHOA has now issued 184 leases, of which 68 have been issued to Just Freehold Energy Corp. (JFEC). As an energy company, JFEC pays \$100 to FHOA for each parcel leased using the FHOA lease. Funding FHOA's activities from the modest fees we charge for membership, seminar attendance and technical requests is a constant struggle and the leases purchased and used by JFEC make a significant contribution to FHOA's revenue stream. As such, FHOA encourages JFEC to continue promoting the FHOA lease and encourages FHOA

members to continue supporting JFEC. With the majority of shareholders in Just Freehold Energy Corp. being freeholders, JFEC is the 'freeholders energy company'.

JFEC is placing another financing beginning this month and running into September 2006. This presents you with an opportunity to become a shareholder if you aren't already. For more information call (403)313-3540.

### **Membership Drive**

You are a highly valued member of the Freehold Owners Association. Without your support, be it financial, time volunteered at seminars, or simply referrals, this association would not exist. Many of you have supported FHOA from its beginning and continue to lend your energy and passion to the cause. While FHOA is helping many freeholders there is much more to be done. We need to update our web site to include sections on estate planning, coal bed methane, and leasing strategies. We need to develop brochures on these subjects and others to assist those members who do not have internet access. We also need to become more pro-active in bringing the legitimate concerns of freehold owners to the attention of industry regulators and our elected representatives. But to do so we need to improve our financial viability and increase our membership. We need your help to do this.

Firstly, we ask that all members with outstanding 2006 fees please renew at your earliest convenience.

Secondly, we ask that you share the FHOA story with your family, your friends and your associates. Please encourage them to join. If you make FHOA aware of a referral you have made (with contact information) FHOA will provide the individual with a complimentary one year subscription to the FHOA newsletter. Hopefully, these individuals will find the information useful and will become a long term member. Referral forms are enclosed with this newsletter and feel free to make or request more copies.

### **Consent Forms**

One of the primary benefits we as individuals realize as members of the of the Freehold Owners Association is a significantly greater influence over matters that impact us all - through the common voice of the association. One such FHOA initiative was to work with GeoLOGIC Systems in making freehold title information (i.e. contact information) more readily available to energy companies interested in leasing and developing our freehold mineral rights. For this initiative to be viable and GeoLOGIC to incorporate this information into their industry services we require participation from a significant number of freeholders. If you haven't completed and returned a consent form to the FHOA offices we strongly encourage you to do so, regardless of whether or not your mineral rights are leased. A blank consent form is attached for your convenience.

### **Upcoming FHOA Seminar**

Seminars provide a great setting for freeholders to mix and mingle with one another and ask questions of industry experts and government officials. The next seminar is scheduled for October 24, 2006 in Vulcan, Alberta. Further information will be provided in our next newsletter and on our web site.

On behalf of the board of directors.

Else Pedersen,  
President

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