
NEWSLETTER

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TIME FOR ACTION & ACCOUNTABILITY

Our last newsletter focussed on the report of the Alberta Royalty Review Panel and FHOA’s efforts to protect freeholders from the more than doubling of freehold mineral tax proposed by the Panel. We are pleased to report that our efforts succeeded - the Alberta Government rejected the Panel’s proposed freehold mineral tax changes.

FHOA has written to Premier Stelmach and Energy Minister Knight thanking them for ‘getting it right’ with respect to the Panel’s freehold mineral tax proposals. Our correspondence with the Government may be viewed on our website under Latest News - Correspondence.

But the Alberta Government has not ‘got it right’ on an even more critical issue - the ownership of coal bed methane (“CBM”) beneath ‘split title’ lands. **Our government has not only failed to protect us from the actions of powerful corporations, it is assisting these corporations in their efforts to usurp our heritage. It is time that we took strong action to protect our property rights and sought accountability from our government.**

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The CBM Ownership Dispute

FHOA first brought the issue of CBM ownership beneath freehold lands to the attention of its membership in a May, 2003 newsletter.

In summary, a century ago the Canadian Pacific Railway Company (the “CPR”) mistakenly believed that natural gas was a worthless and noxious substance. When the CPR sold farm-sized portions of its 25 million acre railway land grant to pioneer settlers during the 1902 - 1912 period, it retained only coal or coal and petroleum for its own account. The settlers thereby acquired title to both the surface and the subsurface natural gas. As a result of the CPR’s land settlement policies, title to coal and natural gas became split beneath approximately 2 ½ million acres in southern Alberta. Most of this split title land is located within the ‘CBM fairway’ - a broad area between Calgary and Edmonton where coals of the Horseshoe Canyon and Mannville geological formations overlap in the subsurface. The natural gas in coal or CBM beneath these split title lands is no longer worthless - it is worth billions of dollars. Encana Corporation (“Encana”) and the Carbon Development Partnership (“CDP”) are successors in interest to the CPR. The CBM ownership dispute arose from these entities’ efforts to correct their predecessor’s mistake and re-claim the natural gas which the CPR sold to our forefathers a hundred years ago. Both Encana and CDP take the position that CBM is coal, not natural gas.

In 2003, the majority of the members of

the Canadian Association of Petroleum Producers (“CAPP”), an organization representing energy companies that produce 95% of Canada’s conventional oil and gas, recommended that the Alberta Government enact legislation stating that CBM is natural gas beneath Alberta freehold lands. Encana, a member of CAPP, opposed this recommendation and instead called for CAPP to encourage owners of natural gas and coal beneath split title lands to negotiate sharing agreements. The Alberta Government adopted Encana’s position. It passed legislation effectively stating that CBM was natural gas but only beneath Crown lands. On its website it advises owners of coal and natural gas beneath split title lands who are unable to negotiate sharing agreements to litigate.

British Columbia also introduced legislation in 2003 effectively stating that CBM is natural gas, not coal. The legislation in B.C. applies to both Crown and freehold lands.

For the past five years, the position adopted by the Alberta Government has enhanced the business interests of Encana and CDP at the expense of tens of thousands of individual freehold owners. Why? Because freehold mineral rights are checker-boarded with Crown mineral rights throughout the CBM fairway; because of what is known in oil and gas law as the ‘rule of capture’, and because Encana and CDP have threatened to sue any CBM developer that produces CBM from a section of land in Alberta that includes split title freehold unless a CBM sharing agreement acceptable to the coal

owners has been negotiated. Most CBM developers share FHOA's view of the dubious legal merit of Encana and CDP's claim to CBM and have refused to negotiate sharing agreements. However the fear and uncertainty engendered by Encana and CDP's threats have caused CBM developers to focus their efforts on Crown lands where no ownership uncertainty exists.

To November 2007, more than 12,700 wells have been drilled for CBM in southern Alberta. The vast majority of these wells are on Crown lands within the CBM fairway. Many of these wells are located on, or in close proximity to, freehold fence lines and are clearly draining natural gas from beneath freehold owners' lands. Under the rule of capture, we, as owners of natural gas, have no legal recourse against the energy companies that are taking our natural gas through wells on offsetting Crown lands or against the Alberta Government which is profiting from this drainage through Crown royalties. All we can hope for is a well on our own lands to prevent further drainage.

In 2006, at the request of Encana and CDP, the Alberta Energy and Utilities Board (the "EUB") called a hearing to determine the legal entitlement to CBM. In March of 2007, the EUB ruled that Encana and CDP have no entitlement to CBM and that CBM is gaseous in the ground prior to human disturbance. Encana and CDP have since been granted leave to appeal the EUB decision to the Court of Appeal of Alberta. It now appears that the Court will not hear this appeal until the fall of 2008. The issues under appeal go to the EUB's jurisdiction and not to the EUB's technical findings or to the fundamental issue of CBM ownership.

If the CBM ownership dispute simply involved legal arguments in a court of law, FHOA would have no concerns. Canada's highest court has already ruled that substances which are gaseous in the ground prior to human disturbance belong to the gas owner in split title situations and this ruling together with the EUB technical finding should decide the issue. Our concerns arise from the fact that this

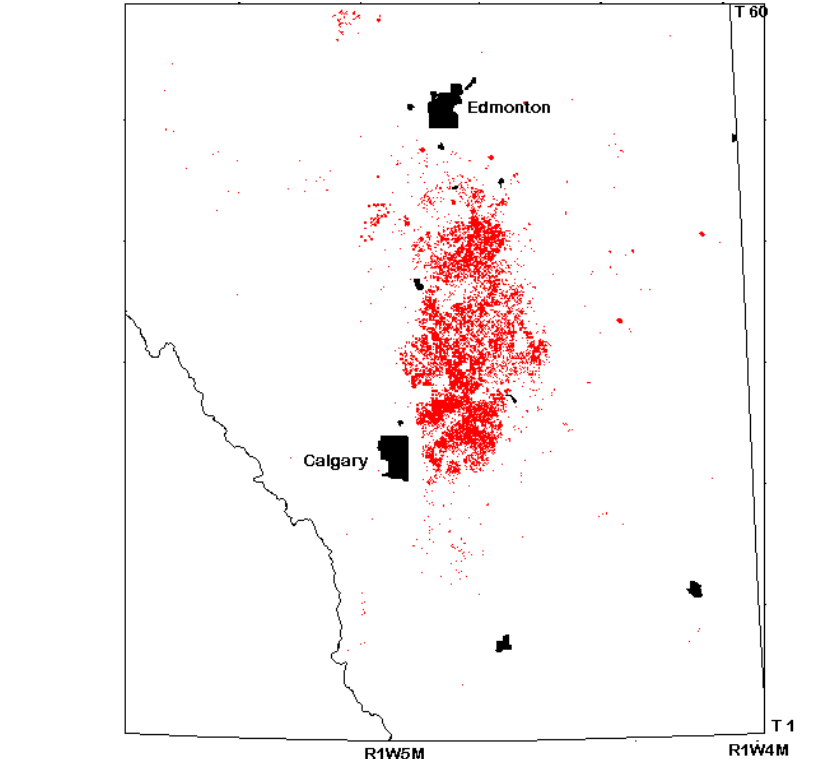


Figure 2 - CBM Wells Drilled in Southern Alberta to Nov/07

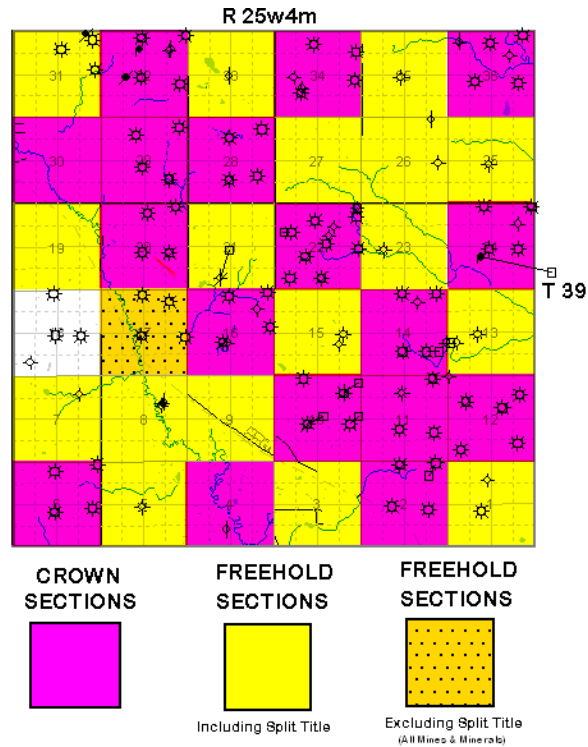


Figure 1 - 'Checker-Boarding' of Crown & Freehold, Preferential Development of CBM on Crown & Drainage of Freehold

dispute has, to date, had very little to do with the law, and a great deal to do with corporate power and influence.

The late Milton Friedman, a Nobel prize laureate who has been described by

the Economist as “the most influential economist of the second half of the 20th century”, popularized the belief that a corporation’s fundamental duty is to maximize shareholder value, irrespective of ethical concerns, so long as no laws are broken. The billions of dollars of CBM in issue in the CBM ownership dispute are clearly material to the shareholders of Encana and it is understandable that the company would use its considerable powers in whatever way possible within the law to maximize shareholder value.

Governments however represent and owe duties to their citizens and this makes the role of Alberta Energy in these matters all the more difficult to understand. Alberta’s Minister of Energy refuses to confirm with legislation the ruling of his own Government’s regulator. According to Minister Knight, the Alberta Government will not become involved while the CBM ownership issue is before the courts. The Minister acknowledges that Encana may keep the issue before the courts for many years to come. Minister Knight apparently sees nothing wrong with his government having passed legislation which enhances the business interests of Encana at the expense of the descendants of this Province’s pioneer settlers or of profiting from the drainage of these citizens’ mineral rights. Despite the EUB’s ruling and FHOA’s repeated objections, the Energy Department web site continues to advise freehold owners to either negotiate sharing agreements with the coal owner or litigate.

Over the past five years, FHOA’s volunteers have done their best to protect the interests of individual freeholders in respect of the split title CBM ownership issue. We have:

- attempted to raise the issue before the Supreme Court of Canada in the Court’s review of a lower court decision respecting the ownership of hydrocarbons produced from a well on split title lands. Encana successfully opposed this attempt;
- met with and discussed the issue with former Energy Minister Smith, former Energy Minister Melchin and current Energy Minister Knight (on two occasions);

- raised the issue on innumerable occasions during meetings of the Multi-Stakeholder Advisory Committee on CBM (the issue was invariably considered ‘out of scope’ by Alberta Energy);
- met with and discussed the issue with the rural Conservative Party caucus and a number of individual MLA’s;
- written countless letters to Government officials and elected representatives;
- intervened in the CBM entitlement hearing before the EUB;
- sought and been granted intervener status in the appeal of the EUB decision before the Court of Appeal of Alberta;
- raised the issue with the Alberta media and received favourable radio, newspaper and magazine coverage .

FHOA’s discussions with the rural Conservative Party caucus resulted in a caucus member committing to bring forward a Private Members’ Bill early in this spring’s session of the legislature vesting the ownership of CBM beneath split title lands in the hands of the owner of natural gas. However, Premier Stelmach is widely expected to call an election in conjunction with the February 4, 2008 Speech from the Throne. The Private Members’ Bill will then die on the Order Paper.

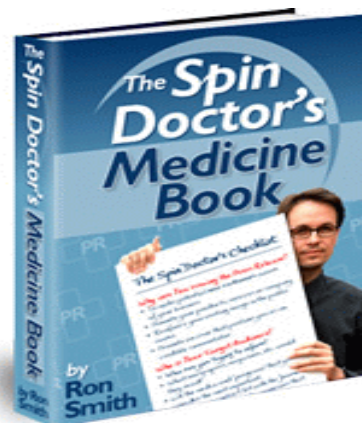
As a result, freeholders will again face the prospect of a pyrrhic victory - by the time the courts get around to ruling that we own the CBM beneath our lands, those of us who have not agreed to share our CBM with Encana or CDP may find that most of our CBM has been drained away for the account of our own Government.

We as freeholders face a number of problems in what is essentially a battle to protect the property rights which form part of our heritage.

Firstly, the legal agenda in the split title ownership dispute has been controlled by Encana to date. In 1991, the Government of Alberta and the EUB advised all energy industry operators that they considered CBM to be natural gas,

not coal. It wasn’t until 15 years later, when it was pointed out during the EUB hearing that Encana was taking no legal action to enforce its purported claim to CBM and when it was alleged that the company was instead using the regulatory process to advance its business interests, that Encana initiated the three legal actions against CBM developers which are currently outstanding in the Court of Queen’s Bench of Alberta. Given the weakness of the coal owner’s legal case, Encana has no incentive to aggressively pursue a final judicial ruling on CBM ownership. As a direct result of the position taken by the Alberta Government, the longer the legal issue remains unresolved and the more drainage of freeholders which occurs, the greater the incentive for natural gas owners to agree to share their resources with the coal owners.

Having secured effective control of the legal battle field, Encana has now turned its attention to the court of public opinion. Although Encana didn’t write the Spin Doctor’s Medicine Book, the company’s public relations department probably could have.



In September of 2007, Encana published a full page advertisement in all of the major Alberta newspapers and many of the rural ones. According to this advertisement: “We know that it might take some time for the courts to reach a decision on this historic matter [split title CBM ownership] and we don’t want to slow down the

development of CBM ... The EUB will issue well licenses to the natural gas owner or lessee regardless of this debate, allowing drilling and production to continue". Like all good spin, the advertisement omits facts which don't support the message - in this case the fact that drilling and production from split title lands has not and will not continue so long as Encana threatens to sue any lessee that has not negotiated a sharing agreement with Encana and produces CBM from split title lands.

In November of 2007, Encana mailed letters to all Alberta split title natural gas owners within the CBM fairway. To do this, Encana searched all relevant titles in the Land Titles Registry - probably at least 15,000 titles. If your title excludes coal and you own mineral rights within the CBM fairway but you didn't receive a copy of Encana's letter, your name or address in the Registry is probably incorrect - it is in your best interest to correct this and we urge you to do so.

According to this letter, Encana "is committed to treat freehold owners like you with fairness and equality" because "it shares your concerns on this matter [split title CBM ownership]". What is fair and equitable clearly lies in the eye of the beholder. The CBM ownership concerns of freeholders are directly attributable to Encana's unsubstantiated claims and it would be more appropriate to replace the word 'shares' with the word 'caused'.



Encana's letters and advertisements illustrate the second problem faced by freehold owners. Advertising, title searching and paying professionals skilled in public relations is expensive. We estimate that Encana spent at least twice as much money on its ads and letters as FHOA has spent in its entire eight years of existence. FHOA cannot afford to pay professional public relations experts or to search thousands of titles and send letters to all owners of split title natural gas rights. In our last newsletter dealing with the Royalty Review Panel's proposed greater than 50% increase in freehold mineral tax, FHOA advised members that Premier Stelmach had appointed Justice Minister Stevens to review concerns with the Panel's proposals and that FHOA had sought a meeting with the Minister. FHOA received no response to our request. FHOA considered the issue so important to our membership that a substantial portion of our available capital was dedicated to publishing an open letter to the citizens of Alberta in all of the Province's major newspapers. We have attached a copy of this letter for the information of those members who may not have seen it. This letter had its desired effect but its publication cost \$11,500 and seriously depleted FHOA's capital.

FHOA's capital has also been depleted by legal fees associated with our successful intervention before the EUB in the CBM entitlement hearing and our successful application for leave to intervene in Encana's appeal of the EUB decision. Although Rae and Company bills FHOA at rates substantially lower than industry standard, it has still cost FHOA \$36,800 for legal representation to date.

Help FHOA Help You

FHOA needs to raise funds from our membership and other concerned parties if we are to continue our efforts to protect the property rights which form part of our collective heritage. We urge you to make a financial contribution to our efforts. With an additional \$50,000 FHOA could seize the initiative in the CBM ownership dispute and bring an end to

this fiasco. A hundred dollar contribution from each of our members would be meaningful. Many of you may deem a significantly larger donation to be a small price to pay given the multi-billion dollar value of the CBM we are trying to protect for you.

You may ask: "What can a group of volunteers, no matter how motivated and dedicated, do in a battle with a \$50 billion corporation?" We believe we can do quite a lot.

When Premier Stelmach assumed his role in early 2007, he promised to "do what's right for all Albertans", not what's right for Encana. By the time you read this, Premier Stelmach will probably have called an election. We believe that the coming election campaign provides FHOA with an opportunity to hold the Premier to his promise. In this age of blogging, Facebook and YouTube, an organization doesn't need a huge budget to make an impact - it needs to be able to reduce complex technical and legal issues to simple issues of fairness and capture the attention of the public. With your financial help we can do this and successfully defend our heritage.

Upcoming Seminar:

FHOA's next seminar for freehold mineral rights owners will be held in the Dow Centennial Centre, 8700-84 Street, Fort Saskatchewan, Alberta from 7:00 to 10:00 pm on February 21, 2008. Guest speakers will discuss freehold leases, looking after your mineral rights, freehold mineral tax and the CBM split title ownership dispute. A question and answer session will follow the talks.

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

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