

# focus

## Energy Law

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FMC

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### **New British Columbia *Coalbed Gas Act***

On March 25, 2003, the *Coalbed Gas Act* was introduced into the provincial legislature of British Columbia. The proposed legislation is intended to address uncertainty related to the ownership of coalbed methane or coalbed gas ("CBG") in British Columbia. The uncertainty is based on the different treatment of CBG rights in case law from various jurisdictions, particularly in the United States. The proposed Act is intended to preclude any potential legal challenges to determine the nature of CBG ownership.

The proposed Act makes it clear that CBG is natural gas, natural gas is a mineral, and the owner of a coal tenure has no CBG rights. It states that CBG rights are owned by the owner of the natural gas rights, which in British Columbia is the Crown in most cases. "Coal" is defined as "combustible sedimentary rock, other than peat, composed of altered and hardened carbonized vegetable matter, but does not include coalbed gas". "Coalbed gas" is defined as: "all substances (a) that can be recovered to the surface through a wellbore from subsurface coal deposits and any reservoirs in communication with the coal deposits, and (b) the volume of which, if measured at the surface immediately following the recovery, would be measured as a gas".

Under the proposed legislation, the Minister of Energy and Mines will now be able to issue natural gas tenures for CBM leases. The legislation makes it clear that its effect is not expropriation or injurious affection. The Act confirms policy in British Columbia that CBG is a natural gas and not part of the coal. The proposed Act specifies that a person has no right of action and must not commence or maintain proceedings for damages or compensation against the government as a result of the enactment of the Act or as a result of tenures issued pursuant to the Act. The Minister may by regulation and for safety reasons authorize coal owners, or holders of Crown coal dispositions to vent or dispose of coalbed gas as directed.

The proposed legislation does not contain rules that will govern the exploration for CBG within coal mining areas, and it does not include any regulations governing the dual tenures that might exist for CBG and coal. In our view, these are issues that will need to be addressed in due course. For example, clarification will be needed as to whether existing mine plans may have to be amended to reflect the development of CBG.

In what appears to be adjunct to this proposed legislation, the Government of British Columbia is also proposing to bring in legislation that will attempt to define the ownership of undersurface mineral rights on freehold lands. That legislation

apparently is intended to end the need for extensive historic searches of freehold mineral title in the future by clarifying freehold mineral title ownership through legislation. We understand that there will be a “window of opportunity” to challenge findings with respect to ownership of minerals and that when the window is closed, mineral title will be “confirmed” and all future ownership will be based on the declared title. It is also proposed that freehold mineral title will be classified by mineral type. This legislation may also result in the creation of a mineral title registry somewhat akin to that found on undersurface charges registered against the surface title in the land title office. We understand this review is currently underway, and that this proposed legislation is scheduled to be introduced into the Legislature in the spring of 2004.

## Seminars and Papers

Brian Abraham recently spoke on “CBM Transactions Relating to Mining and Private Lands in British Columbia” at a Conference Board of Canada conference on “Understanding the Business of Coalbed Methane” in Calgary. He will be speaking on “Title Issues, Who Owns the Rights” at the Insight Conference on “Coalbed Methane, New Policy and Opportunities in British Columbia” in Vancouver on April 28, 2003.

Please visit our website at [www.fmc-law.com](http://www.fmc-law.com) for further publications relating to CBG issues, including “Coalbed Methane – Capitalizing on New Energy Source Requires Answers to Old Questions”, by Al McLarty (February 27, 2003).

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