

## **The First Nations Oil and Gas and Moneys Management Act; some suggested questions and answers**

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1 Since Bill C-54 includes a provision whereby existing mineral "surrenders" to the Crown cease to have effect, could a First Nation membership simply vote to "de-surrender" the oil and gas rights within their reserve lands and NOT opt into FNOGMMA?

Yes. The effect of such a "de-surrender" vote would be to remove the jurisdiction of Indian Oil and Gas Canada ("IOGC"). IOGC would no longer be able to issue oil and gas leases on the reserve to third parties, thus freeing the First Nation to produce its own oil and gas. However, under the Indian Act the Minister's consent would still be necessary in order for the First Nation to sell to off-reserve purchasers oil and gas that the First Nation itself produces from its reserve.

2 When a First Nations opts into FNOGMMA, will it obtain ownership and title to the oil and gas resources on its reserve?

No, title will remain with the Government of Canada. However, the First Nation, in addition to the Government of Canada, will be able to grant oil and gas leases on its reserve lands. As well, it will be able to exploit its oil and gas resources directly should it so wish. Notwithstanding that Canada will still be the title holder to oil and gas lands on the reserve, Canada will no longer be liable as owner of the land, nor will it be liable for environmental or resource conservation matters.

3 When a First Nation opts into FNOGMMA, does it take over the role of Indian Oil and Gas Canada ("IOGC")?

No, in the legislation Canada decided to "supercede" the mineral surrender or designation that presently is the sole source of IOGC's jurisdiction. Canada decided not to delegate to a First Nation that opts into the legislation IOGC's present powers arising from the mineral surrender or designation. Instead, Canada is being released from its fiduciary and trust-like obligations arising under the surrender or designation, in exchange for Canada's recognition of the First Nation's inherent and treaty-based beneficial ownership and jurisdiction over the oil and gas situate on reserve lands. As a consequence, a First Nation opting into the legislation will have the right to grant oil and gas rights without having to first go through the Government of Canada.

4 Many provincial oil and gas laws presently do not apply to oil and gas located on reserve lands. If a First Nations opts into Bill C-54, will those provincial laws then apply

to oil and gas on its reserve?

No

5 Will Bill C-54 allow a First Nation to take out of the Consolidated Revenue Fund the interest imputed on its capital and revenue moneys held in the CRF?

Yes. The term "Indian moneys" does not include the imputed interest that Canada credits to a First Nation's capital and revenue moneys held in the Consolidated Revenue Fund ("CRF:). However, Bill C-54 specifically provides for a First Nation accessing not only Indian moneys (moneys paid into the CRF to the credit of the First Nation), but as well, the imputed interest that has been credited to these moneys by Canada since the date the moneys were paid into the CRF.

6 Bill C-54 permits a First Nation to access its moneys in the CRF, even though these moneys did not originate from oil and gas activities. Why was this provision included in the Bill?

Canada requested that the sponsoring First Nations allow this provision to be included in the Bill, notwithstanding that their interest related primarily to moneys originating from oil and gas activities.

7 Bill C-54 contains no provisions whereby Canada's fiduciary obligations to First Nations are confirmed. Why is this?

The Minister of Indian Affairs has committed to the sponsoring First Nations that Canada, as part of the "transfer agreement" required to transfer management and control to the First Nation, will reiterate and confirm Canada's "special relationship" with the First Nations opting into FNOGMMA.

8 Bill C-54 contains no commitments from Canada to provide transitional funding to a First Nation that wishes to opt into FNOGMMA. Will a First Nation have to use its own financial resources when it pursues opting-into FNOGMMA?

No. Again, the Minister has committed that such funding will be provided as part of the transfer agreement.

9 Will the existing limitations on creditors' remedies imposed by sections 89 and 90 of the *Indian Act* be eliminated?

No.

10 If a First Nation enters into an oil and gas administrative agreement with a province, will the province assume a share of the fiduciary obligations of the Crown to that First Nation?

If a province agrees in the administrative agreement with a First Nation (and Canada) to

so assume a share of these obligations, then yes, the province can do so.

11 What consultation with other First Nations has taken place?

As a result of the broadening of the mandate of the Pilot Project negotiating table in 2003 to include moneys other than those derived from oil and gas, the make-up of the First Nations' side of the negotiating table was broadened to include First Nations representation from British Columbia, Ontario, Quebec and the Atlantic provinces. First Nation representatives from these regions were kept abreast of our negotiations.

12 How does FNOGMMA compare with the proposed First Nations Commercial, Industrial and Development Act?

The most striking aspect of FNCIDA is that there is absolutely NO element of First Nation self-government or sovereignty under FNCIDA. The entire bill is premised on Canada making additional legislation and regulations. While it is stated that no such new federal laws will be made without input from the particular First Nation, ALL such input is informal. There will be no law-making by the First Nation.

FNOGMMA, unlike FNCIDA, recognizes our inherent jurisdiction. FNOGMMA is a framework for First Nation laws. The single most important benefit to First Nations in FNOGMMA is this recognition of our law-making power. FNCIDA does NOT provide for any First Nation law-making power.

13 Overall what is the main benefit to those First Nations who opt into the legislation?

The Government of Canada, facing pressure and in an effort to fulfill Canada's fiduciary and other constitutional obligations lawfully owed to First Nations, has finally proposed legislation that would transfer oil and gas land and resources to their lawful First Nation owners.

For the first time Canada is recognizing the inherent right and primacy of First Nations to independently govern, regulate and tax commercial activities on their own reserve land. This legislation will allow 100% of the resource rents from oil and gas development to go to First Nations, rather than being shared with the federal and provincial governments. The White Bear First Nations, the Siksika Nation and the Blood Tribe will now be able to join the ranks of other hydrocarbon-producing jurisdictions.

This legislation thus represents a significant departure and improvement from Canada's more recent attempts to legislate restrictions on First Nations.

The White Bear, Siksika and Blood First Nations have been driving this legislative change for some nine years. FNOGMMA represents the culmination of their efforts and is a hard fought victory.