



# Peace River Regional District

Box 810, 1981 Alaska Avenue,  
Dawson Creek, B. C., Canada V1G 4H8  
Telephone: 250/784-3200 Fax: 250/784-3201

## REPORT

## R-3

To: Chair and Directors

From: Karen Goodings, Chair  
Fred Banham, CAO

Date: December 1, 2009

Subject: **Independent Land Information & Advocate Office  
(Farmers' Advocate)**

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### PURPOSE/ISSUE:

That the Peace River Regional District (PRRD) partner with the Provincial Government to create a contract position to provide the services of an Independent Land Information & Advocate Office (Farmers' Advocate).

### RECOMMENDATION:

- a) That the Regional Board enter into a Memorandum of Understanding with the Provincial Government to facilitate an Independent Land Information & Advocate Office (Farmers' Advocate) for Northeast BC; and
- b) That staff be authorized to work with Provincial Ministry staff to develop and advertise a Request for Proposal.

### BACKGROUND:

Revenues from oil and gas in Northeast BC are the single largest resource contributor to the BC provincial economy at this time. While considerable development to date has taken place on Crown Land, the vast new Montney shale gas play overlaps significant acreage of private farmland in the PRRD area. Tensions already exist in the region, and Northeast BC rural residents have asked for assistance in providing a level playing field for dealing with oil and gas companies, land agents and other issues. In March 2009, in series of initiatives aimed at enhancing working relations, Energy Mines and Petroleum Resources' Minister Lekstrom announced the creation of the position of a Farmers' Advocate (FA) for BC.

In July 2009 the Regional Board resolved to support the Province in their initiative to establish a Farmers' Advocate and to contribute partnership funding up to 50% of financing for the position/office to be paid for through a tax levy on all properties.

In looking at ways to implement this new office to be independent, and unfettered; the Province is suggesting that the office could be a jointly funded contract position hired and administered through the PRRD.

With a Memorandum of Understanding with the Province and a clear set of deliverables around Farmers' Advocate Office responsibilities including reporting out to the public, stakeholders, industry and government, this Independent Land Information & Advocate (Farmers' Advocate) could be seen as independent and accountable.

**Dec 11 2009**

Department Head: \_\_\_\_\_

CAO: 

# Memorandum of Understanding

between the  
Ministry of Agriculture and Lands,  
the Ministry of Energy, Mines and Petroleum Resources  
and the Peace River Regional District

relating to the  
Northeast British Columbia Rural Residents Independent Land Information and  
Advocacy Office ("Farmers' Advocate")

## 1. Purpose

The British Columbia Energy Plan, policy action number 54, targets "improved working relationships among industry and local communities and landowners by clarifying and simplifying processes, enhancing dispute resolution methods, and offering more support and information".

In the spirit of the Energy Plan, and to offer more support and information to northeast British Columbia rural residents:

1. The Ministry of Agriculture and Lands (MAL), the Ministry of Energy, Mines and Petroleum Resources (MEMPR) and the Peace River Regional District (PRRD) wish to jointly establish and participate in a regional management committee to administer the new office as defined in Section 4.
2. The Ministry of Energy, Mines and Petroleum Resources and the Peace River Regional District wish to enter into a contractual relationship to fund the office of the Farmers' Advocate.

This Memorandum of Understanding (MOU) outlines guiding principles, roles and responsibilities and a collaborative framework for establishing, maintaining and funding the "Rural Residents Independent Land Information and Advocacy Office (Farmers' Advocate)".

The Ministry of Energy, Mines and Petroleum Resources is created under the *Ministry of Energy and Mines Act*. MEMPR administers statutes pertaining to the energy, mining and petroleum resource sectors. In addition, the Minister of Energy, Mines and Petroleum Resources is responsible for the Assayers Certification Board of Examiners, the British Columbia Hydro and Power Authority, the BC Transmission Corporation, the Columbia Power Corporation, the Mediation and Arbitration Board and the Oil and Gas Commission. The Ministry retains responsibility for the policy direction provided to the Oil and Gas Commission, which regulates the oil and gas industry throughout British Columbia.

The Ministry of Agriculture and Lands is created under the *Ministry of Agriculture and Food Act*. The purposes and functions of the ministry, under the direction of the minister, include matters relating to the production, marketing, processing and merchandising of agricultural products and food; the institution and carrying out of advisory, research, promotional or education extension programs, projects or undertakings relating to agriculture and food; and the collection of information and preparation of statistics relating to agriculture and food and the dissemination of these statistics as the minister considers advisable.

In BC, the principal mechanism used to empower regional districts and define their responsibilities is the *Local Government Act* (LGA). The LGA mandates regional districts to foster the current and future economic, social and environmental well-being of its community. The Peace River Regional District was incorporated in 1987 and is responsible for 120,000 sq. kilometres of northeast BC where considerable oil & gas activity takes place. With growing interface between oil & gas activity and private farmland holdings the PRRD sees a growing need for consultative services to assist farmers through growing demands on their farmland resource.

## 2. Background

Landowners in British Columbia generally hold title to the surface of their land, but they do not usually hold title to the sub-surface minerals including petroleum and natural gas. The Crown usually retains these rights, and has the power to dispose of them to companies that may subsequently wish to remove the resources.

The BC Oil and Gas Commission (OGC) is an independent one-window integrated regulatory agency with responsibilities for overseeing oil and gas operations including exploration, development, pipeline transportation and reclamation. The OGC has regulatory responsibility for industry activity from the exploration and development phases, through to facilities operation and decommissioning. It is charged with balancing a broad range of environmental, economic and social considerations. Among its more specific objectives are: public safety, conservation of petroleum resources, fostering a healthy environment, and equitable participation in production. A company that wishes to remove petroleum and natural gas resources must obtain the OGC's approval for a project. The OGC provides dispute resolution opportunities to address the unresolved concerns of persons who are affected by a proposed oil and gas operation.

The holder of a subsurface right has the legal right to access the resource but they must compensate landowners for entering and using the surface to access the subsurface resources. The BC Mediation and Arbitration Board (MAB) is an independent quasi-judicial board established to resolve disputes between landowners and sub-surface holders with respect to surface access and compensation. If landowners and sub-surface holders are unable to negotiate a surface lease agreement providing the subsurface holder with access to the surface and the landowner with compensation for access, the MAB may issue a right of entry order and determine compensation and other terms. The MAB provides mediation and arbitration to resolve disputes.

In order to extract subsurface oil and natural gas, therefore, the holder of the rights to those resources must:

- Comply with the regulatory requirements of the OGC, including requirements for public safety, protection of the environment, and minimizing interference with affected landowners, and
- Negotiate surface access with the landowner or obtain a right of entry order from the MAB.

The OGC and MAB will frequently be required to resolve disputes between landowners and oil and gas companies with respect to the same land and proposed oil and gas installation. The parties to these disputes may raise issues before one agency that are within the jurisdiction of the other agency. Both organizations provide dispute resolution services within their respective spheres of jurisdiction but

neither organization may provide dispute resolution for issues outside of their respective spheres of jurisdiction.

Notwithstanding, some northeast British Columbia farmers and other rural residents report they feel at a disadvantage when approached by oil and gas developers, and are unaware of whom to turn to for advice on compensation and mitigation. In March 2009 MEMPR Minister Blair Lekstrom announced a number of initiatives to improve the relationship between rural residents and the oil and gas sector, including the creation of the office of an independent Farmers' Advocate to be located in Dawson Creek.

### 3. Role and Responsibilities of the Farms' Advocate

#### a) Program

The Ministry of Energy, Mines and Petroleum Resources manages the responsible development of British Columbia's energy, mining and petroleum resource sectors. Through the promotion of teamwork and positive working relationships with our clients, we facilitate a climate for thriving, safe, environmentally responsible and competitive energy, mining and petroleum resource sectors. It is through these initiatives that the Ministry will continue to contribute to the economic growth and development of communities throughout British Columbia.

The Farmers' Advocate will work to ensure rural landowners throughout northeast British Columbia are provided access to relevant information to manage their land and agricultural assets in order to mitigate business risk and maximize future economic opportunity as it relates to interaction with the oil and gas industry.

Key themes for the Farmers' Advocate will be information dissemination, education and client service. The Farmers' Advocate may also engage in advocacy for policy and legislation changes.

The Farmers' Advocate is a new office independent of the Ministry of Energy, Mines and Petroleum Resources that will report, for administrative purposes only, to a management committee comprised of the Ministry of Agriculture and Lands, the Peace River Regional District, the Ministry of Energy, Mines and Petroleum Resources and representative landowner from the NE BC.

#### b) Purpose of Position

The Farmers' Advocate speaks and writes in support of rural landowners' interests in respect of oil and gas developments on private property. This no-fee service for rural residents is aimed at:

- Gathering and disseminating information necessary for landowners to negotiate and address their concerns.
- Working to ensure residents to achieve a full understanding of the information and promoting proactive pre-planning to protect the interests of rural landowners.
- Resolving problems by emphasizing facilitation, negotiation or mediation.
- Providing an effective, independent, "gateway" to existing regulatory, legislated and other services that address the concerns of rural land owners with oil and gas developments.

#### c) Accountabilities and Deliverables

The Farmers' Advocate will be responsible for:

- The collection, dissemination and interpretation of up-to-date and accurate information related to oil and gas related rights, roles and responsibilities, information on surface lease agreements, and the regulatory environment the industry works within to farmers, ranchers and rural residents; maintain an up-to-date website.
- A source of information and support for farmers, ranchers or rural residents in their interaction with the oil and gas industry and their agents including reporting out routinely on all interactions – both successful (e.g., conflict resolved) and unsuccessful (conflict escalated);
- Participate in public meetings on oil and gas landowners' compensation and other matters within the position mandate, sit on appropriate committees, and participate in appropriate training activities;
- Provide quarterly reports to The Management Committee summarizing the activities of the Farmers Advocacy Office and recommending any policy or program changes that will improve the relationship between communities and the oil and gas sector.

The Farmers' Advocate may also:

- Participate in, or lead training or information sessions for landowners and industry.
- Provide input on legislative and policy development matters which are related to the mandate of the Farmers' Advocate.
- Hire and supervise additional staff members.
- Contract for services following the BC Government Financial Management Procedures.

A number of provincial and local agencies already provide services or have responsibilities to farmers, ranchers and rural residents. The role of the Farmers' Advocate will be to identify, integrate and complement, but not replace these programs, services and legal mandates.

The Farmers' Advocate will not:

- Provide legal advice.
- Act as a formal mediator.
- Provide advice on mining, alternative energy, forestry, commercial tourism or agro-business or any other non-oil and gas related sectors.
- Provide advice outside Northeast BC.
- Engage with or act as an intermediary with First Nations governments.

#### 4. Farmers' Advocate Management Committee

The Ministry of Energy, Mines and Petroleum Resources, Ministry of Agriculture and Lands and the Peace River Regional District hereby agree to establish a Farmers' Advocate Management Committee as follows:

Membership, Term and Decision Making

- Members will comprise four representatives, one each from the Peace River Regional District, the BC Ministry of Agriculture and Lands, the BC Ministry of Energy, Mines and Petroleum Resources and a representative farm/landowner from the BC Peace that is agreeable to the three government jurisdictions. Each member will provide an alternate.
- There will be no maximum term of representation.

- Decision making will be achieved by consensus among members present (in person or via teleconference) at each meeting.
- The Chair will rotate amongst Committee members with each formal meeting, and will participate as with other members in decision making via consensus.



#### Reporting & Accountability

The Farmers' Advocate will be accountable to the Peace River Regional District for adherence to the financial aspects of the terms of contract. On an operational basis, the farmers' Advocate will be responsible to the Management Committee (the committee) for carrying out the prescribed duties of the position as described in this MOU. The Committee will otherwise leave the position unfettered, and will not provide any direction or guidance to the position unless requested by the Farmers' Advocate and after consultation and consensus by members.

#### Employees

Employees of the Farmers' Advocate will not be employees of either level of government.

#### Key Responsibilities

The Management Committee will:

- Share in developing the contract terms for the Farmers' Advocate.
- Share in examining the PRRD Request for Proposals and Proposals
- Make recommendation to the Regional District on awarding and amendments to any contract

#### Administering the Position:

The Committee will monitor the position to ensure that the incumbent:

- Adheres to the mandate of the position and is functioning in an effective manner.
- Reports out to the general public in the manner and frequency required by the contract terms.
- (With input and support by the Farmers Advocate) and prior to one month before the end of each fiscal year, recommend any required changes to the contract terms for the position.

#### Termination of Contract:

Continuation of the contract will be subject to the availability of funds, the need for services, and satisfactory performance. Performance will be assessed by the committee, which will decide by consensus on any disciplinary action to be taken, up to and including termination with cause, which must be made in writing.

#### Facilitation and Support:

- The committee members will decide on location of meetings, or teleconferencing by consensus.
- Note taking and any follow-up to meetings will be conducted on a rotating basis.

#### Recommended Meeting Schedule and Reporting Out:

- The Committee will meet with each other, and together with the Farmers' Advocate, a minimum of three times per year.
- The Chair may call additional meetings as needed.
- The Committee and the Farmers' Advocate will develop a regular reporting mechanism.
- Any reporting out will be by consensus.

### 5. Farmers' Advocate Cost Sharing

On June 25 2009 the Regional Board of the Peace River Regional District passed a resolution that "the Regional District participate in the establishment of a Farmers' Advocate position for northeast BC and that a portion up to 50% of financing for the position/office be paid for through a tax levy on all properties in the Regional District." The fiscal relationship between the PRRD and MEMPR is now formalized through this MOU.

The Ministry of Energy, Mines and Petroleum Resources and the Peace River Regional District have agreed to cost share the position in fiscal years 2009/2010 and 2010/2011 as described in Appendix 1. Cost sharing will be achieved by MEMPR providing its share of the funding to the PRRD, which the PRRD, following a request for proposals, will incorporate into a direct contract with the Farmers' Advocate.

### 6. Legal Liability

Nothing in this MOU shall be construed to conflict with current legislation or regulations.

Nothing in this MOU is intended to create any right or benefit, substantive or procedural, enforceable at law by any person or organization against the signatory agencies, their staff, members or officers, or any other person, government agency or ministry.

### 7. Other Provisions

Nothing in this MOU is intended to diminish or otherwise affect the authority of the signatory agencies to carry out their statutory, regulatory, or other official functions or to commit the agencies to providing a particular service it would not otherwise provide in the scope of each agency's individual mandate.

This MOU may be amended or modified at any time by written agreement of the signators.

### 8. Effective Period/Termination

This MOU is effective as of the date of final signature of the signatory agencies and will remain in effect until terminated by any of the agencies. Any of the agencies may terminate this MOU upon written notice to the other agencies.

### 9. Period Review/Continuation

The agencies agree that on an annual basis the appropriate staff will meet to review the content and continued relevance of this MOU. Proposals for change to this MOU can be made at any time, and appropriate amendments made as may be agreed upon.

APPROVED BY:

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(Name)  
Title  
Peace River Regional District

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name)  
Title  
Ministry of Energy, Mines & Petroleum Resources

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name)  
Title  
Ministry of Agriculture & Lands

\_\_\_\_\_  
Date

Appendix 1  
Farmers' Advocate Cost Sharing Agreement

On June 25 2009 the Regional Board of the Peace River Regional District passed a resolution "that the Regional District participates in the establishment of a Farmers' Advocate position for northeast BC and that a portion up to 50% of financing for the position/office be paid for through a tax levy on all properties in the Regional District."

The Ministry of Energy, Mines and Petroleum Resources and the Peace River Regional District have agreed to cost share the position in fiscal years 2009/2010 and 2010/2011. This cost-sharing arrangement will be reflected in a contract between MEMPR and the PRRD to contract out and administer the position of the Farmers' Advocate.

MEMPR has budgeted \$120,000 to end of fiscal year 2011. The PRRD has voted to fund up to 50% of the contract costs, or an additional maximum \$120,000 to end of calendar year 2011. Dependent on the value of proposals received combined funds may be sufficient for the contract term to extend beyond end of calendar year 2011.

Approved:

\_\_\_\_\_  
(Name)  
Title  
Peace River Regional District

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name)  
Title  
Ministry of Energy, Mines & Petroleum Resources

\_\_\_\_\_  
Date