



British Columbia Securities Commission

Citation: 2014 BCSECCOM 197

## Settlement Agreement

### Black Gold Resources Ltd. and William McDonald Ferguson (the Respondents)

#### *Securities Act, RSBC 1996, c. 418*

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director), Black Gold Resources Ltd. (Black Gold), and William McDonald Ferguson (Ferguson) agree as follows:

#### **Agreed Statement of Facts**

##### ***Background***

1. Black Gold is a British Columbia (BC) company.
2. Black Gold #5 LP (BG #5 LP) and Black Gold #6 LP (BG #6 LP) are registered in BC as limited partnerships. The General Partner to BG #5 LP is 0932125 BC Ltd. (932 Ltd.), and the General Partner to BG #6 LP is 0933581 BC Ltd (933 Ltd.).
3. Ferguson was at all relevant times resident in BC, and is the sole director of Black Gold, 932 Ltd. and 933 Ltd.
4. None of Black Gold, BG #5 LP, BG #6 LP (collectively, the Black Gold Limited Partnerships), 932 Ltd., 933 Ltd., or Ferguson has ever been registered under the Act.

#### **Misconduct**

##### ***Unregistered advising***

5. Ferguson created the Black Gold Limited Partnerships to pool investor funds to invest in the oil and gas industry. Black Gold acted as the managing partner of the Black Gold Limited Partnerships.
6. Black Gold and Ferguson relied on the private issuer exemption to distribute the securities of the Black Gold Limited Partnerships.
7. Black Gold and Ferguson raised a total of \$625,000 for the Black Gold Limited Partnerships from 11 investors (the Black Gold LP Investors), including Ferguson, who contributed \$30,000 of the total amount raised.



8. Ferguson used the funds raised for the Black Gold Limited Partnerships to invest in a Saskatchewan oil exploration and production company (the Oil Company).

Assessing investment merits

9. The investments in the Oil Company were in the form of joint venture units that were qualified for distribution by the Oil Company through its offering memorandums. The Black Gold LP Investors did not receive the offering memorandums. Ferguson reviewed and assessed the merits of the offering memorandums on behalf of the Black Gold LP Investors.

Taking a management fee

10. The investments in the Oil Company entitled the Black Gold LP Investors to receive net monthly income from the Oil Company's sales. The Oil Company paid the monthly income to 932 Ltd. and 933 Ltd., not directly to the Black Gold LP Investors.
11. Ferguson deposited the monthly cheques into Canadian bank accounts in the name of 932 Ltd. and 933 Ltd., over which he had control and sole signing authority. Ferguson deducted 20% of the monthly cheque amounts as a management fee, prior to distributing the funds to the Black Gold LP Investors, in proportion to their share of the investments.
12. From March 2012 to September 2013, Black Gold and Ferguson earned approximately \$17,591.68 in management fees (the Management Fees).

Discretionary investing

13. In May 2012, Ferguson purchased a Guaranteed Investment Certificate (GIC) with \$175,000 from two of the Black Gold LP Investors. He redeemed the GIC in August 2012, in order to invest those funds with the Oil Company. Ferguson used his discretion over investor funds to purchase the GIC, without the knowledge or consent of the two investors. The GIC investment earned approximately \$438 in interest income, which Ferguson retained (the GIC Interest Income).

Breach of the Act

14. Black Gold and Ferguson engaged in activities (assessing investment merits, taking a fee, and discretionary investing) similar to those of a registrant. Therefore, they engaged in the business of advising in securities, triggering the registration requirements. The Respondents' failure to register prior to undertaking these activities was a breach of section 34 of the Act.



***Mitigating Factors***

15. The Executive Director has taken into account the following facts as mitigating the sanctions which would otherwise have applied in the public interest.
16. Ferguson received advice from his legal counsel, in 2012, about the Black Gold limited partnership structure. However, Ferguson's lawyer did not advise him that the limited partnership structure, which allowed him to charge investors a fee, would be contrary to section 34 of the Act.
17. Ferguson and Black Gold stopped charging the Black Gold LP Investors a 20% management fee (Fees) in October 2013, after Commission Staff (Staff) contacted him.
18. Ferguson has fully co-operated with Staff throughout their investigation.

***Public Interest***

19. It is in the public interest that the Executive Director issue orders under section 161 of the Act.

***Undertaking(s)***

20. Ferguson undertakes to:
  - (a) reimburse the Black Gold LP Investors by returning the Management Fees;
  - (b) not collect any more Fees;
  - (c) return the GIC Interest Income to the two affected Black Gold LP Investors;
  - (d) within 90 days of the Order defined in paragraph 2, provide the Executive Director:
    - i. an accounting of the portion of the Management Fees returned to each of the Black Gold LP Investors and the portion of the GIC Interest Income returned to the two affected Black Gold LP investors; and
    - ii. proof that the Management Fees and GIC Interest Income have been returned to the Black Gold LP Investors and the two affected Black Gold LP investors, respectively; and



- (e) pay \$5,000 to the British Columbia Securities Commission, in respect of the settlement of this matter, which sum is due and payable immediately, without further demand.

### **Order**

- ¶ 2 The Executive Director, considering it to be in the public interest to do so, will issue an order (the Order) that:
1. under section 161(1)(a) of the Act, the Respondents will comply with the Act, the *Securities Rules*, BC Reg. 194/97, and any applicable regulations;
  2. under section 161(1)(b) of the Act, Ferguson cease trading in any securities, for a period of three years from the date of this Order, except that Ferguson may trade in securities through one account in his own name with a person registered to trade in securities under the Act, if he has first provided the registered representative with a copy of this Order before any trade takes place; and
  3. under section 161(1)(d)(iii) of the Act, Ferguson will be prohibited from becoming or acting as an adviser,

until the later of:

- (a) three years from the date of this Order;
- (b) the date Ferguson becomes registered under the Act;
- (c) the date Ferguson complies with his undertakings to:
  - i. reimburse the Black Gold LP Investors by returning the Management Fees, as set out in paragraph one, item 20(a);
  - ii. return the GIC Interest Income to the two affected Black Gold LP Investors, as set out in paragraph one, item 20(c); and
  - iii. pay to the Commission the sum of \$5,000, as set out in paragraph one, item 20(e).

### **Consent to Regulatory Orders**

- ¶ 3 Ferguson and Black Gold each consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the Orders set out in paragraph 2 above.



**Waiver**

¶ 4 Ferguson and Black Gold each waive any right they may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

**Counterpart**

¶ 5 This Settlement Agreement may be executed in counterpart or by facsimile execution and all such counterparts of executed copies or faxed copies shall be read or construed together as if they formed one originally executed document.

¶ 6 June 03, 2014

¶ 7 William MacDonald Ferguson  
**Black Gold Resources Ltd.**  
**(Signing Authority)**

Teresa M. Jenkins )  
Witness Signature )  
)  
Teresa M. Jenkins )  
Witness Name (please print) )  
)  
Farris, Vaughan, Wills & Murphy LLP )  
*Barristers & Solicitors* )  
1800 – 1631 Dickson Avenue )  
Kelowna, BC V1Y 0B5 )  
Address )  
)  
Receptionist )  
Occupation )



¶ 8 June 03, 2014

¶ 9 William McDonald Ferguson  
**William McDonald Ferguson**

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¶ 10 June 4, 2014

Paul Bourque

¶ 11 Paul C. Bourque, Q.C.  
Executive Director