Fitting “The Public Interest” Into a Big Picture Plan for Alberta

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There has been much talk about “the need for a plan” or “the lack of a plan” in managing Alberta’s growth. But how will “the public interest” fit into Alberta’s plans, particularly the much-anticipated Land-Use Framework?

Currently, “the public interest” is determined by boards such as the Energy Resources Conservation Board (ERCB), which regulates fossil fuel projects, and the Natural Resources Conservation Board (NRCB), which regulates certain non-energy projects. If a hearing is triggered, both the ERCB and NRCB are required by law to determine whether a proposed project is in the public interest by taking into account the project’s social, economic and environmental effects. These Boards have been granted a great deal of discretion to decide whether an individual application, such as a single gas well or tourist resort, should go ahead because it is “in the public interest” for the resource to be developed.

It makes some sense that the ERCB and NRCB have public interest mandates, as they regulate developments which often occur on public land or involve the use of publicly owned resources. Either way, “the public” is a vital component of what these Boards do and whether they approve or reject developments. Both Boards are meant to ensure, on the public’s behalf, that our needs and well-being are considered and represented vis-à-vis natural resource development.

However, there are problems with the current approach; problems that have been exacerbated by our province’s economic boom and the resulting growth pressures on our finite land base and water resources.

The first problem is that these Boards do not have a big picture plan for resource development. They are tasked with licensing projects on a case-by-case basis. This case-by-case approach is not terribly effective at dealing with the cumulative effects of thousands of human actions on the landscape.

The best example of this is in the oil sands. One oil sands mine has impacts that could be managed, but the cumulative impacts of all the mines in the Fort McMurray region are having significant effects on the land, environment and social infrastructure.

To put this a different way, as overall production from the oil sands increases, the intensity of greenhouse gases (GHGs) emitted and amounts of water consumed per unit of output can be reduced by incremental improvements to individual projects. However, these individual mitigation measures do not guarantee that the total amounts of GHGs emitted from all oil sands projects will not have significant impacts on our climate, nor that withdrawals of water from all oil sands projects will preserve in-stream flow needs or the health of our rivers. It is easy to exceed the overall environmental capacity for a
region when no broader environmental objectives or thresholds have been set for that region.

Unfortunately, both the ERCB and NRCB have shied away from making broader planning pronouncements. In particular, the ERCB has said that its role is to provide for the “economic, orderly and efficient development” of the resource, not to discuss whether certain areas of the province should be off limits to oil and gas development or whether thresholds for a region have been met. The consequence of this approach is that trade-offs among competing land uses are not made. Projects continue to be approved individually without consideration of the broader context in which they will operate or the larger environment that they will affect.

Another problem with the current system is that “the public” is not permitted to provide input into a host of decisions that are made before a project reaches the ERCB or the NRCB for approval. For example, there is no process for public input before subsurface oil and gas rights are leased to companies to develop the resource. Even though the province owns 81 percent of all the oil and gas in Alberta, Albertans do not have a voice when it comes to leasing these resources. Although over 60 percent of the land in this province is publicly owned, there are no opportunities for public input into the leasing of these lands for industrial development.

There may be an opportunity for public input later in the process once a project reaches the ERCB or NRCB for approval, but even this is not a guarantee that citizens will be heard. When development occurs on public lands, there may be no one living close enough to the project to be considered “directly and adversely affected” and trigger a hearing. If members of the public are excluded, the only voice heard by the Board is that of the industry operator that it regulates.

Given these systemic issues, should we be surprised that “the public interest” has become synonymous with economic or industry interests? Or that parties are frustrated and dissatisfied with ERCB and NRCB decisions because they do not see how their views are incorporated into either Board’s public interest mandate?

Of course, these Boards do not exist in a vacuum. Since “the public interest” is not defined in legislation, the only benchmark Boards have for determining what is in the public interest is in the general direction and vision of the government that appoints them. The province has made it clear that rapid development of Alberta’s natural resources is a mainstay of its economic strategy.

The release of the province’s Land-use Framework provides a key opportunity to incorporate the context missing from individual Board decisions. The Environmental Law Centre produced a brief entitled “Roadmap For Reforming ‘The Public Interest’ for the ERCB and NRCB,” in February 2008 which outlines how the public interest mandates of the ERCB and NRCB can be incorporated into the Land-Use Framework, which is touted as the big picture plan for land and resource use in the province.

As part of the Land-Use Framework, the ERCB and NRCB can be told that their public interest mandates include considering whether applications before the Boards are consistent with regional land use plans established under the provincial framework. Producing these land use plans prior to the licensing stage and binding the ERCB and
NRCA to follow them ensures that the public interest is defined in terms of the applicable land use plan. This would constrain the Boards’ discretion by providing a clear definition of the public interest in the regional plans which should take into account broader temporal and spatial scales than individual hearings (see Figure 1).

**Figure 1.** Decision-making chain for natural resource development

A further benefit of this approach is that these land use plans could guide the allocation of subsurface mineral rights by the province. This is a key decision-making stage in the development of fossil fuels, as well as the leasing of public lands. Also, because these plans are based on broad spatial and temporal scales, they can potentially deal with the cumulative effects of many projects and activities occurring on the landscape; effects which cannot adequately be addressed in a project-specific licensing process before the ERCB or NRCA.

Our brief also recommends that meaningful public participation be included at each stage where major decisions about land use and resource development are made. This means giving the public the ability to challenge Board decisions that do not conform to land use plans. This also means broadening standing requirements and cost recovery at the ERCB and NRCA hearing stage to ensure that any member of the public who has a legitimate interest has the right to appear before these Boards and provide their views on resource development.

The regulation of Alberta’s natural resources is at a crossroads and there are no easy fixes to our growth problems. Sweeping reforms are necessary to create a much-needed plan for land and resource development in Alberta. We also require decisive
government leadership to give meaning to the public interest and set in place a real plan for Alberta’s future.

1 Energy Resources Conservation Act, R.S.A. 2000, c. E-10, s. 3; Natural Resources Conservation Board Act, R.S.A. 2000, c. N-3, s. 2.

2 For example, in Alberta the provincial Crown owns about 60 percent of the province’s land base; see Alberta Sustainable Resource Development, Public Lands Operational Handbook (Edmonton: Her Majesty The Queen In Right of Alberta, 2004) at 6. The provincial Crown owns about 81 percent of Alberta’s minerals including oil, natural gas and coal; see Alberta Energy, Business Plan 2007-2010 at 129. The provincial Crown also owns all surface and groundwater in the province; see Water Act, R.S.A. 2000, c. W-3, s. 3.

3 For example, an ERCB executive stated that “[w]e as a regulatory body are not in a position to decide if development is (inherently) good and whether or not we should defer development”; see Michael Bruni, “Land-Use Conflicts Escalating, Solutions Urgently Needed” (April 1 - May 17, 2005) 16:4 Enviroline at 2.

4 online: Environmental Law Centre <http://www.elc.ab.ca/ims/client/upload/Roadmap%20for%20Reforming%20The%20Public%20Interest.pdf>.


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