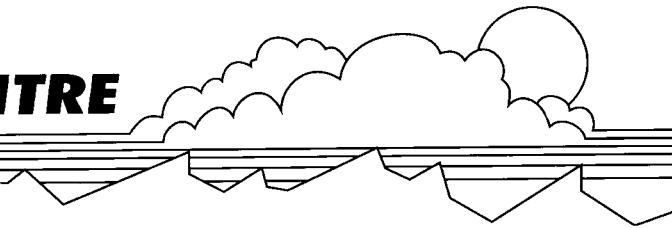


ENVIRONMENTAL LAW CENTRE



March 27, 2006

Our File: 33

The Honourable Gary Mar, Q.C.
Minister of Community Development
320 Legislature Building
10800 - 97 Avenue
Edmonton, AB
T5K 2B6

VIA FACSIMILE: 780-427-0188

Dear Minister Mar,

RE: Comments on Bill-18 Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Amendment Act, 2006.

The Environmental Law Centre (ELC) is a charitable organization incorporated in 1982 to provide an objective source of information on environmental law and policy in Alberta and Canada. The ELC's mission is to ensure that laws, policies and legal processes protect the environment. To this end the ELC supports effective and informed public participation in environmental regulatory, law-making and decision-making processes.

The ELC makes the within comments on Bill 18, the *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Amendment Act, 2006* with the following principles in mind:

1. The overarching goal of the *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*, R.S.A. 2000, c. W-9, as amended (hereinafter "Wilderness Areas Act" or the "Act") must be to protect the ecological integrity of all areas designated as protected and not to protect private economic interests in the use and degradation of public lands.

This is recognized in the preamble of the Wilderness Areas Act where it is noted that:

- "continuing expansion of industrial development and settlement in Alberta will leave progressively fewer areas in their natural state"; and
- "it is in public interest that certain areas of Alberta be protected and managed for the purpose of preserving their natural beauty and safeguarding them from impairment and industrial development."

2. The Province of Alberta, as the owner of public lands, holds protected areas in trust for the benefit of all Albertans, both current and future. The public trust obligations of the Crown in relation to protected areas is to ensure that the integrity of the protected area is not impaired.

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Comments and Recommendations

Clarity of legislation

Bill 18 proposes amendments to section 5 of the Act, which results in terms being unduly vague. Vague terms within legislation carry the potential for adverse outcomes to the integrity of protected areas. In particular, the terms “environmental research and reclamation” should be defined to provide clarity as to the allowable impact on the land. Failure to provide legislative clarity may allow environmental research or reclamation that alters or degrades the ecological integrity of the protected area, working contrary to the legislative purpose.

Recommendation

Amend Bill 18 to provide clarity regarding reclamation and environmental research in protected areas. For example, reclamation may be defined as activities to restore disturbed sites to their pre-disturbance condition, while minimizing adverse effects of such activities.

Public participation in the decision making process

Bill 18 repeals section 2 of the *Wilderness Areas Act* dealing with the Advisory Committee. The role and purpose of the Advisory Committee was to receive and consider requests from the public regarding wilderness areas and ecological reserves and make recommendations regarding establishing, administering and managing wilderness areas and ecological reserves.¹

While the power to create an additional advisory committee to address protected area issues exists in section 7 of the *Government Organization Act*, R.S.A. 2000, c. G-10, the nature and purpose of an advisory committee under that legislation is discretionary. The current provision of the *Wilderness Areas Act* has mandatory language, indicating a legislative intent to provide an avenue of public input into the protected areas creation and management. Notwithstanding the fact that an Advisory Committee under the Act has not been active there is a need to implement an advisory body to provide the Minister with advice on the need for additional protected areas and the efficacy of administration and management of existing protected areas.

Currently management and administration of protected areas in Alberta is pursued on an ad hoc basis with no set legislative framework for public participation.

Recommendation

The ELC recommends that section 2 of the *Wilderness Areas Act* be retained. Further the ELC supports amending section 2 of the *Wilderness Areas Act* to be more inclusive and to create a mandatory system of public consultation and advice to the Minister in relation to assessing and implementing administrative, management, and regulatory processes with the view of protecting the ecological integrity of protected areas for current and future Albertans.

The ELC recommends amending the current Act to include ongoing reporting requirements, detailing an expanded role and purpose for the committee in relation to management and administration of protected areas, and creating a procedure for creation of an advisory committee with wide stakeholder representation.

Buffer zones

Bill 18 repeals section 12 of the Act regarding “controlled buffer zone”. While this provision was not used the efficacy of buffer zones is not diminished. Buffer zones around protected areas can be integral to supporting wildlife populations within protected areas and can provide connections of lesser environmental impact between protected areas (that are otherwise isolated).

¹ *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*, R.S.A. 2000, c. W-9, at section 2(7).

Furthermore, buffer zones can be used to increase management integration in a manner that increases efficiency and decreases potential lawsuits related to protected core areas. The objectives of protective areas will not be met through reliance on simple geographic area in legislative “protected areas” alone; rather, management effectiveness is key. Buffer zones may constitute important portions of “management effectiveness” in certain circumstances.

Recommendation

The ELC supports maintaining the “controlled buffer zone” provisions of the Wilderness Areas Act and further supports the use of the aforementioned advisory committee to identify areas that would benefit from legislated buffer zones. Legislative amendments to the Act would be required to provide for the formation and application of special management plans for “controlled buffer zones”.

Dispositions in protected areas

Currently the Act provides for the withdrawal and/or prohibition of granting new dispositions to varying degrees for the various protected area designations. Unfortunately the granting of dispositions, particularly mineral dispositions, occurs in a relative vacuum of public scrutiny. Once the disposition is granted there is little chance of timely withdrawal and the integrity of the protected area may not have been properly considered when placing terms and conditions on the disposition.

Three departments of the government, Sustainable Resource Development, Community Development and Alberta Energy, came to a policy agreement regarding dispositions in protected areas in Alberta Energy’s Information Letter 2003-25 regarding *Government of Alberta: Honouring Existing Mineral Commitments in Legislated Provincial Protected Areas*. The policy indicates that existing mineral commitments will be honoured in protected areas, including natural areas. The Information Letter indicates that “new surface disposition for existing surface ...or subsurface...commitments will be honoured *as necessary ‘extensions’ to an existing commitment*”. [my emphasis] The intent of the Information Letter is clear that new subsurface dispositions will only be “honoured as necessary ‘extension’ to an existing commitment”.

Recommendation

The ELC recommends that the purpose and intent of Information Letter 2003-25 be reflected in legislative amendments to the *Wilderness Areas Act*. Bill 18 should be amended to include prohibitions on the granting of any new mineral dispositions in all protected areas, including natural areas and heritage rangelands.

Penalties

The ELC supports the proposed amendments to the penalty provisions of Act (section 13 in the amended Act). The current maximum graded penalties are low and need to be raised. Similarly, the provision allowing penalties to be assessed for continuing offences is supported.

The ELC supports amendments proposing sections 14.1-14.5 in relation to vicarious liability, additional fines to account for benefits, and enabling courts to pursue creative sentencing options.

Time Limitation

The ELC supports the proposed amendments to the time limitation involved with the Act. The limitation period of 6 months provided by section 4 of the *Provincial Offences Procedure Act*, R.S.A. 2000, c. P-34, is too limiting and the 2 year limitation period, with the discoverability

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provision included, allows for more thorough investigations and proper preparation of prosecutions to take place.

Conclusion

Bill 18 provides useful amendments to the penalty and time limitation provisions that will make enforcement, compliance and deterrence under the legislation more flexible and robust. Bill 18 fails to maintain and expand upon valuable tools for public consultation and ensuring the ecological integrity of the core protected area, through repealing the Advisory Committee and Controlled Buffer Zone provisions respectively. Furthermore Bill 18 requires amendment to address the lack of clarity in the definitions of “environmental research and reclamation”. Finally, the intent of purpose of protected areas should not be undermined by open-ended dispositions that may have significant impacts on the nature of the protected area in the present and into the future.

Yours truly,

Jason Unger
Staff Counsel

cc. Bharat Agnihotri, Official Opposition Critic, Community Development, Alberta Liberal Party
David Eggen, Alberta New Democratic Party

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