

November 12, 2010

Our File: 5320

Honourable Cindy Ady
#229 Legislature Building
10800 97 Avenue
Edmonton, AB
Canada T5K 2B6

Via Fax: 780-427-0188

RE: Comments re Bill 29, *Alberta Parks Act*

Dear Minister Ady,

The Environmental Law Centre (ELC) is a charitable organization incorporated in 1982 as a public source of information on environmental law and policy in Alberta. The ELC's mission is to ensure that laws, policies and legal processes protect the environment. The ELC has reviewed Bill 29, *Alberta Parks Act*, and views several amendments to the Bill as being necessary. The ELC views the current Bill as inadequate to ensure that the ecological integrity of Alberta's protected areas is preserved for future generations.

Transition provision recommendation

Comment

Bill 29 removes substantive provisions related to protected areas and this reflects a significant step backwards in ensuring the preservation of Alberta's natural heritage. Substantive protective provisions that exist in current protected area legislation must be carried forward in the Bill to ensure the long-term protection and enhancement of Alberta's parks and protected area network.

The ELC recommends amending Bill 29 related to ecological reserves and wilderness areas to provide certainty around how these highly valued ecological areas will be protected under the proposed legislation. The proposed amendments bring forth the substantive provisions of existing legislation, bolstering the zoning approach proposed in Bill 29.

Recommended amendments

s.55.1(1) The Lieutenant Governor in Council, in creating regulations under s.55, shall include two zones which are governed by, but not limited to, prohibitions set out in s.55.2 and s.55.3 respectively.

s. 55.2(1) Where an ecological reserve, as designated under the *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*, RSA 2000 c. W-9, is deemed a provincial park pursuant to section 59 of this Act, a regulation promulgated under section 55 for the deemed provincial park shall include, but not be limited to, the following prohibitions:

- (a) The Crown shall not dispose or allow the disposition on its behalf of any interest granted under the *Public Lands Act*, a lease, permit or easement or other disposition under the *Special Areas Act*, a timber disposition within the meaning of the *Forests Act*, a surface disposition granted under any other Act, or a disposition with the meaning of the *Mines and Minerals Act*.
- (b) No person shall:
 - i. hunt or trap animals,
 - ii. fish,
 - iii. deposit any litter, garbage or refuse except in places provided and designated for that purpose
 - iv. without the permission of the Minister, collect, destroy or remove any plant or animal life (or bird eggs) or excavate or remove fossils or other objects of geological, ethnological, historical or scientific interest,
 - v. take into or use a motor boat or off-highway vehicle,
 - vi. operate a motor vehicle designed primarily for travel on highways other than on a road,
 - vii. take into or use a cycle except on a road or prescribed route, or
 - viii. take into or use a horse or pack animal, without the Minister's permission or except as prescribed,
 - ix. introduce into, deposit in or add to a material, substance or organism that is or may be harmful to plant or animal life,
 - x. camp overnight,
 - xi. light or maintain an open fire, or
 - xii. construct, reconstruct, maintain or add to an improvement on, or do anything that will or might alter or disturb the surface of any land in an ecological reserve.

s. 55.3(1) Where a wilderness area, as designated under the *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*, RSA 2000 c. W-9, is deemed a provincial park pursuant to section 59 of this Act, a regulation promulgated under section 55 for the deemed provincial park shall include, but not be limited to, the following prohibitions:

- (a) The Crown shall not dispose or allow the disposition on its behalf of any interest granted under the *Public Lands Act*, a lease, permit or easement or other disposition under the *Special Areas Act*, a timber disposition within the meaning of the *Forests Act*, a surface disposition granted under any other Act, or a disposition with the meaning of the *Mines and Minerals Act*.
- (b) No person shall:
 - i. travel in a wilderness area except on foot,
 - ii. hunt or trap animals,
 - iii. fish,

- iv. deposit any litter, garbage or refuse except in places provided and designated for that purpose,
- v. without the permission of the Minister, collect, destroy or remove any plant or animal life (or bird eggs) or excavate or remove fossils or other objects of geological, ethnological, historical or scientific interest,
- vi. take into or use a horse, pack animal, cycle or any motor vehicle,
- vii. introduce into, deposit in or add to a material, substance or organism that is or may be harmful to plant or animal life,
- viii. light or maintain an open fire, or
- ix. construct, reconstruct, maintain or add to an improvement on, or do anything that will or might alter or disturb the surface of any land in a wilderness area.

Definition of “ecological integrity”

The ELC recommends striking “likely to persist” from the definition of “ecological integrity”. The inclusion of this phrase unnecessarily qualifies the definition and may be interpreted to mean that where characteristics are not “likely to persist”, even when due to anthropogenic impacts, they are somehow not integral to ecological function. Characteristics of a natural region that may be under threat (i.e. may be deemed unlikely to persist) by anthropogenic or natural factors should not be excluded from the definition of ecological integrity. The risk of this approach is to write off some species at risk in parks.

The Purpose of the Act

The purpose of the Act has an appropriate focus; however, the ELC recommends that the purpose be amended as follows:

The purpose of this Act is to foster an Alberta parks system that conserves unique and representative land within Alberta’s natural regions for present and future generations and *to foster tourism and recreation opportunities that are compatible with the conservation of ecological integrity.*

Minister’s obligations

Bill 29 should be amended to elaborate on Ministerial obligations when exercising discretion in relation to provincial parks.

Recommended amendment

Section 9.1 Minister’s obligation

(1) The Minister, in administering this Act, will give primary consideration to maintenance of ecological integrity.

(2) In exercising the Minister’s discretion under this Act, the Minister must consider scientific information submitted by a resident of Alberta or the Parks Advisory Council, including, but not limited to, information submitted in response to a notice published pursuant to s.8.

Notice of dispositions

Bill 29 provides for public notice of specific changes to provincial parks. This notice provision should be expanded to include the granting and/or amendment of dispositions within parks.

Recommended amendment

Add to section 8(1) “, granting or amending a disposition pursuant to section 12,” following “changing the area of a Provincial Park or heritage Rangeland”.

Limiting Access

Bill 29 provides the Minister with powers to manage access. Managing access is particularly important in instances where species at risk are present. Where there are potential adverse affects on species at risk steps to appropriately limit access should be mandatory.

Recommended amendment

Section 11.1 The Minister must issue an order closing or otherwise limiting access where such access is likely to have an adverse impact on an endangered or threatened species listed under Schedule 6 of the *Wildlife Regulation*, Alta Reg 143/97 or pursuant to the *Species at Risk Act* (Canada) S.C. 2002, c. S-29.

Disposition impacts on ecological integrity

Bill 29 sets out the general Ministerial discretion in relation to dispositions in provincial parks. In exercising this discretion the Ministerial should consider the impact of the decision on the ecological integrity of the provincial park.

Recommended amendment

Section 12 (3) The Minister shall, in exercising discretion under this section, consider the impact of granting, renewing or amending a disposition on ecological integrity.

Dispositions and impacts on species at risk

Bill 29 provides the discretion to the Minister to suspend or withdraw dispositions in provincial parks. Where dispositions are likely to impact species at risk or their habitat, there is a need to ensure dispositions are appropriately managed to minimize impacts.

Recommended amendment

Section 12(3)

The Minister must withdraw cancel or suspend a disposition or permissions where such disposition is likely to adversely impact an endangered or threatened species listed under Schedule 6 of the *Wildlife Regulation*, Alta Reg 143/97 or pursuant to the *Species at Risk Act* (Canada) S.C. 2002, c. S-29 or that species' habitat.

Land sales and species at risk

Bill 29 provides the discretion to the Minister to sell public land that is no longer needed for the purpose of provincial parks. This discretion should be limited in instances where public land is occupied or frequented by species at risk.

Recommended amendment

Section 29(4) The Minister shall not sell or otherwise dispose of land pursuant to this section where the land is frequented by or is otherwise occupied, permanently or temporarily, by an endangered or threatened species listed under Schedule 6 of the *Wildlife Regulation*, Alta Reg 143/97 or pursuant to the *Species at Risk Act* (Canada) S.C. 2002, c. S-29.

Section 29 (1) should be amended by adding “and (4)” so that it reads, “Subject to subsection (2) and (4)...”.

Compensation for environmental harm

Bill 29 sets out specific powers of the court to make directions in relation to convictions under the Act or regulations. The power of the court should be expanded to include the ability of the court to assess an amount to be paid to the Crown for damages to the environment.

Recommend amendment

Section 34 (1) ...(g) to compensate the Crown in an amount for harm to the environment, as assessed by the Court, in relation to potential and actual impacts to ecological integrity.

Liability and penalties for designated authorities.

Bill 29 relies significantly on designated authorities to assist in the administration of the recreational trails, but indicates that the designated authorities will not be considered agents of the Crown. Provisions limiting liability for designated authorities should be removed and maximum penalties should be increased to ensure designated authorities exercise their duties under the legislation with sufficient diligence and regard to the Act and regulations.

Recommended amendment

The ELC recommends striking s.39(1)(d). The government should not provide limitations on liability for entities that are not agents of the Crown, as set out in section 38(2).

Section 42. Maximum fines for violations of a delegated authority or employee, agent, director or officer should be increased significantly from \$2000 and \$10,000 to \$15,000 and \$250,000, respectively.

Summary

Bill 29 attempts to consolidate park and protected area legislation in the province but fails to ensure that substantive protective provisions are carried forward into the proposed law. Amendments must address this fundamental flaw with Bill 29 to ensure substantive prohibitions on activities in ecological reserves and wilderness areas are guaranteed in statute and not left to discretionary regulations.

Yours truly,

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