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Our File: 05320

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VIA email: [LUF@gov.ab.ca](mailto:LUF@gov.ab.ca)

To whom it may concern,

**RE: Comments on South Saskatchewan Regional Advisory Council Advice to the Government of Alberta for the South Saskatchewan Regional Plan.**

The Environmental Law Centre (ELC) is an Edmonton-based charitable organization established in 1982 to provide Albertans with an objective source of information about environmental and natural resources law and policy. The ELC's vision is an Alberta where the environment is a priority, guiding society's choices. It is the ELC's mission to ensure that Alberta's laws, policies and legal processes sustain a healthy environment for future generations.

The ELC has been monitoring the regional planning and advisory committee process since its inception and is pleased to provide these written submissions regarding the *South Saskatchewan Regional Advisory Council Advice to the Government of Alberta for the South Saskatchewan Regional Plan*.<sup>1</sup>

**Principles to be applied to all regional planning in Alberta**

Sustainable development requires that we articulate and achieve environmental outcomes. Planning on a local, regional and provincial scale is essential to making this happen. There is no shortage of ink given to sustainable development and striking a balance between environmental, social and economic outcomes; however, this has not been sufficiently operationalized in our law and policy. The reality is that current law and policy frameworks substantively protect economic rights to such an extent that "balancing" is elusive. Taking steps to truly balance outcomes in regional planning is required and the ELC's comments reflect the application of core environmental law principles to the Regional Advisory Council (RAC) advice. These principles include:

- the precautionary principle
- pollution prevention,
- polluter pays,
- recognizing and addressing cumulative impacts; and

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<sup>1</sup>South Saskatchewan Regional Advisory Council, *Advice to the Government of Alberta for the South Saskatchewan Regional Plan*, (undated) online: Land Use <https://www.landuse.alberta.ca/Documents/SSRP%20RAC%20Advice%20to%20the%20Government%20of%20Alberta%20for%20the%20South%20Saskatchewan%20Regional%20Plan%20Report-P2-2011-03.pdf>

- ensuring intergenerational equity.

Many of these principles have been the subject of extensive academic discourse, have found their way into some aspects of law and policy and can be used to move Alberta's regional planning process to a more balanced approach to economic, environmental and social outcomes.

Regional plans are only a piece of the puzzle of sustainable development in the South Saskatchewan Region. Effective enforcement of environmental laws and policies and the regional plans is necessary to reach any longer term goal of balancing environmental, social and economic outcomes. Taking a more balanced approach requires sufficient capacity within government to monitor, assess, regulate and enforce regulatory requirements in the region.

### **The ELC's vision for an effective regional plan**

The Environmental Law Centre has previously identified some deficiencies in the regional planning system under the *Alberta Land Stewardship Act (ALSA)*, including the need to have planning guided by substantive legislative criteria and the need to ensure that planning is characterized by a transparent, science based, accountable and inclusive process.<sup>2</sup>

To be sustainable, a regional plan must approach scientific uncertainty in a precautionary fashion by ensuring that preventative measures are taken where activities may undermine the long term health and integrity of the environment. For instance, where activities are likely to have an impact on species at risk or their habitat there is a need to take a proactive and preventative approach to avoiding impacts on the species or habitat. This may be contrasted with the status quo where management and policy responses for species at risk and their habitat are not integrated across government policies and the habitat needs of species are inadequately protected. Adoption of a precautionary approach should permeate the substantive terms of the regional plan.

### **Comments on general RAC themes and advice**

The RAC advice outlines various laudible goals in its advice to government; however, particulars regarding how the RAC's recommendations will be implemented and whether they will achieve a "balance" in the region are largely absent. A regional plan for the South Saskatchewan Region should include clear articulations of what constitutes "balance" and sustainable development so that monitoring and measurement of success are feasible moving forward.

Throughout the RAC advice there is also a significant reliance on Best Management Practices (BMPs) for moving forward in a more sustainable direction. While BMPs are recognized as one mechanism to change behavior and mitigate impacts they are also, when used in a policy context, an indication that disruption of the status quo is likely to be minimized. Reference to BMPs without extensive detailing of actual programs, budgets and targets for uptake is of minimal value in a regional plan.

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<sup>2</sup> Alberta Land Stewardship Act, R.S.A. 2009, c. A-26.8.

The RAC advice also has extensive discussion and recognition of private property rights and reliance on “stewardship” initiatives. There is also extensive reference to incentives and market based instruments throughout the document. All Albertans have a responsibility to prevent negative impacts on the environment. In many instances decisions that are aimed at protecting the public interest will require prohibiting certain activities that impact our common resources: water, air and wildlife. Reaching environmental and public interest outcomes may be achieved through the application of a spectrum of tools, from stewardship to regulatory prohibitions and from administrative to criminal sanctions.

Excessive reliance on incentive or market based tools should be minimized in the regional plan as there exist several unanswered questions about the efficacy and sustainability of such tools. Issues around market based tools include:

- broad perspectives and approaches to valuation of the environmental and the services it provides;
- the general inability of economic tools and market transactions to incorporate social and environmental public good concerns (as market systems are generally ethically neutral or ambivalent); and
- reliance on incentivizing actions or behaviours may be undermined where market forces change.

A sustainable planning system must recognize and operate within ecological capacity and should not be constrained by our ability to pay for “ecological goods and services”. Indeed, some payments for such services may be viewed as contrary to the principle that we should pay for the impacts on common resources that we as individuals incur.

## **RAC vision**

The RAC vision statement reflects the articulation of “balance” that has become common in many policy directions of the GOA. A preferred approach for a vision statement is to articulate outcomes for the region. A focus on recognition of rights and how the “rights and interests and interests of all Alberta” might sustain ecological integrity of the region is not instructive. The ELC recommends a vision for the region where biodiversity is maintained, watershed function is not diminished and clean air is achieved while facilitating economic and social wellbeing.

## **RAC principles**

The RAC principle around a “plan for water” is insufficiently precautionary and fails to deal with important cumulative impacts on the aquatic environment. The region is currently in a state of “imbalance” as historical allocation decisions have failed to adequately consider and protect environmental health. An increased focus on demand management and value choices around water use is needed to ensure some level of restoration of water quantity and to begin the steep climb back to “balance” in the region. A regional plan focused on increasing supply is likely to only exacerbate concerns regarding degradation of aquatic health in the region.

The RAC principle of “respecting private land ownership” must be contextualized in the realm of sustainability and true balancing of social, environmental and economic interests. Private interests are currently and have always been curtailed to one degree or another by regulatory and policy frameworks aimed at protecting the public interest. It must be recognized that public interest goals, economic development, environmental protection, social equity and heritage preservation may in some cases impact on private rights (related to land and otherwise). To proclaim some hierarchy of private rights over the public good flies in the face of our legal history and valid measures taken to protect other private and public interests.

The RAC advice regarding accommodating multiple users fails to recognize the balance that is inherent and must be emphasized for this region of the province. There must always be the question of “if” an activity is appropriate in a given locale. Failure to do so assumes society and decision makers have sufficient knowledge to know all the relevant impacts of an activity and the knowledge and ability to mitigate those impacts in such a way as to ensure against adverse outcomes.

For instance, in areas where species at risk are present and habitat is likely to be impacted by an activity the “if” question must be front and centre. A preferred approach in determining whether multiple use of an area is appropriate is to determine the sufficiency of scientific knowledge and efficacy of any potential mitigation measures to determine if and how the activity may proceed. This requires a transition from the typical risk analysis conducted when making decisions about activities to fully canvassing uncertainties and ensuring irreparable harm to environmental integrity is avoided.

The RAC advice regarding “regulatory streamlining” and efficiency should be amended to incorporate environmental outcomes and public interest goals. The current reality in Alberta lacks sufficient capacity within government (hobbled by an inadequate policy and political direction) to undertake effective environmental management. This includes project assessments, robust and fulsome monitoring, and a meaningful compliance and enforcement program. While clarity and efficiency of regulation is laudable there is a significant need to ensure sufficient capacity exists to enforce existing policies and laws.

### **RAC advice regarding Agriculture**

The RAC advice recommends the support of “sustainable growth” in the agricultural industry but fails to define what is meant and when and where it may conflict with environmental outcomes. Certain types of growth in the agriculture sector may not be feasible due to constraints on water supply and a need to balance aquatic ecosystem health. Growth in the agricultural sector must be cognizant of the carrying capacity of the region for water use. Further, where agricultural growth results in further land conversion that is important to biodiversity the intended “balance” would be undermined.

The RAC advice also focuses on “ecological goods and services” as a profit-generating part of the agricultural economy. This provision should be augmented to recognize a paramount responsibility for people within the regional to operate within the ecological thresholds of the region. Reliance on quantifying ecological goods and services may be at odds with existing legislative and policy stances regarding public goods such as water. Protection of public goods need not be offset by compensation.

(In certain aspects of social policy this would be viewed as coercive or extortive.) This approach will often be at odds with the polluter pays principle as well.

The regional plan should ensure that publicly owned lands that are appropriate for grazing are maintained and managed for biodiversity outcomes. Public lands that hold biodiversity value should not be subjected to sale or other dispositions that undermine that biodiversity.

### **The RAC advice regarding Energy**

The RAC advice recommending consideration of cumulative environmental effects is important and must be further defined in terms of how regulatory processes will assess, monitor and regulate cumulative effects to ensure environmental thresholds are not exceeded.

For energy resources, the objective of access to lands to produce energy and minerals must be vetted through a system of environmental sustainability. Access must be limited where species at risk and their habitat may be impacted or where ecosystem health and function will be irreparably harmed.

Similarly, the RAC advice regarding streamlining of regulations as an objective for enhancing the “economic competitiveness” of the region must be offset by a robust and proactive regulatory system aimed at protecting environmental outcomes.

The focus on non-renewables must give way to a focus on renewables. There appears to be a hesitation to invest in renewables while “facilitating” the extended use of coal through technological enhancements. The regional plan should not promote hydrocarbon use under the guise and utopian vision of “clean coal”. Investment in pollution abatement technology is recommended and should be appropriately driven through regulation and adoption of the polluter pays principle.

### **The RAC advice regarding Forestry.**

Objective 4.4.1 speaks to maintaining and enhancing the economic viability and competitiveness of the forestry industry and this again appears to be focused less on sustainability than on inappropriate buoying of industry, either through limited regulation, decreased stumpage or subsidies. If timber production cannot be achieved in such a manner as to not undermine the biodiversity and watershed function of an area, the sustainability of that industry must be debated and discussed in a public forum. Where opportunities arise to achieve environmentally sustainable forestry practices there is an increased need to focus on value added jobs and manufacturing.

### **RAC advice regarding Healthy Ecosystems and the Environment**

The RAC advice is insufficient to guarantee any level of certainty around environmental outcomes. Reliance on “responsible stewardship” to improve the state of the environment provides insufficient policy and regulatory detail regarding how outcomes will be achieved.

The focus of the regional plan on source water protection is laudable; however, there remains significant uncertainty regarding how environmental objectives will be reached, maintained or restored. Reliance on voluntary watershed plans remains unproven in ensuring substantive environmental outcomes and implementation of environmental management frameworks remains unclear. Ensuring accountability and capacity to adequately monitor environmental outcomes and justify regulatory responses remains highly problematic, justifying further substantive outcomes being stated in the regional plan to guide future decisions.

Further, several objectives in relation to water management include the phrase “where reasonably possible” in reference to maintaining and restoring ecosystem function. This phrase is undefined and is often a qualifier that allows non-action. One need only consider wetland avoidance policies as an example where a “reasonable” standard basically devolves into a simple acceptance of impacts.

It should also be noted that some of the recommendations related to water management relate directly (and some indirectly) to allocation issues, which, according to the RAC Terms of Reference, are outside the regional plan scope. These items include comments regarding water allocation transfers, the application of market mechanisms and related comments regarding water storage and supply (including infrastructure). The ELC looks forward to a fulsome public discussion around water allocation.

### **RAC advice regarding Biodiversity**

The majority of outcomes related to biodiversity are laudable; however, there is excessive reliance on voluntary systems and a lack of clear implementation mechanisms in place that would be effective in maintaining biodiversity in the region. Conservation Management Areas are a laudable concept but few details are set out in relation to how they would be managed in a manner that will create accountability for outcomes.

While stewardship and market based incentives may be one tool for conserving biodiversity, they must not be the focus. We must recognize that certain aspects of public interest outcomes are the responsibility of all Albertan’s in how they manage and interact with their land.

The regional plan must provide significantly more details regarding:

- The legal implementation of a biodiversity framework in the region, including thresholds and outcomes for species at risk and ecosystems;
- The content and approach taken in “integrated conservation management plans”;
- The definition and legal conservation of “critical habitat”;
- When regulatory responses will be used in relation to biodiversity and when private property owners may be incentivized to steward the biodiversity on their land;
- What role stakeholders other than industry and governments have to reduce fragmentation and access; and
- How best management practices will be promoted, financed and evaluated.

The ELC recommends use of such collaborative processes only where the management intent and biodiversity outcomes are clearly pre-established. Outcomes and thresholds for management responses must be based on precautionary measures and assessment of what is needed to protect ecological integrity.<sup>3</sup>

## RAC advice regarding Recreation and Tourism

The focus on recreation and tourism in the regional plan is to promote and foster recreation opportunities that minimize impacts on the landscape. The RAC advice regarding motorized recreation on public lands is a step in the right direction, but in many respects it reflects existing prohibitions that have been inadequately enforced to date. Any analysis of “recreation preferences” should be accompanied by broad public input into the appropriateness of higher impact tourism and recreation for a specific area and a clear articulation of priorities for public lands.

Recreation and tourism endeavours must be measured and assessed in regards to the level of impact on natural systems. Tourism developments and increased access in many areas may have adverse impacts on wildlife habitat that is unsustainable, due to increased footprint and human-wildlife interaction.

International marketing of tourism destinations is often driven by parks and protected areas and the Castle Area should be considered for formalized legal protection as a park or protected area.

## Conclusion

The RAC advice for the South Saskatchewan region provides some general direction for the regional plan; however, there is the need to populate the regional plan with appropriate policy statements and thresholds for biodiversity and environmental outcomes. The “balance” that is so often claimed in policy and plan development may only be achieved where environmental outcomes garner similar legal standing as is provided to economic outcomes through our existing legal framework and heritage. Responsibility for these outcomes lies with all Albertans and this requires a regional plan with a substantive regulatory approach and sufficient policy drivers, capacity and funding for the long term use of non-regulatory tools.

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<sup>3</sup> For example, inadequate criteria for protection of greater sage-grouse habitat is currently in place in the province and as such there is a need to amend this management practices in any future conservation management area planning.. The previous iteration of the Greater Sage-Grouse Recovery Plan has proven unsuccessful and current set backs from leks and other habitat do not reflect precautionary application of science to decision making. (See Government of Alberta, *Alberta Greater Sage-grouse Recovery Plan 2005-2010*(Edmonton: Government of Alberta, 2005) online: Alberta Sustainable Resource Development [http://www.srd.alberta.ca/FishWildlife/SpeciesAtRisk/LegalDesignationOfSpeciesAtRisk/RecoveryProgram/documents/Alberta\\_Greater\\_Sage\\_Grouse\\_Recovery\\_Plan\\_2005-2010\\_final.pdf](http://www.srd.alberta.ca/FishWildlife/SpeciesAtRisk/LegalDesignationOfSpeciesAtRisk/RecoveryProgram/documents/Alberta_Greater_Sage_Grouse_Recovery_Plan_2005-2010_final.pdf) and the Government of Alberta *Operating Conditions Enhanced Approval Process*,(Edmonton: Government of Alberta, 2011) online: Alberta Sustainable Resource Development at 17 which sets a 100 metre setback (500 m from wind developments under ERCB policy) for work (on public land dispositions) around Sage-grouse leks to certain times. Scientific research indicates much further setbacks are required from both leks and other habitat (See Pacific Northwest National Laboratory for the United States Department of Energy, *Sage-Grouse and Wind Energy: Biology, Habits, and Potential Effects from Development* (Oak Ridge: Pacific Northwest National Laboratory, 2009), online: Pacific Northwest National Laboratory <[http://www.pnl.gov/main/publications/external/technical\\_reports/PNNL-18567.pdf](http://www.pnl.gov/main/publications/external/technical_reports/PNNL-18567.pdf)>.



The regional plan must recognize that balance requires choices among competing objectives for the land base in the region and must step away from the blind acceptance of the multiple use approach that has been used historically.

Please do not hesitate to contact the Environmental Law Centre should you have any questions.

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