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The Conflict Between the Oil and Gas Industry and Agricultural Landowners - the Major Issues and Some Legal Recommendations to Resolve it

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Introduction

Northern Alberta has experienced tremendous growth in resource development in recent years, including large-scale forestry operations, extensive oil and gas exploration and development, and the clearing of large tracts of land for agricultural purposes. Along with this boom have come serious and pervasive resource and land use conflicts such as those involving the petroleum and forestry sectors[1], conflicts between upstream and downstream water users, conflicts between aboriginal peoples and resource development, and the conflict involving agricultural development and the resultant loss of biodiversity. These conflicts arise because the same land is in demand for different purposes, and one land use is not compatible with other uses of the same land or somehow impinges on the uses of adjacent or nearby land.

The conflict involving the oil and gas industry and the agricultural sector is the most well documented and most familiar to Albertans. It has received a considerable amount of public attention in recent years partly as a result of a series of acts of vandalism directed at oil and gas facilities in northern Alberta. One need only look to the recent publicity given to the conviction and incarceration of agricultural landowner Wiebo Ludwig for vandalism to petroleum facilities in northern Alberta and the murder of oil-executive Patrick Kent by disgruntled landowner Wayne Roberts.[2] Many observers are of the view that the problems between the oil and gas sector and landowners will only increase unless steps are taken to remedy the situation.

Issues

The range of issues lying at the heart of the conflict are extensive. However, the main ones concern surface and subsurface land disturbance caused by oil and gas development; loss of agricultural land; degradation of groundwater and surface water supplies; human and animal health issues (particularly as a result of sour gas installations and flaring); inadequate research; legislative and regulatory problems; the lack of regional planning; inadequate communication and poor public relations; cumulative effects issues; monitoring and operational problems; and enforcement issues. A detailed account of these issues is far beyond the scope of this article. Instead, it will concentrate on a few legislative and regulatory reforms that might be instituted to decrease the problems between the two sectors.

Mineral rights disposition

It can be argued that the oil and gas rights disposition process lies at the heart of the many problems that exist between the oil and gas industry and the agricultural sector. This disposition of rights involves both the issuance of rights to the subsurface minerals and the issuance of access rights to the land surface, or surface rights. A

major issue that is consistently raised by critics of the oil and gas regulatory regime is that the procedure for granting mineral rights is flawed.

The provincial Crown Mineral Disposition Review Committee (CMDRC) is responsible for initially reviewing all proposed mineral rights dispositions and then providing recommendations to the Minister of Energy. It is the only formal institution for reviewing the issuance of mineral rights before they are submitted to the Minister. It has been argued by some that the end point of the disposition issuance process - an operating well - is virtually certain once mineral rights are granted without restrictions on surface access.

The CMDRC is made up of governmental representatives from Alberta Energy, Environment, Agriculture, Community Development, Municipal Affairs and Sustainable Resource Development. Although the concept of having a committee made up of representatives from all relevant government departments is desirable there are inherent problems with limiting its composition to government representatives since it does not allow public input at the initial critical moment of the rights disposition process for a resource that is publicly owned. From a public relations perspective alone public participation and input at this stage is highly desirable. The present closed process should be opened and expanded. Currently, the Chair of the CMDRC requests comments from its members and various agencies concerning parcels of land and then develops recommendations on whether the parcel should be offered for disposition. If the CMDRC decides to offer the parcel it must also decide whether it should be offered with or without restrictions.

It is recommended that the membership of the CMDRC be broadened to include members of the general public as well as representatives from non-governmental organizations. This would give the CMDRC more credibility and allow diverse opinions to be considered from all stakeholders at this very critical preliminary stage of the approval process. It is also recommended that the Energy and Utilities Board's membership on the CMDRC be reexamined and reconsidered in light of its legislated role as an objective regulator. Although there is no reason to believe that its participation on the CMDRC is not objective, its participation may give some an impression of bias and lack objectivity, which is not desirable. In addition, it is also suggested that the CMDRC allow presentations (oral or written) by landowners who may be adversely affected by the approval. A more open hearing process involving an expanded CMDRC would allow concerns to be reviewed before the mineral rights are granted.

It is recommended that the membership of the CMDRC be broadened to include members of the general public as well as representatives from non-governmental organizations. This would give the Committee more credibility and allow diverse opinions to be considered from all stakeholders at this very critical preliminary stage of the approval process. It is also recommended that the EUB's membership on the Committee be reexamined and reconsidered in light of its legislated role as an objective regulator. Although there is no reason to believe that its participation on the Committee is not objective, its participation may give some an impression of bias and lack objectivity, which is not desirable. In addition, it is also suggested that the Committee allow presentations (oral and/or written) by landowners that may be adversely affected by the approval. A more open hearing process involving an expanded Committee would allow concerns to be reviewed before the mineral rights are granted.

It is also recommended that the environmental review function of the Committee be reevaluated, revised, expanded, and strengthened. This review process has been criticized for being "at most a very general assessment of the potential environmental impacts of mineral developments"[4]

Environmental impact assessment

Legislative changes are required if the above recommendations are to be implemented. It is recommended that the provincial government institute legislative changes that would codify the CMDRC's new role and expanded involvement in the granting of mineral rights. These changes could be incorporated into the *Mines and Minerals Act* [3] and its regulations.

It is also recommended that the environmental review function of the CMDRC be reevaluated, revised, expanded, and strengthened. This review process has been criticized for being "at most a very general assessment of the potential environmental impacts of mineral developments".[4]

It is also recommended that changes be made to regulations under the *Environmental Protection and Enhancement Act* (EPEA).[5] The drilling, construction, operation or reclamation of oil and gas wells are expressly exempted from the requirement to undergo an environmental impact assessment under Schedule 2 of the *Environmental Assessment (Mandatory and Exempted Activities) Regulation*.[6] Only certain oil and gas developments are subject to a formal environmental impact assessment process under EPEA.[7] It is recommended that "the drilling, construction, operation or reclamation of an oil or gas well" be removed from Schedule 2 of the Regulation. This would at least allow for the possibility of an environmental impact assessment, which is not currently the case.

Note: This article is part of a longer paper, which deals with the conflict between the petroleum industry and the agricultural sector in northern Alberta. That paper in turn represents one aspect of a larger project on resource conflicts in northern Alberta undertaken as part of a collaborative effort between the Environmental Law Centre and the Canadian Institute of Resources Law at the University of Calgary. To obtain further information or purchase the paper, call (780) 424-5099 or visit the Centre's website at www.elc.ab.ca.

1 For an in-depth analysis of this conflict see M. Ross, *Legal and Institutional Responses to Conflicts Involving the Oil and Gas and Forestry Sectors*, Occasional Paper #10 (Calgary: Canadian Institute of Resources Law, University of Calgary, 2002).

2 For an excellent account of this conflict the reader is referred to A. Nikiforuk, *Saboteurs: Weibo Ludwig's War Against Big Oil* (Toronto: Macfarlane Walter & Ross, 2001).

3 R.S.A. 2000, c. M-17.

4 *Supra note* 1 at 22.

5 R.S.A. 2000, c. E-12.

6 *Environmental Assessment (Mandatory and Exempted Activities) Regulation*, A.R. 111/93, Schedule 2, paragraph (e), which states that "the drilling, construction, operation or reclamation of an oil or gas well" is an activity that is exempt from an environmental impact assessment.

7 *Ibid*., Schedule 1, paragraphs (n) and (q).