

## A CHECKLIST FOR EVALUATING ALBERTA'S NEW LAND-USE INITIATIVES

Article by Steven A. Kennett ♦

### Introduction

Public land management in Alberta is once again under scrutiny thanks to several policy initiatives and stakeholder consultations recently launched by the provincial government. Many stakeholder groups and individuals who pay attention to land-use issues must be wondering whether or not they should participate in this flurry of activity and how likely it is to achieve significant results.

At the moment, information about policy direction is sketchy. The government has not produced a white paper or background studies discussing the key issues and proposing specific options for legislative, institutional or policy reform. A survey of web sites describing the new initiatives yields little more than guiding principles and broadly-worded statements of challenges, objectives and intended deliverables.

This article argues that the ability of the new initiatives to come to grips with the pressing land-use issues spawned by Alberta's booming resource-based economy and growing population will depend on the answers to the following eight questions:

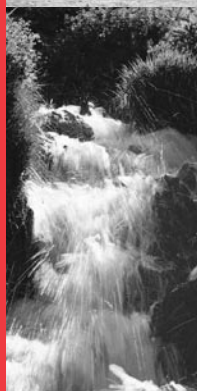
- Is the Alberta government's current inability to manage cumulative environmental effects clearly identified as the problem that these initiatives will solve?
- Is there a strong commitment to action targeting this problem, including unambiguous direction to all interested parties that the status quo is no longer acceptable?
- Are the initiatives focused on achieving integrated landscape management and are they integrated with each other in a way that will produce a coherent approach to land and resource management?

- Is there high-level leadership and support within government for land-use reform?
- Will the initiatives examine the policies and rights issuance decisions of the Department of Energy that are contributing to unmanaged cumulative effects and fueling land-use conflicts?
- Will the initiatives overhaul the current planning regime and implement comprehensive and effective land-use planning on Alberta's public lands?
- Will the initiatives lead to the establishment of regulatory limits on the total amount or intensity of the land uses and impacts that are causing landscape-scale change? and
- Do the initiatives have the solid analytical foundations that will be needed to undertake substantial reform of land and resource management in Alberta?

These questions are elaborated upon below in order to provide a more detailed checklist for evaluating the new land-use initiatives as they unfold. The ideas presented here are based on a longer paper on integrated landscape management published by the Canadian Institute of Resources Law.<sup>1</sup>

### The land-use initiatives

Before turning to the questions on the checklist, a brief overview of the principal land-use initiatives will be helpful. The focal point for policy development is a cross-ministry initiative called Sustainable Resource and Environmental Management (SREM).<sup>2</sup> This initiative is characterized as a 'systems' approach





## RÉSUMÉ

Cet article propose une liste de contrôle pour évaluer les chances de succès des récentes initiatives politiques lancées par le gouvernement de l'Alberta pour aborder les problèmes urgents d'utilisation des sols dans la province. Cette liste consiste en huit questions qui énumèrent les conditions que toute initiative d'utilisation des sols devrait remplir pour être couronnée de succès. Au nombre des questions abordées, figurent l'attention prêtée à la gestion des effets environnementaux cumulatifs, les chances d'aboutir à une gestion intégrée à l'échelon des paysages, et la mise en oeuvre de ces initiatives par l'intermédiaire de l'aménagement du territoire et l'établissement de limites réglementaires au montant total ou à l'intensité des activités susceptibles de causer des changements à l'échelon des paysages.

to management that is intended to facilitate “working together and taking joint responsibility to achieve agreed-upon natural resource and environmental management outcomes.”<sup>3</sup> A coordinating office led by an Assistant Deputy Minister is charged with promoting SREM projects.

Development of a provincial Land Use Framework (LUF) is a key SREM project. The LUF is intended “to be a shared, over-arching, values-based vision for land use in Alberta” and “to set forth a plan to manage land, resources and the natural environment”.<sup>4</sup> It appears destined to be the big picture strategy for land and resource use.

At the same time, Alberta Sustainable Resource Development (SRD) is leading an Integrated Land Management (ILM) Program that “entails the application of informed land management decision-making *at operational scales* aimed at accommodating and integrating the access to, and use of, public land while minimizing the footprint of public land and resource use.”<sup>5</sup> Components of this program will be defined through the ILM Project, one outcome of which will be recommendations for “a set of integrated land management process principles” that will build on existing principles “until such time as further guidance may be obtained from the provincial Land Use Framework as it becomes defined.”<sup>6</sup>

A multi-stakeholder committee is also conducting public consultations on oil sands development, leading to recommendations for the Ministers of Energy, Environment and SRD.<sup>7</sup> On a smaller scale, the Energy and Utilities Board (EUB) is preparing to clarify an information letter, originally issued in 1993, that outlines its approach to cumulative effects and the planning of full field development when reviewing applications for oil and gas development on the southern Eastern Slopes.<sup>8</sup>

Meanwhile, Alberta Energy has released *Alberta's Integrated Energy Vision*, a multi-faceted policy statement that acknowledges land-use issues at several points.<sup>9</sup> This

document refers in passing to SREM and then states that “a new cross-ministry initiative may be needed to focus on an Integrated Energy Vision”.<sup>10</sup> Not surprisingly, the Department of Energy “is expanding its role to one of coordinator” for this proposed initiative.<sup>11</sup>

The land-use issues targeted by these initiatives are undeniably important in Alberta and it is encouraging to see them receiving attention within government, but many of them have already been raised repeatedly in other forums. From early reports by the Environment Council of Alberta,<sup>12</sup> through the blue-ribbon Future Environmental Directions for Alberta Task Force,<sup>13</sup> the Alberta Forest Conservation Strategy,<sup>14</sup> the Northern East Slopes Strategy,<sup>15</sup> the Regional Sustainable Development Strategy for the Athabasca Oil Sands,<sup>16</sup> and the Integrated Resource Management program launched by Alberta Environment in 1999,<sup>17</sup> there is a track record of promising initiatives and thoughtful recommendations that have had disappointingly little impact on land and resource management.

Many Albertans must therefore be weighing hope against experience when deciding whether or not to take the plunge and engage in the latest round of initiatives. Is government offering the best chance yet for progress on previously intractable land-use issues, or is it lining everyone up for yet another run at the proverbial brick wall? It may be premature to offer even a preliminary answer to this question – all of the above-mentioned initiatives are just getting under way. It is not too early, however, to identify criteria for evaluating the likelihood of success.

### Identify the problem to be solved

There's an old saying that if you don't know where you are going, you are unlikely to get there. The policy analogue is that if you don't know what problem you are trying to solve, you are unlikely to come up with the solution.



Identifying issues and options is central to problem definition within the policy process, as is canvassing public and expert opinion on priorities for action. The current spate of focus groups, multi-stakeholder working groups and public consultations associated with the land-use initiatives appears to be intended to achieve these objectives.

Nonetheless, it is worth recalling that multiple consultations, consultants' reports, Delphi surveys and meetings between government officials and key stakeholders over the past couple of decades have explored in detail what ails land and resource management in Alberta. Both the EUB<sup>18</sup> and the Natural Resources Conservation Board<sup>19</sup> have raised specific concerns in their decision reports. A substantial number of published papers and reports by stakeholder representatives, independent scientists and policy analysts, and government officials also provide chapter and verse on land-use issues in Alberta and options for addressing them.<sup>20</sup>

If the Alberta government is serious about tackling these issues this time around, generating a clear and concise description of the problem to be solved and the strategy for solving it should be possible in short order. Central to this description should be the following points:

- Landscapes across Alberta are undergoing significant changes due to the increasing pace and intensity of industrial, commercial, residential and infrastructure development, along with growing pressures from recreational land use.
- Alberta's legal, institutional and policy framework for land and resource management is structurally incapable of managing these cumulative environmental effects, primarily because landscape-scale change is the result of a multitude of individual, incremental decisions made within a highly fragmented regime for land and resource management.
- Albertans therefore lack the ability to set and achieve landscape-scale objectives over spatial and temporal scales that are meaningful for many important land-use values.
- To address this problem, the government will undertake a thorough and public review of existing legislation, institutional arrangements and policies and will then move decisively to implement integrated landscape management by filling gaps in the legal and regulatory regime, enhancing institutional capacity to manage cumulative effects, and ensuring accountability for land-use outcomes.

A problem statement along these lines would go some way to showing that government has a good grasp of the issues. Certainty regarding the problem to be solved is especially important because promising land-use initiatives can be

diverted to serve narrower agendas. For example, 'single window' regulation and expedited project approvals are sometimes promoted under the banner of 'integrated' land and resource management.<sup>21</sup> Before jumping on the integration bandwagon, stakeholders would do well to determine whether the government's priority is regulatory streamlining or landscape management.

Anyone contemplating involvement in land-use initiatives is entitled, early in the process, to know what problem government has decided to address. Red flags should go up if the current initiatives don't get to this stage (and beyond) very quickly and if the problem statements do not focus on managing cumulative effects at the landscape scale.

### Commitment to action

Alberta's new land-use initiatives quite properly involve significant opportunities for stakeholder input. Identifying the default position – what happens if stakeholder consultations or advisory groups yield stalemate or conflicting recommendations – is therefore important. The default position is a key determinant of the incentive structure within multi-stakeholder processes and an indicator of government's commitment to action.

Government can set the status quo as the default position by making consensus, however defined, a precondition to moving forward. This approach sends a clear message to those who benefit from current arrangements – or who fear that they *might* be worse off under other scenarios – that their interests are best protected by digging in their heels and blocking any proposals for change. When promoting stalemate is a winning strategy for key participants, the barriers to constructive multi-stakeholder engagement on difficult issues are almost insurmountable.<sup>22</sup>

The alternative is to tell stakeholders unambiguously that the status quo is no longer acceptable and that they are invited to work together to propose alternatives. Stakeholders should also know the key objectives and parameters that government expects them to respect. This opportunity to influence policy outcomes does not, however, come with a veto over change. If consensus is not reached, government will consider the options and then move decisively to implement the reforms that it considers necessary.

Under this scenario, the incentives facing stakeholders – particularly those with a strong stake in the status quo – are dramatically different. Non-cooperation will simply reduce influence in shaping recommendations from multi-stakeholder processes. Working constructively to solve the problem at hand becomes a winning strategy for virtually everyone once the status quo is no longer the default position for land-use initiatives.





## It's (still) about integration

Assuming that filling the gaps around cumulative effects management will figure prominently in the problem definition for land-use reform in Alberta, integrated decision-making will be a top priority. The need for integration is explicit in SREM and SRD's ILM Program and will undoubtedly be a principal focus of the LUF. It is also central to Alberta Energy's *Integrated Energy Vision*.

Experience in Alberta and elsewhere has shown that integration is easier said than done. Simply relying on coordination or partnerships among sectoral agencies will likely be insufficient to achieve meaningful integration if legal mandates, policy objectives and organizational incentives remain unaltered.<sup>23</sup> Real progress towards integration requires attention to the structural determinants of decision-making: legislation, institutional arrangements and policy. Furthermore, the new land-use initiatives will themselves have to be integrated if they are to yield a coherent approach to land and resource management in Alberta.

The structural integration required to manage cumulative environmental effects at the landscape scale has three components:<sup>24</sup>

- (1) integration across resource sectors and other activities on the land base (i.e., breaking down the sectoral 'silos' that characterize agencies responsible for land and resource management);
- (2) integration among the five principal stages of decision-making – strategic policy direction on land and resource use, land-use planning, the issuance of private rights to public land and resources, project review and environmental assessment, and regulatory and permitting processes; and
- (3) integration over spatial and temporal scales that are appropriate for accommodating important land-use values.

Spelling out the practical implications of these principles is beyond the scope of this article, but it goes to the core of genuine land-use reform in Alberta.

As to integration among the new land-use initiatives, there are already some clues about how they might fit together. As noted above, SREM appears to be an umbrella program, with the LUF intended to establish the structure for land-use decisions. This structure, in turn, should provide guidance on operational issues such as those currently under review by SRD and the EUB. Oil sands consultations focus on a specific sector and geographic area, but they will likely identify cross-cutting issues that intersect with other initiatives.

The fact remains, however, that each initiative has its own champions and particular focus. Turf protection within

government is to be expected, as illustrated by Alberta Energy's proposal to lead a cross-ministry energy initiative as a counterpoint to SREM. The time-frames for the new land-use initiatives create additional integration challenges.

The draft LUF is to be available in the late spring of 2007. SRD's ILM Project, which will define and develop the components of the broader ILM Program, is to conclude by the end of the fiscal year 2006/2007. Final recommendations from the Oil Sands Consultations are due in June 2007. Will internal coordination yield a coherent set of recommendations from these initiatives in the spring and early summer of 2007? Or will the outputs from these processes feed into another policy process that will weave common threads into an integrated whole?

Furthermore, the visions, principles, strategies and frameworks that are to be forthcoming from the new land-use initiatives must be translated into specific guidance to decision-makers if they are to affect land and resource use 'on the ground'. Linkages must therefore be spelled out between broad policy development and the decisions at the planning, rights issuance, project review and regulatory stages that are driving significant land-use change in Alberta. Integration of this type is essential for all land-use initiatives.

The success of the new land-use initiatives depends on their ability to work together to produce the legal, institutional and policy framework that is needed to implement integrated landscape management in Alberta. Without attention to integration, they may produce only fragmented, incremental and ultimately ineffective responses to the structural problems of institutional fragmentation and incremental decision-making.

## High-level leadership and support

Integrated decision-making is an intuitively obvious antidote to unmanaged cumulative effects, but it is institutionally and personally counter-intuitive for many decision-makers. Narrow sectoral mandates and unplanned incrementalism are deeply rooted in the legal mandates, decision-making processes and incentive structures of government departments and agencies.<sup>25</sup> Overcoming these structural obstacles to integration and changing entrenched patterns of behaviour will require considerable effort.

Power structures within government can also determine the fate of land-use initiatives. Alberta Environment's unsuccessful foray into integrated resource management shows that burying responsibility for integration within one branch of a line department is unlikely to yield significant results when other departments managing public land and resources wield more clout at the Cabinet table and remain free to pursue narrow sectoral mandates. The lack of uptake



on recommendations from the Alberta Forest Conservation Strategy and the Northern East Slopes Strategy may reflect the failure of these initiatives to ensure buy-in from senior decision-makers and to anticipate and manage potential vetoes and end-runs by powerful interests within and outside of government.

Not surprisingly, stakeholders have raised the question of high-level support for the new land-use initiatives, notably at a scoping workshop for SRD's ILM Program in early 2006. According to the summary of proceedings, SRD's response was that ILM is based on a broader government strategy and business plan and that "there is commitment from upper management within the provincial government, and therefore SRD *believes* there is a commitment by Cabinet."<sup>26</sup> If this rather tepid affirmation of high-level support is the best that officials could offer, stakeholders investing time in the process have reason to be nervous. These stakeholders and the officials leading the initiative deserve greater certainty at the outset that their efforts have political support.

The cross-ministry character of several of the new initiatives avoids the obvious pitfalls of Alberta Environment's attempt to take the lead on Integrated Resource Management, but creates a risk that the impetus for change will be lost in interdepartmental space. Some champions within the bureaucracy have been identified, but their position may be perilous without strong political backing. Powerful interests with potential veto power may be waiting in the wings.

The biggest source of uncertainty is the impending change of political leadership. Once a new Premier and Cabinet are in place, it may be easier to assess the prospects for meaningful change.

For now, uncertainty regarding high-level commitment makes participation in land-use initiatives an act of faith. While early engagement is a rational strategy for some stakeholders and interested individuals, they would be well advised to look for clear signals from the new Premier, senior Cabinet ministers and key officials once the dust settles politically. Without strong leadership and support from the top, inertia and vested interests are almost sure to prevail over innovation in land and resource management.

### Spotlight on Alberta Energy

Oil and gas development is a significant driver of landscape change across Alberta.<sup>27</sup> Its impact will increase as drilling intensifies to tap remaining conventional reserves and as production ramps up from coalbed methane and from surface mining and in situ extraction in the oil sands region. The growing extent and intensity of the oil and gas industry's footprint are in large part the result of policy and

rights issuance decisions emanating from the Department of Energy.

Alberta Energy has played the spoiler on land-use and stewardship initiatives in the past. As the government's cash-cow, it has had the power in Cabinet to pursue a single-minded growth strategy for the oil and gas sector, with scant regard to cumulative environmental effects or, as it turns out, the cumulative effects of run-away development on the province's labour market and inflation rate, the municipal and transportation infrastructure in and around Fort McMurray, the traditional land uses of Aboriginal people, and the farming, ranching and recreational land-uses valued by many rural residents. In order to get a handle on cumulative effects, the new initiatives will have to shine a spotlight on Alberta Energy's contribution to landscape change.

In particular, Alberta Energy generates significant revenue by selling mineral rights in response to market demand. Rights issuance decisions are made, however, without the benefit of a policy and planning framework that provides guidance on the pace and intensity of development, without a credible and transparent pre-tenure planning or screening process, and without providing effective public notice and an opportunity to comment to parties who may be adversely affected by energy development.<sup>28</sup>

Once mineral rights have been issued, the proliferation of well sites, access roads and pipeline rights-of-way is almost inevitable. The EUB takes the heat on project-specific land-use conflicts, without being able to revisit the initial rights issuance decisions and determine whether or not these decisions were in the 'public interest'.<sup>29</sup> Alberta Energy's rights issuance policy combined with rising oil and gas prices and the incentives for oil sands development that are embedded in the royalty and tax regimes<sup>30</sup> have triggered a wave of development that is spreading across Alberta's landscapes. Alberta Energy takes credit for the resulting cash windfall, while leaving to others the thankless task of attempting to manage the cumulative effects and land-use conflicts associated with large-scale surface disturbance, timber loss, fragmentation of terrestrial and aquatic ecosystems, increased human access and other impacts.

In order to enhance Albertans' ability to set and achieve landscape-scale objectives, the government's new land-use initiatives must tackle the potent combination of a rights issuance free-for-all and a vacuum in key areas of land-use policy and planning. Without better control over the pace, intensity and extent of the energy industry's footprint, massive and unplanned landscape-scale change is inevitable. The issuance of mineral rights as currently practiced in Alberta is therefore inconsistent with the management of cumulative environmental effects and the associated social and economic impacts.





More generally, the oil and gas industry should not be allowed to operate with virtual immunity from the rules of the game that are needed to manage multiple activities and protect a range of values at the landscape scale. These rules should establish a level playing field in the form of an integrated policy, planning and regulatory framework for all significant land uses. Furthermore, Alberta Energy's narrow sectoral mandate must either be modified from within or constrained from without – and its capacity to veto land-use reform must be limited. Without significant progress in all of these areas, the well-meaning folks at SRD and Alberta Environment who are leading the current land-use initiatives are simply whistling in the wind – and so are the stakeholder groups and concerned individuals who are contributing their time and effort.

### You've got to have a plan

Planning is the key to setting and achieving landscape-scale objectives. There are compelling arguments that it will be impossible to manage cumulative environmental effects and landscape change in Alberta without a robust, comprehensive and integrated regime for land-use planning, including transparent and effective mechanisms to ensure that plans are respected by subsequent decision-makers.<sup>31</sup> Much can (and has) been said about the rationale for land-use planning and the design and implementation of planning processes. For the purposes of this article, however, these details are secondary. Without a firm commitment to overhauling landscape-scale planning in Alberta and rapid, tangible progress in this direction, the new land-use initiatives will be largely a waste of time. Period.

### Setting limits

Managing cumulative environmental effects in Alberta requires a willingness to take limits seriously when developing land-use plans and deciding what activities should be allowed to proceed. With current development and population pressures, it is no longer enough simply to determine whether or not oil and gas development, forestry and other activities should be permitted in a given area. Standard land-use zoning and associated lists of approved activities – as found in Alberta's existing integrated resource plans – should be enhanced by limits on the total amount and intensity of activity. For example, plans could set limits on linear disturbance density, the density of stream crossings, or the total amount of forest cover that can be removed.

These limits should, of course, reflect the best current scientific information on cumulative impact 'thresholds'. However, an unreflective commitment to 'science-based decision-making' conceals two potential traps for the unwary.

The first trap is the use of scientific uncertainty as an excuse for refusing to establish limits. Industry lobby groups, for example, may push for delays in setting limits until more scientific studies or better models are available, while proceeding full-speed ahead with development – a phenomenon analogous to what environmentalists in British Columbia refer to as 'talk and log'.<sup>32</sup>

The second trap is confusion about the process for setting limits. These decisions are ultimately a matter of social choice, not pure science. The decision to say 'That's enough' – or at least, 'Not now', 'Not here', 'Not in this way' – should involve a consideration of social, cultural, economic, and environmental factors. Planning provides a mechanism for this type of social choice – informed by science and by other sources of information about the benefits, costs, risks and trade-offs associated with different land-use options. Furthermore, when regional or local planning has implications for broader provincial or national interests – such as maintaining biodiversity or pursuing over-arching economic and social priorities – higher-level policy direction should also be incorporated into the planning process.

Decisions about acceptable impacts should be conservative in the face of uncertainty and cautious when landscape-scale changes may be largely or completely irreversible within the time frames used for managing land and resource use. Effective feedback loops and review processes would allow these decisions to be adjusted systematically over time as more scientific information becomes available or as societal preferences change. Limit-setting thus provides a very practical opportunity to apply the 'precautionary principle' and to practice adaptive management.

Limits on specified activities and impacts will not necessarily result in absolute limits on development. Restricting impacts, such as the removal of forest cover or the creation of linear disturbances, will create incentives to develop improved technology and land-use practices – such as low-impact or no-impact seismic – that may allow most if not all of 'business as usual' development to proceed while respecting limits. The effect of spatial, temporal and intensity limits may also be to defer development, rather than preventing it altogether.

Where trade-offs are inevitable, land use that maximizes economic value within cumulative disturbance limits could be promoted by using a 'cap-and-trade' system of the type that has successfully achieved cost-effective reductions of emissions within airsheds. Tradable land-use (or disturbance) rights could be issued to land users up to the amount of the cumulative limit and market forces would then result in these rights being allocated to the highest value land uses.<sup>33</sup>



Identifying and implementing limits should be an immediate priority given the massive changes to Alberta's landscapes that are in store if current development trends continue. Acceptance of limits is therefore a litmus test for the current set of land-use initiatives.

### Substance versus process

There is little evidence to date of detailed analytical work behind the current land-use initiatives in Alberta. As noted above, no white paper or background studies have been released by government. Invitations to participate in focus groups and multi-stakeholder processes are issued with little or no supporting material.

Perhaps the lack of substance to inform the consultation processes reflects the fact that, as stated in a letter of invitation for the LUF focus groups, government is inviting input "on the ground floor" of policy development.<sup>34</sup> Once beyond this stage, however, it will become clear that overhauling key aspects of land and resource management in Alberta in order to manage cumulative environmental effects is a non-trivial undertaking that will require solid analytical underpinnings. It is not about tinkering at the margins.

Detailed and careful analysis of issues and options will therefore be required, either within government or drawing on outside expertise. Background studies and options papers prepared for land-use initiatives in British Columbia,<sup>35</sup> the Northwest Territories<sup>36</sup> and New Zealand<sup>37</sup> illustrate this type of work. If the Alberta government is unwilling or unable to develop the analytical foundation for significant reform and make it available for public review and comment, it has either decided already what it will do – and stakeholder input is mere window-dressing – or it lacks the capacity and the political will to carry through major land-use initiatives.

### Conclusion

There is convincing evidence that unintended and quite possibly undesirable cumulative effects are shaping the future of Alberta's landscapes. The land-use initiatives launched recently by the Government of Alberta have the potential to address this problem by replacing institutional fragmentation and blind incrementalism in decision-making with a legal, institutional and policy regime that is capable of delivering integrated landscape management. This reform would enable Albertans to identify and reconcile competing land-use values, set long-term objectives for landscapes in this province, and ensure that decisions on land and resource use are directed to achieving these objectives. Experience has shown, however, that there are many

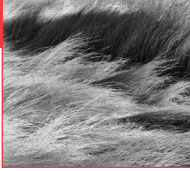
obstacles to the significant structural reforms that will be required for this type of undertaking. The checklist proposed in this article includes some of the key questions that stakeholder groups and individuals may want to ask when evaluating the Alberta government's approach to land-use issues and deciding whether or not to invest time and effort in the latest round of initiatives. It could also provide guidance for the implementation of these initiatives over the coming months and beyond. Given the urgent need for creative thinking and decisive action on land-use issues in Alberta, the new initiatives provide an opportunity that should not be squandered through lack of attention to the requirements for success.

♦ Mr. Kennett is a Research Associate at the Canadian Institute of Resources Law. Research for this article was funded by a grant from the Alberta Law Foundation. The author would like to thank his colleagues Monique Passelac-Ross, Nickie Vlavianos and Mike Wenig for their comments on a draft of this article.

### Notes:

1. Steven A. Kennett, *Integrated Landscape Management in Canada: Getting from Here to There*, CIRL Occasional Paper #17 (Calgary: Canadian Institute of Resources Law, 2006).
2. See [www.srem.gov.ab.ca](http://www.srem.gov.ab.ca).
3. A brief description of SREM, including guiding principles, is found in "Our Commitment: Sustainable Resource and Environmental Management", *ibid*.
4. See [www.srem.gov.ab.ca/luf.html](http://www.srem.gov.ab.ca/luf.html).
5. "Integrated Land Management Project Charter" (July 2005), p. 2 (emphasis added), online: [www.srd.gov.ab.ca/land/pdf/ILM\\_Project\\_Charter.pdf](http://www.srd.gov.ab.ca/land/pdf/ILM_Project_Charter.pdf).
6. *Ibid.*, p. 4.
7. See [www.oilsandsconsultations.gov.ab.ca](http://www.oilsandsconsultations.gov.ab.ca).
8. EUB, *Decision on Requests for Consideration of Standing Respecting a Well Licence Application by Compton Petroleum Corporation, Eastern Slopes Area*, EUB Decision 2006-052 (June 8, 2006), p. 9, referring to ERCB, Oil and Gas Developments, Eastern Slopes (Southern Portion), ERCB Informational Letter IL 93-9 (December 13, 1993).
9. Alberta Energy, *Alberta's Integrated Energy Vision* (2006), online: [www.energy.gov.ab.ca/docs/albertaenergy/Integrated\\_Energy\\_Vision.pdf](http://www.energy.gov.ab.ca/docs/albertaenergy/Integrated_Energy_Vision.pdf).
10. *Ibid.*, p. 12.
11. *Ibid.*
12. For example, Environment Council of Alberta, *The Environmental Effects of Forestry Operations in Alberta – Report and Recommendations* (Edmonton: Environment Council of Alberta, 1979).
13. *Ensuring Prosperity: Implementing Sustainable Development*, The Report of the Future Environmental Directions for Alberta Task Force (March 1995) pp. 52-58.
14. *Alberta Forest Conservation Strategy: A New Perspective on Sustaining Alberta's Forests* (June 1997), online: [www.borealcentre.ca/reports/afcs.html](http://www.borealcentre.ca/reports/afcs.html); See also R. Schneider, "Whatever Happened to the Alberta Forest Conservation Strategy?" (December 2001) 5 *Encompass* pp. 9-13, online: [www.borealcentre.ca/reports/encompass.html](http://www.borealcentre.ca/reports/encompass.html).
15. See [www3.gov.ab.ca/env/regions/nes/strategy.html](http://www3.gov.ab.ca/env/regions/nes/strategy.html).
16. See [www3.gov.ab.ca/env/regions/neb/rsds/](http://www3.gov.ab.ca/env/regions/neb/rsds/).
17. See [www3.gov.ab.ca/env/irm/IRM\\_toolkit.html](http://www3.gov.ab.ca/env/irm/IRM_toolkit.html).





18. EUB, *Shell Canada Ltd., Application to Drill Four Critical Sour Gas Wells and Construct and Operate Related Pipeline and Facilities, Castle River Area*, EUB Decision 1000-17 (March 8, 2000) pp. 9-10. For commentary on this decision, see Steven A. Kennett, *Spinning Wheels in the Castle: A Lost Decade for Sustainability in Southwestern Alberta*, CIRL Occasional Paper #14 (Calgary: Canadian Institute of Resources Law, 2003) pp. 22-26, online: [www.cirl.ca/pdf/OP14Castle.pdf](http://www.cirl.ca/pdf/OP14Castle.pdf).
19. Natural Resources Conservation Board, *Application to Construct Recreational and Tourism Facilities in the West Castle Valley, near Pincher Creek, Alberta*, Decision Report – Application #9201 (December 1993) pp. 10-10 – 10-16. See Kennett, *ibid.*, pp. 4-12.
20. For example: Oswald Dias & Brian Chinery, “Addressing Cumulative Effects in Alberta: The Role of Integrated Resource Planning” in Alan J. Kennedy, ed., *Cumulative Effects Assessment in Canada: From Concept to Practice*, Papers from the Fifteenth Symposium Held by the Alberta Society of Professional Biologists (Calgary: Alberta Society of Professional Biologists, 1994) p. 303; J. Roger Creasey, *Cumulative Effects and the Wellsite Approval Process*, Thesis submitted to the Faculty of Graduate Studies, University of Calgary, in partial fulfillment of the requirements for the degree of Master of Science, December, 1998; Steven A. Kennett & Monique M. Ross, “In Search of Public Land Law in Alberta” (1998) 8 *Journal of Environmental Law and Practice* p. 131 (also published as CIRL Occasional Paper #5 (1998), online: [www.cirl.ca/pdf/OP05Search.pdf](http://www.cirl.ca/pdf/OP05Search.pdf)); Kevin Timoney & Peter Lee, “Environmental management in resource-rich Alberta, Canada: first world jurisdiction, third world analogue?” (2001) 63 *Journal of Environmental Management* p. 387; Monique M. Ross, *Legal and Institutional Responses to Conflicts Involving the Oil and Gas and Forestry Sectors*, CIRL Occasional Paper #10 (Calgary: Canadian Institute of Resources Law, 2002), online: [www.cirl.ca/pdf/OP10Conflicts.pdf](http://www.cirl.ca/pdf/OP10Conflicts.pdf); Steven A. Kennett, *Integrated Resource Management in Alberta: Past, Present and Benchmarks for the Future*, CIRL Occasional Paper #11 (Calgary: Canadian Institute of Resources Law, 2002), online: [www.cirl.ca/pdf/OP11Benchmarks.pdf](http://www.cirl.ca/pdf/OP11Benchmarks.pdf); Richard R. Schneider, *Alternative Futures: Alberta's Boreal Forest at the Crossroads* (Edmonton: Alberta Centre for Boreal Research & The Federation of Alberta Naturalists, 2002); Richard R. Schneider, et al., “Managing the Cumulative Impacts of Land-uses in the Western Canadian Sedimentary Basin: A Modeling Approach” (2003) 7 *Conservation Ecology*, Article 8; Daniel Farr et al., *AI-Pac Case Study Report*, Prepared for the National Round Table on the Environment and the Economy, July 2004, online: [www.nrtee-trnee.ca/eng/programs/Current\\_Programs/Nature/Boreal-Forest/Documents/200407-AIPac-Case-Study/200407-AIPac-CS\\_Complete\\_E.pdf](http://www.nrtee-trnee.ca/eng/programs/Current_Programs/Nature/Boreal-Forest/Documents/200407-AIPac-Case-Study/200407-AIPac-CS_Complete_E.pdf); Richard Schneider & Simon Dyer, *Death by a Thousand Cuts: Impacts of in situ oil sands development on Alberta's boreal forest* (The Pembina Institute, Drayton Valley, Alberta and the Canadian Parks and Wilderness Society, Edmonton, Alberta, August 2006); Steven A. Kennett et al., *Managing Alberta's Energy Futures at the Landscape Scale*, Prepared for the Alberta's Energy Futures Project, Institute for Sustainable Energy, Environment and Economy (ISEEE), University of Calgary, Calgary, Alberta, 29 June 2006 (in press – on file with the author).
21. Steven A. Kennett, “The Two Faces of 'Integration' in Resource Management” (June/July 2005) 29:6 *LawNow* p. 40.
22. This problem was well illustrated by Alberta's protected areas strategy, Special Places 2000, and by the multi-stakeholder committee charged with recommending land-use options for the Castle-Crown area following the Natural Resources Conservation Board's West Castle Decision. See Steven A. Kennett, “Special Places 2000: Protecting the Status Quo” (1995) 50 *Resources* p. 1; Steven A. Kennett, “Special Places 2000: Lessons from the Whaleback and the Castle” (1998) 63 *Resources* p. 1; Kennett *supra* note 18, pp. 12-16.
23. Pierre Walther, “Against Idealistic Beliefs in the Problem-Solving Capacities of Integrated Resource Management” (1987) 11 *Environmental Management* p. 439; Hanna J. Cortner et al., “Institutions matter: the need to address the institutional challenges of ecosystem management” (1998) 40 *Landscape and Urban Planning* p. 159; Bruce P. Hooper et al., “Facilitating Integrated Resource and Environmental Management: Australian and Canadian Perspectives” (1999) 42 *Journal of Environmental Planning and Management* p. 747; Kennett (2002), *supra* note 20.
24. Kennett, *supra* note 1.
25. See, for example, Kennett & Ross (1998), *supra* note 20; Kennett (2002), *supra* note 20.
26. “ILM External Scoping Workshop Summary of Proceedings” (January 17, 2006) p. 1 (emphasis added) (on file with author).
27. Farr et al., *supra* note 20; Schneider et al. (2003), *supra* note 20; Kennett et al. (2006), *supra* note 20.
28. Michael M. Wenig & Michael S. Quinn, “Integrating the Alberta Oil and Gas Tenure Regime with Landscape Objectives: One Step Toward Managing Cumulative Effects” in Henry Epp, ed., *Access Management: Policy to Practice*, Proceedings of the Conference Presented by the Alberta Society of Professional Biologists in Calgary, March 18-19, 2003 (Calgary: Alberta Society of Professional Biologists, 2004) p. 27; Nickie Vlavianos, *The Potential Application of Human Rights Law to Oil and Gas Development in Alberta: A Synopsis* (Calgary: Canadian Institute of Resources Law & Alberta Civil Liberties Research Centre, 2006) pp. 29-43; Schneider (2002), *supra* note 20, pp. 44-47.
29. Steven A. Kennett & Michael M. Wenig, “Alberta's Oil and Gas Boom Fuels Land-Use Conflicts – But Should the EUB be Taking the Heat?” (2005) 91 *Resources* p. 1.
30. Government of Canada, *Report of the Commissioner of the Environment and Sustainable Development to the House of Commons – 2000* (Ottawa: Ministry of Public Works and Government Services, 2000) Chapter 3, Government Support for Energy Investments, pp. 3-20; Dan Woyntonowicz, Chris Severson-Baker & Marlo Reynolds, *Oil Sands Fever: The Environmental Implications of Canada's Oil Sands Rush* (Drayton Valley, Alberta: The Pembina Institute, 2005) pp. 60-63, online: [www.pembina.org/pdf/publications/OilSands72.pdf](http://www.pembina.org/pdf/publications/OilSands72.pdf).
31. These arguments are discussed in Steven A. Kennett, “New Directions for Public Land Law” (1998) 8 *Journal of Environmental Law and Practice* pp. 25-33 (also published as CIRL Occasional Paper #4 (1998), online: [www.cirl.ca/pdf/OP04Directions.pdf](http://www.cirl.ca/pdf/OP04Directions.pdf) and Kennett (2002), *supra* note 20).
32. For an illustration of the oil and gas industry's reaction to proposals to incorporate cumulative effects thresholds into land-use planning, see the comments by the Canadian Association of Petroleum Producers on the Draft Dehcho Land Use Plan ([www.dehcholands.org/docs/public\\_comments/individual\\_submissions/CAPP.pdf](http://www.dehcholands.org/docs/public_comments/individual_submissions/CAPP.pdf)).
33. Marian Weber & Wiktor Adamowicz, “Tradable Land-Use Rights for Cumulative Environmental Effects Management” (2002) 28 *Canadian Public Policy* p. 581.
34. Letter on file with the author.
35. See, for example, the extensive material prepared by the Commission on Resources and Environment (CORE), including: *The Provincial Land Use Strategy, Volume 1 (A Sustainability Act for British Columbia – November 1994)*, *Volume 2 (Planning For Sustainability – November 1994)*, *Volume 3 (Public Participation – February 1995)*, *Volume 4 (Dispute Resolution – February 1995)*.
36. See [www.ceamf.ca/03\\_reference/03\\_references.htm](http://www.ceamf.ca/03_reference/03_references.htm).
37. The Right Honourable Sir Geoffrey Palmer, “Sustainability – New Zealand's Resource Management Legislation” in Monique Ross & J. Owen Saunders, eds., *Growing Demands on a Shrinking Heritage: Managing Resource-Use Conflicts* (Calgary: Canadian Institute of Resources Law, 1992) p. 408.



## NEW PUBLICATIONS

### ***Integrated Landscape Management in Canada: Getting from Here to There***

by Steven A. Kennett. 2006. 49 pp. Occasional Paper #17. \$15.00 (softcover)

Integrated landscape management (ILM) has been proposed as means of overcoming the fragmentation and incrementalism in decision-making that present virtually insurmountable obstacles to cumulative effects management across much of Canada and in other jurisdictions worldwide. In common with concepts such as integrated resource management and ecosystem-based management, ILM adopts a holistic and forward-looking approach to managing the land and resource uses that may affect ecological, social, cultural and economic values. The analysis and practical examples presented in this paper are intended to provide specific guidance for moving forward with the implementation of ILM.

### ***The Potential Application of Human Rights Law to Oil and Gas Development in Alberta: A Synopsis***

by Nickie Vlavianos. 2006. 70 pp. Human Rights and Resource Development Project Paper #5. \$20.00 (softcover)

This paper summarizes much of the work undertaken as part of the Human Rights and Resource Development Project from 2001 to the end of July 2006. It is the fifth publication to come from this project, the purpose of which is to explore the relationship between two important areas of law: human rights, as they are protected by law in Alberta, and the legal regime pursuant to which oil and gas resources are developed in the Province. The paper focuses on two actual or potential impacts from oil and gas development, those affecting human health and those affecting one's culture or way of life. It asks whether human rights law has anything to say about these impacts and the way oil and gas is developed in Alberta. The paper looks at a number of stages in the oil and gas development process, including the mineral rights disposition stage and the EUB approval process.

### ***Wildlife and the Canadian Constitution***

by Priscilla Kennedy and John Donihee. 2006. 14 pp. Wildlife Law Paper #4. \$10.00 (softcover)

This publication is the fourth in a series of papers on Canadian Wildlife Law being published by the Canadian Institute of Resources Law. The purpose of this paper is to give an overview of the sources of Canadian wildlife law focusing on the constitutional authorities to legislate in respect of wildlife, and to outline as well how the distribution of public property, more specifically public lands, has affected these authorities. The distribution of public property, including public lands as well as law-making authorities, is set out in Canada's constitution. The paper starts with an exploration of the division of legislative powers over wildlife between federal

and provincial governments. Investigation of the constitutional framework will take farther a field as well, as consideration how the control over public property contributes to wildlife management authority. The paper concludes this review of constitutional authority over wildlife by examining how both levels of government have developed institutions to facilitate interjurisdictional cooperation on matters related to wildlife.

### ***Protecting Environmental and Health Rights in Africa: Mechanisms for Enforcement***

by Ibironke Odumosu. 2006. 78 pp. Human Rights and Resource Development Project Paper #4. \$20.00 (softcover)

This paper is the fourth publication to come from the Human Rights and Resource Development Project. The latter half of the twentieth century witnessed significant international activity on human rights issues. A considerable number of the human rights abuses in Africa and elsewhere, that garnered international attention, implicated natural resource exploitation carried out by large multinational corporations, sometimes in conjunction with State entities. This paper, the fourth publication to come from the Human Rights and Resource Development Project, engages in African human rights discourse with particular reference to the mechanisms for protecting and enforcing environmental and health rights. Some of the major themes that run through the paper include the liability of multinational corporations (if any), for human rights violations in Africa, and the incorporation of the *African Charter on Human and Peoples' Rights* into domestic law. The paper concludes that on a regional level, Africa has some legal instruments capable of addressing the human rights challenges facing the continent, but requires the establishment of enforcement institutions with the capacity to implement these laws.

### ***Overview of Provincial Wildlife Laws***

by Monique M. Passelac-Ross. 2006. 35 pp. Wildlife Law Paper #3. \$15.00 (softcover)

This publication, the third in a series of papers on Canadian Wildlife Law, provides an overview of wildlife legislation encompassing all ten provinces and three territories in Canada. The paper explains the basic scheme of the wildlife statutes and outlines the commonalities and differences from jurisdiction to jurisdiction. First, it describes the traditional wildlife management mechanisms that are typically utilized in wildlife laws in order to achieve wildlife management goals. It then focuses on the habitat protection provisions of wildlife statutes. These provisions illustrate the broadening in focus of wildlife management techniques starting in the wildlife management era (1960s and 1970s). Finally, the paper provides an overview of legislative provisions that have been enacted for the protection of species at risk, either as stand-alone legislation or as new provisions inserted in existing wildlife statutes.



## NEW PUBLICATIONS (CONTINUED)

### How to Order:

Postage & Handling within Canada: \$5.00 first book, \$2.00 each add'l book.  
Postage & Handling outside Canada: \$10.00 first book, \$4.00 each add'l book.  
All Canadian orders are subject to the 6% Goods and Services Tax.

To order publications, please send a numbered authorized purchase order or a cheque payable to the "University of Calgary". MasterCard and VISA will also be accepted. Please send orders to: Canadian Institute of Resources Law, MFH 3330, University of Calgary, Calgary, Alberta, Canada T2N 1N4.

### CIRL Occasional Paper Series

Most Occasional Papers are available online at CIRL's website, [www.cirl.ca/html/pub\\_OC.html](http://www.cirl.ca/html/pub_OC.html).

### Resources, The Newsletter of the Canadian Institute of Resources Law

All back-issues are now available online at CIRL's website, [www.cirl.ca/html/res\\_back.html](http://www.cirl.ca/html/res_back.html).

Subscribe electronically to *Resources*  
Please provide your e-mail address to [cirl@ucalgary.ca](mailto:cirl@ucalgary.ca)

Canadian Institute of Resources Law  
Institut canadien du droit des ressources

MFH 3330, University of Calgary, 2500 University Drive N.W., Calgary, AB T2N 1N4  
Telephone: 403.220.3200 Facsimile: 403.282.6182 E-mail: [cirl@ucalgary.ca](mailto:cirl@ucalgary.ca)  
Website: [www.cirl.ca](http://www.cirl.ca)



# RESOURCES

NUMBER 95—SUMMER 2006

*Resources* is the newsletter of the Canadian Institute of Resources Law. Published quarterly, the newsletter's purpose is to provide timely comments on current issues in resources law and policy. The opinions presented are those of the authors and do not necessarily reflect the views of the Institute. *Resources* is e-mailed free of charge to subscribers. (ISSN 0714-5918)

**Editors:** Nancy Money and Sue Parsons

**Canadian Institute of Resources Law**  
**Institut canadien du droit des ressources**

THE INSTITUTE

The Canadian Institute of Resources Law was incorporated in September 1979 to undertake and promote research, education and publication on the law relating to Canada's renewable and non-renewable natural resources.

The Institute was incorporated on the basis of a proposal prepared by a study team convened by the Faculty of Law at the University of Calgary. The Institute continues to work in close association with the Faculty of Law. It is managed by its own national Board of Directors and has a separate affiliation agreement with the University of Calgary.

#### Executive Director

J. Owen Saunders

#### Research Associates

Steven Kennett,  
Monique Passelac-Ross,  
Nickie Vlavianos, Mike Wenig

#### Director of Administration

Nancy Money

#### Assistant to the Executive Director

Pat Albrecht

#### Information Resources Officer

Sue Parsons

#### Board of Directors

Nigel Bankes, James Frideres,  
Clifford D. Johnson, Arlene Kwasniak,  
KayLynn Litton, Alastair Lucas,  
Richard Neufeld, F. Van Penick,  
David R. Percy, J. Owen Saunders,  
Alan Scott, Brian Wallace

THE BOARD

