

# ALBERTA'S NEW WETLAND POLICY: BABY STEPS IN AN ADULT WORLD

By Jason Unger

After a very long wait a new wetland policy for the province was released yesterday. The policy is a step forward in managing Alberta's wetlands as it is the first time a policy applies to the Green Area (public land) of the province. Beyond that only time will tell if environmental outcomes are supported at all by the policy. There is simply too much wiggle room in the policy to validate it as an effective mechanism to protect wetlands of significant biodiversity and ecosystem function. The lack of certainty for environmental outcomes certainly doesn't bolster social licence arguments about the sustainability of activities in Alberta.

First, there is no overarching goal to maintain wetland area (as espoused by the non-consensus recommendations of the Alberta Water Council) let alone to maintain or restore wetland function. Rather the stated policy goal is to "sustain the benefits they provide to the environment, society and economy." Interpret that as you will.

Second, there is a significant amount of uncertainty about how the policy will be implemented. This uncertainty can be seen in the following aspects of the policy:

- 1) Relative wetland value (RWV) – the policy outlines a system of management based on the government attributing "values" to the various wetlands on the landscape. The RWV is based on criteria including biodiversity, water quality improvement, flood reduction, human value and abundance. By framing value in this way the policy is likely (if not certain) to attribute lower values to more remote wetlands, which may play minimal roles in water quality improvement, flood reduction and human value but have high biodiversity value. Furthermore, the use of abundance as a criterion to determine value appears to be included to simply justify decreased valuation. There is no rationale or science based justification that more abundant wetlands may be impacted without decreasing their value, particularly when it comes to maintaining the functions that wetlands play on the landscape as a whole. I question whether the government (or anyone else for that matter) can ascertain what is the "right" abundance of wetlands to perform various functions and maintain biodiversity.

- 2) Avoidance and the wetland mitigation hierarchy – the policy outlines a hierarchy of wetland mitigation, which starts with avoidance (not disrupting wetlands) followed by minimizing impacts and, finally, offers the option of wetland replacement. While the hierarchy is laudable in theory (and mimics many wetland policies in North America) avoidance measures are often quickly bypassed by proponents and regulators alike.

Under the policy the proponent of an activity must assess whether they can avoid impacting a wetland. Where the proponent determines that avoidance is not "practicable" they must "adequately demonstrate that alternative projects, project designs, and /or project sites have been thoroughly considered and ruled out for justifiable reasons." This approach is full of uncertainty in what will be deemed "practicable," what constitutes an "adequate" demonstration of considering alternatives, and what constitutes "justifiable reasons." These issues are left to future policy guidance or government discretion.

Past research has indicated a failure to generate meaningful avoidance using similar policies in other jurisdictions, which begs the question, how will this be different?

This is particularly the case where one considers the framework for replacement ratios set out by the policy. For an impact on a high value wetland the replacement ratio is set at 8:1. The cost of replacing such a high value wetland is not specified but the policy sets out specific criteria to generate the amount that must be paid for replacement. I would argue that in order to act as an effective avoidance

motivator the replacement cost must exceed any feasible economic gain from wetland drainage by a significant margin. It seems unlikely that replacement costs will exceed the benefits of many activities, which begs the question “How much weight will economic reasons be given by the regulator in determining whether avoidance is practicable?” Only time will tell.

Third, compensation paid for wetland losses may be used in a variety of ways that may not contribute at all to wetland conservation. The policy allows “non-restorative replacement” which would see money being committed to public education and outreach, and a variety of research and data collection options. Presumably then we could teach people about the wetlands destroyed to bring them that educational opportunity and collect ever diminishing data about vanishing wetlands.

Finally, the policy is silent on how the wetland policy will apply to approved activities that have on-going impacts on wetlands. The assumption is that such policies will not apply retroactively, which begs the question of how much wetland destruction effectively escapes the purview of the policy. There will be opportunities to revisit compensation for on-going wetland destruction where Water Act approvals must be renewed; but again, there is no indication that these projects will be brought within the policy. For many areas, this means on-going wetland losses barring discretionary action to require wetland avoidance and mitigation as part of existing approval conditions (if it is feasible at all). This is particularly troublesome for the working landscapes in the Green Area where significant areas are subject to existing approval, where proponents have benefitted from the government’s delay in getting the wetland policy passed.

In the end, in giving up on the concept of no-net loss of wetlands and providing gaping discretionary measures to allow for the destruction of even highly valued wetlands, the new wetland policy directly undermines any claim that Alberta is a world leader in environmental management.

*Jason Unger is Staff Counsel at the Environmental Law Centre in Edmonton. This article was published originally on the Environmental Law Centre blog on September 11, 2013 <http://environmental-lawcentre.wordpress.com/2013/09/11/albertas-new-wetland-policy-baby-steps-in-an-adult-world/> It is reprinted with the permission of the Environmental Law Centre.*



PHOTO: C. Olson