Managing Recreation on Public Land:

How does Alberta Compare?

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Have you ever wondered if recreational use of public land is managed differently, and perhaps better, in places other than Alberta? A pending report from the Environmental Law Centre compares the legislative regime for managing recreation on public land in Alberta to five American jurisdictions and three Canadian provinces facing similar challenges. The comparisons focus on three legal barriers to implementing recreation policy on the ground in Alberta. These include:

- A clear mandate to manage recreation outside of parks and protected areas,
- The absence of directed revenue for recreation management programs, and
- Questionable protection from liability for trail-related accidents.

The findings indicate that the legislated regime in Alberta diverges from that in jurisdictions thought to be ahead on recreation management and resembles that in other jurisdictions that are struggling. The report identifies how motorized recreation is typically managed relative to non-motorized recreation and explores options for improvement in Alberta under existing law as compared to legislative reform. What follows are summary highlights and general trends from the full report, scheduled for release in June 2015.

Finding #1: How do mandates to manage recreation differ?

In Alberta today the mandate to manage recreation is split between numerous government agencies that administer separate legislation. Parks and protected area legislation provides a fairly adequate mandate but it is tied to protected land. Outside of protected areas, the *Public Lands Act* provides no clear recreation management mandate and has basically allowed recreational use to be an afterthought to natural resource development. Public access to public land is 'open unless closed.' This makes random use the baseline and allows management actions to be perceived as restrictions. There is little direction for the use of existing regulatory tools and several require political decisions. Motorized vehicles are regulated under separate transportation legislation, enforcement officers are being moved from land and transportation agencies to the solicitor general, and municipalities have limited authority and capacity to act. This mandate fragmentation creates uncertainty as to where responsibilities should fall, allows gaps on the landscape, impairs development of recreational infrastructure, and fuels public perception that there are no rules.

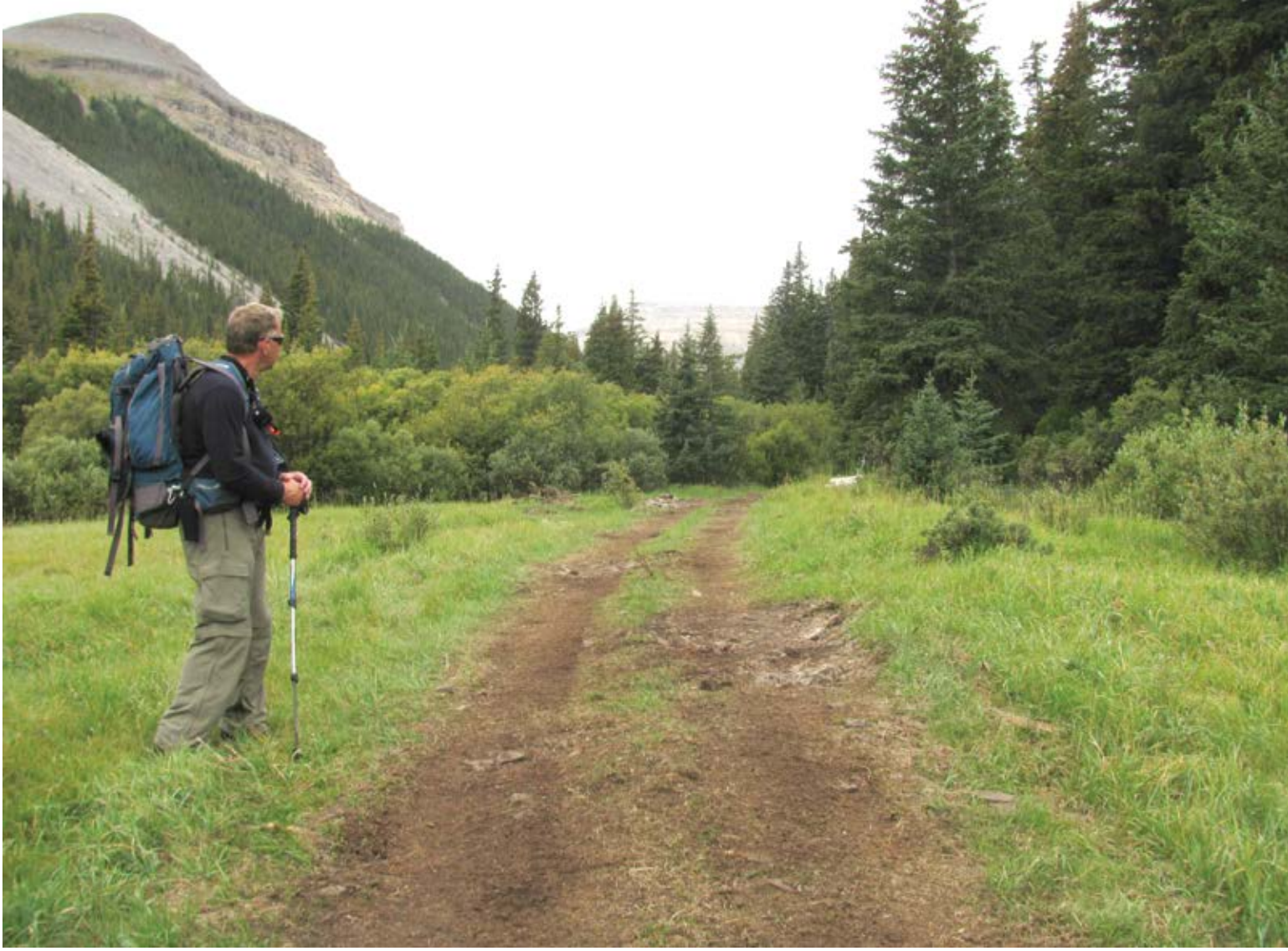
This fragmented mandate is fairly opposite to the jurisdictions reviewed. Especially in the U.S., attention to recreational resources is entrenched in the core of public lands legislation. Recreation-related powers and duties are typically consolidated rather than dispersed. In some cases multiple agencies have comparable powers over their respective lands and in other cases one agency will lead on recreation programs across the land base. Most importantly, regardless of how powers are distributed, recreational land management is always someone's job. In all jurisdictions reviewed public access is either "closed unless open" or "as designated" with mandatory designation of all trails as open, closed or restricted. Legislation also directs agencies to identify recreational opportunities and develop infrastructure. Notably more recreation management decisions are administrative rather than political but are subject to detailed legislated guidance. Legislation often provides for involvement of user groups and municipalities.

Most jurisdictions have additional motorized-specific legislation that consolidates provisions on machines, user rules, access, enforcement, penalties and funding programs. The scope of motorized programs varies immensely with respect to inclusion of off highway vehicles (OHVs), snowmobiles and street-legal vehicles like 4x4 trucks and RVs. Likewise motorized programs vary immensely in their focus on opportunity provision or impact reduction.

The comparisons also warn that mandates won't be met without practical administrative capacity, especially for enforcement and infrastructure maintenance. Land agencies may need outside resources including user payments and non-government service provision even if such schemes are controversial.

Finding #2: How is revenue for management programs generated and directed?

In Alberta there is almost no directed revenue for recreation management. In striking contrast, every single U.S. jurisdiction surveyed uses a spectrum of tools to avoid



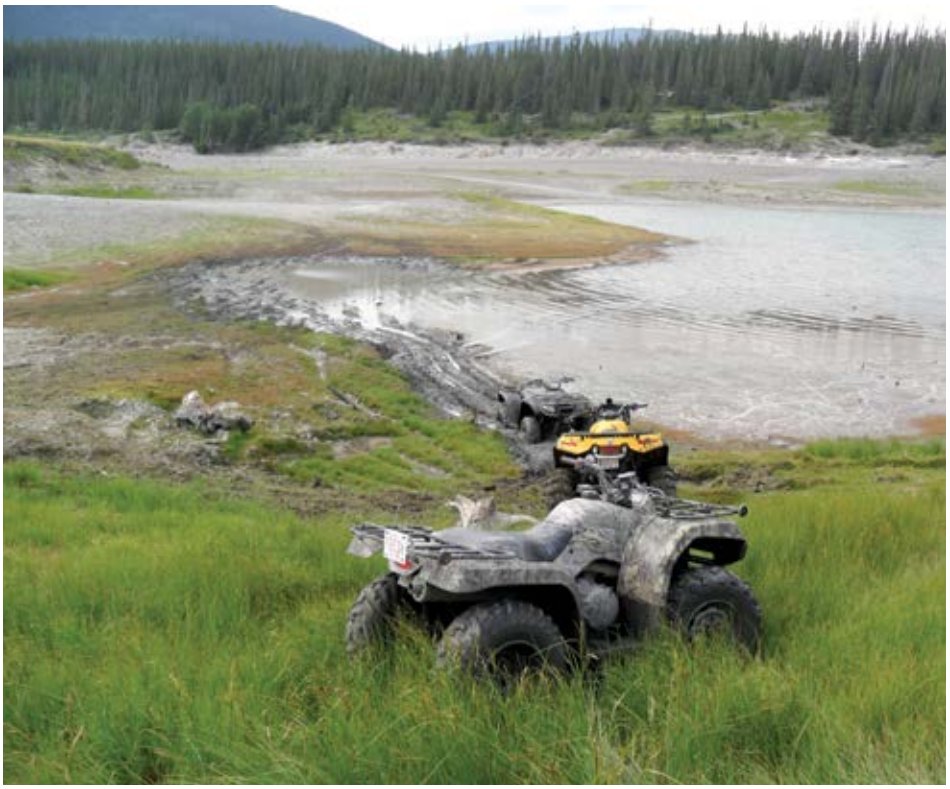
An OHV trail in Alberta's Bighorn Country. See the next article by Sean Nichols for a photo of the damage OHV use did to this trail in just one year.
PHOTO: © S. NICHOLS

sole reliance on general government revenue. This spectrum includes direct user fees and permits to recover the costs of services or high impact activities, regulatory charges on vehicles and operators, indirect revenue sources such as a fuel tax attributable to recreational vehicles, and unrelated sources such as oil royalties, gaming revenue, and legislative appropriations.

Every state surveyed funds motorized and non-motorized programs with means beyond user fees and permits. General or non-motorized funding largely comes from the indirect sources listed above. Motorized funding came from regulatory charges such as levies on vehicle registrations, backcountry vehicle permits, and mandatory user education cards. The breadth of revenue sources, recipients and uses of funding under motorized programs varies immensely. For example, a narrow program would use levies on OHV registrations to fund trail enhancement specifically for OHVs. A broad program would consolidate charges against all vehicle types and operators and use it to fund a mix of opportunity provision and impact reduction. These uses include land acquisition, trail enhancement, enforcement, education, search and rescue, emergency medical services, and general agency operations. There are also some examples of directed fines, restitution payments, and community service for environmental damage.

Finding #3: Are recreation managers protected from liability?

In Alberta protection from lawsuits related to trail injuries is better than it used to be. However, this protection comes through general "occupiers' liability" legislation, which is very complex and provides no guarantee that land agencies and trail groups will not be sued. Risk management practices involve use of further legal instruments like waivers, agreements, and statutory consents that may create more complexity than certainty. Uncertainty warrants insurance and the existing insurance regime may be inadequate. There are very few relevant court cases, which raises the question of what risk really exists. Nonetheless the perception of risk is a deterrent to recreation management action including infrastructure development, engagement of the non-government sector, and user payments. Other Canadian provinces with similar legislation have had similar experiences. In contrast, all American jurisdictions and one province had simpler and stronger liability protections. This usually involves broad protections in recreation-specific



Two of these OHVs were attempting to winch the third out of the mud. The driver of the third was charged under the Public Lands Act. PHOTO: © W. HOWSE

legislation and additional protections in OHV-specific legislation.

Reform considerations

Opportunities to fill these gaps in Alberta under existing legislation are somewhat limited. Lack of agency mandate is the largest issue as all administrative powers must come from legislation. Regional plans, the recreation trails partnership pilot, and merger of the parks and public land ministries could all help the current approach of "shared responsibility" function better. But none of these initiatives can create legislative authority that does not exist.

Revenue generation has mixed potential in Alberta. User fees are possible but require political decisions that may be contentious (witness the apparent backlash to the fees introduced in the March 2015 budget). Permits and other statutory consents may be issued administratively but there's no requirement that revenue from these measures will be directed back to recreation management. Regulatory charges on machines and operators would require legislative reform but at least there are plenty of models. Revenue from a fuel tax attributable to recreational vehicles or from unrelated sources like casino funds would require legislative reform and there would be opposition as these funds already exist and are spent elsewhere.

Liability protection presents a difficult reform problem. Legislated protections already exist, they are better than before, and there are very few examples of them failing in Alberta or elsewhere. Nonetheless, uncertain liability deters management action so demands attention. Legislative reforms to provide broader, simpler, and stronger protections would be ideal.

How to tackle motorized recreation as compared to general or non-motorized recreation is also a serious issue in Alberta. Provincial initiatives including regional plans and the trails partnership pilot project suggest an OHV focus as thinking turns to formalizing a general recreation system. This is the opposite of all jurisdictions reviewed where general recreation management regimes were well established, motorized-specific programs were developed as this new challenge emerged, and some motorized programs were applied to more than OHVs. At least one report stated that responding to OHV issues by focusing too intently on OHVs can lose support for management programs. Motorized programs were part of the solution in most jurisdictions reviewed, but these programs were clearly demarcated and other uses received significant attention. If the current provincial trend were to persist in legislative reforms, it would allow vagueness as to whether reforms were for general recreation management or OHVs specifically and, if the latter, would leave gaps in the system.

Legislative reform is the ideal way to improve recreation management in Alberta given that there were shortcomings on every point of jurisdictional comparison. A dedicated recreation management act could establish a mandate, directed revenue and liability protections in one package. It could move more recreation management decisions from the political realm to the administrative realm and enable user-specific programs where appropriate. It would offer much greater guidance than seen under existing legislation and regional plans. However, new legislation is not clearly on the agenda and if it is it might miss the mark. A "trails act" has been anticipated for years but has yet to emerge. This act could create a delegated administrative organization responsible for recreation trails across different categories of public land. While a pragmatic option, delegated authorities are uncommon in the jurisdictions reviewed, contentious where proposed, and had limited functions where adopted. The more common model combined government authority with legislated stakeholder roles at the program level, so this option should be included in any reform debate. There would be much value in developing model legislation for discussion in Alberta. This would help in adopting the best features of other jurisdictions while avoiding the worst.

For the full report visit the Environmental Law Centre website at www.elc.ab.ca in June 2015.