



Alberta Wilderness Association
"Defending Wild Alberta through Awareness and Action"

Hon. Sonya Savage
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Hon. Jason Nixon
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AER Review
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October 11, 2019

Re: Alberta Energy Regulator Review

Dear Minister Savage, Minister Nixon, and AER Review Group:

Alberta Wilderness Association (AWA) welcomes the opportunity to provide these comments for the Alberta government's review of the Alberta Energy Regulator (AER).

AWA, founded in 1965, is an Alberta-based conservation group with 7,000 members and supporters in Alberta and around the world. AWA seeks the completion of a protected areas network and good stewardship of Alberta's public lands, waters and biodiversity to ensure future generations enjoy the abundant benefits they provide.

I. Mandate

AER's role to assure environmentally responsible energy development has not been met. As well, the AER lacks an adequate mandate to involve the public in energy development affecting public lands, waters and wildlife.

A) Alberta energy development lacks laws and policies to be environmentally responsible

The *Responsible Energy Development Act (REDA)*, which governs the AER, does not define responsible energy development. AWA believes that responsible energy development must occur within overarching environmental policies, targets and legislation. Alberta has not met international commitments for maintaining biodiversity and has no policy to do so. Grasslands, parkland, foothills and boreal dry mixedwood landscapes are significantly under-represented in our protected areas network. Alberta does not have a wildlife policy or laws that emphasize habitat protection within science-based cumulative effects thresholds, and lacks specific endangered species legislation.

Recommendation: Add environmental factors that the AER must consider in reviewing applications and managing projects, including science-based cumulative effects thresholds for land, biodiversity, species at risk, air, and water, to be outlined in accompanying regulations.

B) Mandate misses impacts resulting from issuing energy tenure

The AER does not address the full life cycle of energy developments. As a crucial first step in energy development, Alberta Energy issues and renews tenure, without public involvement. This drives subsequent environmental impacts by conferring a property right for a company to explore, and implies a right to develop under existing law and policies. Alberta energy tenure is issued without regard to cumulative effects management for land and biodiversity impacts, and at times without adequate regard for existing restrictions based on sensitive landscapes and protective notations.

Recommendation: Alberta Energy must assume responsibility for issuing and renewing tenures within a framework that includes:

- science-based thresholds to limit cumulative effects upon land, biodiversity, air and water;
- maintaining and protecting habitat of species at risk;
- respect for existing protective notations; and
- a mechanism for public input and review of tenure applications and renewals.

C) AER is not fulfilling its mandate for Cumulative Effects Management (CEM)

In July 2013 and September 2014 meetings, AER's Board chair and AER's President assured AWA that AER had a strong commitment to advance a meaningful cumulative effects management system (CEMS) for air, land, water and biodiversity, consistent with AER regulatory responsibilities. This responsibility and commitment was reinforced in a Nov. 2016 presentation to Alberta Environmental Network members by AER's Chief Scientist, which included prepared materials stating "under ALSA and REDA, the AER is expected to conduct Cumulative Effects Management for energy resource development aligned with GoA." Despite these assurances and some promising steps, this responsibility is unfulfilled, as outlined further in the 'Evolution' comments section below.

D) AER is not adequately managing species-at-risk habitat to uphold Alberta's commitments to recover populations

AWA understands that the streamlined 'enhanced' approval processes, without review or oversight by the Alberta government's regional fish and wildlife experts, have led to energy infrastructure incursions such as roads into formerly relatively intact areas. The density of seismic lines, roads, pipelines and other energy-related disturbance in species-at-risk habitat is still largely uncontrolled and escalating; an exception is in identified sage grouse habitat where federal emergency protection orders apply.

Recommendation: There should be no standard/automated approvals in species-at-risk habitat, including for caribou, threatened fish, native grasslands and the wildlife dependent on them. All such applications must be carefully reviewed to avoid new disturbance within species-at-risk habitat or identified critical habitat. Enforceable sub-regional access and infrastructure plans should be in place outlining how habitat will be maintained and steadily restored to support self-sustaining populations. Minimized new energy-related disturbance should only be permitted where such sub-regional plans are in place, accompanied by offsets with high compensation ratios.

E) AER has not met its mandate to assure reclamation of disturbed lands

AER's reclamation liability management must be reformed to remove the unacceptably high and increasing public risk of unfunded operator obligations. Albertans must not be left with the costs of un-

reclaimed landscapes, including risks of ongoing soil and water contamination and loss of native vegetation, habitat and watershed connectivity.

Alberta significantly lags other jurisdictions in energy reclamation liability management. For oilsands mines, Canada's Ecofiscal Commission's July 2018 report identified Alberta's liability gap as a pressing issue to address. It documented that Quebec and Yukon each have stringent up-front financial security requirements to motivate timely, progressive mine reclamation. For wells, AER's May 2016 presentation to an IOGCC conference noted that Alberta's system of no time limits, no application requirements and no security deposits for inactive wells has been accompanied by escalating inactive well numbers. It documented that New Mexico, Texas and Wyoming had more stringent requirements accompanied by either declining or relatively stable numbers of inactive wells.

Recommendation: AER must transition to require operators to post full upfront financial security for abandonment and reclamation obligations for wells, facilities and mines. AER must implement strict timelines for the abandonment and reclamation of inactive wells, and strengthen oilsands mine tailings reduction targets and actions.

F) Stronger mandate needed for participation of public and genuine public interest groups

AWA believes that there must be meaningful public participation in decisions affecting Alberta's public lands, waters and wildlife. Meaningful public participation provides better information for decision makers, stronger oversight of decisions, and improves both the ultimate decisions and their public acceptance. This requires not only informal consultation, but opportunities to conduct transparent proceedings with records and reasoned decisions. *REDA* severely restricts who may file a statement of concern and be heard at a hearing, and whether a hearing is held. The current 'directly and adversely affected' test focuses on private financial interests and a narrow residency area, which excludes many legitimate public interests. Compared to previous legislation, *REDA* also reduced the scope for establishing hearings, and eliminated judicial review of AER decisions, which further narrowed public participation and oversight of AER.

Recommendation: AER decision-making processes should formally include parties that demonstrate a "genuine interest" in the application's substantive subject matter. There are appropriate tests to determine "genuine" interest for environmental and other common good values, including subject matter experience, a record of involvement in the relevant issues, and responsible participation in proceedings. The scope for holding hearings should be expanded, and judicial review of AER decisions should be allowed.

II. Evaluating the Evolution of Regulatory Mandate

A) Inadequate evolution of Cumulative Effects Management of energy impacts.

AER's predecessor, the ERCB, had developed some useful pilot approaches to understand, collaborate with communities, and reduce harmful cumulative impacts of energy development, for example, the Aberdeen land challenge pilot (2009) and the Battle Lake watershed development pilot (2011). AER's area-based regulation (ABR) pilot in MD Greenview did evolve to achieve some water ecological benefits, but has failed to manage cumulative land and biodiversity energy impacts.

Initially, the AER's 'Duvernay' ABR pilot focus was to secure industrial water supply, with little ecological dimension. There was an evolution: after significant engagement efforts from ENGOs, NGOs and local municipalities during 2014-2016, senior AER staff launched a promising multi-stakeholder MD Greenview process for water management. This included positive AER-led engagement across AER Approvals, AER Compliance and AEP. The group's recommendations helped produce a useful AER interim limit on water flow allocations. It was followed by AEP's surface water allocation directive for water withdrawals on rivers and lakes not already covered by water management plans. However, this pilot stalled without addressing high cumulative land fragmentation and biodiversity risks.

AER's Policy Management Office (PMO) was touted as a key interface for ENGOs to influence energy life cycle management policy. The PMO launched a promising engagement in 2013 on risk management, but did not appear to move initiatives forward and was dissolved, cutting off a key intended path for ENGO engagement.

As noted above, AER had also committed to conduct broader Cumulative Effects Management of energy development. Some 2016-17 actions were encouraging: AER was leading integrated AER-AEP efforts to build a model linking surface and subsurface system information and approvals. This was to be a regulatory tool to model water and land impacts of prior Alberta government approvals and current energy applications, to inform Approvals staff of present or approaching cumulative effects risks to water and land. AER also drafted a CEM framework for stakeholder review, and had committed to selecting pilot areas that would examine interim land disturbance as well as water guidelines.

AER appears to have virtually halted its efforts to assure responsible Cumulative Effects Management. In a meeting with Alberta Environmental Network members in April 2018, AER affirmed that CEM was a priority for the Science and Evaluation Branch, yet no further progress is evident on the CEM Framework, the cumulative impacts water-land modelling tool, or any CEM pilot. AER decision making, whether project by project or area-based, is still not addressing increasing harmful cumulative environmental impacts to land, biodiversity and species at risk from energy development.

Recommendation: AER should re-commit to piloting approvals tools and implementing interim measures for reducing cumulative effects of energy development to land and biodiversity.

Thank you for considering these concerns. We look forward to the opportunity to discuss them further with you and your officials.

Sincerely,
ALBERTA WILDERNESS ASSOCIATION



Carolyn Campbell
Conservation Specialist

cc: Grant Sprague, Deputy Minister, Alberta Energy
Bev Yee, Deputy Minister, Alberta Environment and Parks