

A Right to Roam

By Nissa Petterson, *AWA Conservation Specialist*



I was born and raised in Alberta and learned quickly that there is an irrefutable set of privileges that come with calling Alberta home. My family spent a lot of time outdoors and I consider myself pretty lucky because of it. Most of our summer weekends were spent camping and fishing in some pretty beautiful places throughout the foothills and Rockies. Today, this continues to be how I spend most of my spare time; nature is where I feel most comfortable and can re-centre from the craziness of life.

Alberta's wilderness has a richness and diversity that has helped establish a wide range of livelihoods, a high quality of life, and to some extent, social wellbeing. While all these elements are equally important in their own domain, the benefits that Alberta's wilderness enables for social wellness is often overlooked, but is arguably the most important.

Ample evidence clearly demonstrates that people need to connect with nature; experiencing wilderness areas has been proven to be an inherent need that increases our overall well-being. Specifically, as Brymer, Cuddihy, and Sharma-Brymer argued in a 2010 paper, exposure to the natural world reduces mental fatigue, fosters deep reflections, and rekindles sentiments of nurturing and connectedness.

Social wellness, however, does not just function on an individual level, it also influences communities as a whole. Under the right circumstances, people can find a personal balance physically, mentally, and spiritually, but in caring for themselves, people foster more positive connections with others, allowing for communities to find greater equity and connectedness.

In my personal opinion, one possible avenue to increasing social wellness within our communities is establishing a "right to roam." Recognizing the importance of Alberta's wilderness and prioritizing it as a vehicle to social wellness is vitally important to a healthy future for current and subsequent generations of Albertans. Unfortunately, to date successive governments have been blind to this opportunity.

Alberta needs to follow the path of a country like Finland. There, the general public - citizens and visitors alike - have the extraordinary freedom to access public lands throughout the country. Called "The Everyman's Rights," this right to roam through landscapes responsibly is central to the Finnish understanding of what the human/nature relationship should look like.

Alberta's blindness is reflected in government's perennial favouritism of economic gain in its management of public lands. Conservation and/or public use of these lands generally have taken a back seat to resource exploitation. By now, this favouritism is well-entrenched in government policy, in addition to being successfully sewn into the cloth of heritage or legacy for many Albertans.

So how do we make a more general understanding of social wellness more of a priority? How do we manage our public lands in a fashion that enhances human health and wellness? To start, I think the legislation for Alberta's public lands needs to be changed to equally weigh all values of public lands, rather than propagating the single narrative of exploiting the land for economic gain. To this end, the law strains towards making public lands private preserves for leaseholders by

restricting severely public access. Legislative barriers to public access need to be removed in order to fully explore the opportunities Alberta's wilderness provides to increasing social wellness.

I once thought accessing public lands for low-impact recreational purposes was pretty straightforward and nearly always allowed. But, in reality, that's not the case. In fact, any number of regulations prioritize the right of industry to explore and develop public lands over public use.

Under the *Public Lands Act (PLA)*, the *Public Lands Act Administration Regulation (PLAR)*, the *Recreational Access Regulation (RAR)*, and other statutory instruments, the public may be granted recreational access, but only under certain conditions. Discovering what those conditions are takes time and research. The onus is on you to be the sleuth and discover of the circumstances under which you can access any particular parcel of public land.

"The PLAR authorizes any person to enter for recreational purposes," Arlene Kwasniak wrote, "vacant public land, where vacant public land is a vacant disposition area, or if the land is Environment and Sustainable Resource Development (ESRD) administered land that is not under a formal disposition..." (ESRD is now Alberta Environment and Parks)

Now, despite the seemingly straightforward language here, there is still a tremendous amount of information to unpack. Prior to accessing public lands, citizens are expected to understand what constitutes a "formal disposition" or what is considered to be a "vacant disposition area."

According to PLAR (section 1 (ff)), for vacant public land to be considered as a vacant disposition area, a suite of conditions must all be met:

- (i) Public land on which no development is occurring or is likely to occur for 90 days;
- (ii) Public land under the administration of the Minister; and
- (iii) Public land that is subject of
 - (A) an authorization, easement, miscellaneous permit, commercial trail riding permit, pipeline agreement or provincial grazing reserve
 - (B) or a licence of occupation, unless the public land is a closed road within the meaning section 54.01 of the Act,
 - (C) a timber disposition,
 - (D) grazing allotment under the Forest Reserves Act, or
 - (E) a registered fur management licence.

Additionally, the term “vacant public land” is in itself inherently misleading; the use of the word “vacant” in the term does not necessarily imply that there is no activity or development associated with the parcel of land, and that the public is permitted to access it. All of the elements within public lands legislation makes decisions about where and how the public can access public lands for recreational purposes overly difficult.

While public access to public land under a formal disposition or authorization/permit may create safety concerns for operators and the public, the regulations for managing public lands clearly do more to accommodate industrial endeavors and dissuade public access to what is defined as a public resource.

In southern Alberta, public lands often are managed as if they were private properties. If you plan to hike or to hunt on public lands in the prairies or the foothills, you better reference the Recreational Access Regulation (RAR) to ensure you aren't trespassing. There are many agricultural dispositions such as farm developments and grazing leases associated with parcels of public lands in the southern part of our province where their activities often supersede your right to access. On leased public lands, the RAR requires you to obtain permission to access the area from the leasee. That means recreationists need to determine who holds the lease, contact them, and give them specifics on how you wish to access the area, (i.e. date, approximate duration of your activity, number of people accessing the area etc). Ultimately, the RAR appoints the lease holder as gatekeeper of public lands, allowing them to choose whether the public can access the land.

Being denied access to public land is something AWA became all too familiar with last

year. As the coordinator of AWA's hikes season, I have had my fair share of awkward conversations (bordering on interrogations) when asking lessees for permission to hike across a quarter of their grazing lease. I understand there are certain times, like during crop harvesting or calving season, when the public's right to roam should be more limited. But, in my opinion, the RAR is far too general; it may be used unnecessarily and unfairly to discourage and exclude Albertans from accessing public lands. It seems to be all too common for some leaseholders to construe the regulation as giving them land tenancy authority and to prevent continuously public access. Governments seem content with this situation. In 2017, the provincial government renewed the RAR without any public consultation; that didn't bode well for seeing access to public lands as a means to increase social wellness.

Last summer, red tape frustrated AWA's efforts to organize two group hikes. In one case, Alberta Environment and Parks told us we required a Temporary Field Authorization (TFA) to visit the Antelope Creek Ranch. Located west of Brooks, Antelope Creek Ranch is a working ranch managed by Alberta Fish and Game, Ducks Unlimited Canada, Wildlife Habitat Canada, and the Government of Alberta to demonstrate how multiple uses



The Whaleback hike that almost didn't happen.
PHOTO: © N. PETERSON

on a landscape can occur without compromising the landscape's natural integrity. The ranch managers encourage public access. In the second case, AWA was told it needed to purchase a permit to conduct our perennial Whaleback hike. Thankfully, correspondence and phone calls evaporated the red tape. We have since had productive meetings with AEP and believe last year's frustrations won't happen again.

To return to a point made near the outset of this article: there is potential to grow social wellness by increasing access to wildspaces using the right to roam. Multiple jurisdictions across the world have successfully invoked elements of the "right to roam" to facilitate better public access to wild spaces, and this even includes accessing private lands.

When exploring this access issue, I came across an article about a dispute between recreationists and the Douglas Lake Cattle Company (owned by Stan Kroenke) located in the Cariboo-Chilcotin area of British Columbia. In short, the members of the public were in a long drawn out battle to access Stoney Lake and dozens of other waterbodies (which are considered Crown property) surrounded by the private property of the Douglas Lake Cattle ranch. Members of the public encountered blocked right-of-ways, or gates installed

by the ranch. A B.C. Supreme Court judge eventually ruled that Kroenke could no longer unlawfully prevent public access to the lakes; this was just one encouraging example of where a right to roam was affirmed.

The "freedom to roam" or "the right of public access to the wilderness" is a centuries old movement. Started by recreationists of all varieties, its goal is to marry justified access to wilderness while respecting private property. Under this campaign, recreationists don't seek unfettered access to all areas, but rather an acknowledgement and support by governments in having the basic right to access wilderness for social wellness.

In 2000, England enacted the "right to roam" by means of the Countryside and Right of Way Act (CRoW). Under this legislation, all private land classified as "mountain, moor, heath or down" is open to the public for hiking and pic nicking. Restricted activities under CRoW include driving, lighting fires, bathing, commercial endeavors or any activity that may cause damage to the property. CRoW also sanctions local authorities to issue a code of conduct for recreationists exercising their access rights, and includes a provision and fines for any person who stations a notice containing "false information likely to deter the public."

Scotland, Sweden, Norway, New Zealand, Maine, and Nova Scotia are all examples of different jurisdictions that have taken the issue of public access to wild spaces, and found creative solutions that prioritize social wellness, eliminate liability concerns, protect environmentally sensitive areas, and even incentivize private land owners to encourage public access.

When comparing the dilemma we face here in Alberta with accessing public land and the fact that some jurisdictions have found solutions that practically enable unrestricted access throughout their boundaries (both on private and public land), it's difficult to understand why Alberta cannot find an approach to public land access that respects a range of values.

When assessing the current level of access Albertans have to public lands, journalist Bob Scammell once wrote that the provincial government has a duty to ensure that, "... public access to our public lands for lawful purposes should be improved and guaranteed to the owners, the people of Alberta". AWA believes that the public has a fundamental right to access public lands, and will continue to defend that principle for the overall social wellbeing of all Albertans. ♣

Featured Artist Anne Beverly Brown

Wetlands in the Valley,
5" x 7" watercolour pens with ink,
PHOTO: © A. BROWN

