

Revoking the Coal Policy - Taking Alberta to Court

December 24, 2020



Alberta's Minister of Energy was well aware that, when she revoked Alberta's 1976 Coal Policy, she did so despite the fact several outstanding government commitments to land-use planning would not be fulfilled. Confidential departmental advice given to Energy Minister Savage in March 2020 unmistakably outlines this.

"This confidential advice makes it very clear the Minister knew legislative commitments were in place to consult with Albertans about the future of the coal policy," said Ian Urquhart, AWA Conservation Director. The record shows the government intended the Coal Policy would be integrated with regional land use plans. It also shows that consultation about this integration would occur. "When Minister Savage turned her back on the requirements of the *Alberta Land Stewardship Act* and the regional/sub-regional plans made under the authority of that law," Urquhart said, "she rejected the legal commitments previous Conservative governments had made to land use planning and public consultation."

"Livingstone Landowners Group has been an active participant in consulting on and supporting Land Use Planning in the area for over a decade," said Bill Trafford, the Group's President. "It is a critical issue for our members. To rescind the Coal Policy with no consultation is a breach of trust and we believe

contravenes the intent of the South Saskatchewan Regional Plan and commitments made in the Livingstone-Porcupine Hills Land Footprint Management Plan.

This confidential advice to Minister Savage was revealed in an affidavit filed in the case of E. Macleay Blades, et al. v. Her Majesty The Queen in Right of Alberta, et al. The landowners who initiated this action seek an order from Alberta's Court of Queen's Bench quashing the decision to revoke the Coal Policy. The ranchers also seek a declaration that the government had a duty to consult with them, a duty Minister Savage shirked. Alberta Wilderness Association, Livingstone Landowners Group, and other concerned parties propose to intervene in this case. The Alberta government wants to prohibit the participation of all potential interveners in this case.

Department officials advised Minister Savage that, since the Coal Policy wasn't established through legislation, "it can be rescinded unilaterally by Alberta Energy at any time." Defenders of the Coal Policy and the Eastern Slopes will argue in court that the government is mistaken; the government can't unilaterally rescind a policy when that policy's land use categories are integral to actions taken under the *Alberta Land Stewardship Act*.

Both ALSA's South Saskatchewan Regional Plan (SSRP) and one of its sub-regional plans use land use categories outlined in the Coal Policy. Like the SSRP, the Livingstone-Porcupine Hills Land Footprint Management Plan promised to integrate a review of the Coal Policy into its evolution. That review promised to integrate more than just a coal miner's imperative; it promised balance with environmental values. It said: "It will specify where surface exploration and development can and cannot occur based on the best and most recent biodiversity sensitivity data." (my emphasis) The government discarded this commitment when it revoked the Coal Policy.

And then there is the failure to consult. The judicial challenge also asserts that the government breached legitimate expectations of consultation. AWA played an instrumental role in formulating the Coal Policy. AWA Board Member Emeritus Vivian Pharis, in her affidavit, describes how one government after another since 1976 consulted with AWA over the future of the Coal Policy.

"In unilaterally revoking the 1976 Coal Policy," Pharis said, "Minister Savage abandoned the consultation commitments that previous governments of all political stripes had honoured."

In Bar C Ranch and Cattle Company Ltd. v. Red Rock Sawmills Ltd. (2004), AWA Director Clint Docken, Q.C., argued successfully that Alberta Sustainable Resource Development failed to satisfy the Ranch's legitimate expectations of consultation. Justice LoVecchio ruled the department was required to "give those who are affected a chance to have direct input particularly when you specifically said you would."

The *Alberta Land Stewardship Act*, the South Saskatchewan Regional Plan, the Livingstone-Porcupine Hills Land Footprint Management Plan all commit to seek direct input from those affected by a change to the Coal Policy. In the case of the Coal Policy, the government only sought input from coal companies and their lobbyist, the Coal Association of Canada. Despite the irreparable harm open-pit coal mining will do to alternate, valued, land uses along Alberta's Eastern Slopes, those negatively affected by the government's decision were never consulted.

In January, the Alberta Court of Queen's Bench will hear additional arguments in this case.

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