Reconsidering the Alberta Energy Regulator: What We Heard Report

BY ALBERTA WILDERNESS ASSOCIATION

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Disclaimer:

Please note that this document is a "What We Heard" report, which summarizes the thoughts, feelings, opinions, and/or perspectives of a diverse group of participants who have been impacted by the Alberta Energy Regulator (AER) in various ways. The report only intends to provide a general overview of the themes discussed, and the sentiments expressed within this report do not necessarily reflect the viewpoints of all individuals and/or organizations who participated in these discussions. Comments have not been attributed to specific individuals or organizations for this reason. This report, and the discussions it summarizes are intended to help Alberta Wilderness Association frame its own organizational position for future work relating to the AER.

Executive Summary

On Thursday, Feb. 1, 2024, Alberta Wilderness Association (AWA) hosted a workshop with representatives from groups across Alberta to discuss our shared concerns about the Alberta Energy Regulator (AER) and its apparent inability to adequately regulate the energy industry for the sake of the public's best interest, Indigenous communities, and Alberta's ecosystems.

Mounting evidence shows that the AER operates without sufficient public transparency while having vast discretionary powers with limited accountability. The evidence indicates that rather than serving the best interests of Indigenous communities, the environment, and the Alberta public at-large, the AER is instead held captive by the interests of the fossil fuel energy industry.

Examples of the AER's inability to sufficiently regulate the fossil fuel industry include the AER's abysmal response to the leak and spill of tailings at Imperial's Kearl Mine, the AER's decision not to reconsider its approval of Suncor's inadequate operational plan for the McClelland Lake Wetland Complex, and Alberta's continued reluctance to collect adequate funds for the cleanup of orphaned and/or abandoned well sites, as well as oilsands liabilities – which are estimated to be as high as $260 billion, leaving taxpayers at risk for the cleanup tab.

The purpose of this event was to bring diverse groups together to share experiences, propose potential solutions, and to begin crafting a collaborative strategy for a broader campaign aimed at demanding structural changes in how energy projects and the energy industry are regulated in Alberta.

The meeting featured 28 participants representing environmental non-governmental organizations (ENGOs), Indigenous Peoples from First Nations and Metis communities, lawyers, western science practitioners, academics, landowners, authors, grassroots organizations, as well as medical and climate justice organizations.

Major discussion themes from the workshop included (but were not limited to):

1. **Alberta Energy Facilitator.**
2. **History Lessons.**
3. **Settler Colonial Dynamics.**
4. **Challenges to Improving Regulations.**
5. **Targets for Change.**
6. **Key Messaging.**
7. **Lessons from Other Jurisdictions; and**
8. **Building Public Knowledge.**

The discussion resulted in the establishment of the following list of values, which are crucial to any form of trustworthy public-interest regulator, but which are currently absent from the AER and the energy regulation regime in Alberta more broadly – including at the legislative level. These are the values that an adequate energy regulator should embody, and sweeping changes within the AER are needed if these are to be attained at the pace needed to limit further harm.

1. **Decolonial.**
2. **Sustainable.**
3. **Equitable.**
4. **Accountable.**
5. **Responsible.**
6. **Accessible and Transparent.**
7. **Independent.**
8. **Capable and Competent.**

Energy regulation in the province should be guided by these values to ensure that Alberta's ecosystems, Indigenous Peoples, and public at-large are prioritized over the short-term profitability of private/corporate interests in the fossil energy industry. Sufficient accountability mechanisms need to be established to ensure that decision-making at the AER is guided by these values.

Part of the motivation for hosting this discussion was to help determine AWA's organizational stance as it relates to the AER, and to help craft a suite of demands for change which we can use in our advocacy work moving forward.

To begin working towards a regulator that upholds these values, **AWA is demanding the following changes to the AER and/or the legislative regime governing energy regulation in Alberta:**

1. **Independence from the Fossil Fuel Industry.**
2. **Indigenous Co-management or Co-regulation of the Energy Industry.**
3. **Replace the Directly and Adversely Affected Test in the Hearing and Appeal Process with a Genuine Interest Test.**
4. **An Independent Public Inquiry or Investigation into the AER.**
5. **Revisions to Alberta's Mine Financial Security Program (MFSP) and the Liability Management Framework (LMF) that Uphold the Polluter Pays Principle.**
6. **Increased Royalty Rate(s) on the Revenues of Fossil Energy Projects.**
7. **Establish and Enforce Strict Timelines for the Reclamation of Mine Sites and Other Infrastructure.**
8. **A Moratorium on New and/or Expanded Fossil Energy Projects.**
9. **A Moratorium on Carbon Capture, Carbon Capture and Storage (CCUS), and Critical Minerals Mining Projects.**
10. **Implementation of Buffer Zones around Protected Areas and "Pristine Viewscapes."**
11. **No New and/or Renewed Water Licenses for Fossil Energy Projects.**

This discussion was concluded by a commitment from all participants to work together as a coalition to fight for these much-needed changes at the AER and for energy regulation in Alberta more broadly. This coalition will seek to develop a joint campaign to raise public awareness and appetite for an improved regulatory system that works in the best interest of Albertans.

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List of Acronyms:

Acronym	Meaning
AER	Alberta Energy Regulator
AWA	Alberta Wilderness Association
CAPP	Canadian Association of Petroleum Producers
ERCB	Alberta Energy Resources Conservation Board
EUB	Alberta Energy and Utilities Board
GoA	Government of Alberta
REDA	Responsible Energy Development Act

Introduction:

On Thursday, Feb. 1, 2024, Alberta Wilderness Association (AWA) hosted a workshop with representatives from groups across Alberta to discuss our shared concerns about the Alberta Energy Regulator (AER) and its apparent inability to adequately regulate the energy industry for the sake of the public's best interest, Indigenous communities, and Alberta's ecosystems. Participants met from 9 a.m. to 4 p.m. at the AWA office in Calgary and virtually through Zoom to discuss concerns about the AER and opportunities for change with a wide variety of voices and perspectives.

Recent AER incidents have resulted in a period of sustained scrutiny on the AER, its operations, and its decision-making processes. A couple of prime examples are the AER's abysmal response to the leak and spill of tailings at Imperial's Kearl Mine, and the AER's decision not to reconsider its approval of Suncor's inadequate operational plan for the McClelland Lake Wetland Complex. As a result of these and other issues, AWA felt it would be beneficial to host a discussion between concerned groups to begin strategizing how concerned parties could work together to push the AER in the direction of much-needed changes.

Mounting evidence shows that the AER operates without sufficient public transparency while having vast discretionary powers with limited accountability. The evidence indicates that rather than serving the best interests of Indigenous communities, the environment, and the Alberta public at-large, the AER is instead held captive by the interests of the fossil fuel industry. Recent criticisms of the AER come from many different backgrounds and perspectives, with calls coming for either large-scale reforms, or demands to dismantle the regulator altogether.

Rather than independently challenging the AER, the purpose of this event was to bring diverse groups together to share experiences, propose potential solutions, and to begin crafting a collaborative strategy for a broader campaign aimed at demanding structural changes in how energy projects and the energy industry are regulated in Alberta. Throughout this process, AWA's priority was to center the voices and perspectives of those who have historically been left out of the decision-making process, such as Indigenous communities and environmental groups.

The meeting featured 28 participants, 17 of which attended in-person at the AWA head office in Calgary. Participants represented environmental non-governmental organizations (ENGOs), Indigenous Peoples from First Nations and Metis communities, lawyers, western science practitioners, academics, landowners, authors, grassroots organizations, as well as medical and climate justice organizations. Additional representatives from First Nations, Metis Nations, and other Indigenous communities were invited, but unfortunately many were unable to participate in this initial meeting. Since this meeting, AWA has received expressions of interest from First Nations to participate in future events on the topic of AER reform.

A key outcome of the meeting was the formation of a coalition to address the AER's deficiencies, with all participants committing to work together to push for changes to Alberta's regulatory system for the betterment of the public and environment.

Themes

Alberta Energy Facilitator

At the meeting there was much discussion about the fundamental flaws of the AER, including a lack of transparency, inadequate monitoring, unparalleled discretionary power in decision making, a lack of accountability (i.e., no checks and balances), limited public input, failure to receive consent from Indigenous Peoples, and being held captive by the interests of the fossil fuel industry.

Many participants supported the claim that the AER is a captive regulator that bends to industry interests and functions more like an energy project facilitator and/or enabler, rather than a regulator.

Participants discussed the AER's 100 percent industry-funded model. Funds are collected through a tariff on each producer, but the tariff is determined by the Canadian Association of Petroleum Producers (better known as CAPP), which is a lobby group for the fossil fuel industry. Participants felt that funding should be paid for by industry, but that the money shouldn't be controlled by industry, because industry shouldn't be allowed (or trusted) to regulate itself.

Some participants expressed their opinion that the AER is functioning exactly as intended, which is to say that it is working for industry interests, rather than for the public, environment, or Indigenous communities. Many believed that the AER isn't intended to serve the public.

The group felt that the AER is not accountable to the public in part because there is a lack of independent review processes for potentially flawed and/or incorrect decisions. Under the *Responsible Energy Development Act* (REDA), the AER has the sole discretionary authority regarding whether (or not) to reconsider decisions it has made. This means that AER decisions are less likely to be overturned, and that the AER has the power to make arbitrary decisions without justification.

Participants agreed that the AER's true mandate is to remove any obstacles to continued energy development. Settler landowners and Indigenous communities are treated by the AER as obstacles. When leases (e.g., surface, petroleum, or natural gas) are signed with members of the public for energy infrastructure on their property, these leases work in such a way that functionally removes their rights as landowners, such as not receiving adequate compensation and trespassing. The AER does not provide adequate protection for landowners who sign these leases. Participants shared that it seems like the AER operates from a development first, rights second approach.

Participants discussed the idea that the structure of the AER is so fundamentally flawed that reforming the institution might be too difficult, and it would be better to dismantle the AER altogether, establishing a new entity in its place, rather than advocating for specific reforms within the existing institution.

History Lessons

Participants discussed that the AER does not regulate industry, and instead functions to lobby the corporate interests of the fossil fuel industry to elected government officials, and that it has been expressly designed for this purpose via the *Responsible Energy Development Act* (REDA). Some participants felt that the problems have always been a part of energy regulation in Alberta, but they

have been exacerbated and accelerated over the past decade. Many agreed that the AER has been permitted to develop the way it has because Alberta has been essentially a one-party state for over 40 years (excluding a single four-year NDP leadership term).

Participants felt that it was important to understand how the AER came to exist in its current form and determine whether energy regulation in Alberta was always flawed and problematic. Some of the participants were able to shed light on the transformation of the Energy and Utilities Board (EUB) to the Energy Resources Conservation Board (ERCB) and then eventually to the AER.

A handful of participants were able to provide some helpful background context on the history of energy regulation in Alberta. Alberta's first energy regulator was called the Petroleum and Natural Gas Conservation Board, which operated from 1938 to 1971. In 1971 it became the Energy Resources Conservation Board (ERCB) with an expanded mandate to include coal and electricity after merging with the Public Utilities Board. In 1995 the EUB was created to replace the ERCB.

The former EUB was responsible for regulating energy development and utilities distribution from 1995 to 2008. Participants noted that the EUB worked "okay," or at least in a more functional manner when contrasted to the AER. However, according to one participant, the EUB had trouble determining the risk scenario for different types of energy, and who was liable for what, so the body was eventually split into the Alberta Utilities Commission (AUC) and the ERCB in 2008. This new version of the ERCB would eventually become the AER.

In the early 2000s, the Government of Alberta recognized the growing financial problem of abandoned and/or orphan infrastructure and the high costs associated with cleaning up those liabilities. Discussions took place around 2004 about the correlation between risk, liability, and security deposits. There was resistance from industry because the liability rating system being discussed would have required industry to put down security deposits at every stage of well implementation (i.e., all five stages — drill, complete, operate etc.). But the regulator scrapped this liability rating system completely, with the intent of protecting industry from ever having to pay for the liabilities they were creating, while simultaneously closing public transparency.

One participant mentioned that there used to be a sustainable resources department within the Government of Alberta which handled impacts to the environment and water. These responsibilities were handed over to the AER as they relate to the energy industry, because both conventional fossil fuel and oilsands use large volumes of water, and industry was running into allocation problems. Shifting the responsibility for water to the AER helped to eliminate any water limitations that industry could potentially face.

Participants discussed how REDA allowed for the ERCB to be dismantled and reassembled into a new structure, steered by a corporate board of directors dominated by industry representatives with an executive branch beneath that board. The AER's board was intended to have both industry representation and representatives from the Government of Alberta, but this never transpired. The AER's board is comprised solely of fossil fuel industry interests. In this way, the AER's board serves as a mechanism for fossil fuel industry influence. The AER essentially functions as a lobby group, which is influenced directly by CAPP. CAPP is an actual industry lobby group, which sets the funding levies that industry operators pay into, and then controls those funds. The funding model used to be 60:40 industry and government, but the switch to 100 percent industry funded is used as

an argument for total industry control. AER decisions are made at the board level, not at the executive (or operational) level, which means that the AER functions in such a way that industry ultimately self-regulates its own activities.

Settler Colonial Dynamics

Discussions at the workshop revealed shared experiences with the AER between diverse groups. Some participants highlighted how industry, facilitated by the AER, has been allowed to mislead and coerce landowners into leases that do not serve them. Through this avenue, industry has been able to extract the resources and wealth from their land, leaving landowners with environmental liabilities, health, and safety concerns, and without avenues for restitution. Others acutely pointed out this is not a new phenomenon and has long been the reality for Indigenous peoples, the original stewards of these lands. Settler landowners are experiencing, to some extent, the colonial treatment Indigenous Peoples have been confronted with since European contact. Participants reflected that the rights afforded under existing legislation for both Indigenous peoples and settler landowners are violated frequently and have not protected either group from exploitation by industry. Further, while their associated rights permit their standing and participation in AER's processes, the dysfunction of the institution and its processes often render participation ineffectual. Decolonizing settler institutions like the AER has the potential to mutually benefit multiple groups.

Indigenous participants raised serious issues with the process of consultation. While consultation is a responsibility of the Crown and designated authorities like the AER, it is a process that is often shirked onto industry proponents and corporations. Deferring this critical responsibility means that consultation is often treated as superfluous to development, whereby industry misconstrues the act as synonymous with consent to their projects. The group asserted that consultation does not equal consent.

Considering that some Indigenous leaders and communities have called for the AER to be dismantled entirely, a participant noted that "solutions not developed in collaboration with Indigenous communities or that don't address the challenges faced by Indigenous communities are not real solutions" to which the group agreed. Participants discussed how recent events like Imperial's Kearl oil spill exemplify critical issues with how AER treats Indigenous communities, in which they are engaged superficially as an afterthought to box-check regulatory requirements. In other cases, like the current water crisis, it seems that Indigenous communities have been excluded entirely, with some participants sharing concerns that First Nations and Métis communities have not been properly informed or considered in planning for the impending drought. AER is complicit in the resulting harm as they continue to approve new water licences for industry, allowing unsustainable resource extraction and development. Many reflected that the continued "business as usual" approach from the AER fails all future generations.

Potential solutions that do not address unequal colonial power dynamics must be rejected. Equity ownership was provided as an example of a false solution that's often promoted by industry. Equity ownership implies that Indigenous communities have been meaningfully included and consent to the development, suggesting equal control and input. In practice, this has not been the case. Participants reflected that this solution seeks to improve industry optics and control the narrative, rather than increase Indigenous sovereignty over their lands and livelihoods.

Challenges to Improving Regulations

Whether reformed, replaced, or dismantled entirely, the group identified multiple barriers to improving environmental protections and industry regulation within the province. Participants acknowledged that many good, knowledgeable, empathetic, and technically competent people are employed by the AER, but they are directed by a heavily lobbied ministry that is bound to implement policies they do not control. The corporate nature of the AER's board and management further undermines their efficacy as a regulator. Despite a mandate to act in the public interest, the AER acts in a way that enables the interests of industry. This reality reveals two separate but related fronts on which efforts could be focused: on government policies and legislation, and on AER's operational structures and ability to regulate.

The group debated which entity would be better to target. Participants agreed that governments at every level must have strong, binding, enforceable environmental laws and protections that cannot be changed on "the whim of the next sitting ideologue", but these are only as effective as they are enforced. If interpreted as written, Alberta's existing legislation (*Water Act, Environmental Protection and Enhancement Act, Responsible Energy and Development Act*, etc.) should offer some environmental protection and industry regulation. However, as identified by participants, a major challenge is that this written law is not meaningfully administered; AER's narrowly scoped, industry-biased interpretation of the law and complete discretionary power over both decisions and appeals renders existing legislation useless. Lack of AER oversight permits the regulator to operate as it pleases, with its lack of binding timelines and public hearings further diminishing opportunities for accountability. Reports from provincial auditors highlight many of these deficiencies within the AER, but the auditor general lacks the power to ensure its recommendations are addressed. Participants noted that currently the only effective strategy to challenge AER's decisions are through the courts, which at the best of times is a costly, lengthy, and labour-intensive endeavor.

The group also acknowledged that AER's own precedents cannot be reliably leveraged. This was revealed by the ongoing attempt to revive the Grassy Mountain coal mine, a project rejected by multiple levels of government and denied appeal by many courts. AER has stated publicly that the denial of an application does not stop a project's prospects, reinforcing the influence of industry and captured nature of the regulator.

Targeting the AER in a public campaign comes with a few key hurdles:

1. The AER is not going to change itself.
2. The average Albertan does not know about the AER or how it functions.
3. The AER's mantra is that it does not set policy, it just implements it.

Focussing instead on the government raises its own issues. The current sitting government is vocally pro-industry and "red-tape reduction"; they are unlikely to impose any perceived barriers onto industry. The transitory nature of government also means that should new regulations be enacted; industry can lobby and wait until policy is changed back in its favour. Participants identified the current lobbyist system, heavily weighted to industry interests, as another fundamental flaw in how energy is regulated (or not) in the province.

Targets for Change

Participants recognized that the AER is not solely responsible for many of the issues discussed. The AER, the Government of Alberta, and the fossil fuel industry all share the responsibility to operate sustainably and, in the public's best interest. Participants emphasized that it is crucial to know which institution to target or pressure when demanding specific changes to how energy regulation functions. For example, the difference between who legislates (i.e., who sets the laws, regulations, and policies) and who implements those policies. When faced with criticism, the AER will argue that it doesn't set the rules, it only implements the rules that are put in place by legislators. Pushing for changes to Alberta's energy regulatory regime will take a multi-pronged approach. Therefore, pressure needs to be applied both to the AER itself in how it implements (or fails to implement) policies, and to the Government of Alberta itself to fix or replace inadequate policies. Participants expressed that both institutions are problematic.

For example, if provisions set out by the *Responsible Energy Development Act* (REDA) are the root cause of a particular problem, such as giving the AER too much discretionary power when it comes to reconsidering its own decisions, then pressure needs to be applied at the legislative level. In contrast, if the AER is acting in such a way that it is failing to adhere to its own governing laws and regulations, then the AER itself should be the target of scrutiny and pressure.

Many participants expressed an interest or desire for the AER's industry-dominated board of directors to be replaced by a form of public-oversight committee with a more diverse group of representatives to ensure that the AER operates in a way that is independent from the will of industry. This is an example of a necessary change that will likely only happen through political pressure, rather than solely criticizing the AER as an institution. Changes will need to be demanded from legislators.

Key Messaging

A constant refrain repeated by both government and industry is that Alberta has the best, most rigorous regulations on industry in the world. As of 2020, Canada ranks 18th on the OECD Environmental Policy Stringency Index, an international metric that compares to what degree each country's environmental policies address environmentally harmful behaviours and pollution. In Canada, Alberta accounts for over 40% of the country's GHG emissions alone and ranks among the worst provinces on progress to protect terrestrial and aquatic ecosystems – these two realities discount any claims that environmental regulations in Alberta are the most robust in the country, let alone the world. This myth is perpetuated to quash public calls and support for better regulations and needs to be actively combatted for environmental protections to improve. Albertan's understanding of industry operations and liabilities and the role of AER must be increased to garner public support for any resulting campaign.

Participants identified multiple points that should forefront messaging, namely issues of liabilities, industry bias, lack of transparency and opportunities for public input. Albertans must be made aware of the sheer amount of inactive and orphaned industry infrastructure that exists on the landscape, the economic, environmental, and health liabilities they pose, and the real-world impacts these liabilities have on their everyday lives, including their cost of living. Messaging must highlight both immediate and long-term threats of unreclaimed wells, vents, pits, and tailings on the landscape, and translate how ineffective regulation results in a worse quality of life for

Albertans. Some participants spoke on how industry liabilities negatively impact human health, with others noting that there is a general lack of understanding that in addition to having high costs, liability reclamation and remediation require precious resources like water.

Points to Highlight:

- Discrepancy between the official reported cost estimates for oil and gas liabilities and leaked documents showing that the value could be substantially greater (i.e., officially $33.3 billion to clean up just under 500,000 wells, but leaked data suggests it could be anywhere from $80–$260 billion).
- Failure to secure adequate deposits (less than two percent of required reclamation and remediation costs for the oilsands have been secured through the Mine Financial Security Program).
- Frequency of operator insolvency and orphaned infrastructure (over 9,000 sites are officially recognized by the Orphan Well Fund).
- Prevalence of operator noncompliance and unaccountability (numerous tailings spills and leaks in 2023, orphaned infrastructure and unpaid royalties without recourse).
- Lack of timelines, limited progress, and questionable quality of reclamation efforts (only 1 km^2 of oilsands reclaimed, legacy Tent Mountain and Grassy Mountain coal mines polluting surrounding environment).
- Use of taxpayer money to relieve operator costs (Alberta received $1 billion from federal coffers in 2020 for the Site Rehabilitation Program).
- Exaggeration of industry's benefits to province (current leasing/royalty system, need for more holistic cost-benefit analyses i.e. concept of social capital).
- Underreporting of emissions (rates of subsurface methane leaks from abandoned wells are three times higher than reported, annual emissions from these wells are almost 40 percent higher than national inventory reports, oilsands emissions are 20 to 64 times higher than reported by industry).
- Impacts of inadequate regulation on meeting climate targets.
- When landowners are under-compensated (or uncompensated) it is rarely because of insolvent companies. When an insolvent company fails to pay a landowner, the province pays the landowner. Money from the public purse.

These last points are especially critical. In addition to evidence of a major reclamation problem for industry infrastructure, study after study of peer-reviewed scientific literature has demonstrated that the fossil fuel industry in Alberta — natural gas, abandoned well, mined and in situ oil sands operations — is wildly underreporting its methane and greenhouse gas emissions and organic pollution rates and volumes. The AER, provincial government, and Environment and Climate Change Canada's failure to incorporate recent research results and their continued acceptance of major underestimates by industry when calculating sector, provincial, and national total emissions, actively hampers progress on emissions targets and has major implications in meeting climate commitments. This casts doubt on reported reductions or achievements and allows major polluters to continue extracting fossil fuels and escape fair carbon pricing.

Participants discussed the need to highlight how a lack of transparent data, monitoring, and reporting on the status and risk of liabilities protects industry, and efforts are needed to get public access to this information. The raw data used by the Auditor General in their annual reporting could be useful for illuminating the inadequacy of the AER. Some participants shared anecdotes of landowners and municipalities who had not been compensated by operators, but had no avenues of recourse from the regulator, and feared retaliation should they speak out. Others noted that sharing these personal stories is essential to galvanize public support, as people empathize with storytelling more than just data and facts. Messaging must support greater avenues for input and influence for all rightsholders and stakeholders in the province and reveal the current imbalance towards industry. People must be empowered to speak out against industry injustices without fear of retribution.

The importance of balancing the messaging to both highlight flaws of the current system and illustrate what an effective regulator would look like in Alberta was reiterated by participants. An ideal regulatory agency must be government-led but funded by industry, with independent oversight. Indigenous consultation should not be deferred to industry, rather, it must be undertaken by government and meaningfully foster Indigenous sovereignty. The regulator must be bound by ethical decision making, with decisions founded on public interest and a complete understanding of associated risks. Strict timelines from exploration to closure and reclamation must be in place and closely monitored. Noncompliance must be firmly addressed. Data must be frequently reported and publicly available, based on the best available techniques and methodologies.

Upcoming opportunities for messaging include the decisions following the renewables moratorium — any regulatory requirements imposed on renewables should be standard for all sectors and apply retroactively, with no exceptions. Simply, messaging should encourage AER at minimum to fulfill its stated mandate.

Lessons from Other Jurisdictions

Alternative regulatory systems were discussed to identify existing statutory schemes that could be beneficial to adopt and elements of the current system that may be valuable to retain. The abandonment and reclamation timelines in British Columbia are much more stringently enforced than in Alberta, although exceptions do exist. One participant stated that BC's "provincial regulations for abandoned and shut-in wells are much more prescriptive when it comes to requiring regular emissions monitoring and quick response to evidence of leaks" but noted, "there are still a lot of problems in BC, including in terms of lack of transparency." BC has a poor track record of regulating gas fracking and mining, particularly with regard to emissions and water use. This is especially exemplified by the extensive pollution and negative impacts downstream of the Elk Valley coal mines.

Another flaw in BC's system is its failure to collect security deposits. While Alberta's securities are desperately underfunded, some participants acknowledged that the polluter pay system and orphan well association are unique to Alberta and could represent good parts of the regulatory scheme.

To the knowledge of the group, BC is the only jurisdiction to complete an inquiry and release recommendations on what an Indigenous-led regulatory body could look like. The inquiry focused

on public utilities, but participants agreed that the lessons learned in the process, findings, and recommendations provided could be useful in informing an effective regulatory scheme for Alberta. One recommendation highlighted was that regulators must "develop, in collaboration with Indigenous representatives, a strategy to build First Nations' capacity in Indigenous ... regulation and a strategy to reduce barriers to the recruitment and placement of Indigenous people in advisory, staff and Commissioner roles in the [regulator]." While AER is required to have Indigenous engagement, many participants noted this is done superficially.

A *genuine interest test* is employed in other jurisdictions, which broadens who qualifies to participate and provide input in regulatory processes and increases opportunities for well-informed discussions. Some participants raised this concept as an alternative to the *directly and adversely impacted* test for standing required in Alberta, which is largely subjective, difficult to meet, and limits participation.

Building Public Knowledge

To create change, it is critical to meet and engage Albertans where they are at. The group agreed an educational component is necessary to build public understanding — who is AER, what do they do, how do they operate, how *should* they operate? The answers to these questions need to be connected and relevant to Albertans and linked to other issues of public concern.

Concerns like affordability and taxation can create these avenues for understanding. Participants discussed that the need to reveal disparate realities between industry and the public, where corporations make billions in profit off public goods and lands while simultaneously pilfering from taxpayer coffers in the form of subsidies and tax breaks. The added insult to injury is that the wealth extracted doesn't translate into a better quality of life for Albertans, who are threatened by frequent layoffs and job insecurity, on top of the industry's environmental and health liabilities. Albertans need to understand that this corruption is facilitated by the AER, who despite being given the responsibility to safeguard public lands and resources, allows industry to develop unsustainably and extract in ways incompatible with environmental protection and public interest.

Participants believed that revealing the AER's corruption is something that may resonate with Albertans. By highlighting the structure of AER, with a board of directors composed entirely by industry, funded entirely by industry, under a government heavily lobbied by industry, it becomes clear that the AER will act in the best interests of industry, which inherently runs contrary to the AER's stated mandate to protect the public and the environment.

Shifting the narrative will require speaking with and amplifying the stories of everyday Albertans who have been directly impacted by AER's negligence; landowners stuck with oil wells polluting their property, without compensation because of insolvent companies; communities downstream of mines and tailings facing negative health impacts; the injustice of taxpayer dollars going to fund corporations and industry while public services like healthcare and education are overburdened and failing, etc.

Some participants stressed that this educational component must be accompanied with messaging that helps Albertans understand what they can do. A campaign cannot simply tell them negative facts and stories, as will only leave the public feeling helpless. There must be meaningful opportunities to engage and mobilize.

Others also stressed that care must be taken to position education of the AER and the demands for change, so it is not seen as an attack on the oil and gas industry. While many examples of AER's inadequacy derive from this industry, it is not the only industry AER 'regulates' and changing the regulator's operation to serve public interest and protect the environment would improve a variety of sectors.

Using past public successes in Alberta can be a useful educational tool and illustrate the potential of mobilizing under a common cause. Participants pointed to the coal industry's recent push to expand mining in the Eastern Slopes, where many different groups united successfully to protect the region from further extraction. Although the AER did eventually decide in the favour of public interests, a key outcome from a review of the events found that most Albertans did not trust AER to properly regulate coal and that the regulator would need to work to rebuild public trust. Examining how this campaign connected with Albertans could help expand general understanding of the AER.

Values:

What does a competent regulator look like? Participants worked together to craft a utopian vision for energy regulation in Alberta. Rather than focusing solely on deficiencies within the current regime, participants agreed that it would be beneficial to map out the values that an adequate energy regulator should embody before beginning to discuss strategies for how we can get there.

Below is a [non-exhaustive] list of values that were presented during this discussion, and other important considerations related, but integral to each of these values.

1. **Decolonial**
    a. Decision making needs to include Indigenous perspectives.
    b. Consultation does not equal consent.
    c. Colonial institutions should cede sovereignty to enable forms of Indigenous co-governance and/or Indigenous co-management.
    d. Alberta's energy regulator needs to uphold Treaty, Constitutional, and Inherent Rights of Indigenous Peoples.
    e. Decisions should require free, prior, and informed consent.
    f. Alberta should uphold the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
    g. Governments and the regulator cannot download consultation obligations onto project proponents.
    h. Governments and the regulator should provide capacity funding and support for Indigenous communities to participate in regulatory processes.
    i. We need to be careful to avoid "red-washing" schemes.
2. **Sustainable**
    a. Decisions must first include consideration for the cumulative impacts of historical, existing, and other planned developments to the natural environment.
    b. Decisions must be assessed to ensure that all potential environmental impacts stay well within Earth's ecological limits (e.g., the carbon cycle and the impacts of greenhouse gas [GHG] emissions on climate change) as informed by the best available evidence from western science and Indigenous Traditional Knowledge.

c. It is important to recognize that we are not starting from a point of sustainability, and therefore we will need to first reduce our existing footprint (i.e., degrowth) and restore or reclaim this footprint in order to address the existing imbalance.
d. Colonial institutions such as governments and energy regulators need to see themselves as having the role of environmental stewards for current and future generations.
e. We cannot have thriving communities or functional economies without healthy, sustainable ecosystems to support them.

3. Equitable

a. Relates to other values such as fairness, democratic, and/or participatory.
b. Energy decisions should ensure equitable participation in the decision-making process, and equitable outcomes for all groups, rather than exclusively favouring industry.
c. The rules around who is granted "standing" need to be changed to better reflect all perspectives in the decision-making process (i.e., change from the directly and adversely affected test to a genuine interest test).
d. The ability to challenge AER decisions should no longer be based on the concept of property rights since not everyone can own property or hold licenses and/or leases for natural resources (i.e., property rights are inherently exclusionary).
e. There is no guarantee that just because an individual or entity has a property right that they also care for the environment.
f. The idea of "equal footing" was raised alongside the idea of genuine interest, where all groups have an equal say in regulatory processes.
g. Democratic processes are needed to ensure equitable participation.
h. Related to the value of diversity (i.e., there should be diverse voices at the decision-making table, and the AER should seek to develop diverse forms of energy, not just fossil fuels).
i. Need to have bigger discussions around what constitutes "public interest" which should not be weighted more to one particular group or interest than another — right now it seems to be purely about increasing corporate profits.

4. Accountable

a. Strict timelines and targets should be implemented and adhered to (i.e., triggers for wellsite abandonment, wellsite reclamation timelines, tailings cleanup, and/or emissions reduction targets).
b. Adequate enforcement and penalties for non-compliance.
c. Robust monitoring programs are needed with timely, public reporting on the results of monitoring — the OSM Program has been insufficient so far.
d. The regulator needs to face regular independent reviews, audits, and/or other forms of scrutiny, especially for potentially wrong decisions.
e. We need to repeal and/or limit the AER's discretionary powers (i.e., no more sole discretion in reconsideration decisions).
f. Adequate appeal mechanisms need to be put into place.
g. Errors should be expected, no institution or individual is perfect, and mistakes do happen, which is why we need reviews, audits, monitoring, and enforcement.

h. The AER should not be able to exclusively review its own decisions — we cannot trust the regulator to investigate itself. AER decisions should be subject to scrutiny and/or challenge by an external auditor or similar body.

5. Responsible

a. Alberta's energy regulator needs to act in a way which demonstrates a responsibility to the public, Indigenous peoples, and ecosystems — not solely to industry interests.
b. The AER needs to uphold the Polluter Pays Principle, and collect adequate funding to cover the costs of cleanup and/or reclamation for all liabilities.
c. The Orphan Well fund must be adequately funded to ensure that money is available to cover the estimated costs for abandonment and remediation.
d. Costs should not be borne by Alberta taxpayers — industry has profited immensely through the exploitation of Alberta's natural resources, they cannot shirk their financial responsibility for clean-up costs onto Albertans.
e. Alberta's energy regulator should demonstrate that it follows evidence-based decision-making as informed by western science and Indigenous Knowledge.

6. Accessible and Transparent

a. All data and information related to energy regulation, including justification for decisions should be made publicly available in a timely and easily accessible manner.
b. Many participants expressed dissatisfaction with the Freedom of Information and Protection of Privacy (FOIP) process in Alberta.
c. The energy regulator needs to have adequate staffing so that they are better able to field requests for information from the public.
d. There is a need for open-access databases for the results of monitoring etc.

7. Independent

a. Alberta's energy regulator needs to operate independently of industry influence and control, or that of any special interest group.
b. A comment from one participant asked: "How can you have the same entity responsible for approving new industry projects and protecting the environment?"
c. Industry should still be responsible for funding the energy regulator, but they should not have control over how those funds are collected, distributed, and spent.

8. Capable and Competent

a. Related to the idea (or value) of professionalism.
b. Alberta's energy regulator needs to have the knowledge, experience, resources, and capacity to actually carry out the work that is within its mandate and jurisdiction.
c. There are major concerns that systemic underfunding of public services has resulted in regulatory bodies and government institutions that can no longer do the work required of them.

Energy regulation in the province should be guided by these values to ensure that Alberta's ecosystems, Indigenous Peoples, and public at-large are prioritized over the short-term profitability of private/corporate interests in the fossil energy industry. Sufficient accountability mechanisms need to be established to ensure that decision-making at the AER is guided by these values.

Demands:

Part of the motivation for hosting this discussion was to help determine AWA's organizational stance as it relates to the AER, and to help craft a suite of demands for change which we can use in our advocacy work moving forward.

To begin working towards a regulator that upholds these values, **AWA is demanding the following changes** to the AER and/or the legislative regime governing energy regulation in Alberta:

1. **Independence from the Fossil Fuel Industry.** There must be changes to the AER's Board of Directors to reduce or eliminate representation from the oil and gas industry. The Canadian Association of Petroleum Producers (CAPP) is an industry lobby group, and it should not have control over industry funding levies.
2. **Indigenous Co-management or Co-regulation of the Energy Industry.** Indigenous communities in Alberta need to have sufficient authority over decisions and activities which may impact their communities, health, and their ability to assert their Inherent, Treaty, and/or Constitutional Rights.
3. **Replace the Directly and Adversely Affected Test in the Hearing and Appeal Process with a Genuine Interest Test.** A genuine interest test would better ensure that the public, Indigenous Peoples, civil society groups, and environmental organization are provided a meaningful avenue to participate in energy-related decision-making processes.
4. **An Independent Public Inquiry or Investigation into the AER.** We need to better understand how and why the AER has been enabled to make decisions that seemingly run counter to the best interest of the public and environment.
5. **Revisions to Alberta's Mine Financial Security Program (MFSP) and the Liability Management Framework (LMF) that Uphold the Polluter Pays Principle.** Adequate funds must be collected immediately for the total estimated cleanup and reclamation costs for both to conventional oil and gas industry as well as for oil sands mines and tailings effluent. No additional public taxpayer money should be spent on the cleanup of oil and gas liabilities.
6. **Increased Royalty Rate(s) on the Revenues of Fossil Energy Projects.** It must be ensured that the Government of Alberta collects its fair share from private companies who extract the publicly held natural wealth of Alberta. And/or a windfall tax must be applied on the profits of the fossil energy sector could help fund public services while the industry is still profitable (and before the next economic downturn).
7. **Establish and Enforce Strict Timelines for the Reclamation of Mine Sites and Other Infrastructure.** Cleanup and reclamation must be conducted as soon as possible to avoid potential stranded un-reclaimed environmental disturbances and/or infrastructure.
8. **A Moratorium on New and/or Expanded Fossil Energy Projects.** This is necessary until adequate funding is held for cleanup and reclamation, and until a comprehensive reclamation plan is in place for the cleanup of tailings ponds, which has the consent of Indigenous communities.
9. **A Moratorium on Carbon Capture, Carbon Capture and Storage (CCUS), and Critical Minerals Mining Projects**. The outstanding issues from past and current fossil energy projects must first be resolved before new projects move forward to avoid repeating

the same mistakes and increasing the footprint of human development on Alberta's landscape. This moratorium should be similar to what was enforced on the renewable energy industry in Alberta, but from a fairness perspective, all new industries should be subject to the same level of scrutiny.

10. **Implementation of Buffer Zones around Protected Areas and "Pristine Viewscapes."** All new and/or proposed fossil energy projects should face similar restrictions recently imposed on renewable energy projects to ensure a consistent and fair approach across the energy sector, regardless of energy source.
11. **No New and/or Renewed Water Licenses for Fossil Energy Projects.** Given the prolonged drought conditions being experienced across Alberta and the prairie provinces and the massive volumes of water consumed by the fossil energy industry in their operations (i.e., more than 10% of Alberta's licensed allocation each year), water allocations should prioritize the needs of human communities for drinking water and sanitation within the limits of scientifically defined in-stream flows which are necessary for the health of aquatic ecosystems.

Final Thoughts

This discussion was concluded by a commitment from all participants to work together as a coalition to fight for these much-needed changes at the AER and for energy regulation in Alberta more broadly. This coalition will seek to develop a joint campaign to raise public awareness and appetite for an improved regulatory system that works in the best interest of Albertans. Much work is needed to synthesize and communicate these messages for the average working Albertan who doesn't have their pulse on the issue of energy regulation.

Next steps will be to determine what capacity and strengths each group can bring to the table and invite any voices that are missing from this coalition. Particularly, the coalition must work to expand Indigenous representation and build bridges to the nations. Journalists, students, youth, and other ENGOs were identified as some of the other groups to expand to the coalition. Some participants noted that it could be beneficial to bring a strategist with specific expertise in campaigning who knows how to message, who and how to influence etc., to focus and enhance this effort.

AWA is grateful for all who took the time to attend and share their thoughts; it was an incredibly productive discussion. It is energizing to see such passion and expertise aimed towards change, and we look forward to the work we can do as a united front.