

# When Conservation Collides with Legislation

BY PHILLIP MEINTZER

A question that frequently arises in my work with AWA is: How can we — “we” meaning those of us in the environmental movement — adequately protect wildlife, its habitat, or entire ecosystems if conservation is treated as subordinate to other activities on the landscape?

To put it another way, what is the point of developing species recovery plans, wildlife management plans, biodiversity strategies, or similar conservation tools, if those tools are incompatible with other legislation and/or policies such as regional land-use plans or natural resource rights?

Given the limited capacity of environmental organizations and Indigenous communities, I worry that the processes that exist to develop these conservation tools may be a waste of time and resources if the end result isn't prioritized over existing land uses. Why bother putting together a wildlife management plan, if it's going to be overruled by an oil company's “right” to develop subsurface minerals or a forestry company's “right” to harvest timber?

I think that one of the major hurdles that governments face with implementing conservation plans or similar tools is that they are worried about lawsuits from industry that may result from lost revenue if a company can't exploit a particular resource that they feel entitled to.

For example, in 2020, the Alberta Court of Appeal overturned a 2018 decision from the Alberta Energy Regulator (AER) to approve Prosper Petroleum Ltd.'s proposed Rigel oil sands project. The Court of Appeal's decision was justified on the basis that Fort McKay First Nation was not adequately consulted in the AER's approval decision, and because the development of the Moose Lake Access Management Plan (a type of land-use plan) was not yet complete.

However, in response to the 2020 decision from the Court of Appeal, in February 2021, Prosper Petroleum then brought a \$400 million lawsuit against the Government of Alberta because Prosper: “had no reason to think there was going to be any problem with developing a project in this area...” Prosper Petroleum had purchased mineral rights for the project back in 2012, and they were suing the government because other land uses conflicted with their mineral rights.

While the Prosper Petroleum decision and lawsuit

were primarily driven by conflicts between industry's claim to natural resources against Indigenous Rights, the situation helps to demonstrate the immense hurdle that the environmental movement faces if conservation plans (or similar tools) are going to prevent industry from exploiting what they feel is rightfully theirs.

While I can't speak to specifics because of confidentiality agreements, I have faced similar hurdles in my own work as part of government processes to protect wildlife in Alberta. On one committee, we did a group exercise where

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participants were presented with several maps showing wildlife habitat and contrasting it against different landscape characteristics. These maps included features such as topography, elevation, priority habitat, and population range based on western science and Indigenous Traditional Knowledge.

Of the many maps we reviewed, one showed the distribution of subsurface mineral (i.e., oil and gas) leases in the area, with many of those leases falling within and/or near the range of the specific wildlife population we are trying to protect. Another map was shared by a representative from the forestry industry, showing all the planned timber harvest within or near the population's range over the next few decades. For a species of wildlife that the Alberta government says it's committed to protecting, they are still permitting a substantial amount of disturbance within its habitat.

In Alberta, land-use plans have been developed to coordinate activities at a regional scale. To date, only two land-use plans have been established: 1) The Lower Athabasca Regional Plan (LARP) and 2) The South Saskatchewan Regional Plan (SSRP). Looking at LARP specifically, the purpose is to identify strategic directions for the Lower Athabasca region for 10 years from 2012 to 2022. The regional vision



Three bighorn sheep pictured at the Grassi Lakes Crag, Alberta in June 2023.  
Photo © S. M. Daniels

outlined in LARP states:

“The Lower Athabasca Region is a vibrant and dynamic region of Alberta. People, industry and government partner to support development of the region and its oil sands reserves. Economic opportunities abound in forestry, minerals, agriculture, infrastructure development, the service industry and tourism. The region's air, water, land and biodiversity support healthy ecosystems and world class conservation areas. Growing communities are supported by infrastructure and people can enjoy a wide array of recreation and cultural opportunities.”

The way that LARP's vision is written makes it seem like the primary goal of the regional plan is the development of the oilsands, then other industries, with environmental concerns included as merely an afterthought. In fact, an independent review of LARP conducted in 2015 found that the cumulative effects of industrial development in the region were negatively impacting the Constitutional Rights of First Nations and their traditional land uses only three years after its implementation.

In addition, the Alberta government has failed to develop a biodiversity management framework for the region that it committed to when LARP was first established in 2012. The framework was supposed to include evidence-based limits, short-term and medium-term objectives, specific timelines and adequate enforcement to ensure Alberta meets its goals.

LARP's lack of environmental protections and infringement of Indigenous Rights are just more examples of how existing legislation puts industry ahead of conservation. If governments (at any level) are going to take environmental protection seriously, then the tools or plans that we develop need to be given priority over existing land uses and potential conflicts with industry.

A potential solution to the problem of conflicting

land uses — although controversial — could be the use of expropriation, also known as eminent domain. Expropriation is the process where a state or authority repossesses property from a private owner for public use or benefit such as conservation. For example, expropriation could be used to repossess any/all natural resource rights that were sold to private companies in an area if the government wanted to protect wildlife and its habitat within that area.

The act of expropriation is nothing new for settler-colonial governments who use this process to acquire land for the construction of roads and other public infrastructure, and Canada wouldn't exist as a country without the expropriation of land stolen from Indigenous Peoples. In an effort to right past wrongs, maybe we even use expropriation to return some of this land and its resources to Indigenous Peoples for their stewardship to help us meet our environmental goals together.

The main difference in what I'm suggesting is that our governments could expropriate resource rights from private companies, which would allow the government to prioritize other land uses without conflict with private interests. I recognize that doing so would take tremendous courage from our political leaders, especially in a world where private property is treated as sacred, GDP is prioritized over all other collective goals, and where simple health precautions during a global pandemic were branded as authoritarian.

Either way, if we can see that our existing conservation policies are insufficient for protecting Alberta's wilderness and/or wildlife, then maybe we need to implement new policies that override a system that has so far heavily catered to the needs of industry at the expense of our ecosystems and a sustainable future. 🌱