



Western Stock Growers' Association

Stockman's Centre, # 101, 2116 - 27 Avenue NE
Calgary, Alberta, Canada T2E 7A6
Phone 403-250-9121 Fax 403-250-9122
wsga@shaw.ca
web site: www.wsga.ca

WSGA White Paper on Land Use Framework and SSRP March, 2010

Background

Western Stock Growers' Association (WSGA) has been representing the livestock industry on behalf of their members since 1896. Those initial members operated largely on lands that are now within the South Saskatchewan Region (SSR) for the LUF process. In that one hundred and fourteen year period the jurisdictional structure overseeing this region has changed dramatically. The province of Alberta was formed, municipalities were created, legislation and policies were developed and amended. The lands themselves in most instances have undergone human induced change. Yet the lands and the natural processes that operate on those lands continue oblivious to whether or not Alberta is a province or a territory. Indeed all of the jurisdictional wrangling is simply a human attempt to protect us from ourselves.

Private property rights, contractual law, and security of tenure form the basis for stable societies and are the foundation underlying the development and prosperity of this nation and this region. There is a mounting body of evidence that the absence of property rights may be significantly contributing to the failure of third world countries and societies to break out of their dependence on foreign aid. There has also been a steady erosion of private property rights in this country and this province over the last decades. Examples include the *Alberta Lands Stewardship Act* which contains provisions for effective expropriations without compensation; and the *Alberta Surface Rights Act*, which has been a longer standing example of eroding property rights. While our common law system of property rights has served us well, recent statutory law infringements cause serious concern to property owners – and virtually all members of society are property owners of some sort. This is the major challenge of the Land Use Framework. WSGA has a long standing commitment to defend and strengthen property rights.

WSGA recognizes that the Land Use Framework process is the Alberta Government's attempt to address competing land uses. Just as land based ecosystems are a complex interaction of all living organisms with minerals (soils), sunlight and water, the regulation surrounding land must also be complex and encompassing.

WSGA members operate significant livestock production systems within the SSR. Those operations vary from very extensive grazing businesses in low rainfall areas of the region to intensive feedlot operations utilizing irrigated croplands as their feed source. The lands utilized for the operations are held in every form of tenure – deeded / freehold, provincial disposition / grazing lease, grazing license / permits, and private lease / rental

The Voice of Free-Market Environmentalists Since 1896

arrangements. The lands occur in all four of the SSR natural regions. Of note would be the preponderance of WSGA member operations on remaining native grasslands in the region. Some of those lands have been in WSGA members' hands since the inception of the organization, thus pre-dating the very province that now undertakes the LUF.

In summary WSGA has a strong and legitimate interest in the LUF and in particular in the SSR Plan.

WSGA Concerns

WSGA is encouraged by the attempt at a wholistic approach to land planning. However we are concerned by the carving out of water allocations to be dealt with by Alberta Environment in a separate process. All lands function in the watershed to varying degrees depending on the uses on those lands. Therefore we would recommend an integrated process for land use and water use planning.

The LUF balancing of societal goals, environmental goals, and economic goals represents wholistic decision making. It likely is tempting to achieve the societal and environmental goals by requiring property owners to absorb much of the economic cost of such achievement. WSGA cautions against this temptation as it undermines the foundations of stable and productive societies.

At the heart of WSGA's concerns is the regulation of land in the province in the absence of property rights associated with the land. WSGA recognizes the need for land planning and authority by government to regulate uses of land. At the same time, WSGA also recognizes the lack of statutory property rights in the Province of Alberta as it pertains to the impact of regulatory takings.

We define regulatory taking as "a government action of taking even though it constitutes less than a complete deprivation of all use or value of all separate and distinct interest in the same private property or, the action is temporary in nature" (Property Rights Preservation Bill, Alberta Property Rights Initiative).

If there is a societal value of reducing or preventing further fragmentation and conversion of agriculture land, for example, then it is imperative that land owners be compensated for regulatory costs associated with this value. The *Alberta Land Stewardship Act (ALSA)* provides some of the "tools" needed to regulate land in Alberta. In particular, the Act outlines the use of conservation easements, conservation directives with partial compensation to land owners, conservation offset programs, and the transfer of development credits. Although the Act attempts to mitigate portions of future land regulation it falls short of paying compensation for all land reregulation. **Alberta's land owners cannot bear either a disproportionate or the entire burden for changes in societal values related to land.**

Further, history is littered with examples of central planning which eventually turned out to be misguided. The SSR documents mention government encouragement to drain wetlands at one point in the province's history, and now the desire to restore wetlands. The homestead policy required conversion of productive natural grasslands to cultivation resulting in significant loss of ecological goods and services (EGS) such as biodiversity, carbon capture, and erosion control. While we undoubtedly are wiser as planners subsequent to those experiences, there is no assurance that we are wise enough to anticipate all of the consequences of our actions or even what future society's needs will be. Notwithstanding the above, there is merit in attempting to avoid known pitfalls of future development. However, to quote one of our members "The Land Stewardship Act itself is a perfect example of top-down Government centralist planning that reeks of totalitarianism, tyranny of the majority, and suppressive regulatory authority over the rights of individuals and property owners. The unchallengeable power of the Land Use Secretariat is not in keeping with a free society or democracy. It can only end badly as world history has continuously proven"

Specific to *ALSA*, *WSGA* is concerned by the right of eminent domain without the requirement for compensation. We realize that compensation may be payable under certain other legislation, but *ALSA* contemplates amending or extinguishing statutory consents in legislative areas that previously did not contemplate such actions. Therefore those Acts and Regulations have no compensation provisions, and *ALSA*, with the exception of conservation directives, specifically forbids compensation as a result of actions under it. Further, *WSGA* is concerned with the extreme concentration of power in the Lieutenant Governor in Council. The statutory bar to court challenge and the ability for cabinet to pass legislation outside of the full legislative assembly and open debate process are two of the more prominent examples of this concentrated power.

Specific to the *SSR Plan* *WSGA* was disappointed in the feedback process – particularly the Phase I Praxis Surveys. That workbook exercise was designed with the potential to identify what members of society want more than what members of society need. Too often those are different things and the objective of leadership should be focused on needs rather than wants. That particular questionnaire displayed an apparent neglect to appropriately consider what rural people – people of the land and very often titleholders and disposition holders of that land – have contributed and learned in the one hundred and five years of provincial existence or the one hundred and fourteen years of *WSGA* existence. Those peoples’ experiences, deep knowledge of the land, and instinctive understanding of natural processes gained through on-site living and direct exposure to the ecosystem we are trying to share are given no more consideration than any semi-literate citizen. Rural Albertans are outnumbered, outvoted, and potentially about to be cast from their own land by an unaware public, most of whom are innocent of any act of wrong doing beyond being overly simplistic.

The *LUF* is essentially an engineering project for the future of our province. We remind readers that accuracy of the up front assumptions in any project are critical to the success of the project. In our opinion the development scenarios in the *SSR Terms of Reference* are not particularly well aligned with the *LUF* desired outcomes of healthy economy, healthy ecosystems and environment, and people friendly communities. A healthy economy is not necessarily a growing economy. The prediction of a population increase of 2 million people in the region by 2076, while potentially accurate, does not necessarily respect the principle of a carrying capacity for the region’s air, land and water resources. Thus we risk developing a plan which responds to the symptoms of the problem rather than addressing the problem. To reach a truly sustainable (steady) state, there cannot be birth without death or growth without senescence.

WSGA Recommendations regarding LUF

The *LUF* recognizes that our society needs a more balanced approach to land use given the lessons of the past and the trends that have become apparent. Unfortunately the *LUF* then takes a regulatory, market interventionist approach to attempt to create that balance. The beauty of a free market is that it functions well in establishing balance between supply and demand and in allocating scarce resources. Likely the problem here is that we have already intervened too extensively in the free market. For example as global society evolved from a hunter gatherer state we adopted the concept of food, shelter, and clothing as properties. This concept is fundamental to modern society where such necessities of life are produced by a small segment of society and exchanged in a system of commerce with the remainder of society. However, we remain extremely reluctant to consider environmental goods and services – every bit as essential to life as food and shelter – as properties. We entertain carbon cap and trade scenarios; we license industrial water use but give no consideration to payment for the capture and storage of water; we recognize the value of endangered species to society but then regulate their protection through penal systems rather than incentives. One could argue that the difference in traditional agricultural productive value of land and its market value is simply the free market assessing the *EGS* productive value of the land. If the *LUF* results in changes to land use that are in the public interest, then it is in the public interest to pay for those changes.

Specifically, WSGA recommends that the Government of Alberta recognize EGS as a product of land management with a property right similar to other traditional products of land management. *ALSA* provides for both regulatory measures and market based incentives to drive land use changes. In the absence of development of the latter option WSGA can only conclude that the emphasis will be on regulation.

In an attempt to minimize the market intervention of the LUF, WSGA recommends changes to the Alberta Expropriation Act which would provide compensation to property owners for regulatory takings. This change to the Act could easily be accomplished by broadening the definition of expropriation to include regulatory takings. The key to land planning will be the recognition of property rights and the right to compensation for regulatory takings paired with land use regulation. Increasing centralized authority over land planning without the recognition of property rights will surely fail.

WSGA Recommendations Specific to the South Saskatchewan Region Plan

WSGA strongly recommends that the RAC devise the regional plan such that it respects historical private property rights, dispositions and the historical land uses. Given that the Plan is being developed under *ALSA* then the RAC should only consider changes to current land uses on private lands under a conservation directive. The RAC should make no recommendation for changes to public lands under disposition since *ALSA* Section 11 and Section 19 combine to ignore the property rights of dispositions.

WSGA also strongly recommends that the regional Advisory Council (RAC) take a balanced approach to the priorities outlined in the Praxis Survey, those being: Strong Economic Development, Increased Protection Surface Water, Increased Protection Ground Water, Improved Air Quality, Greater Conservation of Ecologically Sensitive Areas, Reduction in the Loss of Agricultural Lands, and Increased Recreation Opportunities. It will not be possible to accomplish sustained strong economic growth, for example, without concurrently having adequate high quality water, air, etc.

In terms of the four principal economic drivers in the region: Agriculture, Energy Production, Forestry, and Tourism and Recreation, WSGA comments as follows. Each of these economic activities fundamentally requires consistent opportunities for profit to ensure their success. Those opportunities have been consistently present for energy and tourism and recreation over the past ten years. However agriculture and forestry have experienced much less consistency in profit opportunities and energy may be challenged by recent government (market) interventions. The RAC and the government must realize that all of these activities operate in a global marketplace, and anything that increases costs of production locally; and certainly if they are increased beyond global costs; results in uncompetitive industries with reduced or negative profit potential. Therefore regulations imposed by regional plans, however worthy their intention, will ultimately impact the economic activity in the region.

Each of these economic drivers merits further comment:

Agriculture

Thankfully agriculture functions primarily as a renewable resource harvesting sunlight so the limitation of the base resource should not limit success of the overall endeavor.

WSGA and the Agri-Environmental Partnership of Alberta (AEPA) share concerns with fragmentation and conversion of agricultural lands in the province. WSGA recommends that the RAC take a broad view and include all causes of fragmentation, including environmental regulation. WSGA and AEPA agree that fragmentation and conversion of land has had serious impacts on current agriculture beef enterprises.

Landowners have seen a growing impact on agriculture operations by government regulation related to land. Specifically, this would include policy and regulations embedded in the Alberta Wildlife Act; provincial and federal Endangered Species legislation which regulates habitat for species at risk on private lands without compensation; and the Federal Oceans and Fisheries legislation that regulates not only water, but watersheds. In addition there is land policy and regulation related to hunting, access and wildlife on crown lands under a grazing disposition that directly affects adjoining deeded land causing a “defacto” policy for privately held lands. These government land regulations are too numerous to list in this document.

Sustained economic growth and success for agriculture requires recognition by government and society that agriculture plays a critical role in supplying ecological goods and services as well as food products. The Institute for Agriculture, Forestry, and the Environment recently (Oct. 14, 2009) proposed the development of a market place for environmental goods and services. Current agriculture may sell grain or cattle produced from the land, but may also be able to sell environmental goods and services. These two production models would NOT operate in isolation and may in fact be complimentary or indeed synergistic- the sum of the production being greater than the individual production parts. Those EGS are produced by one entity and consumed by another entity. Currently there is no value attached to the exchange, and in some cases there are regulatory barriers preventing the exchange of value.

The AEPA focuses their fragmentation concern around “prime” agricultural land and “highly productive” agricultural land. Although there is no direct definition of either of these terms there is reference to LSRS – a classification system based on ability to produce domestic “spring seeded small grains”. Further the context of their document suggests highly productive lands as those with the largest gross production of traditionally defined agricultural products, with no reference to inputs. The degree of productivity of lands may be measured in any number of ways – for example by net calories of energy produced, or by quantity and quality of protein produced. WSGA finds the use of a traditional / historic definition for productivity too narrow for the needs of the RAC in their forward looking recommendations regarding agricultural lands. We recommend the RAC consider EGS as agricultural products in addition to the traditional food and fibre products. This puts an entirely different spin on assessing land productivity.

Energy Production

Unfortunately traditional energy production systems suffer from a diminishing finite resource base. Further they are compounded by adverse effects on environment. Future success for this industry will require less environmentally damaging systems of energy capture and transmission. Additionally the energy source will need to shift from a principal focus on non-renewable fossil fuels to renewable sources such as wind, hydro, ethanol, etc. to overcome the aforementioned limitations.

Forestry

Again, a renewable resource whose principal limitation will likely be pure global competition compounded by regional regulatory and perception barriers. Limiting the regional barriers and recognizing the EGS provided by best management forestry practices will provide the best opportunity for success of this sector.

Tourism and Recreation

This industry can be so varied in its primary attractant that it is difficult to assess what will ensure its success. For example the attractants in the SSR vary from the Calgary Stampede to back country hiking in Waterton National Park. The Catch-22 of these industries is that development of the industry has the potential to destroy the resource that was the primary attractant for the industry. They are prone to a delicate supply / demand balance and dependent on significant disposable income. Therefore their success will depend on a strong economy and limited development of the industry.

Maintaining the integrity of “high value regional recreation and tourism lands” essentially requires limiting the access to those lands. For this reason WSGA attaches lower priority to the contributions of tourism and recreation to the region’s economy. The region has recent examples of environmental and resource degradation resulting from tourism and recreation activities (e.g. Indian Graves campground).

Interestingly, recreational activities are the only activity on Public Lands that are not regulated. Energy extraction, forestry, and grazing are all regulated in an attempt to respect the carrying capacity of the resource. Further, all of these activities provide economic rent to the GoA representing the resource owner – the public of Alberta. Therefore the WSGA recommendation is to control and charge for recreational access to public lands in an attempt to stem the “tragedy of the commons”.

Other Potential Economic Drivers

Parts of the region have the potential to develop a significant rural residential economy. The trend for certain sectors of society to own multiple homes in which they reside part-time, and the development of technologies that allow work from remote locations; combined with the scenic and undeveloped nature of parts of the region create this potential. There is already some of this private world class estate living activity in the region and it is much more developed in adjacent areas of Montana. This economy suffers from the same Catch-22 as tourism.

In spite of the Praxis Survey leading questions, WSGA believes there are no “most important” landscapes. All of the landscapes are important. Given the survey criteria for conserving landscapes, the “landscapes” least deserving of conservation would be the urban centres as the only “benefit” box they could tick off is economic value. We are where we are! Certain landscapes have already undergone extreme conversion from their natural and relatively uninhabited state. If the intent is to identify those landscapes that are least disturbed and are important for society in an undisturbed state then it is a fairly easy exercise to delineate the least disturbed landscapes. It is interesting that the criteria listed are essentially, with the exception of economic value, a list of ecological goods and services. The obvious solution here is to attach economic value to EGS produced by relatively uninhabited, undisturbed landscapes and thereby create incentive to keep the lands in that state if that state is important to society. If it is in the public interest to maintain certain lands in their current state, then it is in the public interest to compensate property owners for changes to currently permitted land uses that could alter that state.

WSGA is aware that the foothills fescue grasslands are the “canary in the mineshaft” when land use pressures in the SSR are extrapolated from recent history. It is noteworthy that those grasslands have continued functioning in the production of the broad definition of agricultural products (including EGS) under a combination of private ownership and long term lease dispositions. The property right in both instances has been largely respected with reasonably good security of tenure demonstrated on the leases. While there has been development in these areas, the landlord in both instances has recognized the impact of development on the land’s natural processes and has significantly limited development. Therefore, WSGA strongly recommends that the RAC resist the urge to fix that which is not broken in the grasslands portion of the region. Further, it is essential that the market based incentives for EGS respect the production of those goods and services and not be limited to incentives for “change of practice”.

Summary

WSGA membership has a significant stake in how the LUF and regional plans impact land management. We are supportive of the Alberta Government in its attempt to address competing land uses through the Land Use Framework process. However, just as land based ecosystems are complex interactions of all living organisms with the soils and minerals, the sun, and water; the regulation surrounding those land based ecosystems must

also be complex and encompassing. *ALSA* sections 11 and 19 combine to delete property rights but section 23 introduces market based tools that require those same property rights. This dichotomy needs a solution.

WSGA has confidence in the free market. We also have doubts about the wisdom of central planning; those doubts are rooted in history. We urge the Land Use Secretariat, the South Saskatchewan Regional Advisory Council and the Lieutenant Governor In Council to proceed with caution in exercising the powers granted them under *ALSA*. We remind you that since the *Magna Carta* we have stumbled and bumbled and made mistakes, and in the process created the most successful, best society the world has ever known. That likely is the result of the due process, common law, statutory law, and jurisprudence that *ALSA* allows you to circumvent. Finally we suggest that this cannot be an exercise in popularity. The recommendations of the RAC could entail significant costs for the province or society as a whole if property rights are respected and significant land use revisions are deemed appropriate. While that may not be the popular route it is the right route as it protects the fundamentals of a free and stable society.

WSGA appreciates the opportunity to provide comment on this matter and welcome further dialogue with the Secretariat or the RAC.

Respectfully submitted,

Bill Hanson,
President

March 31, 2010