

## ***Special Places 2000: Protecting the Status Quo***

by Steven A. Kennett\*

### **Introduction**

The Government of Alberta released *Special Places 2000*, its long-awaited protected areas strategy, on March 28, 1995. Although phrased in generalities, the underlying policy direction is crystal clear. *Special Places 2000* represents a conscious decision to entrench a business-as-usual approach to development on Alberta's public lands.

Predictably, environmentalists were enraged.<sup>1</sup> After years of consultation and lobbying, *Special Places 2000* failed to meet even their minimum objectives. Alberta's major environmental groups condemned the government and ruled out further participation in the initiative.<sup>2</sup>

To characterize the debate over *Special Places 2000* as a conflict between a pro-development government and a preservationist environmental movement is, however, a gross over-simplification. The Canadian Association of Petroleum Producers (CAPP) was a major supporter of the initiative as originally conceived. In fact, CAPP and the environmental community joined forces when it appeared to be stalled in government caucus.

For CAPP, a protected areas strategy was a means of diffusing conflict and securing access to a clearly defined, if somewhat restricted, land base within Alberta. Avoiding the polarization and "valley-by-valley" controversies seen in British Columbia's forest sector was a major CAPP objective. The aggressive lobbying in export markets by certain environmental groups was also a reason for CAPP support. A protected areas strategy would provide evidence of a responsible approach to environmental protection and resource management in Alberta.

Alberta's independent regulatory tribunals also have concerns with public land management that could be addressed through a protected areas strategy. The Alberta Energy and Utilities Board<sup>3</sup> (AEUB) is increasingly confronted with broad land-use issues such as those raised by the application to drill an exploratory well in the Whaleback region of the Rocky Mountain Eastern Slopes.<sup>4</sup> The Board stated in 1994 that the *Special Places 2000* process then under consideration was "the logical forum in which to debate the overall public value of the Whaleback from the provincial perspective."<sup>5</sup>

An effective protected areas strategy could facilitate the AEUB's project review process by addressing the

broader land-use and environmental issues and establishing guidelines regarding the acceptability of development in specified areas. As to the adequacy of existing land-use policies, the province's Integrated Resource Planning (IRP) process applies to the Whaleback area. This process was, however, insufficient to avoid a situation where the province sold mineral rights in an environmentally sensitive area for \$1.6 million, a costly and controversial

### **Résumé**

Cet article soutient que *Special Places 2000*, la stratégie de zones protégées récemment annoncée par le gouvernement de l'Alberta, constitue un choix délibéré de maintenir le statu quo eu égard à l'aménagement des terres publiques provinciales. L'article commence par un examen rapide de la justification d'une stratégie de zones protégées et des principaux éléments de *Special Places 2000*, avant d'aborder la substance de cette politique et les processus de désignation des "zones spéciales". La politique est fondée sur le principe de l'usage polyvalent des terres et des ressources et n'offre que des possibilités limitées d'expansion du réseau albertain de zones protégées. Enfin, les hypothèses sur lesquelles la stratégie provinciale paraît être fondée sont décrites. L'influence et le sort de *Special Places 2000* dépendront du bien-fondé de ces hypothèses.

public hearing ensued, and the Board's decision rejected a well license application on environmental grounds (based in part on the Livingston-Porcupine Hills Sub-Regional IRP), but did not definitively rule out future drilling in the area.<sup>6</sup> In the end, there is still no certainty regarding land use in the Whaleback area.<sup>7</sup>

Alberta's Natural Resources Conservation Board (NRCB) has also put its concerns with land-use policy on record. The Board's West Castle decision, released in 1993, states that the province's approach to integrated resource management "may create unrealistic expectations by the public that we can 'have it all,' particularly where relatively small geographic areas are concerned."<sup>8</sup> Referring specifically to the proposed Special Places 2000 policy, the Board stated its belief:

that sustainable development may not be achievable unless integrated resource management is understood to mean that uses may be permitted, but in more discrete areas than have been available in the past.<sup>9</sup>

The West Castle decision also underlined the need for ecosystem management, notably in large and environmentally significant areas such as the Crown of the Continent.<sup>10</sup> The NRCB's view of sustainability is consistent with earlier Special Places documents which sought to improve on existing integrated resource management by creating a network of ecologically significant areas subject to strict land-use controls.

The Report of the Future Environmental Directions for Alberta Task Force, released in March 1995, provided the following assessment of the current situation:

The Task Force sees the need for sustainable land and resource use management policies as the most urgent issue facing Alberta. Without updating and clarifying land-use policy, including determining the relationships among the policy elements, conflicts will continue - valley by valley and hill by hill.<sup>11</sup>

The Report also recommended the completion of Alberta's system of protected lands, noting both economic and environmental rationales and stating that management of these areas "should be based on the ecosystem approach."<sup>12</sup>

The proposal for a protected areas strategy for Alberta thus responded to a number of communities of interest: environmentalists, the oil and gas industry, and the province's regulatory tribunals. It was strongly endorsed by the Task Force established to chart the course for a sustainable future for Alberta. Public opinion is also in favour of completing Alberta's network of protected areas.<sup>13</sup>

This policy was, however, adamantly opposed by another coalition, consisting primarily of those who feared any additional restrictions on their use of public lands for recreation or profit. As the discussion to follow will show, the interests of this latter group prevailed in *Special Places 2000*.

This article has three purposes. First, it demonstrates that *Special Places 2000* diverges materially from the protected areas strategy as originally conceived. Second, it shows how the process for nominating and evaluating candidate "special places" makes significant additions to Alberta's network of protected areas unlikely. Finally, it reviews the assumptions upon which the impact and fate of *Special Places 2000* will ultimately depend. Before turning to this analysis, the policy is briefly described.

### The Policy

*Special Places 2000* presents a "made in Alberta" strategy for completing "a network of Special Places that represent the environmental diversity of the province's six Natural Regions (20 sub-regions) by the end of 1998."<sup>14</sup> It is the province's response to the Endangered Spaces program, launched by World Wildlife Fund

Canada (WWF) in 1989 and endorsed by the federal government and by every province and territory in Canada.<sup>15</sup>

For an initiative that was three years in the making and addresses complex and controversial issues, *Special Places 2000* is remarkably sketchy. The document is only 10 pages long,<sup>16</sup> and falls significantly short of the earlier Draft Policy<sup>17</sup> and the Report of the Public Advisory Committee<sup>18</sup> in its level of detail and sophistication.

*Special Places 2000* is described as an "initiative that embraces the theme of preservation while at the same time recognizes the importance to the province of creating a climate for attracting investment, generating wealth, and creating jobs."<sup>19</sup> This combination of preservation and wealth creation presumably underlies Premier Ralph Klein's statement that *Special Places 2000* "represents an important component of our commitment to sustainable development."<sup>20</sup>

The initiative has four overall goals: (1) preservation; (2) outdoor recreation; (3) heritage appreciation; and (4) tourism and economic development.<sup>21</sup> *Special Places 2000* envisages a "balanced" approach to these goals, noting that "Existing special places contribute to our sustainable development objectives in different ways."<sup>22</sup>

For example, a world heritage site where oil and gas development and grazing are permitted, and a provincial park that contains a ski hill and town site, "caters to over 500,000 tourists and recreationists each year" and "provides 12,000 Animal Unit Months of livestock grazing per year" serve as illustrations of how the four cornerstones of "special places" can be successfully balanced.<sup>23</sup> The policy also notes that "Small sites such as Egg Island Ecological Reserve satisfy a single objective" - in this case preservation of nesting habitat.<sup>24</sup>

*Special Places 2000* contains few specific objectives. It states simply that:

The land base target will be limited to the amount required to provide representative samples of the natural regions (sub-regions) while achieving all the goals in an integrated and balanced manner.<sup>25</sup>

There is no numerical target for the size of protected areas, nor does the term "ecosystem management" figure in the policy.

Designation of special places will be achieved through existing legislative and policy mechanisms<sup>26</sup> and the initiative "will help provide a context for the preservation components" of several existing policies.<sup>27</sup> How the "context" and these "components" will be integrated is not explained. Neither is it clear how an unspecified "new and improved Integrated Resource Planning (IRP) process" will provide the "foundation under which (*sic*) these initiatives will be implemented."<sup>28</sup> *Special Places 2000* simply states that ongoing review will "ensure the highest possible integration, coordination and effective use of existing policies."<sup>29</sup>

The six-stage process for site nomination and designation is also described in only general terms. These stages are: (1) Site nomination by any Albertan; (2) Provincial Coordinating Committee reviews nomination; (3) Local Committee contributes to management principles; (4) Provincial Coordinating Committee review of management principles; (5) Ministerial and Cabinet review and approval; (6) Site establishment and management.<sup>30</sup>

*Special Places 2000* provides little information regarding the decision-making process at each stage. It states clearly, however, that progress towards site designation may be discontinued at each of stages (2) to (5).<sup>31</sup> Candidate sites may be rejected "if there is consensus that the goals of *Special Places 2000* cannot be

achieved due to irresolvable issues."<sup>32</sup> There is no indication who must reach that consensus, how the four goals are to be reconciled or prioritized in cases of conflict, or what level of disagreement signals an "irresolvable" issue.

The significance of *Special Places 2000* for resource and environmental management in Alberta will be determined by three factors: the substance of the policy, its process for designating "special places", and the assumptions on which it is based. These topics are addressed in the following three sections.

### **The Substance: From Protected Areas to Multiple Use**

*Special Places 2000* is the product of a three-year process which included a Draft Policy and a Public Advisory Committee that solicited comments and prepared a report. There was also extensive lobbying and public input leading up to the policy's unveiling. The initial purpose was to develop a provincial protected areas strategy. What emerged, however, is more accurately described as a multiple-use policy for public lands. This distinction underlies the policy's appeal to certain Crown land user groups and its hostile reception by environmentalists and others. It also supports the argument that *Special Places 2000* entrenches the status quo.

The shift from protected areas to multiple use is illustrated by four features of *Special Places 2000*. First, the term "special place" is undefined in the policy, but clearly encompasses much more than the generally accepted definition of "protected area." The original Draft Policy stated that: "Protected areas are special places that are explicitly legislated and managed to protect Alberta's natural heritage."<sup>33</sup> Another definition, proposed by British Columbia's Commission on Resources and Environment, states succinctly that:

"Protected areas preclude most commercial resource harvesting activities, and are specifically set aside by legislation to conserve natural, cultural heritage, and outdoor recreational values."<sup>34</sup>

In contrast, under *Special Places 2000* legislative status is not required and "a considerable range" of resource extraction and recreational activities may be compatible with "special places."<sup>35</sup> This approach is intelligible as a multiple-use approach to integrated resource management, but not as a protected areas strategy.

Second, the goals of *Special Places 2000* establish a multiple-use orientation. According primacy to the goal of protection, a defining principle of earlier Special Places documents,<sup>36</sup> is replaced by a "balance" among objectives.<sup>37</sup>

The goals of outdoor recreation, heritage appreciation and tourism are also given a significantly broader interpretation. For example, the Draft Policy spoke of protecting "natural landscapes throughout Alberta for a variety of resource-based, dispersed outdoor recreation pursuits."<sup>38</sup> The intent was "meeting public demand for wilderness, wildlife viewing, and other nature-oriented extensive recreational activities" such as hiking, cross-country skiing, and equestrian riding.<sup>39</sup> The Public Advisory Committee's version of this goal was "to provide opportunities for low impact, natural landscape-based recreation", to the extent that it is compatible with the protection objective.<sup>40</sup> The *Special Places 2000* News Release, in contrast, emphasises the economic benefits of recreation and tourism, noting as an example that "areas specifically managed for off-highway vehicles will support this industry."<sup>41</sup>

Third, the addition of "economic development" as a goal deviates significantly from the initial policy direction and confirms the multiple-use approach. A development-oriented protected areas strategy can

only be characterized as an oxymoron.

Fourth, *Special Places 2000* is intended to operate seamlessly with Integrated Resource Planning (IRP) and other processes. This relationship is significant because the need to address deficiencies in existing land management is implicit in the protected areas policy initiative since 1992.<sup>42</sup> In particular, existing policies including the IRP process have been criticised for failing to provide satisfactory protection and management of Alberta's public lands and as lacking adequate certainty regarding acceptable land use.<sup>43</sup> As noted above, the Whaleback and West Castle decisions underlined these deficiencies. *Special Places 2000*, however, closely follows the traditional multiple-use philosophy and neither replaces nor, apparently, streamlines existing processes.

A protected areas strategy for Alberta was originally conceived of as working alongside integrated resource management and the sustainable operation of commercial activities as a "complimentary and equally essential element of sustainable development."<sup>44</sup> The shift from viewing protected areas as a component of sustainable development, to promoting sustainable development within "protected" areas, is much more than a matter of semantics. Placing sustainable economic development at the heart of the policy changes the focus decisively from protected areas to multiple use. As such, it is unclear whether *Special Places 2000* can fulfil the Alberta government's public commitments regarding protected areas.

### **The Process: Increasing the Likelihood of Stalemate**

The process for designating "special places" set out in *Special Places 2000* is even more supportive of the status quo than is the policy's substance. This process is presented as a model of consultation and consensus-

building, but it tips the balance in favour of those opposing any significant expansion of Alberta's network of protected areas. The Special Places process is likely to result in stalemate for two reasons.

First, *Special Places 2000* contains no firm commitments or targets beyond the vague promise to complete "a system that includes the environmental diversity of the province's six Natural Regions."<sup>45</sup> As a result, there is little incentive to establish protected areas in the face of inevitable opposition from some "traditional" users of public land.

The land requirements for protected areas is one place where targets are conspicuously absent. The importance of targets was emphasised in the initial Draft Policy<sup>46</sup> and was discussed by the Public Advisory Committee.<sup>47</sup> In some jurisdictions, the Brundtland Report's somewhat arbitrary target of including approximately 12% of the land and water base in protected areas has been adopted.<sup>48</sup> More flexible targets for each natural region could also be set.

In an ideal world, careful selection of ecologically significant areas may be preferable to a process directed towards arbitrary targets. Clearly, a given area of rock and ice in the mountains is far less ecologically significant than the equivalent amount of montane valley-bottom or native prairie grassland. However, establishing numerical targets has the advantage of providing leverage in the bargaining process. The certainty that a significant landmass *will* be protected focuses attention on trade-offs.

Whatever can be said in the abstract about scientific criteria for designating protected areas,<sup>49</sup> site selection will ultimately involve bargaining between conflicting interests. Government leadership will be required. In the absence of targets, and the commitment by government to establishing protected areas that they

imply, progress is likely to be slow at best.

Targets are also lacking in the area of bench mark land-use restrictions for "protected" areas. As with target areas, the "ideal" of an infinitely flexible process for determining land-use restrictions confronts the reality of trading off competing interests. By opting for flexibility and refusing to establish any parameters regarding acceptable land use in "special places", the policy invites protracted site-by-site negotiations with no leverage to counter those whose existing privileges may be curtailed.

The position of these groups and individuals is further strengthened by the undertaking in *Special Places 2000* to "honour all commitments to tenure holders"<sup>50</sup> and the absence of any provision for acquisition or expropriation with compensation should these tenures conflict with the protection of candidate special places. In contrast, the Draft Policy raised the possibility of land exchanges or acquisition "to ensure that the best lands are included in the protected areas network."<sup>51</sup> Conflicts with existing tenure holders seem inevitable, particularly given recent mineral rights sales in environmentally contentious areas of the Eastern Slopes.

The second reason why *Special Places 2000* is very likely to produce stalemate is its multiple veto points. In fact, the policy's only dispute resolution procedure appears to be the removal of candidate areas from consideration in the event of opposition.

The most striking example of veto power is the role given to "local committees." According to the News Release, these committees will be established by the Minister of Environmental Protection based on recommendations from local municipalities.<sup>52</sup> Intended to include local elected officials and representatives of interest groups and the general public, these committees

will contribute to developing management plans and will "facilitate public review and input, and help develop support and consensus."<sup>53</sup> In addition, the local committee will "determine if a site continues through the nomination process."<sup>54</sup> There is, however, no indication how that determination will be made, particularly in the event of "irresolvable issues."<sup>55</sup> There is also no provision for the Alberta government to overrule local committees in order to promote the broader provincial public interest.

The need for local involvement in designating protected areas is undeniable. Some local opposition is inevitable, however, for most if not all significant candidate sites in Alberta. If failure to reach consensus at the local committee level is a ticket out of the process for candidate sites, there is little reason for compromise on the part of those opposing protected areas and even less likelihood that *Special Places 2000* will result in more than token additions to Alberta's protected areas network.

The fate of the NRCB's West Castle decision illustrates the prospects for candidate special places given a consensus requirement at the local committee level. This decision concerned an application for a ski hill expansion and four-season recreational and condominium development in the Crown of the Continent region of south-western Alberta.<sup>56</sup> The NRCB's approval of the project was conditional on the establishment of the Waterton-Castle Wildland Recreation Area (WCWRA) adjacent to the northern boundary of Waterton Lakes National Park.

The WCWRA was intended to improve the long-term economic viability of the project, mitigate its environmental effects, limit further incremental degradation of the regional environment, and promote improved land and resource management. It reflected the Board's conclusion, after extensive public hearings and a careful examination of

scientific evidence, that "the Crown of the Continent Ecosystem is at risk and ... the Castle area in particular has deteriorated."<sup>57</sup> The proposed WCWRA, which historically was part of Waterton Lakes National Park, has been a long-standing candidate for protected status. In short, the West Castle decision presented convincing arguments and the opportunity to establish a protected area (or "special place").

The NRCB's decision was supported by the project proponent, the environmentalist coalition that had initially opposed the application, and a variety of local interest groups and politicians.<sup>58</sup> It was opposed by those who saw the WCWRA's land-use restrictions as inconsistent with their recreational (e.g., off-highway vehicles) or economic (e.g., forestry operations) use of public land.<sup>59</sup> The Minister of Environmental Protection created a local stakeholders committee which, predictably, failed to reach consensus regarding the WCWRA. When several members resigned, the government reversed its earlier authorization of the NRCB decision, thereby blocking both the resort development and the WCWRA.

The demise of the West Castle decision illustrates the likely fate of many candidate protected areas under *Special Places 2000*. Given uncertainty regarding the government's commitment to protected areas and the veto granted to local interests, few if any significant areas could survive the *Special Places 2000* process.

In sum, *Special Places 2000* seems designed to perpetuate the status quo. Its multiple goals make it directionless. The absence of targets and the entrenchment of vested interests reduce incentives for meaningful trade-offs. Finally, the multiplicity of veto points, notably at the local committee level, seem likely to derail the nominations of any significant protected areas.

## Does *Special Places 2000* Matter?

Does it matter that *Special Places 2000* is not a protected areas strategy and, in any case, is unlikely to result in the establishment of many significant "special places"? The answer to this question depends on the strength of the rationale for a protected areas strategy and the long-term viability of the status quo in the management of Alberta's public lands.

*Special Places 2000* appears to be consistent with the following assumptions:

- an effective protected areas strategy is not a significant priority among Albertans;
- CAPP significantly over-estimated the need to achieve a workable *modus vivendi* between conservation and development interests in Alberta as a means of diffusing conflict, avoiding project-by-project controversies, and establishing greater certainty for land access and resource development;
- concerns with the current management of public lands that are evident in recent AEUB and NRCB decisions and in the Report of the Future Environmental Directions for Alberta Task Force do not require immediate action (at least not in the form of a protected areas strategy);
- commercial and industrial projects in environmentally sensitive areas, as illustrated by the West Castle and Whaleback applications, will become progressively less controversial, or the controversies that do occur will have minimal political and economic repercussions;
- provincial and national environmental groups that have supported the Endangered Spaces program will abandon their efforts in Alberta or will lose the ability to attract national and international attention to the province's environmental record; and

• incremental development and the current multiple-use approach will not significantly affect Alberta's ecosystems, or continuing environmental degradation (such as that identified by the NRCB in the Crown of the Continent) will be generally accepted as a necessary cost of economic progress.

If most or all of these assumptions prove to be correct, *Special Places 2000* may, in the end, be viewed as an astute political calculation, bolstering the Klein Government's reputation for successfully challenging "conventional wisdom" in its approach to public policy. If environmentalism is a "flash in the pan," with few long-term implications for Alberta's resource industries, *Special Places 2000* may succeed in side-lining land-use controversies.

However, if a significant number of these assumptions prove to be unfounded, *Special Places 2000* will do nothing to resolve the environmental, land-use and resource management issues that Alberta will then be obliged to confront. Under this scenario, *Special Places 2000* will at best be an insignificant detour on the road to sustainable development. At worst, it will further polarize the debate between environmental protection and development forces, result in increasing negative national and international attention to Alberta's environmental record, lead to ongoing project-by-project confrontation, and permit the incremental degradation of the province's natural environment.

## Conclusion

The analysis presented above leads to three conclusions regarding *Special Places 2000*. First, it is a continuation of the current multiple-use approach to public lands rather than a protected areas strategy. Second, the nomination process for "special places" makes significant additions to Alberta's network of protected areas very unlikely. Finally, it reflects a strategic judgement that no change to the status quo is

necessary to address the clash between environmental and development values on Alberta's public lands. *Special Places 2000* says clearly that the "endangered spaces" agenda is not, in the government's view, a salient feature of Alberta's political landscape.

Only time will tell if this judgement is correct. Clearly, reasonable people can differ on the assumptions outlined in the previous section. Nonetheless, the stakes are high for Alberta's resource-based economy and natural environment. The experience of British Columbia's forest industry leaves no doubt that protracted conflict and negative publicity can have high political and economic costs. Habitat loss is widely viewed as a leading cause of declining biodiversity. Wilderness and scenic beauty may well prove to be the principal drawing-card for Alberta's tourist industry. If the status quo in Alberta does not hold, the result will be increased conflict and uncertainty surrounding resource development. An alternative land-use strategy will then have to be devised, and *Special Places 2000* will stand out as an anachronism and a lost opportunity.

\* *Steven Kennett is a Research Associate at the Canadian Institute of Resources Law.*

## Notes

1. Vicki Barnett, "Conservationists rip into Tory Plan" *Calgary Herald*, 20 March 1995, p.A1; Harvey Locke, "A Big Step Back" *Oilweek*, 15 May 1995, p.30.

2. Jim Cunningham & Anthony Johnston, "Wildlife groups opt out of plan" *Calgary Herald*, 29 March 1995, p.A3.

3. The AEUB is the merged Energy Resources Conservation Board and Public Utilities Board.

4. See, Steven A. Kennett, "The ERCB's Whaleback Decision: All Clear on the Eastern Slopes?" (1994) 48 *Resources* 1.

5. F.J. Mink, D.F. Bietz & R.G. Evans, *Application for an Exploratory Well Amoco Canada Petroleum Company Limited Whaleback Ridge Area*, ERCB Decision D 94-8, 6 September 1994, p.34.

6. *Ibid.*, pp.33-34.

7. The problems illustrated by the Whaleback application, the need for greater certainty regarding land use, and the role for a protected

areas strategy are described in The Report of the Future Environmental Directions for Alberta Task Force, *Ensuring Prosperity: Implementing Sustainable Development* (March 1995), pp.52-53 (hereinafter *Ensuring Prosperity*).

8. K.R. Smith, G.A. Yarranton, C.H. Weir & C. Dahl Rees, *Application to Construct Recreational and Tourism Facilities in the West Castle Valley, near Pincher Creek, Alberta*, NRCB Decision Report #9201, 3 December 1993, p.10-11.

9. *Ibid.*, p. 10-11.

10. *Ibid.*, pp.11-1 - 11-4. The Crown of the Continent is the region including Waterton Lakes (Canada) and Glacier (U.S.) National Parks and surrounding land in south-western Alberta, south-eastern British Columbia, and western Montana.

11. *Ensuring Prosperity*, *supra*, note 7, p.52 (emphasis in original).

12. *Ibid.*, pp.55-56.

13. Government of Alberta, *Special Places 2000: Alberta's Natural Heritage*, Draft, 20 November 1992, pp.2-3 (hereinafter *Draft Policy*). According to a poll conducted by The Dunvegan Group Ltd. in June, 1994 for World Wildlife Fund Canada: "93% of Albertan's think it is important to protect examples of the full range of Alberta's landscapes and wildlife by setting aside wildland areas where there is no logging, mining or other industrial activity."

14. *Special Places 2000*, p.5.

15. WWF's initiative is intended to establish protected areas representing each of Canada's natural regions by the year 2000. Alberta's public commitment to the Endangered Space program was made by the late Honourable Do. Sparrow, then Minister of Tourism, Parks and Recreation, on March 11, 1992. In addition, in March 1992 Alberta's Minister of Forestry, Lands and Wildlife endorsed *Sustainable Forests*, a report prepared by the Canadian Council of Forest Ministers (CCFM), which commits all members of the forest community to work towards "completing, by the year 2000, a network of protected areas representative of Canada's forests". See CCFM, *Sustainable Forests: A Canadian Commitment*, March 1992, p.14.

16. The accompanying News Release and Fact Sheets are considerably longer, but contain few additional details.

17. *Supra* note 13.

18. *Special Places 2000: Alberta's Natural Heritage Report of the Advisory Committee*, 15 November 1993.

19. *Special Places 2000*, p.2.

20. *Ibid.*, "Message from the Premier".

21. *Ibid.*, p.6.

22. *Ibid.*, p.3.

23. *Ibid.*, p.3.

24. *Ibid.*, p.3.

25. *Ibid.*, p.6.

26. *Ibid.*, p.6.

27. *Ibid.*, p.8. The policies referred to are the Forest Conservation Strategy, the Wetlands Policy, and the Heritage Rivers Program.

28. *Ibid.*, p.8.



29. *Ibid.*, p.8.
30. *Ibid.*, p.9.
31. *Ibid.*, p.9.
32. *Ibid.*, p.10.
33. Draft Policy, p.4.
34. Commission on Resources and Environment (C.O.R.E.), *Finding Common Ground: A Shared Vision for Land Use in British Columbia* (Victoria, 1994) p. 64. See also, Canadian Environmental Advisory Council, *A Protected Areas Vision For Canada* (1991) p. 13.
35. *Special Places 2000*, p.2. Fact Sheets accompanying the policy deal specifically with the interests of agriculture, resource industries, motorized recreation (i.e., off-highway vehicles and snowmobiles), hunting, and equestrian activities.
36. See the Draft Policy, (p.4) and the Public Advisory Committee's Report (pp.6, 8) and Recommended Policy (p.3).
37. *Special Places 2000*, p.2.
38. Draft Policy, p.17.
39. *Ibid.*, p.17.
40. Public Advisory Committee, Recommended Policy, p.3.
41. See "Special Places 2000: Questions and Answers" (Question 7. "How will Special Places 2000 benefit the tourism and recreation industry?").
42. Draft Policy, pp.2-3.
43. *Ensuring Prosperity*, pp.52-53, 55-56.
44. Draft Policy, p.1.
45. *Special Places 2000*, p.3.
46. Draft Policy, pp.16-17.
47. Public Advisory Committee Report, pp.9-12.
48. World Commission on Environment and Development (WCED) (the Brundtland Commission), *Our Common Future* (Oxford: Oxford University Press, 1987) pp. 165-166. See, C.O.R.E., *supra* note 34 at 64.
49. *Special Places 2000*, p.6.
50. *Special Places 2000*, p.8.
51. Draft Policy, p.15.
52. "Special Places 2000: Questions and Answers" (Question 19 "What are the roles of the volunteer local committees?").
53. *Ibid.*
54. *Ibid.*
55. *Special Places 2000*, p.10.
56. This decision is discussed in Steven A. Kennett, "The NRCB's West Castle Decision: Sustainable Development Decision-Making In Practice" (1994) 46 Resources 1.
57. *Supra*, note 8, p.9-75.
58. Vicki Barnett, "Westcastle failure bitter pill for town" *Calgary Herald*, 14 May 1995, p.A1.
59. *Ibid.*

## Recent Developments in Canadian Mining Law

by Susan Blackman\*

(reprinted with permission from the Rocky Mountain Mineral Law Foundation Newsletter)

### MINING

#### Claim Staking Disputes — British Columbia — Substantial Compliance

The British Columbia Court of Appeal has overturned the decision of the B.C. Supreme Court in *Ecstall Mining Corp. v. Tagish Resources Ltd.* The issue raised was whether a staker had "attempted in good faith to comply with the Act and the regulations..." (s.34, *Mineral Tenure Act*, S.B.C. 1988, c.5). The issue arose in the context of a staking where four of the required 14 identification posts were not placed and almost half of the total boundary line was missing. The staking had been done in the summer over moderate terrain and in close to optimum bush conditions. The Chief Gold Commissioner cancelled this claim giving written reasons in which he did not expressly address the good faith requirement. On appeal to the B.C. Supreme Court, his decision was reversed.

The majority in the British Columbia Court of Appeal allowed the appeal and restored the Chief Gold Commissioner's decision. Prowse, J.A. reviewed the evidence and arguments presented to the Chief Gold Commissioner and decided there was ample evidence to support the Chief Gold Commissioner's decision on the good faith point. Implicitly, he decided that the staker had not attempted in good faith to comply with the Act and regulations. The Chief Gold Commissioner's decision can only be reviewed for errors of fact, law or procedure. The Supreme Court judge had reweighed the evidence available to the Chief Gold Commissioner and changed the weighting. The question of the weight to give the evidence and even the question of the bona fides of

the staker are matters "singularly within the expertise of the Chief Gold Commissioner." It is to be noted that, in this case, the claim being challenged had itself been established by a successful complaint about an earlier claim. The claimholder, therefore, was in the position of making arguments and interpreting evidence so as to support the opposite position of the one it had taken earlier.

In dissent, Goldie, J.A., pointed out that the Chief Gold Commissioner, in his reasons, failed to separate the issue of compliance with the Act and regulations from the issue of whether s.34 could save the imperfect staking. In addition, the judge felt that a finding of a lack of good faith (as the majority implied in the Chief Gold Commissioner's reasons) is tantamount to a finding of fraud and should not be made without clear and convincing evidence. In this case, the only evidence available from the staker himself was contained in the mineral title inspector's report, a report which was favourable to the staker. Goldie, J.A. agreed with the Supreme Court judge that this evidence should have been given greater weight. See *Ecstall Mining Corp. v. Tagish Resources Ltd.*, [1995] B.C.J. No. 390 (QL) (C.A.).

#### Environmental Impact Assessment of Mining Projects

The *Canadian Environmental Assessment Act*, S.C. 1992, c.37, was proclaimed in force in January of 1995. Section 5 requires an assessment for all projects which are carried out on federal lands, which require a federal licence or permit, or which have federal financing. Certain mining developments may be exempted from assessment under the regulations.

\* Susan Blackman is a Research Associate with the Canadian Institute of Resources Law and is the Canadian oil and gas and mining law reporter for the Rocky Mountain Mineral Law Foundation Newsletter.

## Aboriginal Water Rights Book Reprinted

The Canadian Institute of Resources Law has reprinted its book entitled *Aboriginal Water Rights in Canada: A Study of Aboriginal Title to Water and Indian Water Rights*, by Professor Richard H. Bartlett.

This book provides an analysis of an important problem in the field of water management - the affirmation of aboriginal water rights.

First, the book considers the concept of rights to water as an aspect of aboriginal title. Second, the study considers the rights to water possessed by Indian bands upon the establishment of a reserve. The study also considers the extent to which aboriginal water rights have been validly regulated or abrogated by legislation by examining the legislation of all jurisdictions in Canada from the past to the present. Finally, the study examines the manner in which contemporary agreements have provided for aboriginal water rights.

### How to Order:

Please send \$30.00 plus postage/handling and 7% GST to: Canadian Institute of Resources Law, PF-B 3330, The University of Calgary, Calgary, Alberta, T2N 1N4

#### Postage and Handling:

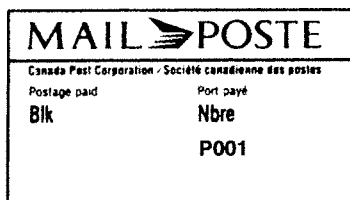
Within Canada: \$2.50 first book, \$1.00 each additional book

Outside Canada: \$4.00 first book, \$2.00 each additional book

Outside Canada prices are in U.S. dollars.

For a complete listing of publications, please contact the Institute for a current catalogue.

Canadian Institute of Resources Law  
Room 3330, PF-B  
The University of Calgary  
2500 University Drive N.W.  
Calgary, Alberta, Canada  
T2N 1N4



## Resources

### No. 50 Spring 1995

*Resources* is the newsletter of the Canadian Institute of Resources Law. Published quarterly, the newsletter's purpose is to provide timely comments on current resources law issues. The opinions presented are those of the authors and do not necessarily reflect the views of the Institute. *Resources* is mailed free of charge to more than 5,400 subscribers throughout the world. (International Standard Serial Number 0714-5918)

Editor: Nancy Money

#### Canadian Institute of Resources Law

Executive Director: J. Owen Saunders

Research Associates:

Susan Blackman, Janet Keeping,  
Steven Kennett, Monique Ross

The Canadian Institute of Resources Law was established in 1979 to undertake research, education, and publication on the law relating to Canada's renewable and non-renewable resources. Funding for the Institute is provided by the Government of Canada, the Alberta Law Foundation, other foundations, and the private sector. Donations to projects and the Resources Law Endowment Fund are tax deductible.

#### Board of Directors

W. James Hope-Ross (Chairman)

Judith Snider (Vice-Chairman)

Nigel Bankes

Don D. Detomasi

Edith M. Gillespie

Jean Giroux

The Hon. Constance D. Hunt

Alastair R. Lucas

Sheilah Martin

John B. McWilliams

David Oulton

David R. Percy

J. Owen Saunders

Donald E. Wakefield

R. Brian Wallace

C. Kemm Yates

#### Canadian Institute of Resources Law

Room 3330, PF-B, The University of  
Calgary, 2500 University Drive N.W.

Calgary, Alberta T2N 1N4

Telephone: (403) 220-3200

Facsimile: (403) 282-6182

Internet: [cirl@acs.ucalgary.ca](mailto:cirl@acs.ucalgary.ca)

PRINTED IN CANADA