



FINAL - Response Letter to the Alberta Land Institute Final Report

January 18, 2016

Dr. Vic Adamowicz
Research Director
Alberta Land Institute
University of Alberta
3-173 Centennial Centre for Interdisciplinary Science
11455 Saskatchewan Drive
University of Alberta
Edmonton, AB
T6G 2E9

Dear Dr. Adamowicz,

Thank you for your call on January 5, 2016 and sharing the Alberta Land Institute's (ALI) final paper titled *Alternative Models of Compensation on Alberta's Crown Grazing Lease Lands*.

The Alberta Grazing Leaseholders Association (AGLA) is pleased to see that the ALI's final paper reflects some of our input on the role of grazing leases to meeting Alberta's land stewardship goals as well as the reasons for leaseholder compensation and the statutory process to determine that compensation.

However, we find that the paper is contradictory on some points, and unfortunately vague in others. Also, we remain concerned about the assumptions used to calculate the compensation paid to grazing leaseholders in the province. Lastly, while the report does offer clarification on some key issues regarding grazing leases the report also fails to adequately address several key myths involving compensation, transparency, and role of the leaseholder.

Compensation is not revenue

A vexing problem for leaseholders remains the final report's ongoing reference to compensation as "revenue" despite the fact the paper acknowledges that compensation paid to leaseholders is compensation "for adverse effects, loss of use of the land, and damages to land, livestock or personal property caused by [energy] operations."

This is an important point and the ALI paper does reinforce it by acknowledging that the "amounts collected by grazing leaseholders from operators are not meant to confer a windfall on the former, but are intended instead to make them "whole", that is, to put the grazing leaseholder affected by energy

operations in a financial position as close as possible to the position they were in prior to entry by the operator.”

Yet despite clearly recognizing the purpose of the compensation is to compensate ranchers for harm they suffer, the ALI paper asserts that the government may wish to change policies and take some of this leaseholder compensation as “revenue” for the government.

As AGLA has stated previously, the Surface Rights Act and numerous court rulings require compensation being paid to the parties directly affected—the ones who suffer the losses and impacts caused by the energy activity. It would be difficult for the Province to argue they are directly affected by noise, dust, gates left open, moving cattle, loss of use or nuisance, because the Province does not experience these impacts.

Moreover, it strikes us as unfair and illogical for the ALI to support taking the compensation away from the people who suffer harm and redirecting that compensation to a party that does not. By continuing to refer to compensation as revenue the ALI report fails to recognize both the purpose and fairness of statutory compensation.

The Crown has other revenue options

If the Crown requires additional revenue to meet public policy objectives, there remain many other income tools available to the government that would not result in the unfairness underlying the ALI’s paper: energy company mineral lease bonus payments; annual mineral lease rental payments; royalty rate increases on production as well related taxes on the energy industry. In fact, the province has just undergone a process to determine revisions to Alberta’s royalty structure. It is far more appropriate to revise the royalties paid to the crown in order to meet policy goals rather than remove the current compensation model which is designed to ensure the “leaseholder is not made worse off.”

Compensation model helps minimize impacts

We agree with the paper’s authors that the benefits of the compensation model extend beyond producers. As they noted “payments serve an important allocative function by requiring energy operators to internalize the external effect of their activities.” In addition, “the prospect of paying statutory compensation encourages operators to take measures to mitigate the impact of energy development.”

The process has transparency

However, the authors seem to suggest that the process of determining this compensation lacks transparency. This is hardly the case in Alberta. Even the authors correctly identified that “energy companies generally make offers to landowners or leaseholders based on the framework for compensation as set out in section 25 of Surface Rights Act.”

In addition, if the parties fail to reach an agreement, the Surface Rights Board -- a provincial, quasi-judicial tribunal -- holds a public hearing to determine the compensation payable under the Surface Rights Act to the surface occupant and owner. The Board publishes detailed written decisions. The evidence the Board receives at its hearings is available to the public. The Board’s decisions are reviewable by the Alberta Court of Queen’s Bench which is also a public process. The process for determining compensation is completely transparent and follows a clear legal process. The ALI’s characterization of the process as lacking in the transparency is contradicted by the facts.

Compensation is directly related to impact and disturbance

The AGLA is also confused by the paper's comments on "average compensation values per lease." The simple fact is each and every lease is different and the impacts from energy activity are also unique. Furthermore, the compensation is regionally concentrated because this is where the energy activity and impacts are occurring. Compensation is only paid when there is an impact. As a result, compensation will always differ from lease to lease and regionally. Furthermore, there are a significant number of grazing leases that have no oil and gas activity so they do not and should not receive compensation for adverse impacts from energy activity.

Calculating compensation needs to be accurate

As we have noted in our earlier correspondence, the AGLA has serious concerns with the process to determine overall compensation to leaseholders in the province. The report uses a figure of \$50 million which is based on 33,421 well sites (calculated using an average of 4.5 wells on 7,388 leases in the province), and an average of \$1,500 compensation provided for each disturbance.

The ALI paper's approach to calculate "average compensation values" to leaseholders is also seriously flawed. When we met with the ALI in September, the CAPP members in the room indicated that the average compensation of \$1,500 per well site used by ALI was higher than they actually pay to grazing leaseholders. As noted above, that the compensation for each lease is unique and is based on the nature of the energy activity and the specific impacts. There are many variables used by energy companies and the Surface Rights Board to determine appropriate compensation – economic value of the activity occurring on the lease, type of impact, nature of the cattle grazing program, carrying capacity of the land, level of improvements made by the grazing leaseholder, etc. Calculating the compensation associated with each disturbance at \$1,500 unfortunately creates an inaccurately inflated provincial total.

In addition, some grazing leases have multi-well pad sites with multiple wells but are only paid \$100 for each additional well after the initial one. When the ALI uses a multiplier of \$1,500 per well site when in fact grazing leases with multi-well pads are only receiving \$100 per well site it illustrates the level of error in the ALI calculations.

Grazing leaseholders make significant investments

We appreciate that the ALI is trying to accurately convey the complexity of the economic and policy system around grazing leases. Yet the report focuses primarily on the compensation model and does not adequately discuss the responsibility of leaseholders as land steward nor does the report adequately portray the significant infrastructure investment by all leaseholders,

Albertans benefit by having leaseholders who help ensure long-term sustainability of the land and protect animals and plants at risk. There is a considerable scientific evidence to demonstrate that un-grazed grasslands deteriorate in terms of biodiversity and important ecosystem functions such as water capture and carbon sequestration. Grasslands evolved under grazing pressure with the grazing managed by predators and aboriginal hunters. Leaseholders supply not only the grazing animals but also the infrastructure, management, capital, and labour to accomplish managed grazing.

However proper stewardship has associated costs. Leaseholders must be diligent in monitoring livestock grazing to ensure vegetation is not adversely impacted. In addition, leaseholders must also fence the lease, develop water sources and provide the other livestock handling infrastructure. These

infrastructure assets are often impacted by other energy activity requiring they be repaired, dismantled, or rebuilt.

By focussing so heavily on the compensation model, while also not offering more detailed information specific to the operational impacts, infrastructure costs and stewardship role of leaseholders, readers of the ALI report are left with an incomplete picture of why compensation is needed. Without that additional context it is easy for a reader to view compensation as an unnecessary practice.

In conclusion, Alberta's current system of managing grazing lands through leases has many strengths which has led to effective ecological stewardship of public land while also meeting the social and economic needs of the province for over 100 years.

Building on this successful past, the AGLA continues to work the Alberta government and other stakeholders on updating grazing lease policies and practices in the province. Organizations such as the ALI influence that dialogue and care is needed so that future reports accurately reflect the complexity of the grazing lease instrument, as well as the issues and intricacies of managing competing interests on the land base.

Sincerely,

A handwritten signature in cursive script that reads "Larry Sears".

Larry Sears
Chairman, AGLA

cc:

David Bissett, ALI
Ted Morton, ALI
Peter Woloshyn, ALI
Colin Jeffares, ALI
Kelly Hall, ALI
Rick Blackwood, ALI
Bill Newton, WSGA
James Hargrave, AGLA
Darcy Wills, AGLA
Aaron Brower, AGLA
Lindsye Dunbar, AGLA