



Submission re:

***Surface Rights Compensation and
Acquisitions Act***

Provincial review

December 13, 2013



Introduction

The Agricultural Producers Association of Saskatchewan (APAS) is pleased to participate in the Ministry of Economy's public review of the *Surface Rights Acquisition and Compensations Act*.

Our comments are informed by in-depth discussions with APAS Representatives and Board members. We also held a series of public meetings on this topic in November which provided APAS with a broader viewpoint from the general public. The public engagements were a resounding success.

We have identified several themes throughout our consultations which form the basis of this submission. First, agricultural producers are generally supportive of resource expansion but seek legislative change to rebalance the rights of surface landowners, mineral rights holders and resource companies (operators). Secondly, landowners currently do not receive the support and resources commensurate with the long-term environmental and financial liabilities that they are assuming. Finally, we have heard a number of surface rights concerns from across the province that extend beyond the scope of the *Surface Rights and Acquisitions Act*.

We would be interested in continuing to work with the Ministry to ensure the resulting legislation can address these manifold issues.

Notes: All resolutions (2013AGM) in this document are draft, subject to further review by the APAS Board of Directors.

For a summary of APAS recommendations, see pages 8-9

1. Compensation

Throughout our consultations it was clear that while most surface rights holders are willing participants in the development of our province's resources, many surface landowners consider themselves "junior partners" in the contractual relationships that govern the acquisition of mineral rights. Landowners have identified some disparities between Saskatchewan and other jurisdictions, and overall feel that the compensation levels should be updated to more accurately reflect the value of their land, time, and resources. The following are nine recommendations for modernizing compensation for surface rights.

1.1 Land values and Right-of-entry Fee

It is our understanding that the Alberta Surface Rights Act requires operators to pay a one time fee for exercising a right-of-entry. Amending the Act to provide for a right-of entry fee would not only be in the interest of interprovincial consistency, but also provide reasonable compensation for the time and effort landowners devote to negotiations, as well as managing and supervising entry onto their private property.

- Recommendation #1: Amend the Act to include payment of a right-of-entry fee, over and above the compensation framework.

The current valuation of leased land is another major concern for landowners. Landowners feel they are currently unable to negotiate land valuations that are a clearer reflection of current market values and inclusive of the increase in land value over the life of the development. Moreover, the acquisition of small tracts of land, sometimes totaling less than one acre, is a significant deviation from the typical rental arrangements for agricultural land. The amended Act should recognize this disparity and equip the Board with minimum standards to award higher lease valuations.

- Recommendation #2: Establish a minimum standard for the determination of land value, with a minimum set value of 1.5 times market value, i.e. “the Blackstock Formula”

There is a common sentiment that the Act affords operators too much lenience to develop additional well-sites beyond the original terms agreed to by a landowner. This is especially problematic for agricultural production, in which losses and inconvenience are compounded by the addition of even one subsequent site. One way to compensate for the burden of numerous well-sites is to make the addition of wells subject to an automatic increase in the annual rental rate.

- Recommendation #3: Adopt a formula and/or fee schedule to ensure that rental compensation automatically increases in proportion to the number of additional wells and leases occurring beyond the original agreement, e.g. an automatic increase in the annual rental of 50%.

1.2 Loss of use, severance, adverse affects, etc

In his opening letter, the Minister recognizes the need for new legislation to adapt to changing agricultural practices. Through the use of new technologies like GPS, producers conduct their operations with increasing precision and geographic tracking capabilities. These technologies could easily provide a more accurate estimation of costs incurred as a result of resource development on agricultural land.

- Recommendation #4: Amend the Act to allow empirical evidence collected by technology to supersede “Patterns of Dealings” when determining compensation relating to loss of use, severance, cumulative effect, adverse effects, etc.

1.3 Compensation for flow-lines

Landowners have expressed concerns that special consideration of flow-lines within the Act is unwarranted. The amended Act should be sufficiently flexible to compensate for any ongoing and recurring losses, including loss of use and inconvenience, resulting from the installation and existence of service and/or flow-lines.

- Recommendation #5: Remove maximum terms and values of compensation for flow-lines within the Act, and subject flow-lines to the same reclamation and compensation requirements as other physical operations and infrastructure within the Act.

1.5 Compensation Reviews

Scheduled compensation reviews are the only mechanism to ensure the terms of the lease stay up to date and reflect the true costs of resource development on agricultural land. Keeping the compensation terms current plays a key role in balancing the cost-sharing relationship between the agricultural industry and oil and gas development in Saskatchewan. In addition to automatic renewal every three years, producers would like to see the amended Act place the onus on the operator to send notification that annual compensation is due for review.

- Recommendation #6: Amend the Act to include mandatory notification requirements for compensation reviews, with penalties payable to the landowner for breach of notice.

1.6 Compensation for Damages

The potential for damages related to oil and gas activity are wide-ranging, and can pose significant health, environmental and financial liabilities to agricultural producers and rural people. The sentiment that the \$1000 limit does not accurately reflect the true costs of damage remediation was universal across our consultations.

- Recommendation #7: Remove the \$1000 limit that the Board can award for damages.

The spread of soil-borne diseases, like clubroot in canola, is also a significant concern for producers. The solution to this problem requires a proactive, preventative approach.

- Recommendation #8: Work with the Ministry of Agriculture, the oil and gas sector, commodity organizations, and the Surface Rights Arbitration Board to develop protocols with appropriate enforcement measures to stop the spread of soil-borne diseases.

1.7 Adjoining Landowners

At times, adjoining landowners can be more affected by the development than the owner. The spread of noxious weeds and crop disease are regional considerations. Therefore, the amended regulations should provide adjoining landowners a mechanism to seek compensation for damages resulting from oil and gas activity.

- Recommendation #9: Amend the regulations to allow adjoining landowners to seek damages and compensation.



2. Farmer's Advocate Office

Surface leases and easements are complicated matters with long-term consequences. Moreover, legislation governing resource development spans numerous Acts and regulations. Better equipping landowners with knowledge and guidance throughout the processes leads to more accountable outcomes and reduces the need for expensive legal counsel and/or arbitration. The establishment of a Farmer's Advocate Office in Saskatchewan would be a positive step towards achieving these outcomes.

Producer support for a Farmer's Advocate Office was clearly expressed at the 2013 APAS AGM in the following resolution:

EFS5-2013AGM:

BE IT RESOLVED that APAS lobby the Provincial Government to create a Farmers' Advocate Office (FAO) in Saskatchewan, using a similar FAO model that exists in Alberta, to deal with issues such as surface rights.

APAS looks forward to discussing the possibilities and potential benefits of a Saskatchewan FAO with the Province in the coming months.

3. Environmental Liabilities

Over the last several years, environmental noncompliance, abandoned wells and inadequate site reclamation have been recurring issues within our organization. Agricultural producers are concerned that contamination of the soil and water pose serious health risks to their families and livestock, and jeopardize the viability of their productive land.

The extent to which this is a going concern was clearly expressed at our most recent Annual General Meeting in the following resolution:

EFS6-2013AGM:

WHEREAS abandoned and decommissioned oil and gas well-sites pose health and financial risks to agricultural producers, rural landowners and occupants;

BE IT RESOLVED that the Government of Saskatchewan monitors abandoned oil and gas wells in Saskatchewan and ensure reclamation;

BE IT FURTHER RESOLVED that the amended Surface Rights Acquisition and Compensation Act include provisions for environmental site assessment prior to reclamation, with enforcement and oversight mechanisms to ensure all remedial recommendations are followed.

There are widespread concerns that soil and water pollution occurs throughout the operation of the well, and that a portion of this contamination goes unreported. Moreover, the number of



inactive wells is ever increasing, posing significant environmental and health risks to rural people. Landowners should not be responsible for ensuring industry compliance.

While understanding that the regulation of the oil industry occurs under separate legislation, APAS considers this public review an opportunity for the Ministry of Economy to demonstrate its commitment to resource development that is environmentally accountable to the people affected. We believe this can be accomplished at the present time by establishing stronger links between the *Oil and Gas Conservation Regulations* and the Act under consideration.

Specific recommendations include:

- a) Preserve abandonment and reclamation provisions within the *Surface Rights Compensation and Acquisitions Act*:
 - The landowner's right to restored land should be enshrined in the same legislation that enables operators to acquire surface rights.
 - The requirement to serve the owner written notice of intent to abandon and restore wells needs to be maintained within the Act and enforced by the Surface Rights Arbitration Board.

- b) Enforcing compliance and enhancing transparency through the *Oil and Gas Conservation Regulations*:
 - Allocate resources to strengthen regulatory oversight during site operation.
 - Establish better working relationships and greater transparency between the regulator, landowners and operators through a Saskatchewan Farmer's Advocate Office.

4. Other Considerations

The Ministry of Economy is tasked with both promoting the development of our resources and protecting the environment, property and public safety from the risks associated with development. APAS considers this legislative review an opportunity to strike a more balanced approach. We feel a balanced mandate is best advanced through:

- Adequate compensation and scheduled compensation reviews.
- Legislative change that is developed in tandem with stronger environmental regulatory oversight in terms of facility operation and site reclamation.
- The continued role of the Surface Rights Arbitration Board, or other third party regulatory bodies, as a mechanism for resolving disputes between surface property owners and all resource operators, including the Crown.
- Scheduled, recurring reviews of surface rights legislation to respond to evolving industry practices and new forms of resource development.



We strongly urge the Ministry of Economy to carry these principles forward through this review and work with other Ministries to develop consistent surface rights legislation. With economic growth, increased mineral exploration and the development of new forms of energy, it is unquestionable that surface rights concerns will be a recurring issue in rural Saskatchewan. There is an opportunity here to develop a surface rights framework to confront this eventuality.

The following resolutions, passed at our most recent AGM, call on the Province to adopt a more comprehensive approach to surface rights legislation:

EFS1-2013AGM:

WHEREAS the Government of Saskatchewan is conducting a legislative review of the Surface Rights and Acquisition Act;

BE IT RESOLVED that the Government of Saskatchewan establish base-line standards for adequate environmental enforcement, and dispute resolution mechanisms in the amended Surface Rights Acquisition and Compensation Act.

EFS2-2013AGM:

WHEREAS agricultural producers are affected by resource development beyond the parameters of the Surface Rights Act;

WHEREAS the Government of Saskatchewan regulates the dealings between agricultural producers and operators, including the Crown, through separate legislative Acts and regulations;

BE IT RESOLVED that the Government of Saskatchewan incorporate these standards into related legislation, such as the Provincial Lands Act, the Pipelines Act, and the Oil and Gas Conservation Act, and make the necessary changes to these Acts to ensure all surface rights issues are dealt with.

EFS7-2013AGM:

BE IT RESOLVED that Saskatchewan surface rights legislation apply to all utilities and power generating corporations as entities that must pay adequate compensation and provide adequate liability protection for surface use of privately owned land, and that recourse for dispute resolutions be channeled through the Saskatchewan Surface Rights Arbitration Board.

EFS8-2013AGM:

BE IT RESOLVED that the Province monitors third party structures such as power lines, wind turbines, and rail lines, to ensure adequate compensation to affected landowners and timely reclamation in all cases.



5. Next Steps

Designing fair and balanced surface rights legislation will require additional input from agricultural producers and landowners subsequent to this review and in the drafting of new legislation. We look forward to working collaboratively with the Provincial Government and other landowner stakeholders when draft legislation is imminent.

Please refer to the following resolution for consideration:

EFS3-2013AGM:

WHEREAS resource development impacts Saskatchewan's agriculture industry;

WHEREAS rural citizens and their families dwell alongside oil and gas operations;

WHEREAS APAS is Saskatchewan's general farm organization and the united voice of thousands of agricultural producers in Saskatchewan;

EFS3a. BE IT RESOLVED that the Government of Saskatchewan engage APAS as a key stakeholder in the legislative review of the Surface Rights Acquisition and Compensation Act

EFS3b. BE IT FURTHER RESOLVED that the Government of Saskatchewan provide APAS the opportunity to review the amended legislation prior to implementation.



Summary of Recommendations:

1. Compensation:

#1: Amend the Act to include payment of a right-of-entry fee, over and above the compensation framework.

#2: Establish a minimum standard for the determination of land value, with a minimum set value of 1.5 times market value, i.e. “the Blackstock Formula”

#3: Adopt a formula and/or fee schedule to ensure that rental compensation automatically increases in proportion to the number of additional wells and leases occurring beyond the original agreement, e.g. an automatic increase in the annual rental of 50%.

#4: Amend the Act to allow evidence based in empirical data to supersede “Patterns of Dealings” when determining compensation relating to loss of use, severance, cumulative effect, adverse effects, etc.

#5: Remove maximum terms and values of compensation for flow-lines within the Act, and subject flow-lines to the same reclamation and compensation requirements as other physical operations and infrastructure within the Act.

#6: Amend the Act to include mandatory notification requirements for compensation reviews, with penalties payable to the landowner for breach of notice.

#7: Remove the \$1000 limit that the Board can award for damages.

#8: Work with the Ministry of Agriculture, the oil and gas sector, commodity organizations, and the Surface Rights Arbitration Board to develop protocols with appropriate enforcement measures to stop the spread of soil-borne diseases.

#9: Amend the regulations to allow adjoining landowners to seek damages and compensation.

2. Establish a Saskatchewan Farmer’s Advocate Office

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b) Enforcing compliance and enhancing transparency through the *Oil and Gas Conservation Regulations*:

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- Legislative change that is developed in tandem with stronger environmental regulatory oversight in terms of facility operation and site reclamation.
- The continued role of the Surface Rights Arbitration Board, or other third party regulatory bodies, as a mechanism for resolving disputes between surface property owners and all resource operators, including the Crown.
- Scheduled, recurring reviews of surface rights legislation to respond to evolving industry practices and new forms of resource development.

We strongly urge the Ministry of Economy to carry these principles forward through this review and work with other Ministries to develop consistent surface rights legislation.

5. Next Steps

Provide APAS and other landowner associations the opportunity to review the amended legislation prior to implementation.