

The property rights debate in Alberta

By Nigel Bankes

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[“Albertans asked for property rights input,”](#) Government of Alberta Press Release, November 24, 2011

Premier Redford has announced the creation of a task force to ask “Albertans for their concerns regarding property rights.” According to the Press Release, Premier Redford has “heard concerns from landowners that their property rights need to be better respected,” and takes the view that “We need to move towards a more common-sense approach when it comes to property rights.”

The task force will be chaired by Diana McQueen, Minister of Environment and Water, (MLA for Drayton Valley-Calmar) with Evan Berger, Minister of Agriculture and Rural Development (MLA for Livingstone-Macleod), as the vice-chair. Other members include Verlyn Olson, Q.C., Minister of Justice and Attorney General (MLA for Wetaskiwin-Camrose); Jeff Johnson, Minister of Infrastructure (MLA for Athabasca-Redwater); Cal Dallas, Minister of Intergovernmental, International and Aboriginal Relations (MLA for Red Deer-South); Frank Oberle, Minister of Sustainable Resource Development (MLA for Peace River); Raymond Prins, MLA for Lacombe-Ponoka; and Arno Doerksen, MLA for Strathmore Brooks. All MLAs are from the government side of the Legislature.

The [Alberta Surface Rights Group](#) (ASRG) greeted the announcement this way: “[Redford] has announced a Task Force to investigate the outrage landowners are feeling over the four land grab bills - 19, 24, 36 and 50.”

For those, like me, who can’t make the connection between a Bill number and a title here are the statutes that the ASRG is referring to:

- Bill 19 is the *Land Assembly Project Area Act* now SA 2009, c L-2.5, (already proposed for amendment in the current session of the legislature, see [Bill 23](#),
- Bill 24 is the *Carbon Capture and Storage Statutes Amendment Act (Alberta)*, SA 2010, c 14 (see earlier post [here](#)) (hereafter *CCS Act*)
- Bill 50 is the *Electric Statutes Amendment Act*, SA 2009, c 44 (I will refer to this as the transmission line legislation).
- And Bill 24 is the *Alberta Land Stewardship Act*, SA 2009, c A-26.8 (ALSA) already amended by SA 2011, c.9 (see earlier post [here](#)) (hereafter *ALSA*).

The ASRG goes on to say that “All of these four land grab bills violate the basic principles of common property law by expropriating your property without fair compensation or due process of law! Bill 24 is probably the worst... probably the most blatant property theft, by any government in the free world!”

The Premier’s press release promises consultations by way of open houses “in several communities,” meetings with stakeholders and a website to facilitate written responses. It will be interesting to watch this debate evolve, but in the meantime here are two thoughts on the process: (1) the framing of the problem to be addressed, and (2) the prerequisites for an informed debate.

Framing the problem

In agreeing to group these four statutes together and in agreeing to review these statutes as a “package” of legislation the Premier has accepted the characterization of this “package” as an attack on property rights.

This is a significant and unfortunate concession to a vocal group of rural landowners. The four statutes have different subject matters. While it is true that the *Land Assembly Project Area Act* and the Transmission Line legislation have something in common in terms of subject matter (utility rights of way), the subject matter of the *CCS Act* and *ALSA* are entirely different. The former is concerned with the mitigation of CO2 emission that lead to global warming; the latter is concerned with landscape level ecosystem protection in Alberta and the management of cumulative impacts.

An informed debate

If one really believes that it is important to assess whether these four bills are part of a package the purpose of which it to attack the property rights of rural Albertans, then it is important to reflect on what sort of process might be put in place to encourage an informed debate on these issues. The Premier has chosen to empanel a group of MLAs, some of whom are Ministers of the Crown, one of whom is a Law Officer of the Crown, and a number of whom are backbench MLAs. Most, if not all, represent rural ridings. There is no suggestion that the government will release discussion papers to facilitate the debate but here are some thoughts as to some “inputs” that might encourage an informed debate about the role of property in a democratic society:

1. How do other governments in common law and European countries protect landscape level ecological concerns? Are these measures more or less invasive of property rights than those proposed by *ALSA*? In what circumstance do these jurisdictions require payment of compensation and in what circumstances do these limitations on property rights remain uncompensated?
2. What do we mean by the term “property rights”? Do we think that the term “property rights” has some sort of “natural” meaning - a sort of pre-political meaning or a minimum content? Or do we believe that property is a social and contingent institution that must reflect the needs of society and community as well as the needs and interests of the particular owner? And whether the former or the latter what is the range of possible contents that we ascribe to the term “property”?
3. While property rights may be constitutionally protected in some countries (e.g. the United States) and in other countries protected by international human rights instruments (e.g.

European countries), how complete are those protections? None provide absolute protection and so we should understand the circumstances in which democratic governments may infringe upon the rights of property owners to achieve social and community goals and the circumstances under which they must pay compensation.

I fear that the task force that the Premier has established will not be able to lead an informed debate on these sorts of questions. I fear that the debate will quickly, very quickly, become filled with the libertarian rhetoric of “property rights in the free world.” And worst of all, I fear that *ALSA*, the most important environmental legislation introduced in this province in decades will become collateral damage. The review procedure established by the Premier needs to examine each of these legislative initiatives on an individual basis and in light of the goals and objectives of each of those statutes and the means chosen to achieve them.