

January 25, 2017

Legal Designation of the New Castle Wilderness Protected Areas

By: Shaun Fluker

Orders in Council Commented On:

[Order in Council 020/2017](#) (amendments to South Saskatchewan Regional Plan under Alberta Land Stewardship Act)

[Order in Council 021/2017](#) (amendments to Forest Provincial Recreation Areas Order)

[Order in Council 022/2017](#) (designation of the Castle Provincial Park under Provincial Parks Act)

[Order in Council 023/2017](#) (designation of the Castle Wildland Provincial Park under Provincial Parks Act)

[Order in Council 024/2017](#) (amendments to the Public Lands Administration Regulation)

On January 20, 2017 the Lieutenant Governor in Council issued 5 Orders in Council and thereby followed thru on Alberta's commitment announced back in September 2015 to legally protect the area in southwestern Alberta known as the Castle wilderness with a new wildland provincial park and a new provincial park. What remained to be seen back in September 2015 was what this legal protection would exactly amount to, and these Orders in Council provide us with the important details. At the time of the announcement back in September 2015 I provided some context for these new designations in [At Long Last - Legal Protection for the Castle Wilderness](#). Collectively these Orders in Council create the Castle Wildland Provincial Park and the Castle Provincial Park effective February 16, 2017, and implement consequential amendments to existing regulations to accommodate these new designations.

Orders in Council 022/2017 and 023/2017 designate the new Castle Provincial Park and Castle Wildland Provincial Park under section 6 of the *Provincial Parks Act*, [RSA 2000, c P-35](#). The wildland park designation offers stronger legal protection than a provincial park designation under the legislation, and it is thus noteworthy that the Castle Wildland Provincial Park is the larger of the two protected areas and encompasses all of the castle river watershed with the exception of lands for the existing castle ski resort. In comparison to what was proposed in the [2014 South Saskatchewan Regional Plan](#) (at pages 140-142), this is a vastly expanded version of the wildland park. The Castle Provincial Park encompasses much of the remaining public land in the Castle that is relatively more developed, and importantly replaces the Castle Special Management Area designation that the 2014 SSRP retained. The Castle Special Management Area was managed by a large swath of non-transparent discretionary power and affectionately known as a 'multiple-abuse' zone by conservationists. The demise of the Castle Special Management Area and its stakeholder committees is surely welcomed by the environmental community.

The relationship between the *Provincial Parks Act* and the *Alberta Land Stewardship Act*, [SA 2009, c A-26.8](#) effectively means the details on legal protection for these new Castle protected areas is found in the amendments to the [2017 South Saskatchewan Regional Plan](#) (2017 SSRP). These amendments are implemented by Order in Council 020/2017. To begin with, the amendments to the 2017 SSRP provide a much more conservation-orientated statement of intent for the Castle region. To illustrate this compare what the 2014 SSRP had to say about the proposed new Castle Wildland Provincial Park with what is now in the 2017 SSRP for both the wildland park and the Castle Provincial Park.

Order in Council 020/2017 strikes the following narrative from the 2014 SSRP:

Castle Area

With an approximate area of 170,000 hectares, the Castle area borders Waterton Lakes National Park and is located within the Crown of the Continent (the area of the Rocky Mountains where Alberta, British Columbia and Montana meet). This unique ecosystem is internationally recognized for its biodiversity and landscape form. Known for its scenic beauty and natural diversity, the Castle area includes mountains, foothills and prairie landscapes and is home to rare plant communities and wildlife. The headwaters of the Oldman River basin are located within the Castle area contributing one third of all water in the Oldman watershed and providing other benefits including natural mitigation of flooding and drought conditions.

With its numerous archeological, historical and First Nations traditional use sites, the Castle area also has cultural and historical significance for First Nations and all Albertans. These cultural and historic values and diversity of environmental settings provide the Castle area with many opportunities for land and water based recreation. Hunting and fishing are popular pursuits in the area as well as camping, hiking, off-highway vehicle use, horseback riding and cross-country skiing.

In recognition of the importance of this area, a wildland provincial park will be established. It will include lands in the prime protection zone under the Eastern Slopes Policy (1984) and will also extend into adjacent lower valley areas as shown (see Map 11). This will protect the integrity of this significant area's headwaters, biodiversity and landscapes through the use of a designation under legislation. It also secures an important connection between the Alberta provincial parks system to the north, the British Columbia parks system to the west and Waterton-Glacier International Peace Park to the south.

The Castle Wildland Provincial Park will be managed to provide low-impact backcountry recreation opportunities and nature-based tourism products and services. Recreational leases will be considered based on the management intent of conservation areas and existing recreational leases will be honoured (see Appendix L – SSRP Land Uses).

Additionally, the existing Castle Special Management Area that extends beyond the wildland provincial park remains in place. An access management plan for the Castle was developed and put in place in 1992. The purpose of the access management plan was to address and provide operational level direction for recreational use of on and off-highway vehicles in the Castle River area. The Castle Special Management Area was established in 1998 in order to better manage motorized access and to protect ecologically sensitive

backcountry areas from adverse effects. Permitted uses include off-highway vehicle and snow mobile use in certain locations and on designated trail systems. Random camping, hiking, horseback riding and cross-country skiing are also permitted uses in the area.

Order in Council 020/2017 replaces the above narrative with the following in the 2017 SSRP (at pages 142 and 143):

Castle area

With an approximate area of 170,000 hectares, the Castle area borders Waterton Lakes National Park and is located within the Crown of the Continent (the area of the Rocky Mountains where Alberta, British Columbia and Montana meet). This unique ecosystem is internationally recognized for its biodiversity and landscape form. Known for its scenic beauty and natural diversity, the Castle area includes mountains, foothills and prairie landscapes and is home to rare plant communities and wildlife. The headwaters of the Oldman River basin are located within the Castle area contributing one third of all water in the Oldman watershed and providing other benefits including natural mitigation of flooding and drought conditions.

With its numerous archeological, historical and First Nations traditional use sites, the Castle area also has cultural and historical significance for First Nations and all Albertans. These important cultural and historic values and diversity of environmental settings provide the Castle area with many opportunities for land and water based recreation. Hunting and fishing are popular pursuits in the area as well as camping, hiking, off-highway vehicle use, horseback riding and cross-country skiing.

In recognition of its importance, the Castle area is protected using a mix of Wildland Provincial Park and Provincial Park designations under the *Provincial Parks Act*. The existing public land lease area and private lands at the end of Highway 774 have not been included (see Schedule C: South Saskatchewan Regional Plan Map). Combined, this approach helps support conservation and connectivity of landscapes for species at risk such as wolverine, grizzly bear, limber pine and whitebark pine, and also includes important fish habitat for the westslope cutthroat trout and other fish species. It also ensures the integrity of this significant area's headwaters, protects and enhances biodiversity and landscapes for future generations and supports the continued practice of traditional activities by First Nations. Protection of the Castle area also supports continued opportunities for a diversified economy through outdoor recreation and tourism development. A Castle Region Tourism Strategy will be developed to provide recommendations on how government can develop a stronger and more dynamic tourism industry in the region. Protection of the Castle area also maintains landscape connectivity between the Alberta provincial parks system to the north, the British Columbia parks system to the west and Waterton-Glacier International Peace Park to the south.

The management intent for the Castle Wildland Provincial Park is conservation while providing low-impact backcountry outdoor recreation opportunities and nature-based tourism products and services. The management intent for the Castle Provincial Park is conservation while providing for appropriate nature-based tourism and outdoor recreation opportunities, which may include trail, staging area, campgrounds, and other tourism-based activities and infrastructure. Specific trail and infrastructure developments will be

determined through the parks management planning process and will support the outdoor recreation, conservation, nature-based tourism, and education mandates of the Parks system.

A park management plan will be developed to provide direction for both the Provincial Park and Wildland Provincial Park. The plan will contain information on environmental, social and economic values and provide clear and concise development and management direction for the parks. Once approved, the plan will guide management for the Castle Wildland Provincial Park and the Castle Provincial Park for ten years, unless significant policy or legislative changes requires an earlier review.

Both the Castle Provincial Park and the Castle Wildland Provincial Park will be managed for conservation. The land disturbance associated with petroleum and natural gas, mining, cultivated agriculture and commercial forestry operations are generally not considered compatible with the management intent of conservation areas. Existing grazing activities will continue. Existing petroleum and natural gas agreements will be honoured and new agreements will be sold with a 'no surface access' restriction – See Note 1 of Appendix M for more information. Freehold rights within the Castle Parks will be honoured.

The 2017 SSRP recognizes the Castle region is Alberta's most significant area for biodiversity and endangered species protection, and the first sentence of the last paragraph in this revised narrative says it all. The Castle protected areas *will be managed for conservation*. Alberta environmental groups have advocated relentlessly for decades to see these words written into government policy. This is backstopped with the *Provincial Parks (Dispositions) Regulation*, [Alta Reg 241/1977](#) which generally precludes dispositions for the exploration and development of subsurface mines and minerals in the Castle Wildland Provincial Park.

Curiously though, the amendments to the Regulation (Regulatory Details) included in the SSRP (at pages 161-206) implemented by Order in Council 020/2017 seem to fall short of expressly prohibiting forestry in the Castle Wildland Provincial Park and non-forestry resource dispositions in the Castle Provincial Park (see in particular sections 18, 19, 43, 43.1 of the 2017 SSRP as amended by Order in Council 020/2017). But then elsewhere, resource dispositions are noted as a prohibited activity in both protected areas (see Appendix M of the 2017 SSRP at page 195). I spent a fair amount of time trying to sort this out to no avail. This oversight in the Regulation (which is serious if it is one – since the only legally binding aspects of the SSRP are the provisions in the Regulation or 'Regulatory Details') seems odd and out of place with the policy intention here. Then again, an oversight is entirely possible given that the complexity of the legal steps needed to create these Castle protected areas borders on the ridiculous. This complexity is one of the reasons why I suggested in [At Long Last - Legal Protection for the Castle Wilderness](#) that Alberta should enact dedicated legislation to protect the Castle wilderness instead of incorporating this protection into what has to be one of the most convoluted and difficult to follow protected area legislative frameworks anywhere in the world.

Another significant policy shift for the Castle is the announcement that off-road vehicle use in these areas will be transitioned out over the next 3 years. The transition period for the phasing out of off-road vehicles is no doubt an attempt to somewhat appease the off-road vehicle users who will not be pleased with these new designations. However, off-road vehicle use has been documented as a significant threat the ecological integrity of the region and, more particularly, as a threat to the westslope cutthroat trout which is listed as a threatened species under the *Species*

at Risk Act, [SC 2002, c 29](#). The University of Calgary [Public Interest Law Clinic](#) filed legal proceedings in Federal Court back in September 2015 on behalf of local environmental groups seeking to have the federal Minister of Fisheries and Oceans issue the [critical habitat protection order](#) for the native populations of westslope cutthroat trout that remain in the Castle. These new protected areas include several locations of critical habitat for the trout which are now set out in the federal critical habitat order, including the west castle river, the south castle river and their tributaries. These new designations, along with the proposed [management plan](#), should significantly enhance legal protection for this species and other threatened species clinging to existence in the Castle region.

This post may be cited as: Shaun Fluker “Legal Designation of the New Castle Wilderness Protected Areas” (25 January, 2017), online: ABlawg, http://ablawg.ca/wp-content/uploads/2017/01/Blog_SF_Protection_for_Castle.pdf

To subscribe to ABlawg by email or RSS feed, please go to <http://ablawg.ca>
Follow us on Twitter [@ABlawg](#)