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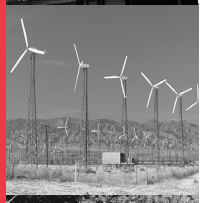
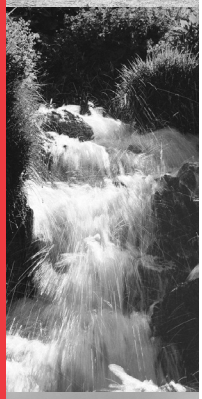
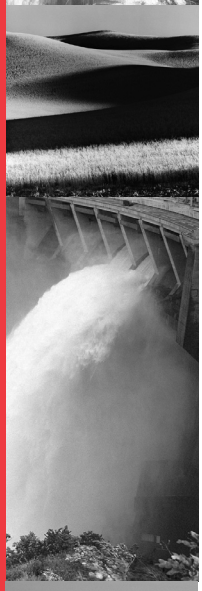

A SINGLE REGULATOR FOR OIL AND GAS DEVELOPMENT IN ALBERTA? A CRITICAL ASSESSMENT OF THE CURRENT PROPOSAL

Article by Nickie Vlavianos

Introduction

In May 2011, the Alberta government announced its intention to consider seriously moving in the direction of a single regulator for oil and gas development in the province.[1] The plan is to integrate, as far as energy projects are concerned, the mandates of the Energy Resources Conservation Board (ERCB), Alberta Environment (AENV), and Sustainable Resource Development (SRD). The ultimate goal to be achieved is a more efficient and competitive system through the creation of a more streamlined, consistent and less complex regulatory regime for project approvals and project monitoring.

There is no doubt that the current system, with three different decision-makers involved in various aspects of energy facility regulation, suffers from complexities, overlapping and unclear mandates, and possibly inconsistent or contradictory decision-making.[2] It is these, essentially process-like, reforms that the government's May 2011 report addresses. There are, however, a host of other issues and challenges with the current regulatory system which do not appear to be on the table in the current reform proposal. Given the current mood of regulatory reform, perhaps the government will see fit to include some of these as well, thereby dramatically enhancing Alberta's framework for energy development.

This article critically assesses the current proposal to move to a single oil and gas regulator in Alberta. It begins with some background, an outline of the proposal and then analyses its timing and key features. It concludes that the proposed procedural changes are laudable from the point of view of increasing efficiency and transparency, but it argues that there are several other key problems with the current system that should form part of the regulatory reform discussion. Rather than simply marrying (or divorcing) inadequate processes, the current reform initiative should also focus on making some key substantive changes to those processes.

Some Background

This is not the first time Alberta has considered merging all regulatory functions over energy projects into a single regulator. Almost ten years ago, a proposal for a single regulator received Cabinet approval in principle, but never moved forward.[3] From 2004 to the current 2011 proposal, there have been various attempts at regulatory reform. In 2004-2005, Alberta Energy completed a cross-Ministry review of the environment, energy and resource regulatory framework and approved a phased plan for adopting streamlined regulatory processes.[4] In 2005-2006, one of four reform projects undertaken by a cross-ministry project office was an upstream oil and gas regulatory review.[5] The review resulted in a report on an integrated policy and delivery approach and a plan for the preliminary design phase, the terms of reference for which were approved by the deputy ministers of SRD, AENV and Alberta Energy.[6] In 2008, the Alberta Energy and Utilities Board was divided into the ERCB (for energy projects) and the Alberta

Utilities Commission (for utility regulation), a move that was said to be necessary to enhance efficiency and transparency.[7] The government has thus been trying to address some of the problems with the current regulatory system for some time now.

What exactly are those problems? To date, the initiatives have focused on streamlining the energy regulation process and making it more efficient. Streamlining is thought to be necessary to address problems of overlapping, confusing and inconsistent mandates and processes amongst the three key regulators over energy development, the ERCB, AENV and SRD. While the ERCB is an energy-specific regulator (and undoubtedly the main energy regulator), AENV and SRD have broad (energy and non-energy related) responsibilities over Alberta's environment (e.g., air, water, land, waste) and Alberta's public lands. The broad mandates of AENV and SRD thus often overlap with ERCB responsibilities and functions in the context of energy projects. As noted by Nigel Bankes, there are "undoubtedly some awkward divisions of responsibility that currently exist as between the ERCB, Environment and SRD."[8] As examples he cites the division of responsibility between well (and facility) abandonment and surface reclamation, the conduct of environmental assessments for major energy projects, the responsibility for protecting potable groundwater, and the regulation and monitoring of air emissions from natural gas processing plants.[9] While the overlapping mandates are likely the result of historical accident, significant checks and balances have seemingly become inherent in a system with more than one decision-maker.[10]

Criticisms of the existing three-regulator system include that it is marked by complexity, inconsistent processes, and unnecessary and costly duplicative decision-making.[11] Not surprisingly, the oil and gas industry has been the most vocal critic. But the criticisms do not resonate only with industry. From a public involvement perspective, a complex and unclear system, especially in regard to agency mandates, is extremely difficult to navigate and tends to result in a lack of transparency.[12] Thus, non-industry stakeholders have, along with industry, asked for clarity and for streamlining.[13] At the same time, these stakeholders have been mindful of the risks associated with placing all regulatory decision-making in the hands of a single all-powerful regulator.[14]

The Current Proposal

As noted, the *Discussion Document* was published in May 2011. It describes a "new vision" for energy regulation in the province. In a covering letter by then Premier Ed Stelmach, Albertans are urged to read the report and "envision a regulator that will meet the needs of a new century". Despite the language, however, it is clear from the discussion above that this proposal is not all that "new".

On the back cover, a disclaimer is printed. It states that the *Discussion Document* is for discussion purposes only and that it does not represent government policy. It goes on to say that the government has not yet made any decision with respect to its subject matter. Still, the covering letter by then Premier Stelmach supporting the proposal and the language used throughout the report (especially the repetitive headings of "Where We Are Headed") make it hard to believe that the government has not already decided to move in this direction. Perhaps the details are yet to be finalized, but the general decision to go there appears to be settled. Indeed, in February 2012, Premier Alison Redford announced that legislation for the single energy regulator could be expected in the fall.[15] Subsequently, in March 2012, she told Albertans that we would have a single oil and gas regulator by June 2013.[16] Finally, and most recently, in a letter to her Cabinet in June 2012, she listed "the development of a single regulator for oil and gas" as a priority initiative for her government.[17]

To move to a single regulator, the *Discussion Document* begins by drawing a clear distinction between the making of energy policy and the delivery of that policy, a distinction that is carried through the report. The proposed system will thus have two distinct components: policy development and policy delivery (or, as the report awkwardly refers to it, policy "assurance"). Policy development will continue to be undertaken by the Alberta government, including SRD and AENV, and will encompass policies in the areas of air, water and land management, including conservation, extraction, processing and the transportation of resources.

The second component of the proposed system will be policy delivery. The report envisions policy delivery (or assurance) being performed by a single regulator with responsibility for all upstream

oil, natural gas, oil sands and coal activities. Coal has been included, the report says, because the "technologies and approaches used for coal extraction (mining and *in situ*) are similar to those used for oil, gas and oil sands extraction."[18] The regulatory functions of the single regulator over these activities will cover the entire lifecycle of projects. They will include project review and authorization, compliance monitoring, enforcement, facilities abandonment and site reclamation. Resource conservation, processing and transportation issues will also fall to the new regulator.[19]

To create a successful, effective, and accountable single regulator system, the report contemplates the establishment of the following: a policy management office (to provide an interface between policy development and policy assurance); public engagement processes (which, according to the report, will be reviewed for both the policy and delivery components of the system); goal-setting and performance measurement systems for both components; and a common risk assessment framework (to allow for innovation, to accommodate the on-going development of processes, and to facilitate the selection of the most appropriate tools for managing social, economic and environmental risks).[20]

From a legal and practical point of view, the move to a single regulator for energy development in the province will mean significant changes to the current regulatory framework. As noted, there are currently three key decision-makers involved in upstream oil and gas development. Briefly, Alberta Sustainable Resource Development (SRD) grants surface leases to companies to develop oil and gas rights on public lands and regulates reclamation on those lands. The Energy Resources Conservation Board (ERCB) grants the key licences and approvals for oil and gas facilities as well as regulates most aspects of those facilities. Alberta Environment (AENV) grants licences and approvals in regard to air and water impacts relating to energy facilities, conducts environmental impact assessments for some facilities, and regulates reclamation over private lands in the province.

The *Discussion Document* envisions a single regulator taking on AENV's current responsibilities for inspections, compliance, reclamation, remediation, and the issuing of licences and authorizations under Alberta's *Water Act* (RSA 2000, c W-3) and *Environmental Protection and Enhancement Act* (EPEA, RSA 2000, c E-12). SRD will no longer be responsible for public lands dispositions, geophysical authorizations, rights of entry, reclamation and remediation on public lands. The ERCB will transfer over responsibility for well licence authorizations, subsurface scheme approvals, oil sands and facility authorizations, the energy project application process, adjudication as well as its public hearing process. Although the report specifically states that the new regulator will "not simply be an expanded ERCB",[21] the fact that most of the proposed characteristics of the new regulator bear a striking resemblance to the ERCB suggest that many of its features will likely be carried over.[22]

To allow for the move, significant amendments to several statutes will be required. These include the *Alberta Land Stewardship Act*, *Coal Conservation Act, Energy Resources Conservation Act* (*ERCA*), *EPEA*, *Oil and Gas Conservation Act* (*OGCA*), *Oil Sands Conservation Act*, *Pipeline Act*, *Public Lands Act*, and *Water Act*. An array of regulations, directives, guidelines and codes of practice will also require amendment.

Why a New Regulator Now?

Nigel Bankes has questioned the timing of this proposed regulatory change. In his view:

> "[i]t is not that long ago that we married the ERCB to the utility board/commission (the AEUB) and then divorced them a few years later — what did we learn from that experiment that might be useful here? Here we are proposing to marry independent regulators and line departments. But I suggest caution here principally because I think that it is important that we work through the implementation of the first two regional plans under the *Alberta Land Stewardship Act,* SA 2009, c A-26.8 before we make further legislative changes."[23]

Undoubtedly there ought to be strong and defensible reasons for proposing such significant changes to the existing regulatory regime. Legislative debates in 2010 reveal that that the impetus for the initial review that culminated in the *Discussion Document*

was "about one thing only, and that [was] … about jobs for Albertans."[24] That initial review was the 2010 Competitiveness Review of upstream natural gas and conventional oil development which had been initiated at a time of declining investment in Alberta (manifested particularly strongly in Alberta's decreasing "land" sales, i.e., sales of Crown-owned oil and gas rights).[25] At the time, the Fraser Institute's 2009 Global Petroleum Survey said that resource developers perceived Alberta as having one of the least attractive regulatory regimes in North America.

The Competitiveness Review recommended redesigning the regulatory regime to address several identified weaknesses, most of which were mentioned above. As described in the Competitive Review, these were: unduly complex and uncoordinated processes; duplicative and overly-frequent reporting requirements; delays; inconsistency in feedback, information and application requirements; reliance on prescriptive rules to the detriment of responsiveness to technological innovation; and a need to ensure consistency with evolving environmental protection and public safety policies.[26] A task force, the Regulatory Enhancement Project (REP) Task Force, was struck to study and make proposals for a regulatory makeover.

The REP Task Force conducted "engagement" sessions with invited representatives from First Nations, landowners, municipal governments, environmental organizations, the upstream oil and gas industry and other interest groups. Several "opportunities" for improvement emerged as follows: simplify the system; enhance policy clarity; improve public engagement; enhance accountability; improve knowledge and information sharing; ensure risk is assessed and managed; and set clear expectations.[27] In its final report, the REP Task Force identified the establishment of a single regulator as a key part of a strategy to address weaknesses and opportunities.[28]

The original and primary rationale for this particular proposal was thus economic (i.e., increasing competitiveness to increase investment to increase jobs). One may wonder, then, whether the initial rationale still holds any water in 2012. Ironically, even by the time the *Discussion Document* was published in May 2011, Alberta's economic situation was on the upswing, especially with respect to sales of oil and gas rights. In his covering letter to the *Discussion Document*, then Premier Stelmach acknowledged that:

> "Alberta broke a record in mineral rights sales last year – over two billion dollars. Industry is again competing for skilled labour to run once idle drilling rigs. That's how quickly it's turning."

Nonetheless, the single regulator proposal was on the table.

This is likely because, as noted, the concerns about the system's complexity, inefficiency and lack of competitiveness are long-standing in nature. The specific impetus for this latest iteration of regulatory streamlining may have been a sudden economic downturn in Alberta, but the problems and criticisms existed long before that. Although the timing may not be perfect (especially, as Bankes points out, because of the pending—hopefully—implementation of regional land use plans in the province), but the ball has been rolled and perhaps this is as good a time as any to deal with these long-standing problems that have plagued the current regulatory system. Moreover, rather than simply making procedural fixes, this may present an important opportunity to enhance the system and improve its substance in various ways.[29]

The Goal of Integration

The bulk of the *Discussion Document* is focused not on substantive changes, but on the marriage of existing processes. What is envisioned is the "integration" of three existing mandates and processes into one. The report emphasizes that "regulatory functions currently delivered by AENV, SRD and the ERCB will remain largely unchanged, but will be integrated."[30]

Integration of the mandates and processes of three distinct decision-making bodies, the ERCB, AENV and SRD, will not be easy, nor can it "happen overnight".[31] Moreover, despite the vision, it is likely impossible to simply merge all the mandates and processes into one coherent whole. Where there are overlapping mandates and processes, ultimately one will have to be chosen (and a divorce of sorts will have to occur). For example, how will the separate and distinct environmental assessment process currently carried out for certain large energy facilities remain "largely unchanged" once it is integrated with the existing ERCB environmental review process? To avoid two environmental reviews from occurring, which is clearly

the whole point of this exercise, one process will have to be chosen over the other. So in some cases there will be a divorce and a takeover of one process by another rather than a marriage or integration.

To cite but one more example, Nigel Bankes has rightly asked what will happen to the current appeal mechanism to the Alberta Environmental Appeals Board from AENV air and water licences and approvals and reclamation decisions in the context of energy projects?[32] Will it give way to the more restrictive (and likely more expensive and cumbersome) approach of allowing for appeals on questions of law and jurisdiction to the Alberta Court of Appeal with leave? As currently drafted, the report suggests that is indeed where we are heading. It specifically states that a "right of appeal to the courts will exist on matters of law and jurisdiction" from decisions made by the single regulator.[33]

Thus, there is a real risk that "integration" and "coordination" will simply mean the disappearance of one process altogether, along with the concomitant loss of any benefits of that prior process. Although the report repeatedly tries to dispel this fear by stating that "attention will be paid to identifying and incorporating best practices used by the current [three] regulators",[34] it is clear that the current ERCB framework is the starting (if not the end) point for the discussion. For example, as noted, the report talks about appeals from decisions of the single regulator going to the courts. It also says the single regulator will follow the same schemes for funding and appointment of Board members as the ERCB, and that public hearings before it will be restricted to parties that are "directly and adversely affected" by a proposed project. Further, with respect to the legislative purposes that will guide the new regulator, the report lists a compilation of purposes found in the ERCB's key statutes, the *ERCA* and the *OGCA*. There is no mention of the purposes (like sustainable development) from Alberta's *EPEA*, a key statute empowering AENV.[35]

This seemingly blind adherence to ERCB mandates and processes is surprising, especially because of the statement noted above that that the single regulator "will not simply be an expanded ERCB" and the further statement that "… the integration of regulatory responsibilities presents an opportunity to enhance energy sector regulation based on the REP principles of effectiveness, efficiency, adaptability, predictability, fairness, and transparency."[36] As discussed below, the blind adherence to the existing ERCB framework fails to consider the many criticisms of that framework.

Improving the System in Substance

There appears to be only one critical substantive enhancement mentioned in the *Discussion Document*. Still, it is a big one. The report states that the creation of a single energy regulator will have the effect of achieving Alberta's long-standing goal of cumulative effects management. While the original rationale may have been an economic one, the *Discussion Document* emphasizes that the proposed move to a single regulator is inextricably bound to social, environmental and public safety issues. The report repeatedly states that provincial environmental standards will not be reduced or diluted, neither will expectations for industry in regard to public safety, resource conservation and the protection of landowner rights.[37] Instead, along with increasing competitiveness, the move will in fact enhance and improve the system's ability to achieve policy outcomes. In particular, the report talks about the new regulator playing a key role in "shifting to a "cumulative effects" approach"[38] to manage land and energy resources, an approach long advocated by commentators as critical to effective resources management and environmental protection.[39] The report states further that cumulative effects management:

> "… recognizes that each activity on the landscape — including energy activities — has incremental impacts on Alberta's air, water, land and biodiversity. Through regional planning, as well as other initiatives, Alberta is moving towards managing the cumulative effects of all development on the air, water and landscape. This requires a step-change in our regulatory approach. The single regulator will play an important role in effecting this change."[40]

The report strongly implies that cumulative effects management has not been possible with the current divisions of responsibilities amongst the ERCB, SRD and AENV with respect to oil and gas projects. According to the report, an integrated regulator for energy projects will ensure that its decisions, although independent ones, will take into account regional

objectives and plans and support AENV and SRD's promotion of sustainable resources management for the province. If it is true that a single regulator is indeed required to finally bring cumulative effects management to Alberta, it is very difficult to argue against this proposal.

Nonetheless, this talk of moving towards cumulative effects management and ensuring coordination of decision-making raises the question of why there is not at least some discussion of the disparate process for the disposition of oil and gas rights in the province vis-à-vis the new regulator. The *Discussion Document* is clear that the single regulator's focus will be project approvals and monitoring and that "[t]he single regulator will not assume responsibility for mineral tenure, which will remain the responsibility of the Department of Energy."[41] Several commentators have noted that the disposition of Crown-owned oil and gas rights by Alberta Energy (through a process that focuses primarily on price) is a critical first-step in setting the course of energy development in the province. The disposition of the rights to explore and drill sets in motion processes that ultimately determine the intensity, location and type of development in the province.[42] Once sold, legally-enforceable property rights have been created which often serve to tip the balance when it comes to project approval decisions.[43] Indeed, when considering the need for a well or facility, the ERCB assumes that need based on the fact that property rights have been granted. It has thus been suggested that the real decision as to whether or not oil and gas development is in the public interest occurs not at the project approval stage, but rather when the government decides to dispose of the rights.[44] For all of these reasons, it is unfortunate that there is no discussion at all in the *Discussion Document* about the rights disposition process in relation to the project approval process. This could be an opportune time to consider how the separate processes could be coordinated, thereby ensuring that at least one hand is not predetermining what the other hand does.[45]

There are a myriad of other substantive issues that are not raised in any way by the *Discussion Document.* Along with the efficiency-based criticisms of lack of coordination, undue complexity, and overlapping mandates, there have been many criticisms of the current oil and gas regulatory process in Alberta on the basis of fairness, transparency and accountability. Most of these have been leveled against the ERCB.

A long-standing charge is that the ERCB is a captive regulator. In other words, it is biased towards making decisions in favor of the industry it regulates, and thus is not able to make decisions that are truly in the public interests of all Albertans. This bias is said to be institutional and arises from several factors including the Board's history, composition, nature, and mandate.[46] As evidence of a built-in bias, commentators often cite the Board's mandate of providing for the "economic, orderly and efficient development" of the province's oil and gas resources as well as the fact that it is funded by the oil and gas industry and receives most of its appointed members from that industry.[47] In response, there have been periodic calls for ERCB reform — perhaps the need for an elected Board, mandatory representation from certain constituencies, and/or a change in purposes and mandate.[48]

There have also been calls for better guidance for ERCB decision-making. Commentators have noted the inherent vagueness and elusiveness of the "public interest" test which currently guides ERCB decision-making. Other than requiring a consideration of "economic, social and environmental effects" of a project, it is said that the existing public interest test does not provide the ERCB with sufficient detailed guidance for making appropriate, fair and balanced decisions. Moreover, it has been suggested that since the vast majority of applications proceed by way of a routine application process (and are not subject to scrutiny via a hearing), the public interest is essentially met whenever an application meets the Board's technical requirements.[49]

Public participation in energy development decision-making in Alberta has been another long-standing and contentious topic. The last four decades have witnessed Albertans, like others worldwide, demanding increasing involvement in natural resources and environmental decision-making processes. Scholarly literature in the area reveals several reasons for why public participation is critical in this context. These include arguments that public participation:

- allows for broader information and knowledge

gathering and therefore results in better (more accurate, more appropriate) decisions for resources management and environmental protection;
- allows for broader interests to be part of the decision-making process thereby ensuring less biased decision-making;
- legitimizes decisions and generates "buy in" by increasing government accountability and transparency of decision-making processes;
- is a means of conflict avoidance and conflict management thereby reducing future transaction costs;
- is required and justified in order to make appropriate decisions in the public interest; and
- is required and justified because natural resources are primarily owned by the public as are the public goods affected by development (i.e., air, water, environment).[50]

Indeed, the representative stakeholders consulted leading up to the *Discussion Document* identified public engagement as a key issue to be addressed in the establishment of the new regulator. Participants said it was important to have discussions, leading to tangible results, at the policy development stage, but they also wanted a more transparent and fair process for addressing private interest matters related to specific project applications.[51] Such views are consistent with the views of many commentators and Albertans generally.[52]

Nonetheless, although public participation is often touted as a central feature of energy development in Alberta, there is considerable evidence of frustration and dissatisfaction. These include concerns that:[53]

- there is currently no legislated requirement for public consultation with respect to the setting of energy and natural resources policy;
- the *ad hoc* processes sometimes adopted by the government for the setting of energy and natural resources policy often lack clear rules in regard to process, the nature of public involvement and the effect of outputs;
- the newly-legislated requirement for public participation in the making of regional land-use plans for the province lacks details on the nature and type of participation required, and the effect of that participation on the creation and implementation of the land-use plans;[54]
- there is no structured funding available for involvement in policy consultation processes to allow for meaningful and informed participation;[55]
- there is currently no public consultation (not even of surface landowners in the case of private lands) when Crown-owned oil and gas rights are sold to the highest bidder;[56]
- the stakeholder consultation carried out by project proponents suffers from several inadequacies; besides, by any account, it is not meaningful participation in *governmental* decision-making;
- the standing test of "directly and adversely affected" to trigger a hearing before the ERCB (along with the "directly affected" language for participation under the *EPEA*) and the way these have been narrowly interpreted unduly restrict participatory rights to a narrow group of Albertans (surface landowners and other property owners in close proximity to a proposed project); this represents an "inadequate vision of a decision-making process that is designed to protect the broader public interest";[57]
- the restricted interpretation of directly and adversely affected parties means that there is often no one able to trigger a hearing for projects on public lands;[58]
- the costs provisions for participating at ERCB hearings are even narrower than the standing provision, requiring that a property interest (in land) be directly and adversely affected by the proposed project; and
- the lack of opportunities for participating in the setting of policy leads stakeholders to try to debate policy in the only forum they have, the project approval hearing, which should more properly focus on technical issues and not questions of broad policy.

Since the *Discussion Document* suggests that the move to the new regulator is an opportune time to "enhance energy sector regulation" based on principles including "fairness and transparency", one would have thought that at least some of these issues would form part of the discussion. Instead, the report largely envisions maintaining the status quo as far as public participation is concerned (including retaining the existing statutory tests for standing and intervener costs).

But all may not be entirely gloomy. There is at least one glimmer of hope in the *Discussion Document.* More than once the *Discussion Document* mentions the goal of allowing for enhanced public engagement at the policy development stage. It goes as far as saying that the government is currently "reviewing public engagement processes for resources management policy development, with a view to continuing and enhancing current processes."[59] Enhancing current policy development processes would be a welcome development. Hopefully this will mean some type of legislatively-mandated processes which engage a broad range of representative interests and have clear process rules, funding opportunities and clear direction on the effect of the outputs from the process.[60]

Conclusion

The proposed move to a single regulator for energy projects in Alberta is poised to provide at least some relief from unclear and overlapping jurisdictions, duplicative processes and complexities inherent in having three decision-makers rather than one. Consequently, there are bound to be some improvements in terms of efficiency and transparency of the approval process. Still, a regulatory overhaul of this nature would seem to be an opportune time to truly enhance and improve the existing system as opposed to simply streamlining (and likely eliminating some) processes. There are many critical issues and challenges facing the existing regulatory system that will simply be carried forward to the new regulator under this current proposal. Rather than simply shifting the frustrations and concerns to a new — albeit single — regulator, perhaps it is time to consider fixing them instead.

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Notes

1. Government of Alberta, *Enhancing Assurance: Developing an integrated energy resources regulator, A Discussion Document*, May 2011 [*Discussion Document*].
2. *Ibid*. See also Nickie Vlavianos, *The Legislative and Regulatory Framework for Oil Sands Development in Alberta: A Detailed Review and Analysis*, Occasional Paper #21 (Calgary: Canadian Institute of Resources Law, 2007).
3. This was likely due to opposition from the environmental community: see Mark Lowey, "Industry backs single regulator, but critics fear environment at risk" (25 November 2004) 4:42 Business Edge 1.
4. Alberta Ministry of Energy, *2004-2005 Annual Report* at 14.
5. Alberta Ministry of Energy, *2005-2006 Annual Report* at 16.
6. Alberta Ministry of Energy, *2006-2007 Annual Report* at 14.
7. Cecilia A Low, *Energy and Utility Regulation in Alberta: Like Oil and Water?*, Occasional Paper #25 (Calgary: Canadian Institute of Resources Law, 2009) at 32-33.
8. Nigel Bankes, "A single window for the permitting of energy projects in Alberta: who will look after the chickens?" (16 May 2001), online: <http://ablawg.ca/2011/05/16/a-single-window-for-the-permitting-of-energy-projects-in-alberta-who-will-look-out-for-the-chickens/>.
9. *Ibid*.
10. Bankes, *supra* note 8 and Lowey, *supra* note 3.
11. See *Discussion Document*, *supra* note 1 and Vlavianos, *supra* note 2.
12. Vlavianos, *ibid*.
13. See, for example, Vlavianos, *ibid* and Government of Alberta & Sierra Systems, *Regulatory Enhancement Project: Stakeholder and First Nations Engagement Summary* (December 2010) at 4-6 [Stakeholder Report].
14. Lowey, *supra* note 3.
15. Darcy Henton, "Province Plans Single Regulator", *Calgary Herald* (25 February 2012).
16. Jeff Lewis, "Alberta to get single oil and gas regulator by June 2013", *Alberta Oil Magazine* (22 March 2012).
17. See online: <http://alberta.ca/mandate.cfm>. Nonetheless, as of the date of writing, no further documents (including proposed legislative amendments) appear to have been made publicly-available.
18. *Discussion Document*, *supra* note 1 at 8. In the future, the report notes that minerals extraction will also likely be brought within the scope of the single regulator: *ibid*.
19. *Ibid*.
20. *Ibid*.
21. *Ibid* at 6.
22. For example, as discussed further below, the *Discussion Document* states that the proposed single regulator will: most likely have the same purposes that the ERCB has in current legislation (including that of

ensuring the orderly, efficient and economic development of energy and coal resources); be established as a corporation, arm's-length from government; have a Board whose members are appointed by Cabinet; and be funded using the current approach for ERCB funding: see *Discussion Document*, *supra* note 1.

23. Bankes, *supra* note 8.
24. Minister of Energy Ron Liepert, *Alberta Hansard*, 27th Legislature, 3rd Session (9 February 2010) at 443.
25. Government of Alberta, *Energizing Investment: A Framework to Improve Alberta's Natural Gas and Conventional Oil Competitiveness* (11 March 2010).
26. *Ibid* at 17-18.
27. *Stakeholder Report*, *supra* note 13.
28. *Enhancing Assurance: Report and Recommendations of the Regulatory Enhancement Task Force to the Minister of Energy* (December 2010) at 14 [*REP Report*].
29. Besides, a cynic might add, Alberta already has a de facto single regulator system, with SRD and AENV playing minor roles vis-à-vis the ERCB. On this view, the proposed legislative changes will simply codify what already exists in practice and make it more transparent. See, for example, Nickie Vlavianos, "The Issues and Challenges with Public Participation in Energy and Natural Resources Development in Alberta" (2010) 108 Resources 1.
30. *Discussion Document*, *supra* note 1 at 12.
31. *Discussion Document*, *ibid* at 6.
32. Bankes, *supra* note 8.
33. *Discussion Document*, *supra* note 1 at 19.
34. *Ibid* at 6.
35. There is some suggestion, however, that the listed purposes will be up for discussion. The report notes that an "issue to be examined" is "whether the purpose section of the legislation enabling the single regulator should be a combination of existing clauses in legislation today (…) or be adjusted in the future.": *Discussion Document*, *ibid* at 11.
36. *Ibid* at 6.
37. The possibility of weaker environmental standards was a key criticism of prior single regulator proposals: see Lowey, *supra* note 3.
38. *Discussion Document*, *supra* note 1 at 6.
39. See for example: Steven Kennett, *Closing the Performance Gap: The Challenge for Cumulative Effects Management in Alberta's Athabasca Oil Sands Region*, Occasional Paper #18 (Calgary: Canadian Institute of Resources Law, 2007); and Steven Kennett, *Towards a New Paradigm for Cumulative Effects Management*, Occasional Paper #8 (Calgary: Canadian Institute of Resources Law, 1999).
40. *Discussion Document*, *supra* note 1 at 6. Sadly, this language of "moving towards" and "shifting to" in the *Discussion Document* suggests that cumulative effects management is not a current feature of the energy policy and regulatory regime in Alberta.
41. *Ibid* at 9.
42. See, for example: Steven Kennett & Michael Wenig, "Alberta's Oil and Gas Boom Fuels Land-Use Conflicts – But Should the EUB be Taking the Heat?" (2005) 91 Resources 1; and Nickie Vlavianos, "Public Participation in the Disposition of Oil and Gas Rights in Alberta (2007) 17 JELP 2005.
43. Kennett & Wenig, *ibid* at 5-6.
44. See Kennett & Wenig, *ibid*, and Vlavianos, *supra* note 29.
45. It may be that some of the concerns about the separation of the rights disposition decision-making process from project approvals may be alleviated by the implementation of regional land-use plans. This remains to be seen.
46. See, for example, Vlavianos, *supra* note 29 and the commentaries reviewed in Vlavianos, *supra* note 2.
47. *Ibid* and Kennett & Wenig, *supra* note 42.
48. Distrust of the ERCB may in fact be the root cause for why environmentalists worry that the single regulator model will remove the "checks and balances" afforded by multiple decision-makers. See, for example, Lowey, *supra* note 3 and Bankes, *supra* note 8.
49. See Jodie L Hierlmeier, " 'The Public Interest': Can it Provide Guidance for the ERCB and NRCB?" (2008) 18 JELP 279 and Vlavianos, *supra* notes 2 and 29.
50. The vast literature on rationale for public participation includes Barry Barton, "Underlying Concepts and Theoretical Issues in Public Participation in Resources Development" in Donald M Zillman, Alastair R Lucas, & George (Rock) Pring, eds, *Human Rights in Natural Resources Development: Public Participation in Sustainable Development of Mining and Energy Resources* (Oxford: Oxford University Press, 2002) and Benjamin J Richardson & Jona Razzaque, "Public Participation in Environmental Decision-making" in Benjamin J Richardson & Stepan Wood, eds, *Environmental Law for Sustainability: A Reader* (Portland: Hart Publishing, 2006).
51. *Stakeholder Report*, *supra* note 13.
52. See Vlavianos, *supra* note 29.
53. These are all set out in more detail in Vlavianos, *supra* notes 29 and 2.
54. Monique Passelac-Ross, "Public Participation in Alberta's Land-Use Planning Process" (2011) 112 Resources 1.
55. On the importance of funding for ensuring effective public participation, see Raj Anand & Ian G Scott, "Financing Public Participation in Environmental Decision Making" (1982) 60 Can Bar Rev 81.
56. Vlavianos, *supra* note 42.
57. Bankes, *supra* note 8 . See also Shaun Fluker, "Public Participation at the Alberta Energy Resources Conservation Board" (2011) 111 Resources 1.
58. Fluker, *ibid*.
59. *Discussion Document*, *supra* note 1 at 4.
60. For criteria on what constitutes effective and meaningful public consultation in policy development, see: Alice Woolley, "Legitimating Public Policy", Alberta Energy Futures Project Paper #3 (Calgary: Institute for Sustainable Energy, Environment and Economy, 2006); and Rebeca Macias, *Public Participation in Energy and Natural Resources Development: A Theory and Criteria for Evaluation*, Occasional Paper #34 (Calgary: Canadian Institute of Resources Law, 2010).

THE INSTITUTE WELCOMES A NEW EXECUTIVE DIRECTOR

Effective July 1, 2012, Professor Allan Ingelson became the Executive Director of the Canadian Institute of Resources Law

He is an associate professor in the Faculty of Law and has served as the Director of the Haskayne Energy Management program and on the Canadian Association of Petroleum Landmen (CAPL) Education Advisory Committee. He holds a LL.M. from the University of Denver; J.D. and B.Sc. from the University of Calgary, and a B.A. from the University of Alberta. He was admitted to the Law Society of Alberta in 1991, and he holds memberships in the Canadian Bar Association, the Law Society of Alberta, and the Canadian Association of Law Teachers. He has published articles in energy and natural resources law journals including the Journal of Energy and Natural Resources Law, Journal of World Energy Law and Business, Energy Law Journal, Natural Resources Journal, Global Business and Development Law Journal, Journal of Natural Resources and Environmental Law, Law, Environment and Development Journal, Rocky Mountain Mineral Law Foundation Journal, Alberta Law Review, Canadian Petroleum Tax Journal and the Water Law Review. His main areas of research are oil and gas law, renewable energy, mining law and environmental impact assessment. He is the recipient of several teaching excellence awards.

J. Owen Saunders

Effective June 30th, Owen Saunders retired as the Executive Director of the Canadian Institute of Resources Law. He has been at the Institute since 1980 and held the position as Executive Director since July 1989. Mr. Saunders will continue to hold an appointment as an Adjunct Professor in the Faculty of Law at the University of Calgary and will maintain an office in the Institute.

Monique Passelac-Ross

Effective June 30th, Monique Passelac-Ross retired as Research Associate at the Canadian Institute of Resources Law. She has been at the Institute since 1989.

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The Canadian Institute of Resources Law was incorporated in September 1979 to undertake and promote research, education and publication on the law relating to Canada's renewable and non-renewable natural resources.

The Institute was incorporated on the basis of a proposal prepared by a study team convened by the Faculty of Law at the University of Calgary. The Institute works in close association with the Faculty of Law. It is managed by its own Board of Directors and has a separate affiliation agreement with the University of Calgary.

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