

Provincial Agricultural Service Board Committee

Report Card on the Resolutions

2015

Introduction

The Agricultural Service Board (ASB) Provincial Committee is pleased to provide ASB members and staff with the Report Card on Government and Non-Government Responses to the 2015 Provincial ASB Resolutions. This document includes the Whereas and Therefore Be It Resolved sections from each of the resolutions passed at the 2015 Provincial ASB Conference, the associated responses and the grade for each response as assigned by the Committee. Comments from the Committee are included with the grade assigned.

There are four response grades that can be assigned to a resolution response: Accept the Response; Accept in Principle, Incomplete and Unsatisfactory. The grade assigned relates to the quality of the response to the resolution. A definition of what each grade means is included as part of the Report Card. This report also summarizes actions undertaken by the Provincial ASB Committee and provides updates associated with resolution issues.

Please note that the grades assigned by the Committee are intended to provide further direction on future activities or follow up with respondents. If you would like to comment on the assigned grade or follow up activities, please contact your Provincial ASB Committee Representative.

The ASB Provincial Committee consists of five regional representatives, a representative from the Alberta Association of Agricultural Fieldman (AAAF) as secretary, a representative from the Alberta Association of Municipal Districts and Counties (AAMD&C), the ASB Program Manager and ASB Program Coordinator (recording secretary) from Alberta Agriculture and Forestry (AF). The members for 2015 were:

Regional Representatives	Alternate
Patrick Gordeyko, Chair, Northeast Region	Ron Bobocel
Lloyd Giebelhaus, Vice-Chair, Northwest Region	Dale Kluin
Steve Wikkerink, South Region	Garry Lentz
Jim Duncan, Central Region	Phillip Massier
Corey Beck, Peace Region	Doug Dallyn
Other Representatives	
Soren Odegard, AAMD&C	
Trent Keller, Secretary/1 st VP, AAAF	
Doug Macaulay, Acting Manager, ASB Program, ARD	
Pam Retzloff, ASB Program Coordinator, Recording Secretary	

Definition of Terms

The Provincial Agricultural Service Board (ASB) Committee has chosen four indicators with which to grade resolution responses offered by government and non-government organizations.

Accept the Response

A response that has been accepted is one that addresses the resolution as presented or meets the expectations of the Provincial ASB Committee.

Accept in Principle

A response that has been accepted in principle is one that addresses the resolution in part or contains information, which indicates further action is being considered.

Incomplete

A response that is graded as incomplete is one that has not provided enough information or does not completely address the resolution. Follow up is required to solicit the information required for the Provincial ASB Committee to make an informed decision on how to proceed.

Unsatisfactory

A response that is graded as unsatisfactory is one that does not address the resolution as presented or does not meet the expectations of the Provincial ASB Committee.

Executive Summary

Grading given by the Provincial ASB Committee to Government and Non-Government Organizations response to resolutions passed at the 2015 Provincial ASB Conference.

Resolution Number	Title	Status	Page
1-15	Adapt Crop Insurance to Protect Clubroot Tolerant Varieties	Unsatisfactory	6
2-15	Pest Control Act - Clubroot	Accept in Principle	9
3-15	Standardized Clubroot Inspection Procedure	Accept in Principle	11
4-15	Additional Funding for Municipalities dealing with Prohibited Noxious Weeds that come from outside the Province of Alberta	Accept in Principle	13
5-15	Maintaining Canada Thistle (<i>Cirsium arvense</i>) as a Noxious Weed under the <i>Alberta Weed Control Act and Regulation</i>	Accept in Principle	15
6-15	Legal opinion on the jurisdiction of the <i>Weed Control Act</i> on CN Rail	Accept the Response	17
7-15	Prevention of the introduction of Zebra and Quagga Mussels into Alberta Water Bodies	Accept the Response	19
8-15	Monitor Ergot Levels in Livestock Feeds	Accept in Principle	20
9-15	Elk Quota Hunt	Accept in Principle	22
10-15	Alberta Fish and Wildlife Officer availability	Accept in Principle	24
11-15	Wildlife Predator Compensation for Domestic Equine Loss	Accept the Response	26
12-15	Agriculture Plastics Recycling	Unsatisfactory	28
13-15	Pesticide Container Collection Program	DEFEATED	30

14-15	Management of Farm and Agricultural Leases	Accept in Principle	32
15-15	Farm Property Assessment	Accept in Principle	35
E1-15	Fusarium Graminearum Management Plan	Accept in Principle	36

NOTE: Central, Northeast and the Northwest Regions graded the responses as a group and submitted them to the Provincial ASB Secretary; this is the preferred option for resolution grading and increases the efficiency of the committee substantially.

The committee would like to thank everyone for your participation and would appreciate your efforts to submit your resolution grading as a region in the future.

The ASB Provincial Committee met four times in 2015.

The ASB Provincial Committee has requested to meet with the Minister of Agriculture and Forestry to introduce themselves, give a brief history on the committee, discuss certain resolutions, and to obtain some insight into the Minister's outlook on the industries that he resides over. Although the committee was unable to meet with the minister to date, we remain eager to meet and work with the new government on behalf of the ASB's.

The committee met with Alberta Beef Producers to discuss on going predation issues and the possibility of having a member sit on the Alberta Game Management Advisory group. A recommendation was made to the Minister of ESRD for a working committee to be created that would include Alberta Beef Producers, ASB Provincial Committee, Alberta Conservation Association, AAMD&C and other agencies.

The Committee entertained a delegation to obtain a better understanding of Weed Control concerns on railways within Alberta. The committee also discussed this resolution with AAMD&C and a legal opinion was sought out.

Elk populations, Wildlife predation, Invasive species, Agriculture plastics recycling, rat habitat, the Fusarium Graminearum Management Plan, and Farm Property Assessment were all discussed and considerations and efforts to lobby for improvements will continue.

A final review of the Provincial ASB Committee terms of reference was conducted and signed by committee members.

The committee has nominated Jim Duncan, Central region representative, to sit as their member on the Wildlife Predator Working Group with ESRD.

Discussion has been ongoing with Alberta Agriculture and Forestry on the role of department employees on the committee and the possibility of a paid secretary position has been discussed.

Resolution No. 1-15

Adapt Crop Insurance to protect Clubroot Tolerant Varieties

WHEREAS: Clubroot (*Plasmodiophora brassicae*) is a declared pest throughout the province of Alberta, and once established is nearly impossible to completely eradicate from a field. Current data indicates that clubroot infestations are spreading throughout Alberta, and threaten all of our canola acres if we fail to take this pest seriously;

WHEREAS: “5X”, which is a recently discovered pathotype of clubroot, has been discovered north of Edmonton and is able to infect all current tolerant varieties. If the 5x pathotype is allowed to spread in the same manner as others have, present tolerant varieties will be ineffective against clubroot;

WHEREAS: The first clubroot tolerant varieties were developed in a short period of time from other closely related winter canola’s and rapeseed; it is unknown how long it will take to develop a variety tolerant to the 5X pathotype of clubroot;

WHEREAS: While the Province’s 70 ASBs conduct clubroot surveys and issue notices on infested land, they are not unified in their approach to dealing with rotational considerations. Many have accepted tighter rotations with the introduction of tolerant varieties, but this appears to be a short term solution, as current clubroot resistance is not durable and may break down in as little as two crop rotations, and some producers have actually been growing canola back to back;

WHEREAS: Most canola producers carry crop insurance through AFSC which is a Provincial crown corporation. If given the right mandate, AFSC has the ability to persuade a lengthier rotation by declining or pricing insurance high enough to make it undesirable to grow canola in short rotation. With the assistance of ASB inspectors a reasonable canola rotation can be encouraged on all agricultural land in Alberta. This will help protect the canola industry in this Province, and ensure that ASBs are performing their duties under the *Agricultural Pests Act*;

THEREFORE BE IT RESOLVED

THAT ALBERTA’S AGRICULTURAL SERVICE BOARDS REQUEST:

That the Alberta Minister of Agriculture per section 3(d) of the *Agricultural Pests Act* enter into an agreement with AFSC to decline insurance on canola acres under their program if canola has been planted back to back in rotation.

FURTHER THEREFORE BE IT RESOLVED:

THAT ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST:

That the Alberta Minister of Agriculture per section 3(d) of the *Agricultural Pests Act* enter into an agreement with AFSC to put an insurance price premium on canola acres under their program if canola has been planted in contradiction to the Province's Clubroot Management Plan, which recommends canola be grown in rotation no more than once every four years.

Status: Provincial

Response:

Alberta Agriculture and Rural Development

- AFSC uses individual coverage and surcharges/discounts to premiums to reflect an individual's risk management practices
- AFSC does not always have historical records on where crops have been grown; therefore, it would be difficult for AFSC to enforce a policy which required longer rotations between canola crops
- Contact: Chris Dyck, Sr. Manager, Research and Corporate Data Management, AFSC
- In 2007, clubroot was added as a pest under the Regulation of the *Agricultural Pests Act* (APA)
 - Under the APA, the landowner or occupant of the land needs to take measures to prevent the establishment of a pest, and control or destroy a pest on that land
- ARD, in consultation with the Clubroot Management Committee, has developed a Clubroot Management Plan (CMP) which outlines the best management practices (BMPs) for controlling this disease. The CMP recommends a minimum of three years between canola crops in order to prevent the buildup of spores in the soil
- The enforce crop rotations under the APA, pest inspectors would need to issue a notice to the landowner or occupant of the land
 - Except under specific conditions, this would be difficult to enforce on a larger scale
- The CMP has been communicated to canola growers, and ARD specialists attend grower and professional workshops, and update canola growers on BMPs for controlling clubroot
- ARD Communications, in conjunction with industry, has developed public messaging on following BMPs for controlling clubroot
- Contact: Dr. David Feindel, Director, Pest Surveillance Branch, 780-422-4911

Response:

Agriculture Financial Services Corporation

While AFSC recognizes the negative impact of clubroot on yields and supports initiatives to limit the spread of this disease, we do not feel our Production Insurance Programs are the right tool to incent producers to adopt management practices like four year rotations on canola. There are two key reasons for this approach:

1. AFSC has systems in place to individualize both premium and coverage offered to producers based on their yield history and loss experience. These systems ensure that producers who use management practices that result in lower yields receive lower coverage, as well those with high claim rates receive a surcharge on their premium. We feel this system does an effective job of recognizing both progressive and questionable management practices.
2. AFSC is not in a position to consistently enforce the use of specified crop rotations. Firstly, for producers insuring for the first time we do not know the cropping history of the land prior to it being insured, and secondly growers are not obligated to insure all their cropped acres which again makes it difficult to know if specific crop rotations are being followed.

AFSC has however implemented protocols for our adjusters which were developed to ensure we do not spread this disease from farm to farm. These protocols include things like: the use of plastic booties in clubroot areas, washing quads and trucks and encouraging the producer to take the adjuster to fields in the producers own vehicle.

Again, thank you for forwarding this resolution to me and I trust you understand the reasons for our position on this matter.

Provincial ASB Committee Grade: Unsatisfactory

Provincial ASB Committee Comments: The committee stated that although AFSC may have answered the question, Clubroot has developed into a real threat, being proactive in a way that supports the best management practices of the Alberta Clubroot Management Plan would help to control the disease.

Resolution No. 2-15

Pest Control Act - Clubroot

- WHEREAS:** Clubroot is becoming more prevalent throughout the Province of Alberta;
- WHEREAS:** Municipalities have been working diligently to limit the spread of clubroot through their inspection and enforcement programs;
- WHEREAS:** Municipalities are being hampered in their efforts to limit the spread of clubroot because instances of clubroot are not being reported;
- WHEREAS:** The *Agricultural Pest Act* does not require industry, agri-retailers, crop insurance adjusters or producers to notify the municipality or Alberta Agriculture and Rural Development when clubroot is found;

THEREFORE BE IT RESOLVED

THAT ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST

That Alberta Agriculture and Rural Development review the *Agricultural Pest Act* and require mandatory notification of the land location to the municipality whenever clubroot is found.

Status: Provincial

Response:

Alberta Agriculture and Rural Development

- Clubroot is established in more than 30 municipalities throughout Alberta. Clubroot is less of an issue in Saskatchewan and Manitoba
 - Canola growers in clubroot infested regions of the province currently use clubroot tolerant canola varieties
- In 2013, a field north of Edmonton identified where clubroot resistance in all current commercial clubroot resistant canola varieties, was overcome. This new virulent pathotype is referred to as “5x”
 - In 2014, an additional 15 fields were identified where resistance to clubroot was overcome. Whether the pathotype is “5x” or not has yet to be determined, but this does significantly raise the threat to several regions in Alberta where canola is a major crop
 - ARD is monitoring this new pathotype and is closely working with the Universities of Alberta, Saskatchewan and Guelph, Agriculture and Agri-Food Canada, and industry partners toward developing new technologies to counter the development of this and other new virulent clubroot pathotypes
- One of the issues identified in the APA, and highlighted by the threat posed by the new virulent clubroot pathotype(s), is the need for mandatory reporting of high impact pests

- This would provide ARD, and industry, with the tools to monitor, and quickly respond to threats. A provision for the mandatory reporting of specified high risk pests is being considered in the APA review
- Contact: Dr. David Feindel, Director, Pest Surveillance Branch, 780-422-4911

Provincial ASB Committee Grade: Accept in Principle

Provincial ASB Committee Comments: The committee felt that information needs to be shared more readily and that the mandatory reporting needs to be in place. It should include other pests as well. The committee has strong feelings towards mandatory information flow between all parties involved and agreed to accept in principle as long as mandatory notification is in place with the review of the *Agricultural Pest Act*.

Resolution No. 3-15

Standardized Clubroot Inspection Procedure

- WHEREAS:** The canola industry contributes \$19.3 billion to the Canadian economy each year;
- WHEREAS:** Clubroot poses an extremely serious threat to Alberta’s Canola Industry;
- WHEREAS:** Clubroot is a declared pest under the *Agricultural Pests Act*, Pest and Nuisance Control Regulation;
- WHEREAS:** A new clubroot pathotype has been confirmed in Alberta, to which current genetic resistance is ineffective against;
- WHEREAS:** Early detection of the new pathotype can promote more vigilant quarantine measures for the prevention of the spread of clubroot.

THEREFORE BE IT RESOLVED THAT

ALBERTA’S AGRICULTURAL SERVICE BOARDS REQUEST

That Alberta Agriculture and Rural Development encourage Alberta’s Agricultural Service Boards to adopt a standardized clubroot inspection procedure by reimbursing ASBs for each field of canola surveyed for clubroot using the standard protocol in the amount of \$50 per field inspected, to a maximum of \$20,000 for each municipality through the use of new grant funding.

Status: Provincial

Response:

Alberta Agriculture and Rural Development

- Municipalities have used the Clubroot Management Plan (CMP) as a guide to develop their clubroot policies; however, municipalities are inconsistent in their approach in dealing with clubroot
- In 2014, ARD, along with the University of Alberta (U of A), industry, and municipal inspectors, surveyed more than 6,000 fields, of which roughly 10 per cent were surveyed intensively
 - A standardized clubroot inspection procedure, developed by the U of A and modified to meet ARD’s needs, was circulated to all ASBs who participated in the survey
 - In 2016, ARD will again provide the standardized clubroot procedure to all ASBs participating in the clubroot survey
- The ASB grant program provides roughly \$11.5 million annually to support legislative activities, which include surveys

- ASBs will prioritize their needs, in alignment with regulatory obligations, and after consultation with ARD's ASB Grant Manager
- ASBs are encouraged to designate ASB grant money to cover the cost of the clubroot survey
- Contact: Dr. David Feindel, Director, Pest Surveillance Branch, 780-422-4911

Provincial ASB Committee Grade: Accept in Principle

Provincial ASB Committee Comments: The committee feels the request was for new money, not existing grant money. In areas that have little clubroot, or do few inspections, the cost is minimal; however, areas with large infestations are experiencing costs that are not covered by the ASB grant allocation.

Resolution No. 4-15

Additional funding for municipalities dealing with Prohibited Noxious Weeds that come from outside the Province of Alberta

- WHEREAS:** There is an increase of spotted knapweed and other prohibited noxious weeds coming into Alberta from Montana and British Columbia;
- WHEREAS:** Spotted Knapweed can be spread via the corridors that come from outside the province of Alberta... Rivers, highways, rail lines, and wildlife;
- WHEREAS:** In trying to fulfill their responsibility required in the *Weed Control Act* there is a heavy financial burden placed on these municipalities that border Montana and BC;
- WHEREAS:** These municipalities are the “front line” of defense in controlling these invasive weeds in trying to stop the spread to the rest of the province;

THEREFORE BE IT RESOLVED

THAT ALBERTA’S AGRICULTURAL SERVICE BOARDS REQUEST

That Alberta Agriculture and Rural Development supply additional funding up to \$75,000 per year for each municipality with an Agricultural Service Board that is affected by the constant flow of prohibited noxious weeds coming into their municipality from outside the province of Alberta.

FURTHER THEREFORE BE IT RESOLVED

THAT ALBERTA’S AGRICULTURAL SERVICE BOARDS REQUEST

That Funding for this program be in addition to the current ASB Grant Program Funding.

Status: Provincial

Response:

Alberta Agriculture and Rural Development

- Weeds are legislated under the *Alberta Weed Control Act* (WCA) and the associated Regulation. The WCA lists weeds as either noxious or prohibited noxious:
 - “A person shall destroy a prohibited noxious weed on land that the person owns or occupies” (Section 2).
 - “A person shall not move anything in the province if it may spread a noxious or prohibited noxious weed” [Section 4(1)]
- Because of the highly invasive characteristics, prohibited noxious weeds are at a high risk of causing serious problems in Alberta, as already observed in other provinces and/or neighboring states

- The purpose of having prohibited noxious weeds listed on the Regulation is to facilitate a rapid response, and to allow for eradication before the weed becomes firmly established. Prohibited noxious weeds that are listed on the Regulation can become widespread in the province, and at that point eradication becomes difficult and is often not feasible
- The ASB grant program provides \$11.5 million annually to support regulatory activities, which includes the removal of prohibited noxious weeds
 - ASBs set priorities when dealing with inspections
 - Municipalities can seek additional funding from sources outside of ARD, such as the Alberta Crop Industry Development Fund
- ARD has been collaborating with Cardston County in exploring the possibility of an intensified survey and control program to eradicate the prohibited noxious weed, spotted knapweed. Heavy infestations occur within the County, some in sensitive areas like water course ways. ARD is supporting the County in developing protocols for their eradication program efforts
- Contact: Dr. David Feindel, Director, Pest Surveillance Branch, 780-422-4911

Provincial ASB Committee Grade: Accept in Principle

Provincial ASB Committee Comments: The committee is concerned the province is going backwards with regards to weed control in the province. They are also concerned about the provincial highways and the cuts to weed control budgets that effect the entire province. The committee feels it is time for the province to reevaluate funding for emergent issues. The Alberta Crop Industry Fund is ending in 2018 and should be revisited (see appendix).

Resolution No. 5-15

Maintaining Canada thistle (*Cirsium arvense*) as a Noxious weed under *The Alberta Weed Control Act and Regulation*

WHEREAS: Currently, Canada thistle (*Cirsium arvense*) is designated a noxious weed under the *Weed Control Act* of Alberta;

WHEREAS: The Alberta Weed Regulatory Advisory Committee (AWRAC) has discussed the possibility of removing Canada thistle from the *Alberta Weed Control Act*;

WHEREAS: Canada thistle continues to be an invasive weed that impacts our province both economically and ecologically and should remain on the *Weed Control Act* and continue to be controlled;

WHEREAS: Canada thistle continues to meet the noxious weed criteria outlined by AWRAC;

THEREFORE BE IT RESOLVED

THAT ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST

That Alberta Agriculture and Rural Development (ARD) continue to regulate Canada thistle as a noxious weed on the *Alberta Weed Control Act*.

Status: Provincial

Response:

Alberta Agriculture and Rural Development

- Part 1 (2) of the WCA states that a person shall control a noxious weed that is on land the person owns or occupies
- The Alberta Weed Regulatory Advisory Committee (AWRAC) recommended that Canada thistle be added as a noxious weed on the Regulation
 - The AWRAC makes recommendations to the Pest Surveillance Branch of ARD on the risk associated with various existing, new, and emerging weeds, and makes a recommendation as to the addition, upgrade or downgrade of risk, or the removal of weed species from the Regulation of the WCA
 - The AWRAC is represented by members from federal, provincial, and municipal governments; cities; universities; industry; and other interested groups, such as the Alberta Invasive Species Council
 - The original risk assessment identified Canada thistle as a highly invasive weed, having a significant negative economic impact. Since then, Canada thistle no longer meets the AWRAC's criteria to be considered a noxious weed
 - While the AWRAC has informally discussed the removal of Canada thistle from the Regulation, due to its pervasive nature, neither the AWRAC nor ARD is proposing its removal from the Regulations at this time

- Further discussion with the AWRAC and a more detailed risk assessment of Canada thistle has to be done before it will be considered for removal from the Regulation
- Contact: Dr. David Feindel, Director, Pest Surveillance Branch, 780-422-4911

Provincial ASB Committee Grade: Accept in Principle

Provincial ASB Committee Comments: The committee would like clarification on ARD's stance on Canada thistle as a noxious weed within the Province of Alberta. The committee is in support of Canada thistle remaining a noxious weed under the *Alberta Weed Control Act*.

Resolution No. 6-15

Legal Opinion on the jurisdiction of *The Weed Control Act* on CN rail

WHEREAS: At the 2014 Provincial A.S.B. Conference, a resolution was passed asking in the Therefore Be It Resolved that; Alberta Agriculture and Rural Development work with Alberta Justice, Canadian National Railways and Alberta’s Municipalities to confirm that CN Rail is bound by the *Weed Control Act* of Alberta;

WHEREAS: Alberta Agriculture and Rural Development have received legal opinion on the matter from Alberta Justice, but have stated in letters from Deputy Minister Jason Krips that the opinion is confidential under the client relationship that is created;

WHEREAS: Deputy Minister Krips encourages municipal authorities who require clarification to seek their own legal advice on issues relating to the Alberta *Weed Control Act* (WCA);

WHEREAS: In a letter from the M.D. of Smoky River to Deputy Minister Krips, we opined that “Having each affected municipality request their own legal opinion in such a matter would be a criminal waste of money, in addition to potentially creating more issues if some legal opinion was positive (we have jurisdiction) and others were negative.” Our opinions regarding having individual municipalities requesting legal opinion in this matter have not changed;

WHEREAS: In the responses and correspondence received from CN rail regarding the resolution, there is no indication that CN’s stance vis a vis being bound by the *Weed Control Act* has changed.

THEREFORE BE IT RESOLVED

THAT ALBERTA’S AGRICULTURAL SERVICE BOARDS REQUEST

That the Association of Alberta Municipal District’s and Counties (AAMD&C) obtain a legal opinion on the jurisdiction of the *Weed Control Act* of Alberta on CN Rail property, and that the opinion be shared with all of its member municipalities.

Status: Provincial

Response:

AAMD&C Board of Directors

This letter is to inform you that the membership of the Alberta Association of Municipal Districts and Counties (AAMDC) has endorsed AAMDC Resolution 3-15S: Legal Opinion on the Jurisdiction of the *Weed Control Act* on all railways.

As you are aware, a resolution was passed at the January 2015 Agricultural Service Board conference calling for the AAMDC to solicit a legal opinion on whether the *Weed Control Act* has jurisdiction on CN Rail property. In order to undertake action on this matter, the AAMDC required the support of its membership and a similar resolution was submitted by an AAMDC member for discussion at the AAMDC Spring 2015 Convention. The resolution was debated by members and eventually passed with amendments. The amendment broadened the request for a legal opinion beyond CN Rail to include all railways operating in the province. As such, the AAMDC will not be obtaining a legal opinion solely focused on CN Rail and will instead pursue a legal opinion as directed in the AAMDC endorsed resolution. A copy of this resolution has been attached for your reference.

When received, the AAMDC will share this legal opinion with member municipalities as well as the Agricultural Service Board Provincial Committee.

Provincial ASB Committee Grade: Accept the Response

Provincial ASB Committee Comments: The Committee has received further correspondence from AAMD&C on this matter and accepts the legal opinion provided (see appendix).

Resolution No. 7-15

Prevention of the introduction of Zebra and Quagga Mussels into Alberta water bodies

- WHEREAS:** Alberta is free of the above mentioned Aquatic Invasive Species;
- WHEREAS:** All watercraft inspections are voluntary which lends itself to common non-compliance issues;
- WHEREAS:** Without strict policies making people with watercraft, of any kind, stop at all border crossings into Alberta, these species will become established;
- WHEREAS:** These two species have enormous destructive potential, both in damage to infrastructure (irrigation) and to the environment;
- WHEREAS:** Once established in Alberta, containment becomes extremely difficult, very expensive and with eradication being unlikely, the costs will be permanent;

THEREFORE IT BE RESOLVED THAT

ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST

That Alberta Environment and Sustainable Resource Development direct Alberta Transportation to have all border crossings into Alberta have a water craft inspection station where it is mandatory for all water craft to stop and be inspected for the presence all aquatic invasive species.

Status: Provincial

Response:

Alberta Environment and Sustainable Resource Development

Bill 13 Fisheries (Alberta) Amendment Act, passed in the legislature on March 19, 2015. Once it receives Royal Assent (is proclaimed into law), watercraft inspections will become mandatory. Inspection stations will be located at commercial vehicle weigh stations throughout the province, as well as main points of entry to prevent invasive mussels from entering Alberta's waters.

Provincial ASB Committee Grade: Accept the Response

Provincial ASB Committee Comments: The committee is pleased with the increased inspection stations and effort and hope to see 24 hour inspection stations in the future.

Resolution No. 8-15

Monitor Ergot levels in livestock feeds

- WHEREAS:** The increase of ergot in recent years is showing up in concentrated levels in screenings where safe allowable levels have not been determined;
- WHEREAS:** Screenings with ergot being processed as pelleted feed cannot be easily identified without costly lab tests;
- WHEREAS:** The symptoms of ergot toxicity in livestock cannot be easily differentiated from other livestock diseases;
- WHEREAS:** The use of ergot in livestock feed is not regulated and Feed companies are setting their own, hit and miss, tolerable levels and herds have been affected;
- WHEREAS:** Cattle have died in the past number of years due to ergot poisoning in prepared feeds;

THEREFORE BE IT RESOLVED

THAT ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST:

That regulations be put into place by Alberta Agriculture to monitor the use and movement of ergot into livestock feeds until research can determine acceptable levels.

FURTHER THEREFORE BE IT RESOLVED

THAT ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST:

That Alberta Agriculture better inform all those involved in feeding, shipping and processing of feed containing ergot of the toxicity, symptoms and devastating consequences of feeding ergot toxic feeds.

Status: Provincial

Response:

Alberta Agriculture and Rural Development

- While the Canadian Food Inspection Agency (CFIA) has not established maximum tolerable levels of ergot in animal feeds, they have established guideline levels
 - ARD does not have regulatory jurisdiction to unilaterally establish regulatory limits for ergot, or to regulate the use and movement of animal feeds containing ergot, which has not established maximum tolerable levels
 - Regulatory jurisdiction surrounding the manufacturing, sale, and importation of safe, effective, and properly-labelled feeds falls under the federal *Feeds Act and Regulations* administered by the CFIA
- ARD will publish information on the hazards of the use of ergot-contaminated animal feed on the ARD website www.agric.gov.ab.ca

- ARD will collaborate with industry organizations to determine the most effective methods for communicating this hazard to producers
- Contact: Dr. Joe Kendall, Veterinary Toxicologist, Animal Health Branch, 780-427-8389

Provincial ASB Committee Grade: Accept In Principle

Provincial ASB Committee Comments: The committee will be requesting more information on this response from CFIA. The committee feels that a request should be made to CFIA that an awareness campaign be put in place to better inform producers of guideline levels.

Resolution No. 9-15 Elk Quota Hunt

WHEREAS: Many Eastern Slopes and Peace Region Municipalities are having difficulties with problem elk populations;

WHEREAS: Many Peace Region Municipalities have submitted many resolutions in this regard for these same problems;

WHEREAS: Minimal and modest increases have been made to Eastern Slopes and Peace Region Wild Life Management Units (WMU's) harvest limits;

WHEREAS: These increases in tag allocations have not resulted in alleviating or mitigating economic losses sustained by producers;

THEREFORE BE IT RESOLVED

THAT ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST

That the Minister of Environment and Sustainable Resources implement an Elk Quota Hunt, based upon the principles of the former Chronic Wasting Disease Quota Hunt and/or other ways the ministry can develop to alleviate this problem.

Status: Provincial

Response:

Alberta Environment and Sustainable Resource Development

Environment and Sustainable Resource Development is implementing new elk hunting seasons in wildlife management units 162 and 163 in southeastern Alberta. These additional seasons will occur in areas where there are currently low elk numbers in order to maintain low populations and reduce range expansion.

Our department is increasing the number of antlerless elk hunting seasons for Canadian Forces Base Suffield and creating new hunting seasons for antlered elk. These seasons are in support of lowering elk populations in and around the base in response to landowner concerns. We are also implementing late-season antlerless elk hunting seasons in wildlife management units 302, 303, 304, 305, 306, 308 and 310 in southwestern Alberta. These seasons will extend into January and are being implemented in response to landowner concerns over agricultural depredation.

Department staff conducted elk population surveys in many wildlife management units throughout the province, including the Peace River area. Updated population estimates will be used to make changes to the number of issued hunting permits for the upcoming 2015 hunting season.

In addition, Environment and Sustainable Resource Development is amending the procedure for landowners to provide greater flexibility in obtaining antlerless elk landowner licences. Landowners who are unsuccessful in either the antlerless or antlered elk special licence draws will be allowed to apply for an antlerless elk landowner licence.

Provincial ASB Committee Grade: Accept in Principle

Provincial ASB Committee Comments: The committee would like more information on what the results of the hunt were. The concern is the reproduction rate versus the number of animals harvested, and this having a negative effect on population control efforts.

Resolution No. 10-15

Alberta Fish and Wildlife Officer Availability

WHEREAS: Fish and Wildlife (F&W) Officers are traveling outside of their office jurisdiction, because of a reduced number of officers in Alberta. Central Alberta area officers have seen the area they cover increase largely, due to the shortage of Officers;

WHEREAS: The Education and awareness portion of the F&W Officer's job has been all but removed. The direction the Province has gone is to rely on farmer/ hunter relations to do the leg work and monitoring, then reporting to F&W Officers to go to the respective complaint area and investigate;

WHEREAS: Interaction between F&W Officers and the Province of Alberta's young hunters ceases to exist. Public perception is key, if F & W Officers are seen in the public like they were 10-20 years ago, there will be more caution amongst hunters to be as ethical as possible;

WHEREAS: To target commercial rings, more enforcement is needed. In order to do this, more man power is needed;

THEREFORE BE IT RESOLVED

THAT ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST:

That Alberta Justice and Solicitor General hire more staff to fill all positions that are now vacant.

FURTHER THEREFORE BE IT RESOLVED:

THAT ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST:

That Alberta Justice and Solicitor General reopen office closures from 2014, hire F&W Officers to staff these offices and increase manpower so that all offices have a minimum of two F&W Officers in them.

FURTHER THEREFORE BE IT RESOLVED:

THAT ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST:

That Alberta Justice and Solicitor General encourage more awareness and education between hunters and the public and that the level of enforcement of infractions be increased.

Status: Provincial

Response:

Alberta Justice and Solicitor General

The Fish and Wildlife Enforcement Branch was moved to Justice and Solicitor General in 2011. Since that time, the number of fish and wildlife officers has remained the same at 144 positions and 30 new officers have been hired to fill vacancies. Another competition is currently underway to fill the remaining vacancies. Over the past year, fish and wildlife officers have

been deployed to Vegreville, Camrose, Ponoka, Red Deer and Wetaskiwin districts. There are currently 12 officers working in the Red Deer unit.

Protection of life and property is a priority for the government, which means providing a response to reports of problem wildlife may sometimes shift the efforts to fish and wildlife officers away from the law enforcement mandate. This has been identified as an issue and has prompted discussions between this department and Environment and Sustainable Resource Development to identify efficiencies and create new strategies to ensure law enforcement effort is not diminished.

The Fish and Wildlife Enforcement Branch understands that community and stakeholder engagement is key to delivering a successful enforcement program and is grateful for the support demonstrated by your organization.

Anyone wishing to report illegal hunting or fishing activity is encouraged to contact a fish and wildlife officer or call the Report a Poacher line at 1-800-642-3800.

Thank you for writing to share the Alberta Agricultural Service Board Committee's resolution.

Provincial ASB Committee Grade: Accept in Principle

Provincial ASB Committee Comments: The committee would like clarification on which offices are closed and where the 30 new hires would have been deployed. More information will be requested as to if any offices were reopened, and what the travel times would be in some areas to arrive at an incident.

Resolution No. 11-15

Wildlife Predator Compensation for Domestic Equine loss

WHEREAS: Domestic horses are recognized as livestock under *Section 1 (m) of the Alberta Livestock Identification and Commerce Act*, *Section 2 (f) of the Alberta Stray Animals Regulations*, *Table 1 of the Standards and Administration Regulation*, *Agricultural Operation Practices Act* and are already partially recognized under *Section 11 (b) of the Alberta Wildlife Regulations*;

WHEREAS: Under *Section 11 (b) of the Alberta Wildlife Regulations*, a domestic horse is already recognized as compensable within the shot livestock compensation program;

WHEREAS: Many domestic equine, including horse and donkey, owners are in the business of breeding, promoting and selling their domestic equines for an income, in the same way as other livestock producers;

WHEREAS: When loss to predation by wolves, bears, cougars or eagles occurs, there is no compensation available to domestic equine producers for their economic loss as their animals are not recognized as a compensable livestock.

THEREFORE BE IT RESOLVED

THAT ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST

That Alberta Environment and Sustainable Resources Development fully recognize domestic equines, including horses and donkeys, as livestock under the *Alberta Wildlife Regulation*, *Section 11 (b)*.

FURTHER THEREFORE BE IT RESOLVED

THAT ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST

That Alberta Environment and Sustainable Resources Development allow owners of domestic equines, including horses and donkeys, to be eligible for compensation when a loss is caused by predation of wolves, bears, cougars and eagles.

Status: Provincial

Response:

Alberta Environment and Sustainable Resource Development

Alberta's Wildlife Predator Compensation Program provides compensation for food-producing livestock such as cattle, pigs, goats, sheep and bison that have been killed or injured by predators such as bears, wolves, cougars and eagles. The program is intended to provide coverage for food-producing animals at the average market value for the type and class of animal lost.

A committee of representatives from Environment and Sustainable Resource Development, the Agriculture Financial Services Corporation, and Agriculture and Rural Development recently reviewed the program. During this review, horses were considered but not included for compensation because Alberta does not have a significant horse meat market. Horses that have been attacked by predators are usually being raised for personal use or as working stock, not as meat.

Provincial ASB Committee Grade: Accept the Response

Provincial ASB Committee Comments: The committee felt the response was sufficient.

Resolution No. 12-15

Agriculture Plastics Recycling

WHEREAS: Several Alberta Municipalities have implemented Agricultural plastics collection and recycling pilot programs in recent years and have invested significantly in these initiatives;

WHEREAS: Options for recycling are very limited and inventory is beginning to accumulate at collection sites;

WHEREAS: This product is either using an excessive amount of landfill space, or if not accepted at landfills, is being stockpiled or burned on farm sites;

WHEREAS: Alberta Environment and Sustainable Resources Ministry together with the Alberta Recycling Management Authority have implemented a number of stewardship programs which collect environmental fees to help fund the collection and recycling of products like tires, electronics and paint;

THEREFORE BE IT RESOLVED

THAT ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST

That Alberta Environment and Sustainable Resources Development together with the Alberta Recycling Management Authority implement a stewardship program that will provide funding and add value to both collection and recycling of Agricultural Plastics in the Province of Alberta.

Status: Provincial

Response:

Alberta Environment and Sustainable Resource Development

Currently a regulated recycling program for agricultural plastics is not being considered. Environment and Sustainable Resource Development and Agriculture and Rural Development are developing an education program for agricultural producers and municipalities, which will include information on the environmental impact of burning agricultural plastics and current options for the disposal of agricultural plastics.

In order for the Alberta Recycling Management Authority to implement a stewardship program for agricultural plastics, a regulation would be required to designate agricultural plastics under the authority.

A stewardship program for agricultural plastics would also likely require environmental fees; that is agricultural plastic manufacturers and retailers would likely pass those fees on to agricultural producers. Recycling regulations for all designated materials, except beverage containers, list activities covered by environmental fees charged on designated materials. The

activities are specific to the recycling and management of the designated material. Environmental fees collected on one designated material cannot be used to pay for management of a different material.

Other jurisdictions, such as Saskatchewan, are looking at options to address the waste management of agricultural plastics. The Government of Alberta will stay informed of these developments to determine if those options could be applied in Alberta.

Response:

Alberta Recycling Management Authority

Alberta Recycling has an ongoing working relationship with municipalities and regional waste commissions in large part through the 460 municipal collection sites associated with the electronics, tires and paint recycling programs that we have been mandated to manage by the Government of Alberta. Through these relationships, Alberta Recycling has repeatedly been questioned about how an Alberta agriculture plastics program could be developed.

While Alberta Recycling has expertise and experience in developing and running environmental stewardship programs that may provide useful input on an agriculture plastics program, it is not within our mandate to act on agriculture plastics. However, I will raise your letter with our Board of Directors to confirm their willingness to provide input informally if requested by those endeavouring to establish a program. I have also given a copy of the resolution with an accompanying briefing note to the Minister and I am waiting for a response from his office.

I appreciate your concern with this environmental issue and will respond further after our May 2015 Board meeting.

Provincial ASB Committee Grade: Unsatisfactory

Provincial ASB Committee Comments: The committee feels that ESRD should be involved in a stewardship program for Ag Plastics. They feel that the issue should be brought to the new government's attention. Comments included that the recycling board is revisiting the issue, hoping to have other stakeholders involved and work together to install a stewardship program.

Resolution No. 13-15

Pesticide Container Collection Program – Defeated at the 2015 Provincial ASB Conference

WHEREAS: Since 1989, Alberta’s municipalities have been involved with the collection of empty pesticide containers and have done so with only one time funding from Alberta Environment to establish permanent collection sites within their municipalities. Since that time no funding has been provided to municipalities to assist with collection and upkeep of the container collection facilities;

WHEREAS: The pesticide container collection program is the responsibility of CleanFARMS Canada, a non-profit industry stewardship organization representing Pesticide manufacturers and retailers;

WHEREAS: CleanFARMS oversees the removal of the containers sites by hiring contractors to process the containers and funds this program through a levy collected from its pesticide manufacturer members on each container (less than 23 litre) sold into the market place;

WHEREAS: Local municipalities expend a significant amount of manpower and money to operate the program; building and maintaining the sites, transferring containers from temporary storage sites, controlling what is entering the sites at their manned sanitary landfills and transfer stations as well as dealing with containers and refuse dumped at the sites which is not collected by CleanFARMS contractor.

WHEREAS: Alberta is only one of two provinces in Canada that utilize municipalities at their expense to deliver the pesticide collection program within their province while the remaining provinces place this responsibility and cost on agricultural retail facilities who market and sell pesticide products;

THEREFORE BE IT RESOLVED

THAT ALBERTA’S AGRICULTURAL SERVICE BOARDS REQUEST:

That Alberta Environment and Sustainable Resource Development develop, with CleanFARMS, an empty pesticide container program that places the responsibility of collecting pesticide containers in Alberta with the Agricultural Retail/Dealer and removes the responsibility from the municipalities.

FURTHER THEREFORE BE IT RESOLVED

THAT ALBERTA’S AGRICULTURAL SERVICE BOARDS REQUEST:

That should Alberta Environment and CleanFARMS prefer the municipalities continue to co-operate in the Pesticide Container Collection program, that all costs to the municipalities

including upgrade and future liability expenses associated with the program be recovered from Alberta Environment and Sustainable Resource Development and CleanFARMS.

Resolution No. 14-15

Management of Farm and Agricultural Leases

- WHEREAS:** Currently the department of Public Lands, under the Ministry of Environment and Sustainable Resource development (ESRD), manage the use and operation of farm development leases and agricultural leases;
- WHEREAS:** Alberta Agriculture would be better adapted to manage the lease land as their expertise in agricultural production would give stronger representation as to the needs of producers;
- WHEREAS:** The current policies and practices utilized by the ESRD do not account for the unique nature of agriculture, and frequency in which the market changes, thus effecting the financial abilities of producers to operate;
- WHEREAS:** More direct control from the Ministry of Agriculture would allow the policies and procedures adapted in a more timely manner minimizing the negative effects on producers.

THEREFORE BE IT RESOLVED

THAT ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST

That Alberta Environment and Sustainable Resource Development transfer Management of Farm Development leases and Agricultural leases to The Ministry of Agriculture.

Status: Provincial

Response:

Alberta Environment and Sustainable Resource Development

The Government of Alberta is not considering transferring responsibility for agricultural public land at this time.

Public land, whether used for agriculture, timber, industry, recreation, or conservation is managed by Environment and Sustainable Resource Development under *the Public Lands Act*. Public land management focuses on establishing and sustaining an optimum balance of use, conservation, and development of resources, in harmony with the values and needs of Albertans. This stewardship responsibility requires public land managers to ensure that the quantity and quality of public land resources are maintained or enhanced.

One of Environment and Sustainable Resource Development's core responsibilities is the effective management of agricultural uses on Alberta's public lands. The majority of agricultural use on public is grazing. Leasing of public land for cultivation (farm development leases), occurs on only about 70,000 acres.

Environment and Sustainable Resource Development has professional agrologists with training and experience in rangeland management. Department staff work collaboratively with agricultural disposition holders to find adaptive and practical strategies that meet the Government of Alberta's goals for sustainable management of public land and resources. This management task holds a significant responsibility which the department shares with ranchers and farmers, as well as all public land users.

Rent is reviewed every five years and the lessee has the advantage of having the rental rate set for a five-year period while giving the government, and Albertans, the ability to get fair value for leasing the land. Our department is aware that there are some administrative challenges and concerns regarding farm development leases, which are issued to allow annual cropping for a ten-year term. The department is currently reviewing its rental rate policies and your input is being taken into consideration.

Response:

Alberta Agriculture and Rural Development

- There is currently nothing in the *Public Lands Act* (PLA) or *Public Lands Administration Regulation* (PLAR) that refers specifically to an "agricultural lease" or "farm lease"
- ESRD legislation allows for seven types of public land dispositions intended for agriculture. Two specific disposition types issued for the cultivation of public land include Farm Development Leases (FDLs) and Cultivation Permits (CUPSs), addressed by Section 85-90 of the PLAR
- Section 41 of the PLA outlines that disposition land does not come with a warranty or condition of quality for a particular purpose. Section 63 outlines duties of the disposition holder, which include necessary weed management by the lessee and the continued use of land in a manner that promotes conservation, and Section 77 indicates that the lessee must work within the terms and conditions prescribed on the lease. Fencing and livestock containment requirements are described within PLAR, Sections 27 and 53 (3)
- As of April 2014, over 7,600 public land dispositions covering close to 8.8 million acres of public land were issued for agricultural purposes. Of this, there were only 816 FDLs and CUPs dispositions (i.e. approximately 11 per cent) covering an area of close to 112,000 acres, which is less than two percent of the total public land under some form of agricultural disposition (i.e. cultivation and grazing)
 - Of the 816 FDLs and CUPs, 643 are FDLs covering 104,000 acres
 - The remaining disposition types are intended for livestock grazing, and include Forest Grazing Licenses, Grazing Leases, Grazing Permits, Provincial Grazing Reserves, or Protected Notations allowing for grazing
- The South Saskatchewan Regional Plan contains specific strategies aimed at minimizing the conversion of native grasslands on public land to other uses, such as cultivation-

based agriculture. This will likely further decrease the number of FDLs and CUPs issued by ESRD in the future. It is anticipated that similar language will appear in other regional plans

- Returning either partial (FDLs and CUPs) or all of the administration of Alberta's public land management back to ARD would require significant changes to current government structure, which is not being considered at this time
- Contact: Jason Cathcart, Land Use, Policy, Strategy and Intergovernmental Affairs, 780-427-3432

Provincial ASB Committee Grade: Accept in Principle

Provincial ASB Committee Comments: The committee feels that this resolution should be brought back to the new government agency due to the realignment of the two involved.

Resolution No. 15-15 Farm Property Assessment

WHEREAS: Alberta Municipal Affairs has launched a *Municipal Government Act* (MGA) review during 2014;

WHEREAS: Discussion during the review resulted in a proposal to alter the assessment of Farm Land, the intent of the land, and assessment of residences and intensive livestock operations;

WHEREAS: Farm property is currently assessed at agricultural use values not market values;

THEREFORE BE IT RESOLVED

THAT ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST

That Alberta Municipal Affairs stay with status quo on Farm Property Assessment of farmland, farm residences, and farm buildings when completing *the Municipal Government Act* Review.

Status: Provincial

Response:

Alberta Municipal Affairs

Agricultural use value is prescribed by the *MGA* to prepare property assessments on farmland in Alberta, while some assessment reductions are applied to farm residences and buildings. The Government of Alberta is committed to supporting Alberta's farmers and recognizes the importance of the farmland assessment model in encouraging investment in Alberta's agricultural sector.

The Government of Alberta is pleased to receive and consider the Agricultural Service Board's resolution as it continues to review the *MGA*.

Provincial ASB Committee Grade: Accept in Principle

Provincial ASB Committee Comments: The committee will comment on the proposed new act as it is available. The hope is that this resolution is incorporated into the new *Municipal Government Act*

Emergent Resolution E1/15

Fusarium Graminearum Management Plan

- WHEREAS:** Fusarium graminearum produces deoxynivalenol (DON) that reduces the marketability and end-use potential of *cereal grains, especially wheat (including durum) and barley*;
- WHEREAS:** Agriculture and Agri-Food Canada guidelines for acceptable feed are 1 ppm of DON for swine, dairy cattle, cow/calf operations and horses, and 5 ppm for finishing beef cattle, sheep and poultry;
- WHEREAS:** Lightweight, shriveled, fusarium-damaged kernels (FDK) may contain high concentrations of DON levels as high as 30 parts per million (ppm) in wheat and barley;
- WHEREAS:** The Fusarium Action Committee recommends amending the current Management Plan to establish “Commonly Found” and “Not Commonly Found” areas within the province;
- WHEREAS:** The creation of a “Commonly Found” Area could create a dumping ground for infected commodities and a decreased value of commodities produced and sold in that specific area;
- WHEREAS:** The recommendation from the Fusarium Action Committee is to adopt a Management Plan that would increase the allowable amount of FG to be used in the Commonly Found areas;
- WHEREAS:** An increased tolerance levels in the Management Plan without specific protocols and resources to protect the unaffected regions will only accelerate the spread of FG;
- WHEREAS:** An increased pressure from industry to downgrade FG to a nuisance or remove it from the Agricultural Pest Act.

THEREFORE BE IT RESOLVED

THAT ALBERTA’S AGRICULTURAL SERVICE BOARDS REQUEST

That Alberta Agriculture and Rural Development maintain the current tolerance level in the Fusarium Graminearum Management Plan with no detectable amount allowed.

FURTHER BE IT RESOLVED

THAT ALBERTA’S AGRICULTURAL SERVICE BOARDS REQUEST

That Alberta Agriculture and Rural Development keep Fusarium Graminearum on the Agricultural Pest Act as a Pest.

Status: Provincial

Response:

Alberta Agriculture and Rural Development

- FG is a declared pest under the Regulation of the *Agricultural Pests Act* (APA)
 - Fg is well-established in the southern region of Alberta, but found in trace, or low levels, in most other areas of the province
- Alberta has a Fusarium Action Committee (FAC), which advised the Minister on matters pertaining to Fg
- A science-based review of the Fusarium Management Plan (FMP) was recommended by the FAC. The review was completed in 2013, and presented to the FAC in 2014
- On November 10, 2014, the FAC met and voted to revise the FMP
 - The revision would include the concept of Commonly Found (CF) and Not Commonly Found (NCF) areas
 - This would mean that municipalities designated as CF, having Fg above pre-determined threshold levels (>20 per cent incidence if Fg over a three year period), would have a revised allowable maximum level of Fg incidence on seed for sowing. This maximum allowable level of Fg would be five per cent incidence. The seed would also have to be treated with a seed treatment fungicide registered for use on Fg spp.
 - The Agricultural Service Boards (ASBs) and the Alberta Association of Municipal Districts and Counties (AAMDC), voted to retain the zero tolerance policy. Industry voted for the recommended change
- ARD is currently reviewing the FAC recommendations to the FMP. The FMP is being revised, incorporating the proposed changes, and will be sent back to the FAC for final comments by the end of March, 2015
- Contact: Dr. David Feindel, Director, Pest Surveillance Branch, 780-422-4911

Provincial ASB Committee Grade: **Accept in Principle**

Provincial ASB Committee Comments: The committee is looking forward to the *Agricultural Pest Act* review. The majority of the ASB's voted for a 0 tolerance at the 2015 AGM and the committee's position reflects that. The committee is interested in seeing the suggestions made by the Fusarium Action Committee on the FMP and will comment on recommendations made.

Regional Resolutions

REGIONAL RESOLUTION: SOUTH ELK (*Cervus elaphus*) POPULATION CONTROL AT CANADIAN FORCES BASE (CFB) SUFFIELD

WHEREAS: The elk (*Cervus elaphus*) population from the CFB Suffield is currently at 5,900 and will surpass 7,200 in 2015 according to Alberta Wildlife estimates;

WHEREAS: There is an exponential increase in the CFB Suffield elk herd population as elk cows are more consistently producing 3 calves per season;

WHEREAS: There are no natural predators on CFB Suffield;

WHEREAS: Increasing harvest tag numbers and seasons have been ineffective in reducing the current elk population;

WHEREAS: Elk threaten the cattle industry in southern Alberta, which is already a drought sensitive area, due to destruction of feeds stocks, forage, fences and introduction of diseases such as tuberculosis;

WHEREAS: Civilian safety on the major and secondary highways that surround CFB Suffield is a serious concern with the number of elk collisions rising steadily;

THEREFORE BE IT RESOLVED

THAT ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST

That the Federal Government and Department of National Defence produce a wildlife management plan in conjunction with ESRD, the neighbouring municipalities and ranchers to decrease the current elk population by at least 60% on CFB Suffield to levels under 2,000 that could be managed to be sustainable for the base and neighbouring ranchers.

Sponsored by: Special Areas 2

Response:

Department of National Defence

Thank you for your correspondence of 26 November 2014 concerning the elk population levels in the vicinity of Canadian Forces Base (CFB) Suffield.

I understand that this matter is of great importance to you and the ASB South Region Resolutions Committee, and I assure you that the Base Commander at CFB Suffield takes this issue very seriously.

CFB Suffield is federal government property and the largest military training installation in Canada, encompassing an area of 2,692 square kilometres. The Base is a very active training area and a significant ecological reserve for the protection of native prairie ecosystems. Given an absence of large predators, it is clear that the elk have flourished in the vicinity of CFB Suffield since reintroduction in 1997.

In recent years the Department of National Defence (DND) has been working in partnership with the Government of Alberta to address elk population growth in and around CFB Suffield. This collaborative approach recognizes Alberta Environment and Sustainable Resource Development (AESRD) as the provincial authority responsible for managing elk as a wildlife resource, while the role of DND is to responsibly regulate access to CFB Suffield as federal land.

The Base Commander has been committed to regular engagements with all levels of governmental representation, from the Deputy Premier of Alberta in 2013, the federal Member of Parliament for the area, regional Members of the Legislative Assembly, neighbouring county officials, and most recently, in December 2014, the Chairman of Special Areas Board. Base representatives meet regularly with AESRD officials to implement short and mid-term strategies for elk herd reduction, and work is in progress to develop a long-term strategy including the definition of sustainable population goals.

In 2012 AESRD and DND conducted the first controlled access hunt for the removal of up to 200 antlerless elk. This was followed in 2013-2014 with the issue of 300 tags. For the 2014-2015 Base hunt, 660 tags were originally made available. This steady increase in reduction targets over three years, coupled with increased area access, has been instrumental to the success rates with the current hunt, namely, the harvesting of more than 325 elk at the end of the third of six weeks.

Recently, AESRD and the Base committed to a further two-week extension of this year's hunting season, with the potential to harvest several hundred additional elk. Moreover, the experience gained over the past three years of controlled access hunting will place AESRD and the Base on a trajectory to significantly increase elk herd reduction next year. It is also important to note that reduction efforts on the Base are effectively synchronized with those efforts in adjacent wildlife management units as part of an overall provincial elk management strategy.

While it is very difficult to predict results with certainty, recent population modelling suggests it is probable that the 2014-2015 CFB Suffield elk herd reduction program will stabilize, or even reduce, the number of antlerless elk. In concert, a further possibility exists for the hunt to check the growth of the overall elk population in the vicinity of CFB Suffield. Regardless, reduction of the overall elk population will be required for several years, building upon this year's success and affirming more ambitious targets for next year.

CFB Suffield and I remain committed to supporting the Province of Alberta in the continued planning and implementation of a comprehensive, effective, and enduring elk management plan.

I trust that this information is helpful, and thank you again for writing.

Alberta Environment and Sustainable Resource Development

Thank you for your November 26, 2014, letter regarding the Agricultural Service Board's Regional Resolution #1, Elk (*Cervus elaphus*) Population Control at Canadian Forces Base (CFB) Suffield.

I appreciate the board's proposal to increase hunting opportunities to help control growth of elk populations. CFB Suffield is unique with regards to wildlife management given that it is a closed military facility with very restrictive access. Environment and Sustainable Resource Development staff worked in partnership with the Department of National Defense at the base, and created an elk management planning team. This team developed both short and mid-term harvest strategies to stop growth of the population and start reducing it. Implementation of these strategies is in place for the 2014-15 hunting season and will continue through the 2015-16 season. With the development of these harvest strategies completed, the planning team is now focused on developing a comprehensive management plan with emphasis on hunting as an effective management tool. This management plan will be released early in the new year.

In the first three seasons of hunting at CFB Suffield this fall, more than 325 elk have been harvested. As part of the strategy for the 2014-15 hunting season, three additional hunting seasons will be held in January 2015. In addition, department staff finalized plans with the elk management planning team to hold a quota hunt in February 2015. The quota hunt will consist of two four-day seasons, with 125 licences for each season. Licence holders will be able to harvest two antlerless elk. For the 2014-15 hunting season, more than 900 antlerless elk licences will be available for resident hunters, a significant increase over the 300 last year.

In wildlife management units surrounding the base, the department created an additional elk hunting season in January 2015 with 60 elk special licenses available to residents. This is in addition to four existing elk hunting seasons in these wildlife management units for a total of 300 elk special licenses for the 2014-15 hunting season. Environment and Sustainable Resource Development will continue to evaluate the effectiveness of these measures, and use sound game management tools that are accepted and supported by Albertans. The elk management planning process for CFB Suffield will include opportunities for public comment on elk management objectives and strategies for this population.

For further information, please contact Mr. Shane Petry, Wildlife Biologist in our South Saskatchewan Region. Mr. Petry can be reached at 403-528-5205, or at shane.petry@gov.ab.ca.

To view the complete resolutions and responses from previous years go to www.agriculture.alberta.ca/asb

APPENDIX

ADDITIONAL INFORMATION FOR RESOLUTIONS

- 1) Legal opinion on jurisdiction of the Weed Control Act on Railways
- 2) The Alberta Crop Industry Development Fund Ltd
- 3) Big Game Harvest Estimates 2014 ELK



July 3, 2015

Mr. Pat Gordeyko, Chair
Agricultural Service Board Provincial Committee
J.G. O'Donoghue Building
Room 200, 7000 – 113 Street
Edmonton, AB T6H 5T6

Re: Legal Opinion on Jurisdiction of Alberta *Weed Control Act* on Railways

Dear Mr. Gordeyko,

At the Spring 2015 AAMDC Convention, members passed *Resolution 3-15S: Legal Opinion on the Jurisdiction of the Weed Control Act on all Railways*. The endorsed AAMDC resolution was similar in nature to Resolution #6: Legal Opinion on the Jurisdiction of the *Weed Control Act* on CN Rail, that was endorsed at the Agricultural Service Board (ASB) 2015 convention.

AAMDC's endorsed resolution provided the following direction:

THEREFORE BE IT RESOLVED that the Alberta Association of Municipal Districts and Counties obtain a legal opinion on the jurisdiction of the *Weed Control Act of Alberta* for all railways, and that the opinion be shared with its member municipalities

In following this direction, the AAMDC received a legal opinion on this issue from Brownlee LLP. The legal opinion indicates that both federally- and provincially-regulated railways operating within Alberta must comply with the weed control requirements of the *Weed Control Act (WCA)*. The legal opinion indicates that municipal inspectors have the authority to enforce and monitor compliance under the WCA within the geographical boundaries of each municipality and that activities undertaken by a federal railway company on lands that are not integral to federal undertakings are subject to provincial legislation. Furthermore, complying with the WCA will not impair the operation of any railway, nor does it contradict or conflict any federal laws.

The AAMDC values its strong working relationship with the Agricultural Service Board and is sharing the enclosed legal opinion for your information.

In addition, the legal opinion will be shared with Canadian National and Canadian Pacific railways and, the AAMDC will follow up with the above-mentioned railways to discuss the legal opinion.

Sincerely,

Al Kemmere
President

2510 Sparrow Drive Nisku, AB T9E 8N5 Phone (780) 955.3639 Fax (780) 955.3615 Web www.aamdc.com

Alberta Association of Municipal Districts & Counties



B R O W N L E E
L A W
L L P
S U I T E 7 0 0

Suite 700
396 11th Ave. SW
Calgary, AB Canada T2R 0C5
Telephone: (403) 232-8300
Telecopier: (403) 232-8408
E-Mail: e-mail@brownleelaw.com
WebSite: www.brownleelaw.com

Refer to: D.J. King
Direct Line: 403.260.1472
E-mail: dking@brownleelaw.com
Our File No.: 71034.0308

May 19, 2015

VIA EMAIL: Tasha@aamdc.com

Alberta Association Municipal Districts & Counties
2510 Sparrow Drive
Nisku, AB T9E 8N5

Attention: Tasha Blumenthal

Dear Madam:

Re: **Alberta *Weed Control Act***
Application to Railways Lands

Further to your instructions on April 10, 2015, we write to provide our opinion regarding whether the Alberta *Weed Control Act* (the "*WCA*") applies to both federally regulated railway lands as well as provincially regulated railway lands within Alberta.

BACKGROUND

This request for a legal opinion has arisen as result of member municipalities being prevented from taking steps to control weeds on federal railway lands pursuant to their authority under the *WCA*. It is our understanding that when certain municipalities have attempted to conduct weed control on railway lands, federal companies such as CN Rail have advised that it is their position that the *WCA* does not apply to its railway lands as they are federally regulated undertakings and therefore exempt from having to comply with provincial legislation. Member municipalities have also been advised that it would be considered trespassing if an inspector under the *WCA* entered on CN Rail property without the proper CN documentation and permissions.

At the AAMD&C Spring 2015 Convention, the membership passed a resolution (Resolution 3-15S) which directed the Association to obtain a legal opinion regarding the jurisdiction of the *WCA* over all railway lands within the Province. Further, and based on the instructions from Ms. Blumenthal, we have confirmed that our opinion is to address both federally regulated as well as

{12/05/2015,B1731791.DOC;1}

provincially regulated railway lands within Alberta. We understand that this legal opinion will be shared with all member municipalities of the Association.

ISSUES

Based on the information provided, below we have addressed the following issues:

- i. Municipal Authority to Control Weeds Generally;
- ii. Jurisdiction over Railways under the *Constitution Act*, 1867;
- iii. Application of Provincial Legislation to Federal Railway Lands; and
- iv. Municipal Authority to Control Weeds on Provincial Railway Lands.

EXECUTIVE SUMMARY

As you are likely aware, municipal inspectors have broad authority to enforce and monitor compliance under the *WCA* within the geographical boundaries of each municipality. Sections 12 to 15 and Sections 17 and 18 of the *WCA* authorize a municipal inspector to inspect lands, issue notices for non-compliance and take enforcement steps where a landowner has failed to comply with a notice. Further, a municipality may recover the expenses for enforcing a notice from a landowner pursuant to Section 21 of the *WCA*.

Interprovincial railways are within the jurisdiction of Parliament under section 92(10)(a) of the *Constitution Act*, 1867 (U.K.), 30 & 31 Victoria, c. 3 (the "*Constitution Act*"). Although federally-regulated undertakings such as railways often take the position that they are "immune" from provincial laws, our Courts have strongly confirmed that any activity undertaken by a federal railway company on its lands which cannot be characterized as an integral part of its federal undertaking will be subject to provincial legislation. In other words, federal undertakings are not federal "enclaves" from which all provincial laws are excluded.

In our view, complying with the provisions of the *WCA* will not impair the operation of any federal railways. Further, there is no federal law which directly conflicts with the provisions of the *WCA* in this regard. Therefore, it is our opinion that federal railways within Alberta must comply with the weed control requirements of the *WCA*. Please note however that where a municipal inspector intends to access railway lands for inspections or enforcement, we strongly recommend that such enforcement measures always, where necessary or requested, be considerate of the railway safety requirements of each company and the Federal Government.

Further, given the provisions of the *WCA* and the common law principles regarding dual compliance, it is our opinion that provincially regulated railway lands must also comply with the

{12/05/2015,81731791.DOC:1}

WCA and that an authorized municipal inspector has the authority to monitor and enforce compliance on such lands (subject to any necessary safety requirements).

DISCUSSION

A. Municipal Authority to Control Weeds

As you are likely aware, municipal councils, as local authorities pursuant to the *WCA*, must appoint inspectors to enforce and monitor compliance under the *WCA* within the geographical boundaries of each municipality (*WCA*, s.7). Unless the Minister has appointed a provincial inspector, municipal inspectors have broad authority to enforce the *WCA*.

Specifically, Sections 11 to 15 authorize a municipal inspector to inspect lands and issue notices for non-compliance. Section 11 further provides that a person shall not obstruct or delay an inspector in the exercise of the inspector's duties or powers to enforce and monitor compliance with the *WCA*.

Section 18 of the *WCA* provides that an inspector, or any person authorized by an inspector may take any action that the inspector determines is necessary to fulfil a requirement of a notice that has not been complied with. Finally, a municipality may recover the expenses for enforcing a notice from a landowner pursuant to Section 21 of the *WCA*.

Municipalities must ensure that the requirements of the *WCA* are met with respect to the contents of an inspector's notice as well as the service of a notice before an inspector can take steps to enforce the notice. Further, the appeal period must have expired or the appeal must be determined before enforcement steps can be taken.

There are no provisions in the *WCA* which address the authority of a municipal inspector to enforce the *Act* on lands owned by federally regulated undertakings.

B. Jurisdiction over Railways under the *Constitution Act, 1867*

The Division of Powers

The division of authority between the Provinces and the Federal Government, as contained in the *Constitution Act*, is not always clear cut. For example, the Federal Government's authority relating to telecommunications, railways and aeronautics was created by specifically limiting the Provinces' ability to regulate on matters directly related to these areas. Where the Province's ability to regulate is limited, so too is a municipality's ability to regulate, as a municipality is a creature of the Provincial Government.

While the *Constitution Act* does not prescribe a municipality's jurisdiction, municipalities derive their authority from Provincial statutes. Accordingly, a municipality's authority to enforce

{12/05/2015,B1731791.DOC;1}

compliance with the *WCA* is derived from Section 92(13) of the *Constitution Act*, which provides Provinces the exclusive authority to legislate on matters of "property and civil rights in the Province" and s. 92(16) which gives the Provinces authority over "generally all matters of a merely local or private nature in the Province."

Section 92(10)(a) provides that a Province may make laws in relation to local works and undertakings; however, the regulation of any railways which connect a Province with any other Province, or railways which extend beyond the limits of the Province, is specifically exempted from provincial authority.

Therefore, pursuant to the *Constitution Act*, the Federal Government regulates all inter-provincial and international transportation, whereas the Province regulates all intra-provincial transportation. Further, Section 92(10)(c) permits the Federal Government to declare works that are wholly within provincial boundaries to be "for the general Advantage of Canada" or "for the Advantage of Two or more of the Provinces" therefore placing such works under federal jurisdiction.

The Alberta Transportation, Dangerous Goods and Rail Safety branch is responsible for administering the Alberta *Railway (Alberta) Act* and all associated rules, regulations and standards which apply to provincial railways. Federal railways are the responsibility of Transport Canada under the federal *Railway Safety Act*.

Despite the potential for conflict, our Courts have confirmed that it is possible for a federally regulated undertaking to be subject to provincial law and municipal bylaws, but only to the extent that the laws do not impair vital parts of the federal operations and activities ("interjurisdictional immunity"), and so long as the laws are not inconsistent with any federal statutes to which the undertaking is subject ("federal paramountcy"). These concepts are discussed below.

C. Application of Provincial Legislation to Federal Railway Lands

The Paramountcy Doctrine

The principles of federal legislative paramountcy provide that where there is an inconsistency between validly enacted but overlapping provincial and federal legislation, the provincial legislation is inoperative to the extent of that inconsistency. In the absence of operational inconsistency with federal law, the provincial law will continue to operate.

The mere fact that federal and provincial laws may deal with the same subject matter does not oust the operation of provincial law. For the purposes of the paramountcy doctrine, an inconsistency only exists if it is impossible to comply simultaneously with both provincial and federal enactments, or if the provincial law frustrates the purpose of the federal legislation.

{12/05/2015,B1731791.DOC;1}

As noted by the Supreme Court of Canada in *Burrardview Neighbourhood Assn. v. Lafarge Canada Inc. et al*, ("*Lafarge*"), lands do not cease to be "within the province" by reason of their potential use for federally regulated activities. *Lafarge* involved an attempt by a neighbourhood association to have a city land use and development bylaw enforced to prevent a concrete batch plant from being constructed on lands owned by the Vancouver Port Authority. In discussing federal paramountcy, the Court went on to confirm that "*land-use control within a harbour has both provincial and federal aspects. . . but of course federal authority will be paramount to the provincial authority in cases of overlapping jurisdiction where there is a valid federal law and a valid provincial law applicable to different aspects of the proposed use and the two laws come into operational conflict.*"

i. Compliance with the WCA

We have reviewed the provisions of the federal *Railway Safety Act* and can confirm that there are no provisions within that *Act* or its regulations which specifically address the control of noxious weeds on railway lands. Although Section 24(e)(ii) of the *Act* provides that the Governor in Council may make regulations respecting the removal of weeds from railway lines, we can confirm that presently, there are no federal regulations which address weed removal. Further, there is no other federal law which addresses this issue.

Therefore, it is our opinion that the doctrine of paramountcy does not apply to support an argument that federal railways are not required to control weeds on their lands in compliance with the *WCA*.

ii. Access to Federal Railway Lands to Monitor and Enforce Compliance

Although it is our opinion that federal railways must comply with the weed control requirements of the *WCA*, we do caution that there are provisions of the *Railway Safety Act* which address unauthorized access to federal railway rights of way. Specifically, Section 26.1 of the *Railway Safety Act* states that:

"No person shall, without lawful excuse, enter on land on which a line work is situated."

Further, Section 24(1)(f) of the *Act* provides that the Governor in Council may make regulations for restricting or preventing access to the land on which a line of railway is situated by persons — other than employees or agents or mandataries of the railway company concerned, or of the local railway company authorized to operate railway equipment on the railway — or by vehicles or animals, if their presence on that land would constitute a threat to safe railway operations.

{12/05/2015,B1731791.DOC;1}

We have reviewed the regulations associated with the *Railway Safety Act* and can confirm that there are presently no regulations which control or prohibit access to railway lands as outlined in Section 24. Pursuant to Transport Canada's Railway Right of Way Access Control Policy, the jurisdiction of the federal government with respect to controlling access "is intended only to extend to those aspects which have a direct relationship to the safety of a railway right of way."

We also reviewed case law to determine if the term "without lawful excuse" referenced in Section 26.1 of the *Railway Safety Act* has ever been considered in relation to a municipality's statutory authority to access federal lands. Unfortunately, we were unable to find a case on point. What our Courts have confirmed however is that where a public body has been given statutory power to enter or exercise certain rights over another person's lands, the defence of legal authorization will apply to any action in trespass.

In our view, a plain reading of Section 26.1 suggests that where a municipal inspector has lawful authority pursuant to the provisions of the *WCA* to enter railway lands for purposes of conducting an inspection or taking enforcement action, such authority provides the "lawful excuse" required under Section 26.1 so as to allow lawful access. That being said, we strongly recommend that municipal efforts to enforce the *WCA* should always, where necessary or requested, be considerate of the railway safety requirements of each company and the Federal Government. If a company refuses to cooperate with a municipal inspector to allow access, further enforcement measures may be required pursuant to the provisions of the *WCA* including prosecuting the company for contravening the *Act*.

Interjurisdictional Immunity

The principles of interjurisdictional immunity provide that that federally regulated undertakings are "immune" from provincial laws that affect a "vital part" of the management and operation of the undertaking; however, where a provincial law has only an "indirect effect" on the federal undertaking, the provincial law is inapplicable only if it impairs, paralyzes or sterilizes the federal undertaking.

As this matter potentially deals with both property and civil rights (a provincial jurisdiction) and inter-provincial railways (a federal jurisdiction), we must also apply the division of power interpretation rules to determine whether a municipality's authority to inspect lands and enforce compliance under the *WCA* will affect a vital part of the management and operation of a federally regulated railway, thereby rendering the *WCA* inoperative.

When addressing situations involving the interplay between provincial legislation and federal activities, like aeronautics or railways, the Courts first look at the "pith and substance" of the legislation in question. The "pith and substance" analysis tries to identify the true nature of the law in question and the essential matter to which it relates. In conducting this analysis, our Courts have noted that it is impossible to formulate a single comprehensive test which will be

{12/05/2015,B1731791.DOC:1}

useful in all of the cases involving s. 92(10)(a) of the *Constitution Act*. The common theme in most cases is that the Court must be guided by the particular facts in each situation, including a consideration of the dominant aspect of the challenged provincial legislation. Further, although useful analogies may be found in decided cases, in each case the determination of this constitutional issue will depend on the facts which must be carefully reviewed.

i. Review of Case Law

Although we were unable to find a Court decision directly on point with respect to the control of weeds on federal lands, there are cases which address the jurisdiction of provincial statutes (including municipal land use regulations, employment codes, etc.) over federal undertakings such as railways. These cases apply by analogy as the same type of functional test is used in delineating provincial and federal authority.

For example, *Reference re Application of Hours of Work Act (British Columbia) to Employees of Canadian Pacific Railway in Empress Hotel, Victoria (City)* was a 1950 Supreme Court of Canada decision in relation to a hotel which was constructed on lands owned by CP Rail. In *Empress Hotel*, the Supreme Court of Canada held that the hotel was not part of CPR's undertaking as a railway and therefore was subject to provincial legislation regarding employee work hours. Specifically, the Court stated that if CP Rail chose to conduct a hotel solely or even principally for the benefit of travelers on its system, the hotel would be a part of its railway undertaking. Even if the railway business and hotel business helped one another, the Court found that this would not prevent them from being separate businesses or undertakings.

Cases respecting aeronautics also provide helpful comments regarding the application of provincial statutes to federal undertakings. The most recent aeronautics decision of the Alberta Court of Appeal is *Taylor v. Alberta (Registrar, South Alberta Land Registration District)*. In *Taylor*, Airdrie Airpark had secured approval for the construction of an aerodrome that would form part of the Airdrie airport. Construction of the aerodrome required subdivision of land (by condominium plan), which had been approved by Transport Canada and then registered with Land Titles. Taylor, an adjacent land owner, challenged the validity of the approval of the aerodrome on the basis that the Municipal District of Rocky View (as it was then known) was required to grant subdivision approval as opposed to Transport Canada.

Taylor's position was that only Rocky View had the constitutional jurisdiction to approve a plan of subdivision of land, even where that land would form part of an airport, as the subdivision was not integral, essential or vital to the operation of the airport. In overturning the decision of the chambers judge, the majority of the Court of Appeal held that Transport Canada did not have exclusive jurisdiction to approve the entirety of the plan of subdivision. The Court held that the plan was divisible into two parts, consisting of the lots that were clearly related to aeronautics, and the remaining 184 acres that the Airpark intended to sell, but for which the future use was uncertain. The Court concluded that requiring municipal approval of a plan to develop and sell

{12/05/2015,11731791.DOC,1}

lots as a means of financing an airport expansion would not have a direct effect upon the operational qualities of the airport, nor upon its suitability for the purposes of aeronautics.

Finally, case law from Ontario supports the argument that management decisions taken by federal undertakings are not completely impervious to the impact of provincial legislation simply because such legislation may require the management of a federal undertaking to undertake certain positive actions (see *TransCanada Pipelines Ltd. v. Ontario (Ministry of Community Safety & Correctional Services)*).

To summarize, our Courts have soundly rejected the proposition that federal undertakings are wholly immunized against valid provincial legislation. As the Supreme Court of Canada stated in *Air Canada v. British Columbia*:

So far as the attack based on the federal nature of the undertaking (i.e., s. 92(10)(a) and the aeronautics powers), the airlines at times appeared to argue for a type of enclave theory making them immune from otherwise valid provincial legislation. This contention is wholly without merit. By and large federal undertakings, like other private enterprises functioning within the province, must operate in a provincial legislative environment. ...

ii. *Application of the WCA to Federal Railway Lands*

In our opinion, requiring federal railway operators to comply with the *WCA* does not unduly impede the vital operation of a railway. Further, it is clear that the dominant aspect of the *WCA* is the protection of property and the environment through the regulation of noxious weeds within Alberta. Therefore, it is our opinion that the principles of interjurisdictional immunity do not apply to render the *WCA* inoperative with respect to federal undertakings.

Based on this analysis, it is our view that federal railways within Alberta must comply with the requirements of the *WCA* respecting weed control. Further, although it follows that the principles of interjurisdictional immunity do not apply to prevent a municipal inspector from inspecting railway lands and taking enforcement measures, we wish to emphasize our above recommendation that municipal efforts to enforce the *WCA* should always be considerate of railway safety requirements.

D. Municipality Authority to Control Weeds on Provincial Railways Lands

Section 17(1) of the *Alberta Railway Act* requires that "*the operator of a railway shall at all times maintain and keep the rights of way and track free from dead or dry grass, weeds and any other unnecessary combustible matter.*" There are, however, no further regulations or positive obligations imposed on provincial railway operators in relation to weeds.

{12/05/2015,B1731791.DOC;1}

Our Courts have confirmed that the principles regarding federal paramountcy apply similarly to conflicts between municipal authority and provincial legislation. In other words, provincial regulation is no bar to municipal regulation over the same subject matter; municipal regulation may be complimentary to provincial regulation if there is no inconsistency. Where the issue at hand is a municipal bylaw, it has been confirmed that bylaws may enhance the statutory standards but must not conflict with them. As confirmed by the Supreme Court of Canada in *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, dual compliance is possible unless a true and outright conflict has arisen because one enactment compels what the other forbids. Based on these principles, it is our opinion, there is no conflict between the *Railway Act* and a municipality's authority under the *WCA* as there is nothing in the *WCA* which compels what the *Railway Act* prohibits.

Further, we note that although municipalities have the authority to regulate weeds under the *WCA*, it is the provincial government which enacted both the *WCA* as well as the *Railway Act*. Therefore, a railway operator would likely have a difficult time arguing that while it does have to comply with the *Railway Act*, it does not have to comply with the *WCA*.

In a scenario where a private company owns a provincially regulated railway, it is our opinion that the railway operator must comply with both the *Railway Act* as well as the *WCA* to control weeds.

Although we are unaware of any provincial railways which are currently owned by the Crown, for completeness we wish to also advise that Section 14 of the Alberta *Interpretation Act* provides that the Crown is not bound by an enactment unless the enactment expressly states that it binds the Crown. Section 31 of the *WCA* specifically provides that the Crown is bound by the *Act*. Therefore, if in the future there are any provincial railway lands which are owned by the Crown, the Crown must also comply with the requirements of the *WCA*.

Finally, unless the Minister has appointed a provincial inspector to enforce the *WCA* within a specific municipality, it is our opinion that an authorized municipal inspector has the authority to enforce and monitor compliance with the *WCA* on all provincial railway lands within that municipality's boundaries. As with federal railways lands, we recommend that anytime a municipal inspector intends to enter provincial railway lands, that he or she does so in compliance with any applicable railway safety requirements.

CONCLUSION

The question of whether a municipal bylaw will apply to a federal undertaking is not simple to answer and each case will be determined on the facts. There is no federal law which directly conflicts with the provisions of the *WCA*. Further, requiring federal railway operators to comply with the *WCA* does not unduly impede the vital operation of a railway. It is our opinion that federal railways within Alberta must comply with the requirements of the *WCA* respecting weed

{12/05/2015,B1731791.DOC:1}

control, as well as any enforcement measures taken by municipalities pursuant to their authority under the *Act*.

Further, given the provisions of the *WCA*, and the common law principles regarding dual compliance, it is our opinion that provincial railway lands must also comply with the *WCA* and that an authorized municipal inspector has the authority to monitor and enforce compliance on provincial railway lands.

We trust that the foregoing information is of assistance. Should you have any question with respect to this analysis or our conclusions, please do not hesitate to contact the writer directly or our associate, Marlana (Marny) S. Paul, who was instrumental in the preparation of this opinion, at (403) 260-5314 or mpaul@brownleelaw.com.

Yours truly,

BROWNLEE LLP
PER:



DEREK J. KING
DJK/hjs

cc: Brownlee LLP – Marlana (Marny) Paul (via email)

The Alberta Crop Industry Development Fund Ltd. (ACIDF)

The Alberta Crop Industry Development Fund Ltd. (ACIDF) is a private not-for-profit company owned by organizations in Alberta's crop industry. We invest in research, development and pre-commercialization projects and activities to the benefit of producers and industry in the province. Supported primarily by Alberta Agriculture and Forestry, the company manages five investment initiatives. Our portfolio ranges from basic sciences through to support for product development and manufacturing process. The major portion of investment is targeted at production issues and applied sciences with strong emphasis on applied technology that benefit agricultural crop producers.

Alberta's crop sector is successful, thanks to you, the agriculture community. ACIDF funding is currently **FULLY COMMITTED**. Please check back regularly to see if opportunities for funding are available. <http://www.acidf.ca/>

Research Priorities *The Alberta Crop Industry Development Fund (ACIDF) has been asking producers, researchers, agronomists and others which areas they consider the highest priority for that work. Find out what they have been saying by clicking on the following links:* - [Research priorities for beekeepers in Alberta](#) -

[Research priorities for irrigated crop production in Alberta](#) - [Research priorities for greenhouse production in Alberta](#) - [Effectively Managing and Maximizing the Benefits of Crop Inputs](#) - [Knowledge Transfer](#) - [Integrated Pest Management](#) - [Tillage, Harvest and Residue Management Practices](#) - [Continued Support for Plant Breeding](#) - [Water and Moisture Management](#) - [Seeding Practices](#) - [Soil Health](#) - [Precision Agriculture and Data Management](#) - [Research Priorities for Forage Production in Alberta, Part 1](#) - [Research Priorities for Forage Production in Alberta, Part 2](#)

Big Game Harvest Estimates 2014 – Elk

My Wild Alberta – Hunter Harvest

WMU: Wildlife Management Unit

WMU	Males	Females	Young	Total Animals	Hunter Success Percentage (%)
102	9	13	10	32	46%
104	10	17	0	27	52%
108	17	26	3	45	86%
116	5	0	0	5	29%
116/118/119	-	-	-	0	0%
116/118/119/624	-	-	-	0	0%
118	0	0	0	0	0%
119	3	0	0	3	11%
124/144/148/150	76	66	8	150	60%
151	8	0	0	8	7%
151/152	19	17	0	36	65%
152	13	0	0	13	8%
164	0	8	0	8	17%
164/166	9	5	0	14	12%
166	4	0	0	4	7%
200	0	0	0	0	0%
200/202/203/232/234	72	82	13	166	29%
202	4	0	0	4	8%
203	0	0	0	0	0%
204	0	0	0	0	0%
204/228/230	0	8	0	8	21%
206	4	0	0	4	11%
206/222/226/244/246	7	0	0	7	10%
208	0	0	0	0	0%
208/220	14	11	0	25	41%
212	17	68	22	107	12%
214	29	0	4	34	18%
214/314	0	66	3	68	53%
216	17	0	0	17	6%
216/320	0	43	8	50	65%
220	13	0	0	13	13%
221	25	0	0	25	38%
221/322	0	6	0	6	8%
222	0	0	0	0	0%
224	8	11	3	22	7%
226	0	0	0	0	0%
228	4	0	0	4	50%

WMU	Males	Females	Young	Total Animals	Hunter Success Percentage (%)
230	0	0	0	0	0%
232	8	4	0	13	12%
234	21	0	4	25	19%
236	0	0	0	0	0%
236/238/256/500	11	13	9	33	77%
238	0	0	0	0	0%
240	0	0	0	0	0%
240/242	4	0	0	4	19%
242	13	0	0	13	21%
244	0	0	0	0	0%
246	4	0	0	4	20%
248	0	0	0	0	0%
250	0	0	0	0	0%
252	4	0	0	4	14%
252/254/258/260	0	18	0	18	39%
254	0	0	0	0	0%
256	4	0	0	4	20%
258	0	0	0	0	0%
260	0	0	0	0	0%
300	4	0	0	4	8%
300A	14	6	6	25	14%
300B	12	12	0	24	13%
302	101	31	2	134	18%
303	0	16	2	18	67%
304	109	82	8	200	14%
305	198	35	0	233	17%
306	29	44	4	77	13%
308	72	27	0	99	9%
310	67	32	6	105	19%
312	257	120	26	403	27%
314	76	13	0	88	9%
316	4	0	0	4	1%
318	0	0	0	0	0%
320	17	0	0	17	3%
322	4	0	0	4	3%
324	0	0	0	0	0%
326	4	0	0	4	1%
328	4	0	0	4	1%
330	13	5	0	17	3%
332	17	44	3	64	8%
334	0	9	4	13	5%
336	29	16	0	46	9%
337	17	20	0	36	10%
338	8	21	0	29	5%
339	13	0	0	13	3%

WMU	Males	Females	Young	Total Animals	Hunter Success Percentage (%)
340	13	3	0	16	4%
342	4	0	0	4	2%
344	46	10	0	56	8%
346	93	41	11	145	14%
347	8	0	0	8	4%
348	34	93	16	143	16%
349	4	0	0	4	2%
350	4	0	0	4	4%
351	4	0	0	4	13%
352	29	10	0	39	12%
353	25	33	0	58	8%
354	21	9	0	31	9%
355	0	15	0	15	13%
356	88	51	0	139	16%
357	168	580	92	840	38%
358	177	244	19	440	30%
359	198	284	22	504	36%
360	67	168	14	250	29%
400	55	10	0	65	5%
402	59	0	0	59	5%
404	9	13	6	29	17%
406	8	3	0	10	5%
408	0	2	0	2	2%
410	29	4	0	34	13%
412	0	0	0	0	0%
414	0	0	0	0	0%
416	0	0	0	0	0%
417	0	0	0	0	0%
418	10	0	0	10	56%
420	0	0	0	0	0%
422	0	0	0	0	0%
426	4	0	0	4	4%
428	0	0	0	0	0%
429	4	0	0	4	2%
430	0	0	0	0	0%
432	0	0	0	0	0%
434	0	0	0	0	0%
436	0	0	0	0	0%
437	4	0	0	4	8%
438	4	11	0	15	8%
439	0	6	0	6	7%
440	8	0	0	8	10%
441	0	0	0	0	0%
442	8	0	0	8	29%
444	0	0	0	0	0%

WMU	Males	Females	Young	Total Animals	Hunter Success Percentage (%)
445	0	0	0	0	0%
446	4	0	0	4	8%
500	0	0	0	0	0%
504	0	0	0	0	0%
505	17	4	0	21	19%
506	4	4	0	8	5%
507	17	43	6	66	18%
508	13	11	0	23	18%
509	4	7	1	12	13%
510	42	21	4	67	10%
511	4	17	0	22	17%
520	4	6	0	10	10%
521	101	297	47	445	29%
522	114	285	14	413	37%
523	29	152	11	193	28%
524	4	0	0	4	20%
525	0	0	0	0	0%
526	76	113	15	204	26%
527	67	124	7	198	25%
528	4	0	0	4	11%
535	21	0	0	21	25%
537	0	0	0	0	0%
544	0	3	0	3	7%
732	0	406	39	445	89%
936	15	20	0	36	29%

Estimated Totals	Males	Females	Young	Total Animals
	3,254	4,120	472	7,846

Resolutions to be archived in 2015

2011 Agricultural Service Board Resolutions

Resolution #1	Agricultural Service Board Funding
Resolution #2	Eradicable Weeds Program Funding
Resolution #3	Mitigating the effects of Agricultural Disaster Years on Crop Insurance Levels and Premiums - DEFEATED
Resolution #4	Monitoring of Groundwater Wells
Resolution #5	Environmental Regulations of Crown Land
Resolution #6	BSE Class Action Lawsuit
Resolution #7	Disposal of Agricultural Plastics
Resolution #8	Enforcement of Clubroot Infestations
Resolution #9	Richardson Ground Squirrel Control - Emergency Registration
Resolution #10	Richardson Ground Squirrel Control - Permanent Registration
Emergent Resolution #1	Bill C-544 - Banning of Importation of Horses for Slaughter

For more information:

[http://www1.agric.gov.ab.ca/\\$Department/deptdocs.nsf/all/rsv13553](http://www1.agric.gov.ab.ca/$Department/deptdocs.nsf/all/rsv13553)