

# ALTERNATIVE MODELS OF COMPENSATION ON ALBERTA'S CROWN GRAZING LEASE LANDS

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## ABSTRACT:

Over 6.3 million acres (3.9 per cent of the province)<sup>2</sup> of publicly owned Crown agricultural lands in Alberta are leased to individuals or corporations for livestock grazing. Historically, grazing lease holders in Alberta have received compensation from oil and gas exploration when development is undertaken on lands that they lease. Compensation to leaseholders is generally determined through privately negotiated agreements and this information is not publicly available. Recently, one jurisdiction in Alberta adopted a mechanism similar to the approach used in Saskatchewan for the treatment of compensation revenue from oil and gas disturbance on public grazing land that limits the amount of compensation that leaseholders can receive. This paper provides a review of the current policy for public lands grazing leases in Alberta, and compares it with the approaches used in the Province of Saskatchewan and Municipal District of Taber. We examine the implications of the alternative approaches and provide a description of the number of wellsites on grazing leases and an estimate of the size and distribution of compensation funds transferred from oil and gas operators under the various policy approaches. While this paper provides detailed information on some aspects of this issue, the Government of Alberta would have to determine whether or not the magnitude of the revenue involved would be worthwhile to invest in other programs, given the challenges that could be associated with legislative or regulatory change, transactions costs, transition costs, and impacts on a sector that has faced economic shocks over the past two decades. The government may also have to factor in the impact any changes in compensation payments would have on the regional agricultural sector and potentially, provision of ecosystem goods and services. Given the differences between approaches to compensation, clear and independent information regarding the legislative and policy objectives around compensation - and the potential consequences of policy change - should be useful in informing discussions around this issue.



## 1. INTRODUCTION

In Alberta, a portion of publicly owned land is leased for agricultural uses, such as for grazing livestock. Public grazing lands in Alberta pre-date the province itself.<sup>3</sup> Much of this land leased for the purpose of grazing is in the southern agricultural heartland of the province. Many current grazing leaseholders have had livestock grazing operations on the same land for decades; some farmers have had grazing leases in their families for over a century.

Crown grazing lands provide important environmental, social and economic benefits to the Alberta public at large. Many Albertans believe that grazing lease lands require long-term care, stewardship and protection as a provincial resource.<sup>4</sup>

Over the past two decades, there has been much debate about Alberta's grazing leases, including concerns about: public recreational access to Crown land;<sup>5</sup> leaseholder liability; environmental protection; rental rates and their relationship to municipal taxes; and lease tenure and transferability.<sup>6</sup>

An issue that has been highlighted recently, and at times in the past, is the compensation collected by grazing leaseholders on Crown land from oil and gas companies for exploration and development. Under the current system, grazing leaseholders are provided annual compensation for loss of use of the land and for adverse effects by oil and gas operators.<sup>7</sup> The provincial Crown is provided a standard rental fee for the grazing rights, but does not share as landowner in the compensation paid by the oil and gas operators to the leaseholders. This legal arrangement contrasts with corresponding policies in other jurisdictions, notably with those of the Province of Saskatchewan, and with the recently developed policy for grazing leases on land owned by the Municipal District of Taber, Alberta. Thus, as it appears that policies differ both across, and now within, provincial boundaries, we investigate the potential implications of these alternative approaches.

The Government of Alberta has reviewed its direction around this issue in the past. In 1998, Mr. Tom Thurber, Member of the Legislative Assembly of Alberta and chair of an Agricultural Lease Review Committee, released a report containing policy recommendations for the Government of Alberta related to compensation on grazing leases (the "Thurber Report"). Following the Thurber Report, related legislation was debated and passed, with draft regulations undergoing consultation – but the law never came into effect, and no changes were made; the reasons for this departure from the originally intended direction are unclear.

Seventeen years after the Thurber Report's release, there remains little publicly available information on oil and gas compensation on public lands grazing leases in Alberta. Given the



Municipal District of Taber's adoption of a policy similar to that proposed by Thurber, and Alberta's current economic climate and examinations of new potential revenue sources, discussions of this particular issue may arise again. Clear and independent information regarding the legislation and policy around compensation, and the potential consequences of policy change, should be useful in informing discussions around this issue.

This paper provides a background and context for grazing leases in Alberta, including the extent of oil and gas activity on public lands grazing leases, in order to answer the questions:

1. What are the differences between the current Alberta policy, Thurber's proposed policy, the policy adopted by the Municipal District of Taber and the province of Saskatchewan's approach to this issue?
2. If Alberta changed its policy related to compensation (as proposed by Thurber or as employed in other jurisdictions) what might the financial outcome be for the provincial government and grazing leaseholders?



## 2. ALBERTA'S PUBLIC LANDS GRAZING LEASES

Grazing leases on Crown land in the western prairies were first granted to independent ranchers in accordance with the *Dominion Lands Act* in the 1870s and predate the Province of Alberta.<sup>8</sup> Today grazing rights on public lands are governed by the *Public Lands Act* (RSA 2000, c P-40) and administered by Alberta Environment and Parks (AEP), formerly Alberta Environment and Sustainable Resource Development (ESRD). The grazing lease is a legally protected property interest and an important factor of production for many ranchers in Alberta.

According to government figures there are 5,962 active Crown grazing leases on 5,221,363 acres across Alberta.<sup>9</sup> This public land leased for grazing in Alberta's White Area equates to approximately 3.2 per cent of the province's total land area<sup>10</sup> but is estimated to provide as much as 20 per cent of the grazing requirements for the province's livestock.<sup>11</sup> The average size of a grazing lease is 876 acres,<sup>12</sup> although this varies across regions (see Table 1.1 and Figure 1.1). Some leases comprise multiple sections (640 acre units of land) while others are smaller than individual quarter sections (160 acres).<sup>13</sup>

**Table 1.** Number, total area covered and average size of Alberta's grazing leases on Crown public lands by Alberta Environment and Parks' Operations Regions and Special Areas (for location map, see Figure 1.2).

	Alberta Environment and Parks (AEP) Regions					Special Areas	Total (Province)
	Peace	Lower Athabasca	Upper Athabasca	Red Deer - North Saskatchewan	South Saskatchewan		
Number	907	584	1,049	1,820	1,602	1,426	<b>7,388</b>
Total Area (acres)	742,891	387,601	449,512	1,006,652	2,634,707	1,054,123	<b>6,275,486</b>
Average Lease Size (acres/lease)	819	664	429	553	1,645	740	<b>849</b>

In addition to those grazing leases on Crown lands administered by AEP, there are also grazing leases in Alberta's Special Areas. The Special Areas comprise a rural municipality home to 5,000 residents in southeastern Alberta, spanning 5.1 million acres.<sup>14</sup> The Special Areas were established in 1938 by the provincial government to provide municipal services in the area, which was hard-hit by drought during the Great Depression.<sup>15</sup> The *Special Areas Act* (RSA 2000, c S-16) establishes the Special Areas and their administration.<sup>16</sup> Alberta Municipal Affairs delegates administration of the Special Areas to the Special Areas Board through a



Ministerial Order.<sup>17</sup> Approximately half of the Special Areas are public lands administered by the Special Areas Board: 1.6 million acres of Crown land, and 1 million acres of Tax Recovery lands.<sup>18</sup> There are currently 1,966 grazing leases on public lands within Special Areas. Of those, 1,426 grazing leases are fully or partially located on Crown public lands.<sup>19</sup>

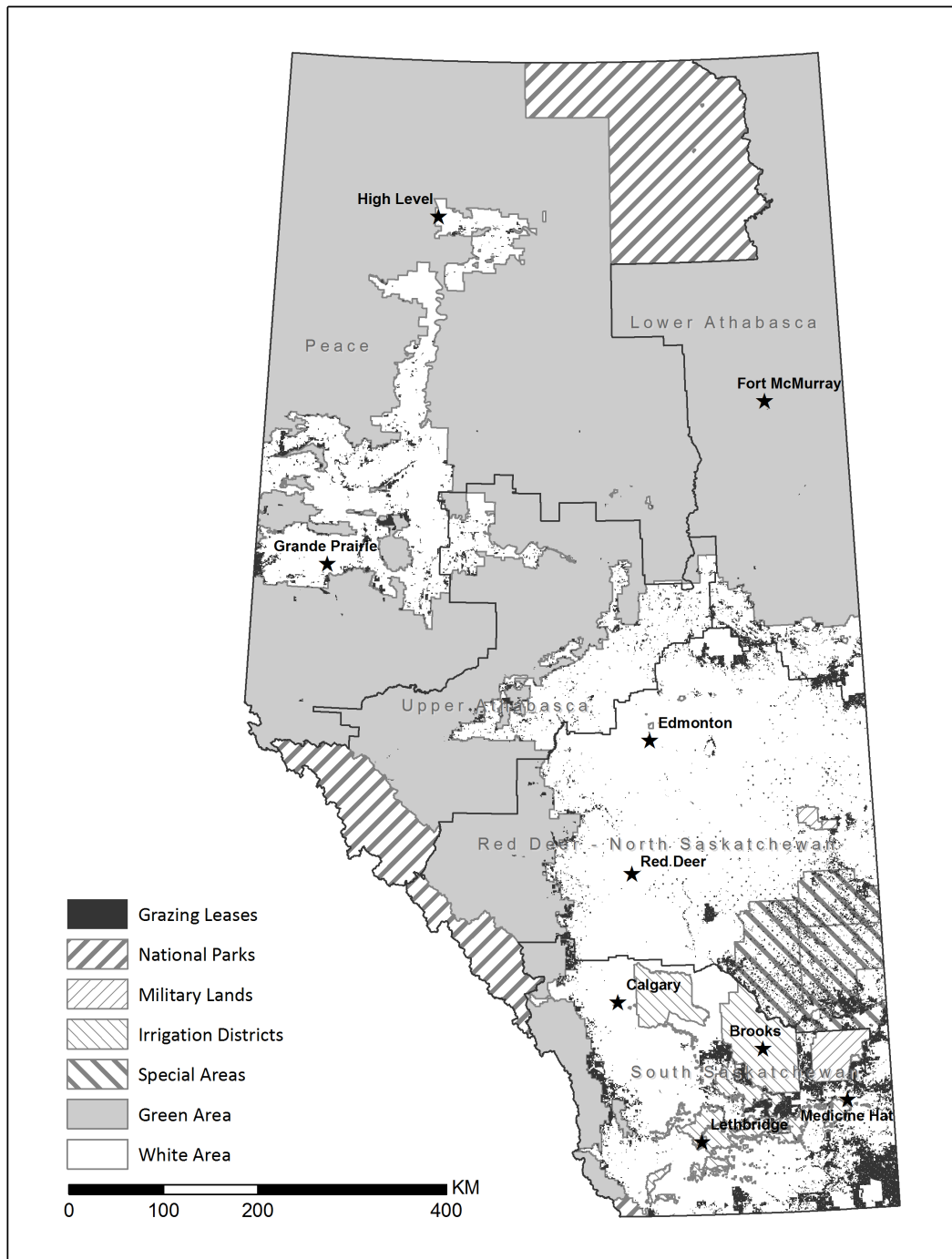


Figure 1. Public lands grazing leases in Alberta.

The administration of grazing leases and the rights and responsibilities of grazing leaseholders on public lands in Alberta is governed by a number of laws and regulations including the *Public Lands Act* and Regulations.<sup>20</sup> As Table 2 shows, grazing leaseholders face some requirements that private land owners do not. Some of these requirements are intended to generate a balance between livestock production and the protection of a broader set of ecosystem services on public lands.

**Table 2.** Some features of public land grazing leases in Alberta.

Feature	Description	Source
Grazing Lease Tenure	Up to 20 year leases; issued to either an individual or a corporation	<i>Public Lands Act</i> , s 102(1); <i>Public Lands Administration Regulation</i> (Alta Reg 187/2011) s 50(1)
Grazing Lease Renewal	Alberta Environment and Parks (AEP) may renew upon application by the grazing leaseholder; AEP may add to, vary or delete terms and conditions of the grazing lease subject to the <i>Public Lands Act</i> , regulation and any regional plan	<i>Public Lands Administration Regulation</i> (Alta Reg 187/2011), s 17
Grazing Lease Transfer or Assignment	Allowable only with written consent of AEP (AEP has the authority to reject an application to transfer or assign); an “assignment fee” must be paid to AEP	<i>Public Lands Act</i> , s 43,114.1; <i>Public Lands Administration Regulation</i> (Alta Reg 187/2011), s 146(2)
Sublease	Allowable only with written consent of AEP; a sublease cannot be further sublet	<i>Public Lands Act</i> , s 43(1); <i>Public Lands Administration Regulation</i> (Alta Reg 187/2011), s 146(4)
Annual Rent	Rates based on 1) grazing capacity of the land; 2) average gain in weight of cattle on grass, and 3) average sale price per pound of cattle; adjusted by zonal per cent royalty	<i>Public Lands Act</i> , s 103; <i>Public Lands Administration Regulation</i> (Alta Reg 187/2011), Schedule 1
Property Taxes	Land under grazing leases are assessable as parcels of land for taxation purposes	<i>Municipal Government Act</i> , RSA 2000, c M-26 (see s 290(3))
Range Improvements	Grazing leaseholder may apply for assistance to conduct range improvements	<i>Public Lands Administration Regulation</i> (Alta Reg 187/2011), s 77
Grazing Lease as Collateral	Grazing leases cannot be used as collateral for mortgages without the written consent of AEP	<i>Public Lands Act</i> , s 43(1); <i>Public Lands Administration Regulation</i> (Alta Reg 187/2011) s 146-152
Access/Trespass Rights	Grazing leaseholder must allow for recreational access, except under prescribed circumstances	<i>Recreational Access Regulation</i> (Alta Reg 228/2003) s 6
Surface Rights Compensation	Industrial exploration and development companies must obtain grazing leaseholder’s consent prior to entering land; compensation payable to leaseholders for entry (for both exploration and later development), loss of use of the land, adverse effects and general disturbance. <sup>21</sup> Formal mechanisms exist in cases of disputes between leaseholders and companies	<i>Surface Rights Act</i> , s 25(1); <i>Exploration Regulation</i> (Alta Reg 284/2006) s 8(1)(e); <i>Exploration Dispute Resolution Regulation</i> (Alta Reg 227/2003)



The Act sets out basic requirements for determining annual rent, based on the forage value of the land (including the grazing capacity of the land, the average gain in weight of cattle, and average sale price per pound of cattle during the previous year.<sup>22</sup> Since 1960,<sup>23</sup> the province has divided grazing leases into three administrative zones with differing fees (see Table 2), set out in regulation.<sup>24</sup> Annual rental rates for grazing leases are calculated based on animal unit month (AUM) per region and have not changed or increased since 1994 (although changes to the policy have recently been proposed).<sup>25</sup>

**Table 3. Approximate rental rates for public lands grazing leases in Alberta.**

Zone	Annual Rental Fee/AUM	Estimated Animal Unit Month/Acre <sup>26</sup>	Approximate Rental Fee/Acre	Average Estimated Annual Rental Fee per Grazing Lease <sup>27</sup>
Zone A (South Saskatchewan; Special Areas <sup>28</sup> )	\$2.79	0.25	\$0.70	\$849.56
Zone B (Red Deer – North Saskatchewan)	\$2.32	0.30	\$0.70	\$384.89
Zone C (Peace; Lower Athabasca; Upper Athabasca)	\$1.39	0.23	\$0.32	\$198.87

The Act allows for the transfer (“assignment”) of leases between parties, subject to the written consent of, and a registration fee payable to, AEP.<sup>29</sup>

The *Public Lands Administration Regulation* (Alta Reg 187/2011) outlines further requirements for grazing leases<sup>30</sup> (see Part 3 (Dispositions), Division 1 – Grazing Dispositions.)<sup>31</sup> The regulation requires grazing leaseholders to use ‘proper range management and conservation practices’ and prohibits overgrazing of the land.<sup>32</sup> Leaseholders have no right to compensation for anything done to comply with these requirements.<sup>33</sup> In accordance with the regulation leaseholders may apply to AEP to enter into an agreement for range improvements on the land,<sup>34</sup> and to that end may also apply for ‘assistance’ from the Minister in conducting range improvements,<sup>35</sup> with the stipulation that any such range improvements receiving assistance belong to the Crown.<sup>36</sup> Leaseholders are prohibited from clearing, breaking, ploughing, cultivating or disturbance the surface of the leased land without AEP approval.<sup>37</sup>



Public recreational use of public lands subject to a grazing lease is permitted, subject to the *Recreational Access Regulation* (Alta Reg 228/2003)<sup>38</sup> sets out rules for the public recreational use of Crown lands under grazing leases, including disagreements over access. Under the regulation, grazing leaseholders must allow access for public recreational use, except under certain prescribed circumstances.<sup>39</sup> The leaseholder may refuse access or provide specific terms and conditions for entry under these circumstances (which include: intention to camp, access by vehicle, or the presence of livestock in fenced pasture).<sup>40</sup>

Some provisions of the *Public Lands Act* apply to the Special Areas, including those related to grazing leases in the Special Areas.<sup>41</sup> Rules for grazing leases on Special Areas public lands are outlined in the *Special Areas Disposition Regulation* (Alta Reg 137/2001). Terms for grazing leases are 20 years, and can be renewed for additional terms of 20 years.<sup>42</sup> Similar to grazing leases authorized under the *Public Lands Act*, grazing leases in Special Areas can be transferred.<sup>43</sup>





### 3. OIL AND GAS DEVELOPMENT ON PUBLIC LANDS GRAZING LEASES

Oil and gas exploration and on Alberta’s public lands subject to a grazing lease occurs across all regions in Alberta.<sup>44</sup> (Table 4).

In the Special Areas, mineral surface leases cannot be granted without the grazing leaseholder’s consent, which the operation must acknowledge.<sup>45,46</sup>

Nearly half of provincial AEP grazing leases do not have any wellsites (2,894 leases, or 48.5 per cent), while a number of grazing leases (819 leases, or 13.7 per cent) have 5 or more wells. The highest concentration of wellsites on grazing leases is in the South Saskatchewan region, which accounts for 61.2 per cent of all wellsites on AEP Crown grazing leases.

**Table 4.** Oil and gas wells on Alberta’s Crown land grazing leases (administered by Alberta Environment and Parks [AEP] and Special Areas).

	Alberta Environment and Parks (AEP) Regions					Special Areas	Total (Province)
	Peace	Lower Athabasca	Upper Athabasca	Red Deer - North Saskatchewan	South Saskatchewan		
<b>Total Number (wells)</b>	1,417	1,855	905	5,898	15,868	7,477	<b>33,421</b>
<b>Average Number per Lease (wells/lease)</b>	2	3	1	3	10	5	<b>4.5</b>
<b>Average Number per Acre (wells/acres)</b>	0.002	0.005	0.002	0.006	0.004	0.007	<b>0.005</b>

In general, the number of wells per lease on Special Areas Crown grazing leases is slightly higher (5.24 wells per lease) when compared to other public lands grazing leases in Alberta (4.35 wells per lease).



## 4. COMPENSATION FOR PUBLIC LANDS GRAZING LEASES

### 4.1 Current Compensation for Oil and Gas Operations on Public Lands Grazing Leases in Alberta

At common law, the right to work subsurface minerals includes by default the incidental right to access the surface and employ all reasonable means to recover the minerals.<sup>47</sup> In Alberta, however, the *Surface Rights Act* requires oil and gas leaseholders and other operators to obtain the express written consent of the owner and occupant prior to accessing the surface of private or public land.<sup>48</sup> If the parties fail to reach an agreement over the operator's access and the compensation payable to the surface occupant and owner, they may refer to the Surface Rights Board, a provincial, quasi-judicial tribunal. The SRB has jurisdiction over surface rights disputes, including the authority to issue an order granting an operator a right of entry.<sup>49</sup> On making a right of entry order the SRB holds a hearing to determine the compensation payable under the *Surface Rights Act* to the surface occupant and owner.<sup>50</sup>

Grazing leaseholders are considered occupants whose consent is required under the *Surface Rights Act* and the *Public Lands Act* before an operator can enter the surface and to whom compensation must be paid.<sup>51</sup> Grazing leaseholders are entitled to compensation for interference with their rights on public lands grazing leases, including interference related to wellsites, pipelines, lease access roads, power transmission lines and oil and gas facilities.<sup>52</sup> Note that the empirical analysis in this paper is limited to wellsites only.

Operators and grazing leaseholders typically reach private, site-specific agreements regarding entry and compensation.<sup>53</sup> Energy companies generally make offers to landowners or leaseholders based on the framework for compensation as set out in section 25 of *Surface Rights Act*.<sup>54</sup> Section 25 sets out the considerations the Surface Rights Board may take into account in determining the amount of compensation payable in the case of dispute. These include: market value of the land; loss of use of the land by owners or occupants; adverse effects, which includes any nuisance and inconvenience to the owners or occupants; damage to the land; and any other relevant factors.<sup>55</sup> Under this framework, grazing leaseholders are not eligible for compensation for market value of the land, but are eligible for compensation for adverse effects, loss of use of the land, and damages to land, livestock or personal property caused by operations.<sup>56</sup>

Other jurisdictions have different approaches to compensation on publicly owned land subject to grazing leases, including the Government of Saskatchewan's Agricultural Crown Land Lease Policy and the Municipal District of Taber's Tax Recovery Land Grazing Lease



Agreements. These examples were selected due to similarities in environment, use of agricultural lands and industrial development interests on public lands grazing leases, although differences in management and compensation for grazing leases do exist.

In the late 1990s, the Government of Alberta examined changing the system of compensation for industrial development on public land leased for agricultural purposes, including grazing leases. The government undertook several years of public consultation, drafted and debated legislation, and consulted on draft regulations proposed under the new law. The legislation was never proclaimed and the proposed changes were not implemented.<sup>57</sup> The reasons for this remain unclear.

The following sections outline the Saskatchewan and MD of Taber examples, as well as the proposed changes related to compensation for grazing leaseholders that were discussed in Alberta the late 1990s. For an overview, see Table 5.

**Table 5. Comparing features of compensation paid by oil and gas companies for well sites on public land grazing leases, under proposed and current frameworks. Further detail is provided in the narrative.**

Jurisdiction/Source	Leaseholder: First Year	Leaseholder: Annual	Government
2015 (current) Government of Alberta	Privately negotiated between grazing leaseholder and oil and gas company	Privately negotiated between grazing leaseholder and oil and gas company (estimate: \$1,500 per year)	Standard royalty fee, prescribed by the Minister for the surface lease <sup>58</sup>
2015 (current) Government of Saskatchewan	\$500 per wellsite*	Reduction in annual rental fees of \$200 per wellsite, to a maximum of a 30 per cent reduction in annual rental fees, as long as the site is active*	Land under surface lease removed from the grazing lease; developer pays standard lease and rental fees <sup>59</sup>
MD of Taber (starting February 28, 2016)	\$800 per surface mineral lease*	\$400 per surface mineral lease*	100 per cent of all revenue derived from the surface mineral leaseholder
1998 Proposed: Thurber Report <sup>60</sup>	\$500 per well site	\$300 per well site, capped at the amount the leaseholder pays in 'yearly agricultural fees' <sup>61</sup>	First year payment and annual rental from the developer
1999 Proposed: Charges Regulation	\$500 per acre or part thereof for wellsites (the document states that a "site" is typically 4 acres)	\$300 for first 1-3 sites; \$200 for next 4-10 sites, \$100 for over 10 sites, to a maximum of \$5000 per development	\$500 per acre in the first year, and \$300 per acre in subsequent years

\* This compensation amount is paid to the leaseholder by the government (as landowner), rather than directly from the industrial operator.



## 4.2 Saskatchewan Agricultural Crown Land Lease Policy

In Saskatchewan, publicly owned provincial Crown lands are also leased for agricultural purposes. Saskatchewan's agricultural leases may authorize grazing livestock, growing crops, harvesting hay, and establishing or operating a domestic game farm on publicly owned lands in the province.<sup>62</sup> Crown agricultural leases are governed under the *Provincial Lands Act*, SS 1978, c P-31 and *Provincial Lands Regulations*, Sask Reg 145/68, as well as the *Agricultural Leaseholds Act*, RSS 1978, c A-12 and several Agricultural Crown Land Lease policies.

General rules for grazing leases, including compensation to agricultural leaseholders,<sup>63</sup> are provided in the *Provincial Lands Regulations*.<sup>64</sup> Three features of compensation are clearly laid out in section 3.1 of the *Provincial Lands Regulations*:<sup>65</sup>

- 1) the land subject to a surface lease (i.e., for oil and gas development) is withdrawn from the agricultural lease for the period during which the surface lease is in effect;
- 2) the Province of Saskatchewan<sup>66</sup> will compensate the leaseholder;
- 3) the leaseholder must continue to pay taxes as if the withdrawal had not been made.<sup>67</sup>

The standardized compensation amounts paid by the Government of Saskatchewan are provided in the regulation. Currently, each holder of an agricultural lease from which land is withdrawn for a surface lease is provided a one-time payment of \$500 along with an additional one-time payment of \$500 for each subsequent well if more than one is drilled.<sup>68</sup> Rather than direct annual payments, leaseholders are provided with a reduction in annual base costs: \$200 for each surface lease affecting the agricultural lease;<sup>69</sup> as well as \$200 for the second producing well and each subsequent producing well<sup>70</sup> to a maximum annual lease reduction of 30 per cent of the total annual charges otherwise payable.<sup>71</sup> As in the Province of Alberta, industrial operators must negotiate directly with agricultural leaseholders to compensate for damages (such as crop losses occurring as a result of development, construction, operation or maintenance as per the surface lease).<sup>72</sup>

Rent and penalty on land leases contributed over \$24 million to Saskatchewan's Ministry of Agriculture revenues in 2011/12, amounting to 16.8% of the total revenue for the ministry.<sup>73</sup> This amount is inclusive of rent and compensation payments on all agricultural lease lands (i.e., grazing and crop leases).



### 4.3 Tax Recovery Lands in the Municipal District of Taber

Since the 1930s, the Government of Alberta has held in trust and managed 'Tax Recovery Lands' as public lands on behalf of municipalities.<sup>74</sup> As of 2011, Alberta Environment and Parks (AEP) stated that 84,000 acres of tax recovery land remained to be transferred back to municipal authorities, involving 250 grazing leases and 1,300 industrial dispositions.<sup>75</sup>

The Municipal District (MD) of Taber began a process in 1996 to transfer administration of remaining Tax Recovery Lands from the provincial government to be concluded in 2016. In February 2011, the MD of Taber stated 54,845 acres of its Tax Recovery Lands that had been leased to local grazing leaseholders by the Government of Alberta would be transferred back to the MD.<sup>76</sup>

The MD of Taber stated that it would continue leasing Tax Recovery Lands to current grazing leaseholders upon transfer of title to the municipality. The MD of Taber developed its own system of rules for how it will provide compensation for the now-locally-authorized grazing leases. Background materials and a template lease agreement were made publicly available in February 2011.<sup>77</sup>

New grazing lease agreements with the MD of Taber include an initial period where previous (provincial) guidelines for compensation are maintained. Beginning February 28, 2016, all compensation from existing surface leases will be paid directly to the MD of Taber.<sup>78</sup> The municipality will provide leaseholders with payment for inconvenience, loss of use and adverse effects amounting to \$800 per surface mineral lease in the first year; and \$400 each year thereafter.<sup>79</sup> All other revenue collected from the surface lease would "be used for municipal purposes for the benefit of the citizens of the municipality as a whole."<sup>80</sup> The terms of the MD of Taber grazing leases make it clear that in the event that the municipality is able to negotiate higher compensation rates with an oil company, additional funds would be retained by the municipality.<sup>81</sup>

### 4.4 Proposed Frameworks for Compensation for Alberta Grazing Leases

#### *Agricultural Lease Review: The Thurber Report*

On March 26, 1997, Premier Ralph Klein appointed Member of the Legislative Assembly (MLA) for Drayton Valley-Calmar, Mr. Tom Thurber, to chair a review committee that would undertake consultation on the issues surrounding agricultural leases in the province,<sup>82</sup> with special emphasis on grazing lease issues.<sup>83</sup>



In May 1998, the Agricultural Lease Review Committee released an Interim Report (the “Thurber Report”) outlining its findings, providing initial recommendations to the Legislature, and soliciting further public feedback.<sup>84</sup> Some key recommendations included topics such as recreational public access to grazing lease land, leaseholder liability and lease tenure. The Thurber Report also contained specific recommendations on several changes to leaseholder compensation for resource exploration and oil and gas development.

The Thurber Report suggested that for oil and gas developments, the province as landowner would collect all compensation previously paid to the leaseholder as well as required rental payments.<sup>85</sup> Grazing leaseholders would be provided with a first year reimbursement and subsequent annual reimbursements from the operator (intended to offset pressures and any necessary supervision by the leaseholder). The report suggests \$500 per wellsite as a first year reimbursement, and a \$300 annual reimbursement for subsequent years.

The Thurber Report suggested that funds collected under the new scheme would flow into the province’s general revenue fund, but some portion of this new revenue would be placed in a ‘Conservation Resource Management Fund’ for the reimbursement of leaseholders, funding of resource enhancements, resolving conflicts, as well as education and monitoring of dispositions.

The Government’s response to the Thurber Report was published in November 1998.<sup>86</sup> The government’s response provided a description of the issues raised during the review<sup>87</sup> and outlined actions the government planned to take to address these issues, including legislative changes.

### ***Proposed Charges Regulation under the Agricultural Dispositions Statutes Amendment Act, 1999***

On April 1, 1999, Mr. Thurber introduced Bill 31, the *Agricultural Dispositions Statutes Amendment Act, 1999* in the Legislature.<sup>88</sup> Similar to the recommendations in the Thurber report, the omnibus Bill 31 proposed legislative changes related to public access to public lands under grazing leases and compensation to grazing leaseholders for industrial development.<sup>89</sup> The Bill was discussed at length in the Legislative Assembly and in legislative committees. During Third Reading debates in May 1999, a number of letters were tabled from stakeholder groups asking for the government to delay the passage of the bill to accommodate further public consultation,<sup>90</sup> but Bill 31 passed Third Reading without such a delay, on May 18, 1999.<sup>91</sup>



In November 1999, the Government of Alberta released a document outlining draft regulations under the *Agricultural Dispositions Statutes Amendment Act, 1999*.<sup>92</sup> The document proposed three new regulations under the Act: 1) Recreational Access Regulation; 2) General Regulation; and 3) Charges.

The proposed Charges Regulation outlined a new payment schedule for industrial operators to both leaseholders and to the provincial government (for new developments or changes to existing developments).<sup>93</sup> For wellsites, the proposed regulation suggested that both the government and a grazing leaseholder would receive \$500 per acre in the first year (wellsites were estimated at 4 acres per site). For annual payments, the proposed regulation suggested a grazing leaseholder would receive \$300 for the first 1 to 3 sites, \$200 for the next 4 to 10 sites, and \$100 for over 10 sites, while the government would receive \$300 per acre annually. The proposed regulation suggested a maximum amount of \$5,000 per development payable from operators to a grazing leaseholder (however, the term “per development” was not defined.)<sup>94</sup> The rates outlined approximated 75 per cent of the compensation that would be have been provided to private landowners from oil and gas operators at the time.<sup>95</sup>

The *Agricultural Dispositions Statutes Amendment Act, 1999* was never proclaimed and therefore never came into force. It remains unclear why the Act and its draft regulations were abandoned.

In 2003, Bill 16, the *Agricultural Dispositions Statutes Amendment Act, 2003* was passed and proclaimed into force,<sup>96</sup> as well as related regulations under the *Public Lands Act*.<sup>97</sup> This legislation clarified rules for recreational access to agricultural public lands,<sup>98</sup> as well as processes for dispute resolutions between leaseholders and recreational users or exploration activities.<sup>99</sup> However, the issue of compensation for industrial development on agricultural leases was not addressed.



## 5. ANALYSIS

### 5.1 Financial Effects of Selected Alternative Policy Options for Compensation on Alberta's Grazing Leases

Precise compensation rate values for grazing leaseholders across the province are not available since compensation rates are determined through privately negotiated agreements.<sup>100</sup>

To determine an estimated compensation rate, Surface Rights Board decisions were examined. Over the past decade, ten Surface Rights Board decisions have addressed compensation on grazing leases on Crown public lands in Alberta.<sup>101</sup> Of these decisions, seven dealt directly with compensation for wellsites and several noted the established 'patterns of dealings' for compensation on comparable sites within a local region. A 2007 decision noted that eight examples of \$1,500 annual rate of compensation for wellsites on grazing lease lands were "indicative of a general pattern of compensation to Crown grazing occupants throughout the Province."<sup>102</sup> In the Board's five most recent decisions related to compensation to date, the annual rate of compensation for a wellsite on grazing lease lands has been at least \$1,500<sup>103</sup> (with an average of \$1,610). Note that we do not know whether these values are accurate estimates of the costs imposed on grazing lease holders by wellsites; such a calculation is beyond the scope of this study. These values reflect the decisions made by the Surface Rights Board regarding comparable compensation settlements.

Compensation rates for Special Areas grazing leases are also determined through privately negotiated agreements. In recent Surface Rights Board decisions related to Special Areas grazing leases, it appears the patterns of dealings (i.e., compensation amounts provided) are similar to those administered directly under the *Public Lands Act* (described above).<sup>104</sup> The *Special Areas Act* defers to the *Public Lands Act* for much of its contents related to grazing leases through regulation (Alta Reg 310/2003),<sup>105</sup> including lease rental rates.<sup>106</sup>

This figure was further confirmed by maps created by the Farmers' Advocate Office<sup>107</sup> to assist private landowners in negotiating compensation packages, which include adverse effects, loss of use of the land, general disturbance and value of the land. Although grazing leaseholders would not receive compensation for the value of the land, the \$1,500 figure selected is well within the dominant range of values presented in maps for annual compensation for adverse effects alone.<sup>108</sup>





For the purposes of this analysis, \$1,500 per wellsite was selected as an estimate for current annual compensation levels from oil and gas operators to grazing leaseholders across Alberta, inclusive of both loss of use of the land and adverse effect payments, for both AEP and Special Areas leaseholders.

The compensation rates presented in the analysis include annual rates only and do not include “first year compensation,” which appears generally to be a one-time payment of double the amount of the annual rate in the first year only (i.e., \$3,000 in first year, and \$1,500 each year thereafter). The analysis assumes that oil and gas companies provide compensation for abandoned or non-operational wells, as long as these sites are not reclaimed. These assumptions were made due to a number of supporting Surface Rights Board decisions,<sup>109</sup> including on grazing leases. In 2010, a Surface Rights Board decision related to a non-producing well with no above ground facilities on a grazing lease in the Medicine Hat region set the annual rate of compensation payable at \$1,500.<sup>110</sup>

To calculate financial values over the long term, the lifespan of each well located within a grazing lease was set at 30 years<sup>111</sup> with year zero beginning at current time (i.e., the year 2013).<sup>112,113</sup>

At the estimated 2013/2014 annual rate of compensation of \$1,500 per wellsite, grazing leaseholders on Crown public lands in Alberta’s White Area (excluding Special Areas) would currently receive an approximate \$38.9 million annually from oil and gas companies. This amounts to an estimated average compensation of \$6,527 per grazing lease, with the largest estimated amount of annual compensation paid on a single lease being \$1,218,000 (for a lease with 812 wells). When applied over a 30-year period (assumed to be the average productive lifespan of a well in Alberta) at a 4 per cent discount rate, grazing leaseholders would receive an estimated \$699.8 million.



**Table 6.** Estimates for current compensation for oil and gas wellsites on Crown grazing leases on Alberta's public lands (Special Areas and public lands managed by Alberta Environment and Parks [AEP]).

Region	Annual Compensation	Compensation over 30-year Wellsite Lifespan
Public lands grazing leases administered by AEP	\$38,914,000 (±12,972,000)	\$699,827,000 (±233,276,000)
Special Areas grazing leases	\$11,216,000 (±3,789,000)	\$201,696,000 (±67,232,000)
<b>Total</b>	<b>\$50,130,000 (±16,710,000)</b>	<b>\$901,524,000 (±300,508,000)</b>

*Note:* A province-wide compensation payment range was provided for the current compensation scenario. The lower point of the range is a conservative estimate – assuming an annual compensation payment of \$1,000 per wellsite – of province-wide compensation collected by leaseholders while the upper bound is a liberal estimate – assuming an annual compensation payment of \$2,000 per wellsite. The midpoint used a compensation rate of \$1,500 per wellsite.

At an estimated 2013/2014 rate of \$1,500 per wellsite, grazing leaseholders on Special Areas Crown lands would currently receive \$11.2 million annually from oil and gas operators – an estimated average of \$7,865 per grazing lease. When applied over a 30-year period (assumed to be the average lifespan of a well in Alberta) at a 4 per cent discount rate, grazing leaseholders in Special Areas Crown lands would receive an estimated \$201.7 million (see Table 3.2).

In aggregate, grazing leaseholders on Crown lands in Alberta are estimated to receive \$50.1 million annually from oil and gas companies at the estimated 2013/2014 rate of \$1,500 per wellsite.

## 5.2 Compensation in Context

Compensation to grazing leaseholders serves both a legal and an economic function. From a legal perspective, compensation serves as a remedy to protect the rights of the holder of a grazing lease. A grazing lease is a legally enforceable interest in land and allows its holder to maintain an action before the courts against anyone who infringes the rights granted to the grazing leaseholder – be it the grantor of the grazing lease, or a third party.<sup>114</sup> In Alberta, the rights granted under a grazing lease on provincial Crown lands are modified by and subject to the *Public Lands Act*. Importantly, the right of the grazing leaseholder to prevent or limit access to the surface and the right to compensation for interference with the holder's grazing rights are governed by the legislation. The statutory framework and the reported decisions of the Surface Rights Board make it clear that the amounts collected by grazing leaseholders from operators are not meant to confer a windfall on the former, but are intended instead to



make them “whole”, that is, to put the grazing leaseholder affected by energy operations in a financial position as close as possible to the position they were in prior to entry by the operator.<sup>115</sup>

From an economic perspective, the payments may be seen as transfers from the pockets of energy operators to those of grazing leaseholders. The better view, however, is that the payments serve an important allocative function by requiring energy operators to internalize the external effect of their activities. The various uses to which Alberta’s public lands can be put, including grazing and energy development, can be conflicting, and their reconciliation poses a challenge to policymakers to ensure that the lands are used in the best interests of Albertans. Both grazing and oil and gas development are activities of particular importance in the province. Regarded independently of each other, each of these activities can produce negative environmental impact as well as significant economic benefits. Properly set rates for permission to engage in grazing, or in oil and gas development on public lands ensure that these activities will be carried out only when their benefits exceed their costs. Conversely, government rates which do not accurately reflect the true costs of the activities will result in misallocation of resources to these activities (i.e., a market failure). When grazing and energy development are permitted contemporaneously on the same public lands, their impact on each other must be also considered. Specifically, oil and gas development should be allowed on public lands, economically speaking, only when its expected benefits exceed the total costs – including any harm to the existing users of the land. Compensation to grazing leaseholders is an effective method of ensuring the benefits outweigh the costs.<sup>116</sup>

The long-standing practice of compensation by private negotiation provides assurance on the one hand that grazing leaseholder is not made worse off (otherwise it will not give consent to the energy operator), and on the other hand, that exploration remains economically viable after payment is made to those parties adversely affected by it (or it will not take place). At the same time, private negotiation takes place in the shadow of the *Surface Rights Act*, which provides a mechanism for overriding an unreasonable or strategic veto by the existing user of the surface. Economic theory further suggests that the prospect of paying statutory compensation encourages operators to take measures to mitigate the impact of energy development or to negotiate with existing users of the surface to take such measures (e.g., fencing), as the case may be, depending on who can take such measure in the most cost-effective way. Insofar as the short- and long-term impacts on the surface are aligned, compensation which encourages mitigation of such impacts is in the public interest overall. It should be noted, however, that negotiation is not expected to be efficient if the rates charged by the province for grazing or energy development are not set properly, or if the patterns of



compensation awarded by the Surface Rights Board to grazing leaseholders, which private negotiations follow, do not reflect the actual harm caused by energy developers.

### **5.3 Analysis of Selected Policy Options**

In order to compare different potential options, the estimated rate of compensation to Alberta's grazing leaseholders of \$50,130,000 is used as a "base case" to which alternate policy approaches are compared. In these options, the amount retained by the provincial government is assumed to be the difference between the estimated 2013/2014 level of compensation and the amount the leaseholders were estimated to receive under different scenarios (see Table 3.1).<sup>117</sup>

#### ***Province of Saskatchewan***

Saskatchewan's system differs from both those proposed in the Thurber Report and from the proposed Charges Regulation. Rather than a direct monetary payment from oil and gas operators, leaseholders are provided with a reduction in their grazing lease rental rate from the provincial government. If Saskatchewan's system were implemented in Alberta, grazing leaseholders would receive \$5,752,000 (an average of \$778 per grazing lease; 11.5 per cent of estimated 2013/2014 Alberta compensation values) in rental fee discounts and the provincial government would retain \$44,378,000 from compensation payments annually.

#### ***Municipal District of Taber***

If the provincial government implemented the MD of Taber's system, the provincial government would retain an estimated \$36,762,000 annually, and \$13,368,000 would be provided to leaseholders (an average of \$1,809 per grazing lease; 26.7 per cent of estimated 2013/2014 Alberta compensation values). Of the alternate scenarios presented here, the MD of Taber's policy, if applied at the provincial scale, would provide the highest level of compensation for grazing leaseholders.

#### ***The Thurber Report***

The Thurber Report proposed a \$300 annual compensation rate per wellsite to grazing leaseholders, capped at a maximum of the entire rental fee paid by the leaseholder to government. Applying this framework to Alberta's 2013/2014 grazing leases, leaseholders across the province would be collectively compensated at an annual rate of \$9,687,000 (a province-wide average of \$1,311 per grazing lease; 19.3 per cent of estimated 2013



compensation values). Compared to the baseline, the Government of Alberta could gain an additional \$40,443,000 of annual revenue from oil and gas operators.

### *Proposed Charges Regulation*

The proposed Charges Regulation under the *Agricultural Dispositions Statutes Amendment Act, 1999* was perhaps the closest that the province came to passing a new system into effect. Using the proposed policy, leaseholders would be provided \$300 for the first 3 sites, \$200 for the next 4 to 10 sites, and \$100 for over 10 wellsites, up to a maximum of \$5,000. Applying this system to Alberta’s current wellsites on grazing lease lands, this would result in payments of approximately \$4,605,000 to leaseholders per year (an average of \$623 per lease; 9.2 per cent of estimated 2013 compensation values). This would mean potential revenues of an additional \$45,525,000 compared to Alberta’s 2013/2014 system. The draft Charges Regulation indicated the government would receive a separate compensation payment of \$300 per acre from the operator.

**Table 7.** Scenarios for oil and gas wellsite compensation on Alberta’s Crown land grazing leases (administered by Alberta Environment and Parks [AEP] and the Special Areas Board). Values are based on current and proposed policies as well as policies from other jurisdictions.

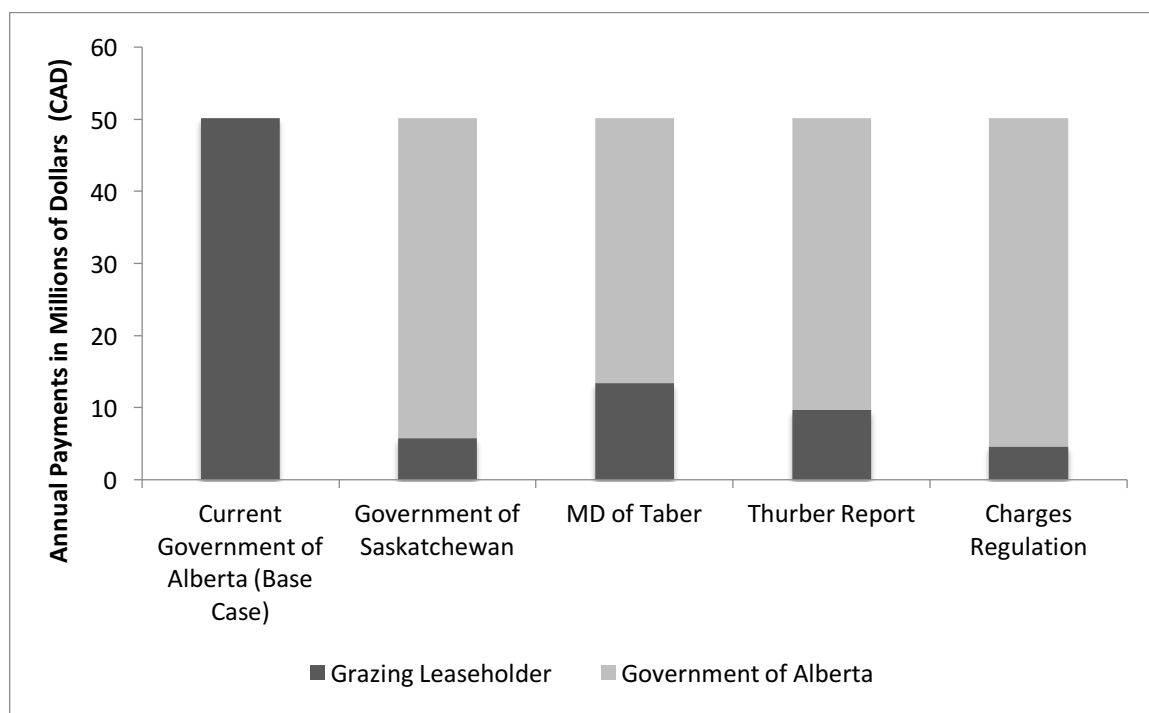
Scenario	Annual Compensation		Compensation over 30-year Wellsite Lifespan	
	Grazing Leaseholder	Provincial Government <sup>1</sup>	Grazing Leaseholder	Provincial Government <sup>1</sup>
<b>Current: Government of Alberta</b>	\$50,130,000 (±16,710,000) <sup>2</sup>	n/a	\$901,524,000 (±300,508,000) <sup>2</sup>	n/a
Government of Saskatchewan	\$5,752,000	\$44,378,000	\$103,436,000	\$798,087,000
MD of Taber	\$13,368,000	\$36,762,000	\$240,406,000	\$661,117,000
Thurber Report (1998) <sup>118</sup>	\$9,687,000	\$40,443,000	\$174,214,000	\$727,310,000
Charges Regulation (1999)	\$4,605,000	\$45,525,000	\$82,817,000	\$818,707,000

1. Note: All calculations of compensation for the provincial government presented in this table represent the difference between leaseholders’ compensation in a given scenario versus the ‘base case’ of Alberta’s current compensation framework.

### *Summary*

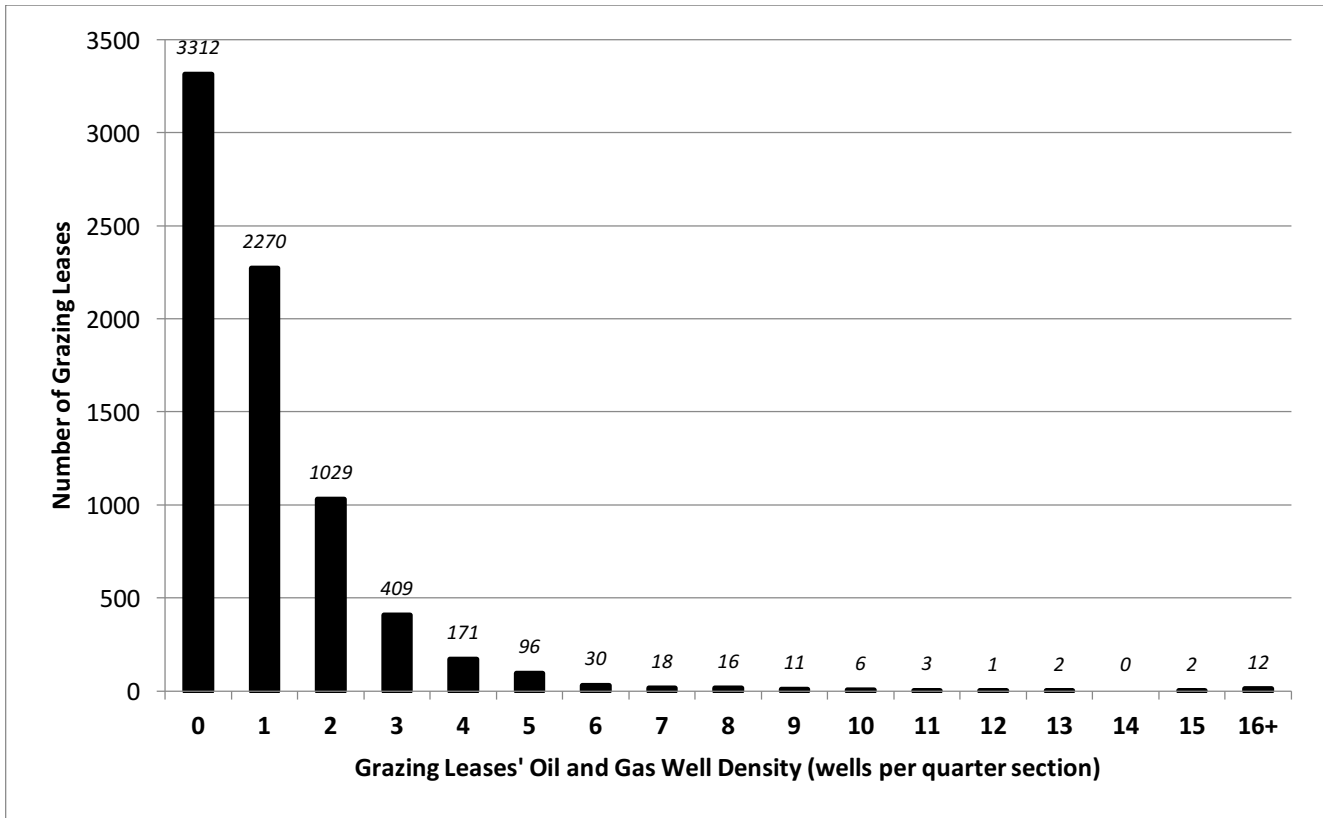
All of the alternative models outside of the current Government of Alberta approach generate smaller returns to leaseholders (Table 7).





**Figure 2.** Allocation of annual compensation revenue for grazing leaseholders and the Government of Alberta under selected policy options. The base case 2013 Alberta compensation system estimates 100 per cent of \$50.1 million to grazing leaseholders (see text for further description).

When broken down on a per-lease basis, Alberta’s public lands grazing leases receive approximately \$6,785 in compensation funds from oil and gas operators annually (based on an average 4.52 wellsites per lease in the province). Average compensation values per lease, however, do not accurately represent the compensation payments received by each leaseholder. This is due to the current distribution of oil and gas wells across the province’s Crown grazing leases. For example, approximately 45 per cent of the province’s grazing leases (or 3,312 of 7,388) currently have no oil and gas wellsites and receive no surface compensation payments.



**Figure 3.** Oil and gas well density on Alberta's public lands grazing leases (in Special Areas and Public Lands administered by Alberta Environment and Parks.).

Under the policy scenarios considered, the top 30 per cent (i.e., 70th percentile, or 2,217 of 7,388) of grazing leases collect as much as 93 per cent of the total annual compensation payments to all leaseholders, and the top 2 per cent (i.e., 98th percentile, or 148 of 7,388) of leases collect as much as 50 per cent of the total compensation paid to leaseholders (Figure 3, Table 8). The Charges Regulation had the most equal distribution of compensation payments. This results from the policy's payment cap of \$5,000 per lease per year.

**Table 8.** Distribution of compensation amounts collected by grazing leaseholders for oil and gas wellsites on Crown public lands (AEP and Special Areas).

Scenario		Percentile (Number of Leases)						
		All Leases (7,388)	70 <sup>th</sup> (2,217)	80 <sup>th</sup> (1,478)	90 <sup>th</sup> (739)	95 <sup>th</sup> (370)	98 <sup>th</sup> (148)	99 <sup>th</sup> (74)
<b>Current: Government of Alberta</b>	Compensation Collected	\$50,130,000	\$46,739,000	\$43,932,000	\$38,408,000	\$32,516,000	\$24,587,000	\$19,107,000
	(% of Total Compensation Funds)	(100%)	(93%)	(88%)	(77%)	(65%)	(49%)	(38%)
<b>Government of Saskatchewan</b>	Compensation Collected	\$5,752,000	\$5,317,000	\$4,967,000	\$4,323,000	\$3,678,000	\$2,811,000	\$2,198,000
	(% of Total Compensation Funds)	(100%)	(92%)	(86%)	(75%)	(64%)	(49%)	(38%)
<b>Municipal District of Taber</b>	Compensation Collected	\$13,368,000	\$12,464,000	\$11,715,000	\$10,242,000	\$8,671,000	\$6,556,000	\$5,095,000
	(% of Total Compensation Funds)	(100%)	(93%)	(88%)	(77%)	(65%)	(49%)	(38%)
<b>Thurber Report (1998)</b>	Compensation Collected	\$9,687,000	\$9,011,000	\$8,452,000	\$7,379,000	\$6,264,000	\$4,801,000	\$3,747,000
	(% of Total Compensation Funds)	(100%)	(93%)	(87%)	(76%)	(65%)	(50%)	(39%)
<b>Charges Regulation (1999)</b>	Compensation Collected	\$4,605,000	\$3,927,000	\$3,366,000	\$2,407,000	\$1,557,000	\$740,000	\$370,000
	(% of Total Compensation Funds)	(100%)	(85%)	(73%)	(52%)	(34%)	(16%)	(8%)

The amounts presented here are likely to underestimate financial implications of the alternatives. This analysis includes oil and gas wellsites only, while compensation can be provided to grazing leaseholders for other private infrastructure, including pipelines, lease roads, transmission lines and oil and gas facilities. Further, the analysis includes no new wells and, therefore, no first year compensation payments which, while variable, are often higher than the subsequent annual compensation rates. As compensation may be paid on non-producing or abandoned wells, the 30-year well lifespan may also be an underestimate. In the data used for this analysis, the average age of a well on a grazing lease was 21 years, while 27.7 per cent of wells on AEP Crown grazing lands were over 30 years old (with a maximum age of 102 years old, drilled in 1911).





## 6. DISCUSSION

The preceding analysis illustrates the various outcomes that could arise through the use of alternative systems of compensation on Alberta's Crown grazing leases.

Overall, applying any of the alternate models presented would result in less revenue for grazing leaseholders, and additional revenues to the Government of Alberta. Applying alternate policy scenarios for compensation of wellsites on grazing leases – such as the public land grazing lease policy in place in Saskatchewan or in the MD of Taber – shows that revenues to the Government of Alberta or losses to grazing lease holders could be of the magnitude of \$37 million to \$45 million annually. Over the average 30-year productive lifespan of individual wells, this could amount to between \$661 million and \$818 million. This amount may be an underestimate, as it does not include compensation revenue for infrastructure beyond wellsites.

The analysis has also shown that the majority of compensation funds are concentrated to a small number of grazing leases located in particular geographic regions. While nearly half of the province's public lands grazing leases do not contain wellsites, a small number of grazing leases contain many wellsites. Therefore, any change in policy would have a disproportionate impact on a small number of grazing leases, and have little or no impact on the majority of grazing leases. In this analysis, the only policy that addressed the uneven distribution of compensation funding across grazing leases was the 1999 draft Charges regulation, which provided for an annual payment cap of \$5,000 per grazing lease, regardless of the number of wellsites on the grazing lease. This particular policy could disproportionately impact larger grazing leases because the payment cap was linked only to the lease, rather than the density of wellsites.

There are a number of ways the Government of Alberta could change its direction around grazing leases, including through legislative changes to the *Public Lands Act*, *Surface Rights Act*, regulations, or through policy changes. Each of these changes would have associated challenges and risks, including transition costs associated with moving to a new regime. There are consequences to both maintaining the current system and to moving to alternate models for compensation for oil and gas activity on public lands grazing leases (Table 9).



**Table 9.** Possible consequences related to oil and gas compensation on public lands grazing leases in Alberta.

	Current System	Alternate Models
<b>Revenue and Distribution of Oil and Gas Compensation Funds</b>	<ul style="list-style-type: none"> <li>• Compensation in privately-negotiated agreements between oil and gas operators and grazing leaseholders</li> </ul>	<ul style="list-style-type: none"> <li>• Increased Crown revenues (that could be re-invested in the region to improve public lands and target provision of ecosystem services; or in general revenues to address other needs)</li> <li>• Decreased revenues to agricultural producers at the local level, with potential downstream effects on agricultural revenues and regional impacts</li> <li>• Unclear if the payments to agricultural producers cover the costs of disturbance</li> </ul>
<b>Bargaining and representation</b>	<ul style="list-style-type: none"> <li>• Individual leaseholders are likely to have better information on the impact of disturbances and may be in a better position to bargain for appropriate compensation to address surface disturbances; thus compensation agreements may better reflect the opportunity cost of disturbance (assuming government and Surface Rights Board rates are set correctly)<sup>119</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Potentially decreased transactions costs with standardized rates</li> </ul>
<b>Transparency</b>	<ul style="list-style-type: none"> <li>• Compensation in privately-negotiated agreements, information not publicly available</li> </ul>	<ul style="list-style-type: none"> <li>• Increased transparency in compensation funding arrangements on public lands</li> </ul>
<b>Trade</b>	<ul style="list-style-type: none"> <li>• Compensation could provide an advantage to grazing leaseholders versus private landowners when costs are compared (trade implications), although the trade implications of the current system were viewed as <i>de minimis</i> (small) by a U.S. ruling.</li> </ul>	

Moving to an alternate compensation model would result in increased revenues to the provincial government, and reductions in overall compensation funds from oil and gas operators to grazing leaseholders. This could potentially have downstream implications to agricultural revenues, depending on how the “new” revenue was collected and used by the provincial government. Additional revenue collected by the Government of Alberta could be

allocated in a way that could benefit both grazing leaseholders and the public at large. For example, the 1998 Thurber Report suggested that funds recovered through the new system would be shared between the government's general revenue fund and a new "Conservation Resource Management Fund" that would provide funds to reimburse grazing leaseholders, fund resource enhancements, resolve conflicts, monitor dispositions and fund education and outreach. Such a fund could be better targeted to improve ecosystem services arising from public land and could offset the cost of provision of such services by grazing leaseholders.

Similar to the Province of Saskatchewan, the Government of Alberta could remove the area subject to the subsurface lease from the grazing lease. Bargaining for compensation revenue by the provincial government, rather than by grazing leaseholders, could have benefits and drawbacks. Since the leaseholders would no longer negotiate with the oil and gas sector for compensation, it is unclear that the compensation payments would cover the actual disturbance. Transactions costs may be saved with compensation amounts set in policy or regulation rather than determined in private negotiations for individual wellsites. The impact of oil and gas disturbance on public lands, with respect to the public interest, could possibly be better represented through government-led negotiations with oil and gas companies for compensation. However, revenue could be lost or gained depending on the success of the government in negotiating with oil and gas companies for province-wide compensation values. Individual bargaining, because of the individual knowledge of the land by leaseholders might result in revenues closer to the true impact of damages than could be achieved by province-wide compensation. Leaseholders may also be in a better position to negotiate damages related to the future liability, for example, the future loss of annual payments due to bankruptcy of an oil and gas company.

Another possible issue is whether or not the current oil and gas revenues from public lands grazing leases might confer a subsidy. The United States Department of Commerce and International Trade Commission undertook a Countervailing Duty Investigation in 1998 and 1999<sup>120</sup> in response to a petition filed by the Ranchers-Cattlemens Action Legal Foundation. The investigation found that grazing leases conferred a subsidy – due to the difference between the grazing lease rental rates and the compensation funds provided by oil and gas activity - and was therefore countervailable under United States trade law. Alberta's grazing leases, inclusive of oil and gas compensation revenues, comprised the highest per cent countervailable subsidy of all the programs examined. The total estimated net subsidy for each product under investigation was found to be '*de minimis*' and the investigation terminated. Alternate systems may be less likely to be subject to claims of subsidization. As noted above, the province is also in the process of examining and revising rental rates for



grazing leases, which may also address some of the broader concerns related to subsidization. Modification of the current system to directly compensate for maintenance or improvement of ecosystem services may also serve to address concerns about subsidization.

Lastly, Alberta's current framework for grazing lease compensation lacks transparency when compared to policy frameworks in other jurisdictions and even other resource policy areas of Alberta. For example, in Saskatchewan, it is clear how much money public lands grazing leaseholders are being compensated for oil and gas activity across the province – while in Alberta, this information is virtually impossible to obtain. Estimates provided here were simplified to \$1,500 per wellsite across the province, while in practice; large variations could exist across regions and within private agreements.

Further transparency may assist in reducing the confusion and controversy surrounding this issue. Another Alberta example of compensation provided by the oil and gas industry to a Crown disposition holder – in a more transparent manner – is in the forest industry. In Alberta, forest management agreement holders on Crown land are eligible to be compensated for timber damaged during other industrial development and/or operations in the management area, such as oil and gas development.<sup>121,122</sup> The forestry industry and energy companies work together to develop appropriate methods and compensation amounts to be paid, through the Joint Energy/Utility and Forest Industry Management Committee (JMC) independent of government.<sup>123</sup> The annual timber damage assessment values for different types of forests across the province are provided publicly on a government website.<sup>124</sup> Alberta's cooperative and transparent approach taken in the case of Timber Damage Assessment may be worth further research or consideration in application to grazing leases.



## 7. CONCLUSIONS

This paper has described grazing leases on publicly owned Crown lands in Alberta, and current oil and gas activity on these grazing leases. This paper has also estimated compensation from oil and gas operators to grazing leaseholders on public lands, and examined alternate compensation models that exist in other jurisdictions or have been proposed for Alberta in the past.

If any of the alternate models were to be applied across the province, less overall compensation would be provided to grazing leaseholders than under current Alberta policy, although this would impact a small proportion of grazing leaseholders due to the unequal distribution of oil and gas wellsites across grazing leases. More revenue could be generated for the provincial government, which could have the potential to provide more public benefit than currently exists – depending on how the “new” revenue would be used.

This analysis was not intended as policy advice. Instead, this information was gathered in the hopes of providing a clearer picture of the current situation in Alberta and to contrast it with alternate models being used elsewhere. The Government of Alberta will have to determine whether or not the magnitude of the revenue involved (estimated at \$37 to 45 million annually for compensation on oil and gas wellsites) would be worthwhile to invest in other programs, given the challenges that could be associated with legislative or regulatory change, transactions costs, transition costs, and impacts on a sector that has faced economic shocks over the past two decades. The government may also factor in the impact any changes in compensation payments would have on the regional agricultural sector and potentially, on ecosystem services provision. The relationship between payments to grazing leaseholders for wellsites and rates charged for grazing and energy development should also be considered as the efficiency of negotiation will be affected by inappropriate grazing and energy fees. Given the financial and political risks involved with this issue, the Government of Alberta should first understand and clearly articulate its management objectives for grazing leases.

Future research should address additional questions related to oil and gas compensation on public lands grazing leases, and could further examine other social, economic or environmental outcomes of alternative models of compensation.



## ENDNOTES

<sup>1</sup> Stacey O'Malley, MSc is a Research Associate with the Alberta Land Institute at the University of Alberta (somalley@ualberta.ca). Alicia Entem, MSc was working as a Research Associate at the University of Alberta when drafting this paper and is currently a Fellow at the Smithsonian Tropical Research Institute. Eran Kaplinsky is an Associate Professor Law at the University of Alberta. W.L. (Vic) Adamowicz, PhD, is the Research Director of the Alberta Land Institute and a Professor in Resource Economics and Environmental Sociology at the University of Alberta. The authors thank Dr. Feng Qiu for help with maps and an anonymous reviewer for comments on an earlier draft. The research team wishes to thank participants at a fall 2015 workshop for feedback on an earlier draft of this report.

<sup>2</sup> The total landmass in Alberta: 163,384,000 acres (661,190 square kilometres); 5.2 million acres of public lands grazing leases managed by Alberta Environment and Parks and an additional 1.1 million acres of Crown land is leased in Alberta's Special Areas. (Alberta Environment and Sustainable Resource Development – Rangeland Management Branch, Lands Division, *Digital Integrated Dispositions* (Edmonton: Government of Alberta, 2013))

<sup>3</sup> David H. Breen, *The Canadian Prairie West and the Ranching Frontier, 1874–1924* (Toronto: University of Toronto, 1983); Leonard Bauer, *An economic analysis of the costs and returns associated with the use of crown grazing dispositions in Alberta 1976–1996* (Calgary: Alberta Cattle Commission, 1997).

<sup>4</sup> Alberta, Legislative Assembly, *Alberta Hansard*, 24th Leg, 3rd Sess, [11 May 1999] at 1633.

<sup>5</sup> *The Recreational Access Regulation*, Alta Reg 228/2003 was passed in 2003 to address recreational access issues on public lands grazing leases. For further discussion, see Mike Wenig, "Unsteady Ground, Recreational Access on Alberta's Grazing Lease Land" *LawNow* (August/September 2005), *LawNow*, Vol. 30, Issue 1 (August/September 2005) at 54.

<sup>6</sup> The rights of grazing leaseholders as long-term occupants and stewards of the land are often at the core of these concerns. This paper does not address property rights of leaseholders as compared to titled landowners. Under current law, grazing leaseholders are entitled to compensation under the *Surface Rights Act* regardless of the rights they hold in other respects. For further discussion, please see: Arlene Kwasniak, *Alberta Public Rangeland Law and Policy* (Edmonton: Environmental Law Centre, 1993) at 83.

<sup>7</sup> "Compensation Elements and Explanation" Alberta Agriculture and Rural Development [24 February 2012], online: Alberta Agriculture and Rural Development < [http://www1.agric.gov.ab.ca/\\$department/deptdocs.nsf/all/ofa11758](http://www1.agric.gov.ab.ca/$department/deptdocs.nsf/all/ofa11758) >

<sup>8</sup> See *An Act to Amend and Consolidate the Several Acts Respecting the Public Lands of the Dominion*, (42 Vict), c 31, s 35.

<sup>9</sup> A file containing the boundaries of grazing dispositions, farm development leases and cultivation permits was provided by Alberta Environment and Parks: Alberta Environment and Sustainable Resource Development - Rangeland Management Branch, Lands Division, *Digital Integrated Dispositions* (Edmonton: Government of Alberta, 2013). Spatial data for grazing leases within the Special Areas boundaries was provided by the Special Areas Board in March 2014. Alberta Environment and Parks operating region boundaries can be viewed online at <<http://esrd.alberta.ca/forms-maps-services/maps/resource-data-product-catalogue/geoadministrative.aspx>>

<sup>10</sup> Alberta, *supra* note 4 at 1629.

<sup>11</sup> Canada, House of Commons, Standing Committee on Environment and Sustainable Development, "Mr. Larry Sears (Chairman, Alberta Grazing Leaseholders Association)" in *Evidence*, No 037 (17 May 2012) at 1120

<sup>12</sup> Alberta Environment and Parks, *supra* note 9.



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<sup>13</sup> Tom Thurber et al, *Interim Report of the Agricultural Lease Review Committee* (Edmonton: Government of Alberta, May 1998) at 5.

<sup>14</sup> Special Areas Board, *About Us*, online: Special Areas Board <<http://specialareas.ab.ca/about-us/>>

<sup>15</sup> Special Areas Board, *History*, online: Special Areas Board <<http://specialareas.ab.ca/about-us/history>>

<sup>16</sup> *Special Areas Act*, RSA 2000, c S-16.

<sup>17</sup> Alberta, Minister of Municipal Affairs, Ministerial Order No L:005/13 (11 March 2013), online: <[http://municipalaffairs.gov.ab.ca/documents/LGS/L\\_005-13.pdf](http://municipalaffairs.gov.ab.ca/documents/LGS/L_005-13.pdf)>

<sup>18</sup> Special Areas Board, *Public Lands*, online: Special Areas Board <<http://specialareas.ab.ca/living/public-lands/>>

<sup>19</sup> Note that Tax Recovery Lands grazing leases within the Special Areas were excluded from this analysis.

<sup>20</sup> See, especially, *Public Lands Administration Regulation*, Alta Reg 187/2011.

<sup>21</sup> For further overview of Surface Rights Board appraisal of grazing leaseholder compensation entitlements as of 1993, see: Arlene Kwasniak, *Alberta Public Rangeland Law and Policy* (Edmonton: Environmental Law Centre, 1993) at 78.

<sup>22</sup> *Public Lands Act*, RSA 2000, c P-40, s 102(3).

<sup>23</sup> Bauer, *supra* note 3 at 1.

<sup>24</sup> *Public Lands Administration Regulation*, Alta Reg 187/2011 at Schedule 1: Forage Value Percentages

<sup>25</sup> Alberta Environment and Parks, *ESRD Grazing Royalty Proposal: Grazing Lease Rental Rates and Assignment Fees on Agricultural Public Lands*, online: Western Stock Growers' Association <<http://www.wsga.ca/pdf/2014/Rental-Rates-Summary-Proposal-2014.pdf> >

<sup>26</sup> Bauer, *supra* note 3 at 3. Note that Bauer's Table 1 includes estimates of total acres per grazing lease, as well as total animal unit months for the three zones.

<sup>27</sup> Average estimated rental fee based on the average grazing lease size in each of the regions; see Table 1 for average size in acres per grazing lease.

<sup>28</sup> For the Special Areas, the South Saskatchewan (Zone A) rental fee rate was used as an estimate as no publicly available rates could be found.

<sup>29</sup> *PLA*, *supra* note 22 at s 113 – s 117; see section 114.1 for fees.

<sup>30</sup> Alta Reg 187/2011, *supra* note 24 at s 1(o)(v). A "grazing lease" is considered a "formal disposition" for the purposes of the regulation.

<sup>31</sup> Alta Reg 187/2011, *supra* note 24 at s 50-s 76

<sup>32</sup> Alta Reg 187/2011, *supra* note 24 at s 53

<sup>33</sup> Alta Reg 187/2011, *supra* note 24 at s 53

<sup>34</sup> Alta Reg 187/2011, *supra* note 24 at s 77



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<sup>35</sup> Alta Reg 187/2011, *supra* note 24 at s 78

<sup>36</sup> Alta Reg 187/2011, *supra* note 24 at s 82

<sup>37</sup> Alta Reg 187/2011, *supra* note 24 at s 56

<sup>38</sup> *Recreational Access Regulation*, Alta Reg 228/2003

<sup>39</sup> *Ibid* at s 6

<sup>40</sup> Alta Reg 228/2003, *supra* note 38 at s 6

<sup>41</sup> The *Application of Public Lands Act Regulation*, Alta Reg 310/2003, under the *Special Areas Act* provides that the *Public Lands Act* applies to Special Areas except for certain provisions.

<sup>42</sup> *Special Areas Disposition Regulation*, Alta Reg 137/2001, s 29

<sup>43</sup> *Ibid* at s 30

<sup>44</sup> Alberta oil and gas data were collected from geoSCOUT™ (geoLOGIC Systems Inc.; <http://www.geologic.com/products-services/geoscout>) in the Department of Earth and Atmospheric Sciences at the University of Alberta, using the following project boundaries: SE coordinates of 01-01-01-01-W4 and NW coordinates of 60 degrees N and 120 degrees W. Information on all wells was downloaded on August 12, 2013. A NAD83 projection was chosen for all the data downloaded. Wells were exported using the export well data function and converted into a point shapefile using the surface hole (SH) latitude and longitude coordinates for the well.

The geoSCOUT well data were clipped within ArcGIS to the provincial boundary and made into a new shapefile. The well data were then clipped to AEP's grazing lease (GRL) polygon layer. Several wells had the same license number, surface hole location, spud date and completion date as another well in the data set. The unique well identifiers (UWI) for these wells differed only by their sixteenth character, known as the event code. This signifies that it is the same surface well, but has subsequently been either deepened, re-entered, whipstocked, or has had additional completions. For this research project, all wells with the same surface hole location, license number and both spud and completion dates were limited to only one occurrence (i.e. all repeat wells were removed). This limited the erroneous double-counting of the same surface well. Only the remaining wells represent those used to calculate compensation agreements that would have been made.

Spatial joins were used to find the number of wells within each grazing lease. The resultant shape files contain all grazing leases and information on the number of wells within each lease.

Density data were created on a per acre basis. The number of wells in each grazing lease was divided by the number of acres included within the grazing lease. This information was used to create well density maps.

<sup>45</sup> *Special Areas Disposition Regulation*, Alta Reg 137/2001, s 73.

<sup>46</sup> The *Exploration Dispute Resolution Regulation*, Alta Reg 227/2003 sets out a formal process for disputes that arise on related to exploration activities on grazing leases and other agricultural dispositions. The regulation authorized new powers for the Surface Rights Board to resolve conflicts related to exploration access on agricultural dispositions (prior to the 2003 regulation, the Surface Rights Board did not have any jurisdiction over exploration issues).

<sup>47</sup> See Bruce Ziff, *Principles of Property Law*, 6th ed (Toronto: Carswell, 2014) at 104–05; *Alberta Energy Company Ltd. v Goodwell Petroleum Corporation Ltd.*, 2003 ABCA 277 (CanLII) at para. 64.





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<sup>48</sup> *Surface Rights Act*, RSA 2000 c S-24, s 12(1)–(2).

<sup>49</sup> SRA, *supra* note 48 at s 12(3) and s 15–16.

<sup>50</sup> SRA, *supra* note 48 at s 23 and 25.

<sup>51</sup> SRA, *supra* note 48 at s (1)(g). In addition, pursuant to regulations made under the *Public Lands Act*, s 9(b.2), a subsurface mineral leaseholder must obtain the consent of the agricultural surface leaseholder (including a grazing leaseholder) prior to conducting any “exploration” (as defined in the regulations). Where consent cannot be obtained, the SRB may issue an order granting the mineral explorer a right of entry and determine the amount of compensation that should be paid to the surface leaseholder. See *Exploration Regulation*, Alta Reg 284/2006, s 8(1)(e) and *Exploration Dispute Resolution Regulation*, Alta Reg 227/2003, ss 19–20.

<sup>52</sup> SRA, *supra* note 48 at s 12

<sup>53</sup> Arlene Kwasniak, *Alberta Public Rangeland Law and Policy* (Edmonton: Environmental Law Centre, 1993) at 78.

<sup>54</sup> Alberta Agriculture and Rural Development, *supra* note 8. “Canadian Association of Petroleum Landmen follow a strict interpretation of the *Surface Rights Act* in Alberta. They generally make an offer with the underlying premise that if the negotiations fail with the land owner; their offer must address the compensation categories used by the Surface Rights Board.”

<sup>55</sup> SRA, *supra* note 48 at s 25

<sup>56</sup> SRA, *supra* note 48 at s 25(5)(a)(b)

<sup>57</sup> James Mallet, “Government Set to Restrict Recreational Access to Public Lands,” *Environmental Law Centre News Brief* (2003), online: Environmental Law Centre <[http://www.elc.ab.ca/Content\\_Files/Files/NewsBriefs/GovernmentSet-V18-1.pdf](http://www.elc.ab.ca/Content_Files/Files/NewsBriefs/GovernmentSet-V18-1.pdf)>

<sup>58</sup> Alta Reg 187/2011, *supra* note 24 at s 107.

<sup>59</sup> Government of Saskatchewan, *Crown Land Surface Lease Fees and Rentals* (reviewed May 2012), online: Government of Saskatchewan <<http://www.agriculture.gov.sk.ca/Default.aspx?DN=7155bdb0-fda5-4910-ae25-21a4dc63f6cd>>

<sup>60</sup> Thurber et al, *supra* note 13 at 10.

<sup>61</sup> Thurber et al, *supra* note 13 at 10.

<sup>62</sup> *Provincial Lands Regulations*, Sask Reg 145/68, Part I, s 2(2.01).

2.01 “agricultural lease” means a lease of provincial lands for the purpose of growing crops, grazing livestock, harvesting hay, or establishing or operating a domestic game farm.

<sup>63</sup> *Ibid* at Part III, s 3.1

<sup>64</sup> Sask Reg 145/68, *supra* note 62 at Part III, s 2

<sup>65</sup> Sask Reg 145/68, *supra* note 62 at Part III, s 3.1

<sup>66</sup> The regulation identifies the Minister of Agriculture as the responsible minister for this statute.



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<sup>67</sup> Sask Reg 145/68, *supra* note 62 at Part III, s 3.1 (5-6)

<sup>68</sup> Sask Reg 145/68, *supra* note 62 at Part III, s 3.1(2)

<sup>69</sup> Sask Reg 145/68, *supra* note 62 at Part III, s 3.1(4)

<sup>70</sup> Sask Reg 145/68, *supra* note 62 at Part III, s 3.1(5)

<sup>71</sup> Sask Reg 145/68, *supra* note 62 at Part III, s 3.1(6)

<sup>72</sup> Sask Reg 145/68, *supra* note 62 at Part III, s 4(6)

<sup>73</sup> Saskatchewan Ministry of Agriculture, *2011/2012 Annual Report*, online: Saskatchewan Ministry of Agriculture <<http://www.finance.gov.sk.ca/PlanningAndReporting/2011-12/201112AgricultureAnnualReport.pdf>> at 27

<sup>74</sup> Municipal District of Taber, *Background Information: Municipal District of Taber – Tax Recovery Land* (February 7, 2011), online: Municipal District of Taber <[http://www.mdtaber.ab.ca/sites/default/files/M.D.%20of%20Taber%20-%20Background%20Information%20-%20Tax%20Recovery%20Land%20-%20Feb%207,%202011\\_0.pdf](http://www.mdtaber.ab.ca/sites/default/files/M.D.%20of%20Taber%20-%20Background%20Information%20-%20Tax%20Recovery%20Land%20-%20Feb%207,%202011_0.pdf)>

<sup>75</sup> Alberta Environment and Parks, *About Public Lands: Tax Recovery Land* (Posted May 2009, Updated January 2011), online: Alberta Environment and Parks <<http://esrd.alberta.ca/forms-maps-services/documents/APL-TaxRecoveryLand-Feb4-2011.pdf>>

<sup>76</sup> MD of Taber, *supra* note 74.

<sup>77</sup> Municipal District of Taber, *Municipal District of Taber Mobile Website*, online: Municipal District of Taber <<http://www.mdtaber.ab.ca/node/908>>

<sup>78</sup> Municipal District of Taber, *Tax Recovery Land Grazing Lease Agreement* (Template) (Taber: Municipal District of Taber, February 7, 2011) at s 21.2.

ON all new tax recovery lands being transferred to the Lessor (i.e., the MD), the Lessee (i.e., the leaseholder) shall be allowed to retain all their existing income from the said existing Surface Leases until February 28, 2016, after which, all leases will be subject to the provisions of paragraph 21.3. Further, should the Lessor negotiate a higher rent on the said existing surface leases, any increase in lease payment shall be retained for the benefit of the M.D. of Taber

<sup>79</sup> MD of Taber lease agreement, *supra* note 78: “21.3 SUBJECT to paragraph 21.2, the Lessor will receive one hundred percent (100%) of all income from all existing surface leases and new surface leases and shall pay to the Lessee the sum of \$400.00 each year on each existing well site surface lease. Further the Lessor will pay to the Lessee an additional \$400.00 (for a total of \$800.00) as well as any compensation paid for nuisance, inconvenience and adverse effect in the first year of the establishment of a new well site surface lease. Notwithstanding the foregoing, all monies received for seismic activity on these lands will be payable to the Lessee.”

Also see: MD of Taber, *supra* note 74. “Following 2016 in consideration of new surface mineral leases the leaseholder will receive the payment received by the municipality for inconvenience, loss of use and adverse effect plus \$800 in the first year of new surface leases, and \$400 per surface lease each year thereafter.”

<sup>80</sup> MD of Taber, *supra* note 74.



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<sup>81</sup> MD of Taber lease agreement, *supra* note 78 at s 21.2.

<sup>82</sup> Thurber et al, *supra* note 13 at 3.

<sup>83</sup> Government of Alberta. *Agricultural Lease Review Report* (Edmonton: Government of Alberta, 1998) at 3.

<sup>84</sup> Thurber et al, *supra* note 13 at 10.

<sup>85</sup> “Average” amounts are provided as an example – see Thurber et al., *supra* note 13 at 9: “The Province, as the land owner, would collect all the compensation currently paid to the agricultural disposition holder, as well as current rental payments paid to the Province, in one new fee. A schedule of fees would be developed by the Province which will show the amount the oil company will pay based on existing compensation and rental payments as well as considering regional differences. First year and annual rental fees would be paid for oil and gas activities on all public land in the White Area (vacant or under disposition). The average first year payments would be \$925/acre (e.g., \$3700 for a 4 acre well site) with the average annual rental of \$350/acre (e.g., \$1400 for a 4 acre site.)”

<sup>86</sup> Thurber et al, *supra* note 13 at 3.

<sup>87</sup> Issues outlined in the document included: 1) Sale of public land; 2) Access to public land; 3) Liability; 4) Industrial access and surface compensation; 5) Industrial access for resource exploration; 6) Environmental protection; 7) Rental rates and municipal taxes; 8) Grazing disposition assignments and tenure; 9) The term “public land.”

<sup>88</sup> Bill 31, *Agricultural Dispositions Statutes Amendment Act, 1999*, 3rd Sess, 24th Leg, Alberta, 1999.

[http://www.assembly.ab.ca/net/index.aspx?p=bills\\_status&selectbill=031&legl=24&session=3](http://www.assembly.ab.ca/net/index.aspx?p=bills_status&selectbill=031&legl=24&session=3)

<sup>89</sup> *Ibid*. Bill 31 would make consequential amendments to the *Public Lands Act*, the *Municipal Government Act*, the *Occupiers Liability Act*, the *Surface Rights Act*, the *Petty Trespass Act*, and the *Stray Animals Act*.

<sup>90</sup> Alberta, Legislative Assembly, *Alberta Hansard*, 24th Leg, 3rd Sess (18 May 1999).

<sup>91</sup> *Ibid* at 1835.

<sup>92</sup> Government of Alberta. *Agricultural Dispositions Statutes Amendment Act (Bill 31): Discussion document on draft regulations* (Edmonton: Government of Alberta, November 1999).

<sup>93</sup> *Ibid* at 46-47.

<sup>94</sup> In our analysis, we interpreted this as a payment cap of \$5,000 per grazing lease; see section 5.1 for details.

<sup>95</sup> Government of Alberta, *supra* note 92 at 45:

“The following rates reflect about 75 per cent of the current amount paid to private landowners. The 75 per cent level takes into consideration the general remoteness of the lands and their overall lower economic value. It also makes allowance for the variance in rates throughout the province.”

<sup>96</sup> Bill 16, *Agricultural Dispositions Statutes Amendment Act, 2003*, 3rd Sess, 25th Leg, Alberta, 1999.

[http://www.assembly.ab.ca/net/index.aspx?p=bills\\_status&selectbill=016&legl=25&session=3](http://www.assembly.ab.ca/net/index.aspx?p=bills_status&selectbill=016&legl=25&session=3)

<sup>97</sup> Alta Reg 227/2003, Alta Reg 228/2003



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<sup>98</sup> For more information, see: Alberta Sustainable Resource Development, *About Public Lands: Questions and Answers for Leaseholders – Recreational Access to Agricultural Public Lands*, online: Alberta Sustainable Resource Development < <http://aep.alberta.ca/forms-maps-services/directives/documents/AccessAgriculturalPublicLands-Oct2006.pdf>>

<sup>99</sup> For more information, see: Alberta Sustainable Resource Development, *About Public Lands: Exploration Background*, online: Alberta Sustainable Resource Development <<http://esrd.alberta.ca/forms-maps-services/directives/documents/Bill16ExplorationBackground.pdf>>

<sup>100</sup> Prior to about 2011, a private company undertook large-scale collection of private surface compensation value data (William D. Marriott & Associates Ltd.); this company had been used by the Farmers' Advocate Office to create the value maps on its website. However, this company no longer exists and the data are no longer available. (Author's personal communication Assistant Farmers' Advocate, August 2013).

<sup>101</sup> The authors examined Surface Rights Board decisions from January 2002 through to September 2015 dealing compensation (under s 25 of the *Surface Rights Act*) with land under grazing leases only (i.e., did not consider decisions that included partially deeded land). The following cases met the criteria:

- *Secure Energy Services Inc. v Canada*, 2012 ABSRB 454 (CanLII)
- *Legacy PetroLeum Ltd. v Maser*, 2012 CanLII 60639 (AB SRB)
- *Arbour Energy Inc v Scoville*, 2010 CanLII 98450 (AB SRB)
- *Conocophillips Canada Resources Corp. v Canada (Sustainable Resource Development)*, 2008 CanLII 88592 (AB SRB)
- *Bonavista Petroleum Ltd v Canada (Sustainable Resource Development)*, 2007 CanLII 81444 (AB SRB)
- *Quicksilver Resources Canada Inc v Canada (Sustainable Resource Development)*, 2007 CanLII 81455 (AB SRB)
- *Imperial Oil Resources Limited v Canada (Sustainable Resources Development)*, 2006 ABSRB 167 (CanLII)
- *Burlington Resources Canada (Hunter) Ltd v Canada (Sustainable Resource Development)*, 2005 ABSRB 58 (CanLII)
- *Canadian Natural Resources Limited v Canada (Sustainable Resource Development)*, 2005 ABSRB 20 (CanLII)
- *Tusk Energy Inc v Alberta (Sustainable Resource Development)*, 2002 ABSRB 32 (CanLII)

<sup>102</sup> For example, see discussion in: *Quicksilver Resources Canada Inc v Canada (Sustainable Resource Development)*, 2007 CanLII 81455 (AB SRB).

<sup>103</sup> Three of five decisions were for \$1,500 annually (in Medicine Hat, Red Deer and Stettler); one was for \$2,050 annually in Peace River; one was for \$1,500 (adverse effects) annually plus \$200 (loss of use) per acre in Olds.

<sup>104</sup> For example, see:

- *Husky Oil Operations Limited v Canada (Municipal Affairs)*, 2009 CanLII 90805 (AB SRB)
- *Enermark Inc v Canada (Municipal Affairs)*, 2003 CanLII 71248 (AB SRB)



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- *Conocophillips Canada Resources Corp v Canada (Municipal Affairs)*, 2005 ABSRB 62 [CanLII]

<sup>105</sup> Application of *Public Lands Act Regulation*, Alta Reg 310/2003.

<sup>106</sup> This is addressed in s 103 of the *Public Lands Act*; in Alta Reg 310/2003 this section is not excluded, so would apply in the Special Areas. Note that there may be small (negligible) differences in the amounts paid to the Special Areas Board by oil and gas operators and/or grazing leaseholder for the issuance of dispositions themselves when compared to grazing leases authorized under the *Public Lands Act*. Fees for assignment and issuance of permits/licenses are outlined in a separate regulation (*Special Areas Service Fees Regulation*, Alta Reg 124/2000).

<sup>107</sup> Alberta Agriculture and Rural Development (Farmers' Advocate Office), *Compensation for Surface Leases*, online: Alberta Agriculture and Rural Development (Farmers' Advocate Office) <[http://www1.agric.gov.ab.ca/\\$department/deptdocs.nsf/all/ofa11701](http://www1.agric.gov.ab.ca/$department/deptdocs.nsf/all/ofa11701)> (last accessed July 2013).

<sup>108</sup> See files outlining data maintained by the Farmers' Advocate Office:

Alberta Agriculture and Rural Development, Environmental Stewardship Division, Agri-Environmental Management Branch, *Surface Lease Data of Alberta, 2009: Loss of Use Payment per acre in Canadian Dollars*, online: Alberta Agriculture and Rural Development <[http://www1.agric.gov.ab.ca/\\$Department/deptdocs.nsf/all/ofa11701/\\$FILE/Loss%20of%20Use%202009.pdf](http://www1.agric.gov.ab.ca/$Department/deptdocs.nsf/all/ofa11701/$FILE/Loss%20of%20Use%202009.pdf)> (last accessed July 2013).

Alberta Agriculture and Rural Development, Environmental Stewardship Division, Agri-Environmental Management Branch, *Surface Lease Data of Alberta, 2009: Adverse Effect Payment Per Well site in Canadian Dollars*, online: Alberta Agriculture and Rural Development <[http://www1.agric.gov.ab.ca/\\$Department/deptdocs.nsf/all/ofa11701/\\$FILE/Adverse%20Effect%202009.pdf](http://www1.agric.gov.ab.ca/$Department/deptdocs.nsf/all/ofa11701/$FILE/Adverse%20Effect%202009.pdf)> (last accessed July 2013).

<sup>109</sup> For example, see: *Legacy Petroleum Ltd v Majestic Ranches Ltd.*, 2011 CanLII 95518 (AB SRB); *Enerplus Resources Corporation v Ulseth Holdings Ltd*, 2005 CanLII 78471 (AB SRB); *Nayha v Joule Resources Inc*, 2013 ABSRB 309 (CanLII)

<sup>110</sup> *Legacy PetroLeum Ltd. v Maser*, 2012 CanLII 60639 (AB SRB)

<sup>111</sup> Alberta Department of Energy. 2007. Alberta Royalty Review 2007 Technical Royalty Report OG #2: Alberta's Conventional Oil and Gas Industry Investor Economics and Fiscal System Comparison. Economics and Royalty Series.

<sup>112</sup> This calculation is a simplification of reality for three primary reasons: (1) most wells in the data set were completed prior to 2013 and may therefore receive compensation payments for less than 30 years; (2) 30 years is the assumed productive life of an average well; however, many wells receive compensation payments well beyond their productive lifespan (e.g., abandoned well site payments); (3) there was no accounting for future wells that will be drilled on grazing leases. Reason one may lead to this value being an overestimate of future compensation; however, reasons 2 and 3 likely result in this estimate remaining conservative in nature.

<sup>113</sup> A real discount rate of 4 percent was used to calculate the net present value (NPV) of the compensation payments over this 30-year period. While leaseholders may request a compensation increase from oil and gas operators at five-year intervals [see *Surface Rights Act*, RSA 2000, c S-24, s 27], this analysis assumed that increases in compensation payments would simply reflect inflation-adjustments. As a result, a real compensation value of \$1,500 was used throughout the 30-year compensation period.



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<sup>114</sup> There remains in Alberta some uncertainty regarding the exact legal essence of a grazing lease under the *Public Lands Act*. Analysis suggests that like mineral “leases”, the grazing lease is a *profit a prendre* – an incorporeal hereditament (i.e., a non-possessory interest in land) consisting of the right to take the fruit of the land of another (see Arlene Kwasniak, *Alberta Public Rangeland Law and Policy* [Edmonton: Environmental Law Centre, 1993]). In one case, however, the Court of Appeal of Alberta characterized the grazing lease as a leasehold estate, that is, the right of the leaseholder to exclusive possession of the lands granted for term stipulated in the grant (see *Patton v OH Ranch Ltd.*, 1996 ABCA 294 [CanLII]). For the purpose of this report, it is not necessary to settle this question; suffice it to recognize that the grazing lease is a legally enforceable interest in land.

<sup>115</sup> The following statement, found in one of the Surface Rights Board decisions referred to, *supra* note 101:

“The effect of the granting of right of entry to the Operator was to superimpose a second user right, which is an exclusive and dominant right (section 16(1)(a)) for the term of the Order, on the respondent landowner’s existing right, resulting in damages of both tangible and intangible nature to the bundle of rights entrenched in the ownership and right of use and enjoyment of the said land. Notwithstanding any inherent right of the Operator to occupy such part of the surface as may be necessary to remove or transport a natural resource in the public interest, the exercise of that right has created an interference and a disturbance to the landowner’s vested right of use and enjoyment of the surface of the land. It is this disturbance to the vested interest of the respondent landowner that attracts an award of compensation, together with any incidental losses and damages arising from that disturbance to the owner’s use and enjoyment of the surface in his farming operations.” (*Imperial Oil Resources Limited v Alberta (Sustainable Resources Development)*, 2006 ABSRB 167 [CanLII])

<sup>116</sup> See Ronald H. Coase, “The Problem of Social Cost” (1960) 3 J Law & Econ 1.

<sup>117</sup> Note: In some alternate policy scenarios, compensation is provided in acres rather than by wellsite; in these cases, compensation was determined on a per wellsite basis by using a four acre per wellsite conversion factor. In the proposed “Charges Regulation,” the document states that a “site” is typically 4 acres (See *supra* note 92).

<sup>118</sup> Thurber et al, *supra* note 13 at 10.

<sup>119</sup> See discussion in section 5.2 for additional information.

<sup>120</sup> Government of Canada, “Alberta Crown Lands Basic Grazing Program” in *US Trade Remedy Law: The Canadian Experience*, Foreign Affairs, Trade and Development Canada, online: Government of Canada <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/disp-diff/section05-8.aspx?lang=en#albertacro5l>>

United States Department of Commerce, “Final Negative Countervailing Duty Determination; Live Cattle from Canada,” *Federal Register* 64 (204), Friday, October 22, 1999, online: United States Department of Commerce <<http://www.gpo.gov/fdsys/pkg/FR-1999-10-22/pdf/99-27570.pdf> - US Federal Register>

<sup>121</sup> *Forests Act*, RSA 2000, c F-22, s 16(2).

<sup>122</sup> Unlike compensation to grazing leaseholders by oil and gas operators, the payments from energy companies to forest management agreement holders is strictly for losses or damages due to oil and gas activity (for the value of the standing timber, annual allowable cut and the cost of future reforestation), not for adverse effect or loss of use of the land.

Alberta Environment and Parks, *Website: Timber Damage Assessment*, online: Alberta Environment and Parks <<http://aep.alberta.ca/lands-forests/forest-management/timber-damage-assessment/default.aspx>>



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“Private parties may also choose to use the JMC’s TDA values as the basis for determining compensation for damages to timber but they are encouraged to undertake their own research in order to understand whether or not the tables are appropriate for their circumstances and then to use the tables at their own risk.

“Determining timber damages for privately held rights is ultimately a matter for private negotiation between the affected parties.”

<sup>123</sup> Developed independently and submitted to AEP. See Alberta Environment and Parks, *supra* note 122.

<sup>124</sup> Alberta Environment and Parks, *supra* note 122.

