

**Submission of the Castle-Crown Wilderness Coalition
to the Alberta Energy and Utilities Board**

**In the matter of Shell Canada Applications #1498479 and 1483571, for a Well and Associated Pipeline
Licenses – Waterton Field – Waterton 68 Project**

1. As Conservation Director of the CCWC (a tenuous part-time position), my role is to provide some critique of Shell's present Application including their consultant's Environmental Impact Assessment for their proposed well at 10-1-6-3-W5M, Shell Waterton 68, and the associated pipeline tie-in.
2. Given the attention that has already been paid to the IRIS Environmental Assessment document submitted by Shell by the other interveners in this process, I will spare the Board the detailed critique that I had intended to present. Our position with respect to that assessment has not changed from that presented previously: the CCWC will demonstrate that Shell's Environmental Impact Assessment conclusions regarding the potential project impacts (7.0 Summary, p.59 IRIS document) and conclusions of their Cumulative Impacts Assessment (8.4, Conclusions, p.74) that environmental impacts will be local, short term and insignificant are seriously flawed.
3. Under normal circumstances the CCWC would be able to count on the personal knowledge and professional expertise of one of our organisation's founding members, Dr. David Sheppard, to assist in a review of these sections of the EIA, especially in light of the fact that Dr. Sheppard has been the CCWC's volunteer steward for the Screwdriver Creek/Mt Backus area for a number of years. Given the constraints imposed by his participation in the EUB's Alternative Dispute Resolution process, that option has been foreclosed to us. However, from Dr. Sheppard's past observations, his annual contributions to the CCWC's stewardship reports since 1992 and his published work with the CCWC, including his compilation of the Castle Wilderness Inventory and "Bringing it back: A Restoration Framework for the Castle Wilderness", the contribution of the Screwdriver Creek/Mount Backus/Kyllo Hill areas to the Castle's overall ecosystem integrity and biodiversity, at least in the past, is well documented. The brief discussion of Rare Plants and Rare Plant Communities in Section 3.3.2.2 of the IRIS EA appears to validate Dr. Sheppard's appraisal.
4. The location of the proposed wellsite immediately between the Kyllo Hill and Mount Backus Environmentally Significant Areas would suggest that this can clearly be regarded as a "sensitive area", although that term is not defined in IL93-9..

5. One point of clarification is needed here. I realize that the court record of these proceedings carried out by your secretaries would not be able to distinguish the use of irony. When I remarked that I commended Mr. Roe on his EA, it was in the sense that will be abundantly clear to you in what follows: namely that he had prepared an EA that is a near textbook example of what can satisfy the check-box regulatory approvals process, without actually engaging in any new research or addressing significant land use issues related to this single wellsite. I think that that matter has already been amply demonstrated during the cross-examination of Mr. Roe by the other interveners, with respect to the specifically environmental content of the IRIS EA.
6. On a more general note with respect to the Board's mandate for adjudicating the public interest in this matter, I will restate an observation that I am sure the Board may have heard on other occasions but nevertheless remains relevant to our concerns today. In any cost benefit analysis that the Board may engage in to determine the public interest, the assumed benefits, and particularly the assumed financial benefits, accrue to the proponent and to some wider and geographically removed set of publics (be they the tax revenues for the Municipality or royalties to the Provincial revenues), while the costs – the real and actual costs, socially and environmentally - are very directly carried by the local community affected and by the local landscape. At the social level, those costs are huge and I suspect that few Panel members of the EUB have had personal experience of the sort of stress that is carried by such local residents as are represented here.
7. I believe the recent Royalty Review Committee's Report reflects that concern, both with respect to communities and to the environment all across the province.
8. While Shell may feel satisfied that they have resolved the concerns of some of the immediately affected Seven Gates Roads Group, the Board would be mistaken if they believed that other fundamental public interest concerns have also automatically been resolved.

Land use issues

9. Contrary to the assertions made by Mr. Gilmour in his September 10th letter to the Board, that challenged the relevance of any land-use planning analysis, this critique is intended to be fully consistent with the Board's definition of the scope of issues to be addressed at this Hearing and with their specific reference to their Information Letter IL93-9 for applications in the Southern Eastern Slopes Region of the Province, and is aligned with the Environmental Impact Assessment parameters recognized by IRIS Environmental Systems Inc, November 2006.
10. In its General Expectations section IL 93-9 states: *"The Board may conclude for instance, that while development may be permissible under an IRP (as is the case here), the proposed development may not be appropriate for the specific area."* In its Environmental Assessments section the IL states: *"It is also recognized that the environmental sensitivities of regions within the Eastern Slopes are variable, and it is reasonable to expect that the level of detail of the EA information be consistent with the sensitivity of the area proposed for development. That is to say that for areas of lower sensitivity, an overview assessment may suffice, compared to an area of high sensitivity where thorough treatment of all EA criteria would be appropriate."*

11. IL 93-9 calls on the proponent to deal with all relevant issues, and in the appropriate level of detail to allow the Board to consider the application. The reason we are in this hearing is because this routine check-box application process for this well is clearly deficient in that regard and has failed to resolve the outstanding concerns of some of the directly affected parties.
12. We note that the assessment for this application can be regarded at different geographical and temporal scales, as has been recognized in Figures 1-3 of the IRIS document, which zero in on the wellsite from the Regional, to Sub-Regional to Local Study Area perspectives, and in Chapter 8, where the first consideration under Section 8.1 is to “*identify regional environmental management issues relevant to the analysis*”, some of which are already referenced in Chapter 4.1 under the heading of Local and Regional Land Use Guidelines.
13. The starting point for this critique has to be the Board’s own Screwdriver Creek Decision Report # 2000-17, that has catalyzed Shell Canada’s recent Castle-Carbondale development plans. I do not need to remind the present panel of some of the conclusions that were drawn by that Panel in their Decision Report. I read some of that Decision Report to you the other day and will only repeat here the most succinct passage: “**In order to ensure that future energy development in the region continues to be environmentally acceptable, the Board strongly believes that additional evidence, such as would be found in an updated integrated resource management strategy must be developed to confirm that the region’s environmental values are being adequately protected.**”
14. There are two points that we would like to make about this statement, in addition to our general agreement with the direction that the Board is moving in. The first is that the Panel explicitly refers to the integrated resource management strategy as a source of “*evidence*” for the Board to draw upon in hearings such as these, where the routine application process has broken down.
15. The second point that our members would stress is that such IRM Strategies address more than simply “*environmental*” issues: they are land-use documents that set the priorities for activities on the landbase that have public resonance and relevance as “*social*” planning documents. They set the public expectations for the regulation of any number of activities, particularly – as in the integrated resource plan for Castle-Crown region - for watershed protection, recreation and tourism.
16. Most of us live in urban or rural municipalities where our councillors turn to their Land-Use Bylaws for assistance and direction in making any number of decisions that are as equally challenging for them as this hearing process may be for you. They ignore those Land-Use Bylaws at their own risk as elected officials, and, as is the case right now in this municipality, they change or amend those Bylaws through a structured public hearing process under the Planning Act.
17. Given the powers invested in the present Board for the determination of the public interest in energy-related matters, similar in scope to those invested in the Natural Resources Conservation Board (NRCB) for non-energy matters, we would note that when the NRCB was faced with a challenging decision in this same region in 1993, the Board stated that it “*could not reach a determination of whether or not the proposed project is in the public interest without fairly detailed consideration of the land use planning and ongoing management structures for the area.*” While acknowledging that the NRCB was faced with what all would agree was a “big” decision, we respectfully submit that

this apparently “small” decision needs similar consideration. We will draw on Mr. Creasey’s own work to illustrate this further.

18. I am sorry that my attempt to “cross-examine” Shell’s witnesses on IRP-related matters became so tortuous for us all at the time. I make no apology, however, for raising these issues as legitimate issues to be dealt with in this Hearing, having regard to their social, as well as strictly environmental, relevance.
19. The Castle River Sub-Regional Integrated Resource Plan has now been accepted as an exhibit for the Board to refer to, should they wish to go down that road. In the spirit of cooperation requested by the Board in its Screwdriver Creek Decision, and - as I understand it - in this Hearing, we have also put before you, as part of our evidence, three documents that I understand are now listed as Exhibit 15:
 - Revised Castle River Sub-Regional Integrated Resource Plan, Draft for Public Review, April 2, 2001
 - Cumulative Effects and the Wellsite Approval Process, by Roger Creasey, 1998
 - Spinning Wheels in the Castle: A Lost decade for sustainability in Southwestern Alberta, by Steven Kennett, Canadian Institute for Resources Law Occasional Paper #14, 2003
20. We fully understand and share the Board’s frustration with respect to the IRP system as it stands, especially at a time when, as Mr Creasey notes, there is a “*loss of commitment to planning systems*” (Creasey, p109). We also recognize that the EUB accepts that the IRP guidelines have no legal status...something that Shell’s lawyers have consistently reminded environmental and conservation groups around here ever since the Energy Resources Conservation Board embraced the “step-out” drilling provisions that allowed Shell to access oil and gas from the Prime Protection Zone of Prairie Bluff. Under the original IRP this was the highest level of protection that could be afforded to our wild landscapes and the wild resources that they support.
21. Nevertheless, as Creasey notes, with reference to the ERCB’s Whitney Creek Decision (which many of us in this room recall), the “guiding” intent of the IRP was fully acknowledged by the Board at that time: “*The Board recognizes that the IRP represents a very useful land use planning initiative....Accordingly, the Board would give considerable weight to the IRP in considering the evidence filed by parties and in reaching a decision on an application.*”
22. More recently, and within this regional study area, the Board’s ruling on Shell’s Carbondale Pipeline, Decision Report #D 95-6, reiterates the Board’s reliance on the Castle Sub-Regional IRP for guidance in its decisions and further states: “*The Board believes that a consideration of cumulative effects is implicit in that document although not labeled as such.*” No explanation is given for this “*implicit*” assumption so it is not clear how the Board came to this conclusion, particularly given the exemption of energy activities from any formal environmental assessment review process, other than those advanced under IL93-9, and the exemptions to the oil and gas sector under the “step-out” drilling provisions recognized by the ERCB and now the EUB, that have had the effect of trumping all other guidance that might be provided by the IRP.
23. As has already been noted, it now appears from the Board’s 2000-17 Decision Report that the Board has less faith in the IRP and its associated Mineral Surface Lease approvals process than it had in the past. The Decision Report suggests that the IRP is inadequate for addressing the cumulative effects

in the region. This is not news to those of us who live here. This was recognized by the Natural Resources Conservation Board in its 1993 decision regarding the Westcastle Skihill expansion, and has since been emphasized in 2002 when the Director of Regulatory Approvals for Alberta Environment undertook her screening of the current Castle Mountain Resort expansion plans.

24. Despite the inadequacy and the “*loss of commitment*” noted by Mr. Creasey to any IRP guidance by government agencies and decision-makers, we - as part of the public at large - have no other reference point for making informed decisions about applications affecting public lands in the Castle, whether they be applications by Shell to drill this well, or Castle Mountain Resort Inc to expand its four season real-estate development at the former Westcastle Ski Hill or, most immediately and directly within IRIS’s subregional environmental assessment study area, the present application by a Crowsnest Pass businessman to develop a year-round off-road and snowmobiling staging area, with proposals for “cabin style accommodation”, at the former Forest Ranger Station/Minimum Security Camp at the confluence of the West Castle and South Castle Rivers.
25. We note that IRIS’s EA makes no mention of this proposed development in its assessment of cumulative effects in this study area, even though the public consultation process for this application was initiated early in 2006.

The 1985 Castle Sub-Regional IRP

26. To simplify any quick review of the admittedly inadequate and outdated IRP that the Board may choose to make in this application process, I have copied the pages from the IRP that set the tone of the IRP’s guidance for this particular location. As a simply practical improvement to the EUB’s check-box application, we would respectfully suggest that all applications provide the relevant passages of the IRP in their entirety to avoid the mangling and obfuscation of intent that has been exemplified in the IRIS EA submitted with this application. I leave it for the Board to contrast the IRIS version (IRIS Chapter 4, pages 36-38) with the original. I recognize that trying to lead Mr. Roe through this exercise the other day was frustrating for everyone. My point is that by cutting and pasting some passages verbatim, and shifting to his own paraphrasing of other sections, Mr. Roe has consciously subverted the guidance that is available to the Board in the IRP.
27. Unlike the presentation of the IRP given in the IRIS EA, these pages from the IRP can actually inform the Board of the hierarchy of priorities associated with this location: priorities that at the broadest level assert the primacy of watershed protection, recreation and tourism for this Castle area of the Eastern Slopes, and for the O’Hagan-Adanac resource management area (RMA) sets out the primary intent as to protect critical wildlife habitat. Hence the IRP’s statement that “*Within the O’Hagan-Adanac resource management area, watershed has been listed first as it has been identified as a paramount resource by the Eastern Slopes Policy. Wildlife is listed second to reflect the resource management area’s intent for the protection of critical wildlife habitat. The remainder of the resources have been listed alphabetically.*” (IRP p.47)
28. Thus, in contrast to the ordering of these priorities in the IRIS EA, the exploration for minerals, petroleum and natural gas in this resource management area (RMA) clearly stands lower in the hierarchy than watershed protection and the protection of critical wildlife habitat, and also lower than recreation and tourism, given the broad resource management objectives spelled out for the

Castle River area as a whole. Any “step-out” or exploratory exemptions should still be reviewed in the context of the IRP, and this means more than just automatically conditioning wellsite approvals. The Board’s past decisions reflect that position.

29. The Resource Management Objectives and Guidelines for Watershed and Wildlife are spelled out on pages 47,49 and 50. The Resource Management Objectives and Guidelines for Recreation are spelled out on pages 52/53:
30. *“Other than hunting, recreation activities in the O’Hagan- Adanac RMA are currently low. There is potential for summer non-motorized trail development and limited summer motorized trail use (with no development of additional facilities). Resource Management Objectives are: 1. To manage the area for non-motorized and limited summer motorized trail activities. 2. To manage the area for recreational hunting. Resource Management Guidelines are: 1. Enforcement of off-highway vehicle use restrictions will require legislative enactments. Enforcements may be necessary in the future due to critical winter wildlife habitat values. 2. Adequate hunting access will be maintained. 3. “Serviced camping” will only be permitted during summer months because of the area’s importance as critical wildlife habitat for elk and ungulates.”*
31. For members of the CCWC, these wildlife and recreation values stand at the core of our concerns about the incremental proliferation of Shell’s industrial footprint across this region. Notwithstanding the conclusions reached by the ERCB and the EUB at any number of hearings over the past three decades that the “environmental effects” are minor, temporary and insignificant, Roger Creasey has documented the cumulative impact of these effects specifically in Shell’s Waterton field, as they have related to the site-specific surface disturbance associated with well-pad leases, roads and pipelines .It is for this reason that we have requested that Mr. Creasey’s thesis be accepted as evidence at this Hearing. It is important to note here that Mr. Creasey’s study consciously restricts itself to those directly measurable effects, in the interests of analytical clarity. He does not get involved in buffer zones or zones of influence or any of the other more qualitative issues that might have an impact either on wildlife or humans.
32. *“The gas field development followed by Shell Canada in the Waterton field illustrates the normal progression of gas pool delineation and development. It is apparent that individual well site development can result in a large surface disturbance when the total effects are tallied.*
33. *In developing the gas field in this manner, Shell Canada staff followed the regulatory approval framework (detailed in Chapter 4). But while addressing individual applications and specific environmental issues coming before the regulatory agencies, the applicant did not deal directly with the multiple effects of its own or other developments in the area.” (Creasey p.37)*
34. In summarizing his review of the site-specific developments of the Waterton field, Mr Creasey writes: *“ That analysis has shown that while the EUB panels frequently heard presentations on the cumulative effects of wellsites, the Board did not generate a cogent approach to address those recurring issues.” (Creasey, p38).* That is indeed how it seems to us today.
35. One of the key flaws in the wellsite approval process that was recognized by Mr. Creasey in his paper and that is quite clearly a flaw in this specific application for Shell Waterton 68, is the

dependence of the EUB on the prior approval of a Mineral Surface Lease by the land manager for the site (Creasey, p46-47). At the time of writing his thesis, that approvals process was housed within the omnibus Ministry of Alberta Environmental Protection, and even then was recognized as a weak link in the approvals chain.

36. Today that condition is exacerbated by virtue of the restructuring of departments such that approvals for air and water activities are housed with Alberta Environment, with their mandate for upholding the Water Act and the Alberta Environmental Protection and Enhancement Act, while the MSL is approved by the Public Lands Division of Alberta Sustainable Resources Development, taking their mandate from the Public Lands Act. Fish and Wildlife staff, previously part of the omnibus AEP Department, are now the poor cousins in ASRD, and provide only limited site-specific screening of any potential environmental effects and only have the opportunity to suggest conditions for mitigation measures, but have no ability to refuse a permit. Under the present self-regulated approvals process, that Mr. Creasey describes in his paper, this is a cause for concern:
37. *“No screening or judgement of the environmental consequences associated with an application occurs in the routine wellsite approval process as it is designed to operate at the present time. Prior to 1996, there existed a means, albeit limited, for EUB staff to interpret environmental effects based on their professional knowledge and information from a number of sources. At that time, wellsite applications located in sensitive areas were routinely routed through the departments with staff trained in environmental assessment and environmental issues. Government staff in several agencies were also available to assist in the assessment of surface impacts associated with specific wellsite development applications. It is important to note the EUB’s reliance on the surface lease process to identify, address, and resolve any and all environmental issues associated with proposed wellsite developments. This reliance has for several years been the traditional means for the Board to gain comfort that the environmental issues associated with development on the land surface have been addressed.”* (Creasey, p50; see also p71 where Mr. Creasey elaborates on the same point)
38. An example of that more collaborative approach to the application process can be found around the time of the drafting of Il 93 – 9, when Amoco was applying to drill in the Whaleback area. On that occasion, the Area Fish and Wildlife Biologist assisted Mr. Creasey himself, who was then the ERCB’s senior environmental specialist (sorry if I have his title wrong), in the crafting of the appropriate terms of reference for an environmental impact assessment for the proponent to carry out.
39. Under today’s conditions of the self-regulated check-box approvals process, it appears that that Mr. Creasey, as Ecosystem Manager for Shell, has been careful to restrict his collaboration with today’s Fish and Wildlife Area Biologist to such things as the Shell-funded Elk Study and not to soliciting her input on establishing an appropriate terms of reference for his company’s present EA, even when he must have been fully aware that the Fish and Wildlife Division had no ability to deny a Mineral Surface Lease application under the Public Lands Act. The Board should consider why Mr. Creasey did not consult more thoroughly with Dr. Bergman with regard to these issues.
40. Indeed, the whole “public-private partnership” approach to the administration of Public Lands is a matter of serious concern. There are implications for the exclusion of the public from important information at the same time as there is blurring of lines between proponents and their regulators,

who traditionally were considered at least in the public's mind, to be at arm's length from each other.

41. Given the extensive discussion of the wildlife resources of the area surrounding the proposed wellsite, particularly with regard to Grizzly Bears and the associated concerns regarding Core Security areas, Habitat Effectiveness, Linkage Zones and Road Density issues, the CCWC had already suggested that the Board request the attendance of Dr. Carita Bergman, former Fish and Wildlife Area Biologist for the Pincher Creek/Crowsnest Region, to assist in their review of these aspects of Shell's EIA.
42. We have already asked that Dr. Bergman's letter of September 11th, 2007, together with the accompanying letter from Diane Dunn, Executive Director, Human Resources, ASRD, be entered into the public record of this hearing. We note that Dr. Bergman explicitly states that her most important concern as a resident within the EPZ is **"impacts to internationally significant wildlife populations and deterioration of the natural landscape"**, a position shared by many of the stakeholders referenced in Shell's public consultation report, including those CCWC members who have asked us to represent their interests at this hearing.
43. With respect to grizzly bears in particular, this concern was expressed to Premier Klein in March 2006. In March 2006, by a group of large carnivore scientists who had already expressed their concerns to the Alberta Government in 1997. They wrote to Premier Klein to express their support for the establishment of the proposed Andy Russell – I'tai sah kop Wildland Park for the Castle region. The letter was signed by notable scientists in their fields: Stephen Herero, John Weaver, Lance Craighead, Chuck Jonkel, Barrie Gilbert and Wayne McCrory. (I can obtain a copy of this letter should the Board wish to verify the details. I have the text, not a copy of the original)
44. The very fact that Dr. Bergman, the Area Biologist for this region with the Fish and Wildlife Division of ASRD, attempted to provide a written submission to this Hearing that was both delayed and censored by her superiors, confirms that the prior approvals process for the MSL has to be seriously dysfunctional today
45. This fragmentation of the approvals process, with resulting limiting constraints on the input from the Fish and Wildlife Division, has recently been demonstrated in two of the Regional Land Use planning processes dealt with in Chapter 4 of the IRIS EA (IRIS 4.1.1 C5 Forest Management Plan, p36; 4.1.3 Castle Special Management Area, p38). I will address these with reference to the Castle Special Management Area first, and then to the more recent C5 FMP. These matters have a very direct bearing on the matters at hand, given the location of this well and the wildlife resources that may be affected.

Castle Special Management Area

46. Given the EUB's explicitly stated concern regarding the inadequacy of the 1985 IRP to address the challenges posed by *"the current level of development"* expressed in their Screwdriver Creek Decision Report in 2000, and the Board's particular mandate as a quasi-judicial tribunal that has the ability to steer public policy in the oil and gas sector through its Regulatory requirements, Guidelines

and Information Letters and its own Decision Reports (or even through dedicated Public Enquiries), it seems irresponsible of Shell's present environmental assessment consultant to ignore the publicly available version of the Draft Revised IRP that was drawn up to address the Recommendations of the Special Places Local Committee Report, accepted by the Minister in 1998.

47. The IRIS EA (IRIS 4.1.3 p38) provides a minimal summary of what is an extensive and ongoing planning process for the Castle area. As the IRIS EA notes, the only significant land-use activity that has been addressed by the current designation of the Castle Special Management Area – Forest Land-Use Zone, is the provision for some regulation of vehicle access in the area, through the Castle Access Management Plan.
48. By limiting its discussion here, the IRIS EA handicaps the Board's ability to consider the full social and public significance of the Castle Special Management Area designation, beyond the specific environmental conditions that are addressed.
49. The designation came about through the Alberta Government's Special Places Program that ran from 1995 to the acceptance of the Local Committee's Recommendations by the Minister in 1998. Those recommendations are the foundation for the Draft Revised Integrated Resource Plan for the Castle, initiated in 1999 and subsequently reviewed by a Project Management Group, that included representation from all relevant government agencies, including Alberta Energy, chaired by the Lands and Forest Service. The Draft Plan was approved by the Environmental Protection Regional Board of Directors and submitted to the Minister in 2001. It has yet to be given Ministerial Approval but, as will be seen below (para 59), it was already being referred to by decision-makers in Alberta Environment in 2002. We have already provided a copy of that document to the Board to consider in evidence.
50. Given the negligible reference to the Castle Mountain Resort expansion in the IRIS EA (IRIS 4.1.1, p36; 8.2.5, p63) despite its strategic importance as a wildlife corridor area and its central place in recent regional planning, we would offer more detail to the Board than can be found in the IRIS EA, either in Chapter 4 or Chapter 8. I will focus my remarks particularly on the issue of the incorporation of the Fish and Wildlife Division's advice into the various approvals processes required for the Castle Mountain Resort expansion to illustrate that the Board's lack of confidence in the MSL leasing process is probably well-founded. Here I will draw from the court proceedings of *Castle-Crown Wilderness Coalition v. Flett*, 2004 ABQB 515, as well as from some of the Freedom of Information material that we accessed during that litigation.
51. When Dr. Bergman and her Regional Director attempted to put forward the Fish and Wildlife Division's concerns regarding the Castle Mountain Resort expansion in 2002 to the Director of Regulatory Approvals in the Department of Environment in 2002, the Public Lands Administration Division attempted to block that input. The Fish and Wildlife Division had to break ranks with its own department in order to get their concerns before the Director. Despite the absence of any formal endorsement from senior management in ASRD's Public Lands Division for the input from the Fish and Wildlife Division, the Director of Regulatory Assurance, Alberta Environmental Protection, recommended to her Minister on 5 different occasions, that the proponents of the expansion be required to carry out an EIA. Amongst the reasons cited by the Director, and later accepted in Madam Justice Kenny's analysis, was that:

- *“The Public Lands Act and Municipal Approval processes may not be able to address the complexities. She (the Director) further points out that there is internal disagreement between the Fish and Wildlife and Land and Forest divisions within SRD. She notes that the information deficiencies cited by the NRCB are still outstanding; there is concern about the impact the development will have on adjacent public lands and that an EIA can assess those impacts: and that this proposal may be a turning point in the West Castle Valley and ,therefore, an EIA report would provide the necessary information to make informed decisions in the future.” (CCWC v. Flett, 2004 ABQB 515 Para 74, p 15)*
52. Madam Justice Kenny, Court of Queen’s Bench, endorsed those earlier recommendations, declaring that the Director’s final decision not to order an EIA was “patently unreasonable”. (Castle-Crown Wilderness Coalition v. Flett, 2004 ABQB 515)
 53. Her ruling was overturned at the Court of Appeal CCWC v. Alberta (Director of Regulatory Assurance Division, Alberta Environment), 2005 ABCA 283, which upheld the Minister’s right to discretion in this matter, based on assurances that he had received from ASRD that all the concerns raised by his Director could be met through “other approvals” and through the upcoming C5 Forest Management Plan. (CCWC v. Alberta, 2005 ABCA 283, para 21,p9)
 54. The Appeal Court judges accepted that: *“Approval of the proposed development may result in some environmental concerns never being met. For example, if, as has been suggested, the development encroaches on a wildlife corridor, only not proceeding will ensure that the encroachment does not occur. An EIA is not required to come to that conclusion.”* (CCWC v. Alberta, 2005 ABCA 283, para 58, pp17/18)
 55. With all due respect to that judgement, AEPEA also recognizes that an additional purpose of any EIA is to provide mitigation guidance, as was well reflected for the same location by the Natural Resources Conservation Board in 1993, with their recommendation for additional protective legislation for other areas in the region amongst other things, in order to at least attempt to offset the effects of the development.
 56. As had been brought forward in evidence at the Court of Queen’s Bench, the Fish and Wildlife Division within ASRD did not agree with this view that “other approvals” could address their concerns.
 57. Their judgement seems reasonable in light of what has occurred since. Had a comprehensive EIA been required for the Castle Mountain Resort expansion, it seems likely that we would have avoided the situation that now exists upstream of the Castle Mountain Resort where ASRD’s FireSmart program has *“severely compromised this wildlife corridor.... This corridor was never identified as a solely grizzly bear corridor (which it is), but rather as a multi-species corridor for both ungulates and large carnivores.”* (FOIP Materials. Bergman Memo to Planning Team, 11/10/05).
 58. The full text of that response to an information request by the C5 FMP Coordinator reads:QUOTE BERGMAN 11/10/05

59. The IRIS EA makes no mention of this recent FireSmart logging in one of the most significant corridor areas of its Regional Study Area. Planning for that program was well underway before the IRIS study was initiated and the first area cut occurred in the winter of 2004/05 (That area can be identified to the Board in our slides). A Second cut was carried out over the winter 2006/ 2007.
60. It is worth noting here, for the Board's consideration, that when the Department of the Environment carried out its Initial Screening of the Castle Mountain Resort expansion, the Director of Regulatory Assurance explicitly references the EUB Decision Report 2000-17 as having a bearing on her own decision. Her review team's comment was: *"This suggests that existing land use policies are not adequate to fully address cumulative effects and mitigative actions in the region."* The same sentiment was expressed in all her 5 subsequent Briefing Notes to her Minister over the following 3 months. (Alberta Environmental Protection, Initial Review, 2002)
61. Her evaluation also took into account the 2001 "Administrative Update" of the existing IRP. Her recommendation at this first initial screening level was that regardless of what the final decision on this particular application by CMR might be, the government should *"initiate a thorough review and revision of the current IRP and other resource management policies in the Castle River Sub-Region with consideration of thresholds in the region."*

C5 Forest Management Plan

62. More recently, and directly relevant today - given the Court of Appeal's determination that the C5 Forest Management Plan was one of the ways in which environmental concerns could be addressed (CCWC v. Alberta, 2005 ABCA 283, para 21, p9)- it should be noted that the local Public Advisory Committee that worked on this C5 Plan publicly withdrew their support for the Plan. Among the reasons for doing so was their dissatisfaction with the proposed spatial harvest sequence modelling to meet non-timber values, including recreation, wildlife and biodiversity values in the C5 area.
63. As the IRIS EA notes, this C5 Plan remains in Draft form only at this point in time, and therefore the references to planned harvesting in proximity of the Waterton 68 site are probably premature but certainly remain a concern in any consideration of the continuing degradation of the aesthetic and wildlife values of the area through the cumulative effects of all activities on the landbase.
64. A number of factors have contributed to the delay in the government's endorsement of the C5 FMP. These include the lack of any overall Watershed Management Plan for the Oldman Basin, despite the long-standing commitment to Watershed Protection as the highest priority of the IRP, and the lack of endorsement of the Plan by the First Nations Councils that are affected. The Advisory Committee withheld their support for a number of reasons including:
- *Important issues such as fragmentation, connectivity and interior habitats have not been addressed in the FMP or in some form of environmental assessment, nor have the cumulative effects been considered in the planning process. We suggest they should be an important component of the forest management plan.*
 - *In order to garner public support for future plans it should be made clearly apparent to the public how expertise from areas such as wildlife, fisheries and water management, to name*

but a few, have contributed to the plan, how they are monitoring the results, how those results compare to the identified targets and how that monitoring is resulting in adaptive management. Review of the current plan and any future plan by a panel of independent experts from relevant disciplines would certainly add credence to the process.

65. They ended their letter to the Minister: *“CROWPAC is a group chosen by SRD to provide input and represent the public’s best interest, as we see it, in developing the 2006 -2026 C5 Forest Management Plan. After much discussion and deliberation the members of CROWPAC believe there are enough uncertainties regarding the FMP’s ability to achieve the ecological and social priorities, as represented in the Preferred Future Forest and Timber Supply Analysis sections, to let it be known both to SRD and the public that we cannot entirely support and defend those sections.”* (Letter from CROWPAC to Minister Coutts, April 11, 2006)
66. Given Dr. Bergman’s absence from this Hearing, I can at least draw from the few materials that I have accessed under the Freedom of Information and Privacy Act to demonstrate the Fish and Wildlife Division’s serious misgivings with the C5 Forest Plan. All the issues of concern to wildlife biologists at this hearing, whether they be from Shell’s team or from the intervenors, around habitat effectiveness, corridor connectivity, road densities and threshold indices for focal species are addressed, particularly as they relate to grizzly bears, in many volumes of material that were not readily available even to the CROWPAC group.
67. I would particularly refer the Board to the many discussion papers, reports, and correspondence that Dr. Bergman, Area Biologist – Fish and Wildlife Division; Chris Shank, Provincial Biodiversity Specialist – Fish and Wildlife Division; and John Stadt, Forest Ecology Specialist – Public Lands and Forests Division, contributed to that planning process, few of which have been publicly released.
68. Throughout these papers Dr. Bergman is constantly on the alert to remind her colleagues that any of these targets or thresholds *“are the surrogate variables that we are “managing” or “monitoring” to ensure that a diversity of habitat exists for all wildlife species, from carnivores to birds to ungulates to amphibians”* .
69. There are some take home messages that I have gleaned from all my reading of these materials, not the least of which is the under-resourcing of the Fish and Wildlife Division in ASRD (FOIP materials, Bergman Memo to Planning Team, October 26, 2005; Clark Memo to Crutchfield, Feb 2, 2002).
70. Chris Shanks’ summary of the process is forthright: *“ Detailed Forest Management Plans are intended to address all forest values in a balanced manner. The balance has been tipped so far to one value that it is intellectually dishonest to suggest that other values have significant weight.”* (FOIP materials. Shank, Memo to Planning Team, 21/06/05).
71. In a final attempt to have Fish and Wildlife concerns recognized, Dr. Bergman provided the planning team with a paper titled: 13 “Unresolved Wildlife Issues in the C5 DFMP Process”, in November 2005, as the planning process was closing down.

72. I believe that her overview of these issues affecting the C5 landscape need to be heard, remembering that this a 20 year timber allocation plan that will have significant, if not dramatic, impacts on the Castle region. While the substance of her observations under bullet # 3 is addressed to the Forest Planning process, the philosophy of planning for the future sustainability of all our ecosystem components that she articulates here is a message and a challenge equally applicable to this hearing.

73. QUOTE FROM Bergman's Unresolved Wildlife Issues

74. Simply to accept that certain thresholds for the long-term sustainability for some wildlife may have been exceeded and that therefore our future land uses need not take them into account, is not an option that many in this local community are prepared to accept.

75. Certainly that fatalistic/pessimistic position not one the CCWC accepts. In recognition that ecosystem functionality and integrity may have already been seriously impaired, the CCWC commissioned Dr. Dave Sheppard and others to research those issues for the Castle. We are proud to have taken the lead in the restoration challenge. In 2002 we published and circulated to about 50 stakeholders the result of that work: Bringing it Back: A restoration framework for the Castle Wilderness. Similarly, in order to proactively address the issues around the declining grizzly bear population, the CCWC commissioned Dr. Brian Horejsi's work, that has already been presented in evidence at this hearing by the Friends of Mt. Backus group: Grizzly Bears in Southwest Alberta: A vision and plan for population and habitat recovery.

76. In a similar vein to address particular aspects of Shell's activities in their Waterton Field that we had become aware of through our stewardship program, the CCWC was directly responsible for putting pressure on the company to make a start to clean up the many old sites that are either suspended or abandoned in the Front Range Canyons. We have also assisted in identifying areas where strategic road and trail closures could result in some important, if limited, core secure areas for wildlife.

77. We have taken these initiatives as a local volunteer-based, minimally funded, not-for-profit public interest organization in order to address the very same concerns that your Board claimed to be concerned about in many of your past Decision Reports, but most particularly those addressing the Carbondale Pipeline and Screwdriver Creek developments. It is not apparent to us what initiatives the Board has taken since 2000 to address these issues and we would be glad to have them spelled out to us. I hope that the Southern Alberta Sustainable Communities Initiative will not be offered as the panacea for the industry's cumulative effects across this region.

78. Given the level of local concern and controversy associated with both these examples of activities occurring within the IRIS EA Regional Study, and dealing with many of the same regional cumulative effects issues that the EUB's Screwdriver Creek Decision Report was attempting to address, it seems "patently unreasonable", if I may borrow Madam Justice Kenny's term, for Shell's Ecosystem Manager, Mr. Creasey, to have accepted the IRIS Report as satisfying the conditions "of a thorough treatment of all EA criteria" or "all relevant issues".

79. Mr. Creasey was one of the original architects of IL 93-9, he participated in the IRP/IRM Review Panel in 1997 (Creasey, p109) and subsequently in his professional career has been acknowledged as an authority on cumulative effects issues. He has very specialized knowledge of the local environment and the community here and is fully aware of the significance of these other planning processes, and we would submit that he appears to have failed to heed the Board's direction as it was articulated in the Screwdriver Ck Decision.

80. As I believe our slides should demonstrate, Mr. Creasey will have a hard time convincing many of us that his chosen site for this well is a seriously "disturbed site" given the at least equal priority attached to non-motorized recreation and hunting in the IRP for this site. The present hunters' camp area is certainly more correctly aligned with the priorities of the IRP than any alternative that Shell is proposing.

Break to view slides of site and Iron Creek Developments in the Carbondale since 2002

Ref to Table 9 p39 (IRIS EA): these solely site-specific industrial footprint impacts of Shell's activities in this area since the Screwdriver Creek Decision in 2000 amount to around 50 hectares. This does not take into account any consideration of the overlapping or cumulative effects associated with these surface footprints - habitat avoidance or connectivity issues.

Fallacy of Access Management as "mitigation" – written, verbal and slide presentation

David Sheppard Stewardship reports

NRCB p.10-15 "The Plans represent some five years of 22 diverse groups working together. All groups signed the draft plan which is now being considered by several government agencies. Signing of the document indicated a "joint best effort" and not necessarily agreement..... The Board notes that the AMP dealt only with the location and use of access in winter or summer but not the intensity or management of the many uses. The Board believes that both of these factors must be dealt with having more regard for the environmental impacts and cumulative effects on the regional ecosystem before the plan can be finalized."

Reference S.E. Slopes Task Force Report – June 2004

Remedy sought by the CCWC

The Castle-Crown Wilderness Coalition respectfully submits to this Board that the Environmental Assessment carried out by Shell's consultant does not meet the expectations of Il 93-9, or the expectations of the Board in their previous Screwdriver Creek Decision 2000-17. In fairness to the wider public interest matters related to this particular wellsite and pipeline application and the future proposed development scenario presented by Shell, we respectfully submit that these applications be denied.

Other Remedies

81. In his search for remedies to assist the Board in the fulfillment of their public interest mandate, Mr. Creasey's thesis highlighted the investigative and public inquiry options open to the Board. With regard to the latter, Mr. Creasey provided the 1990 Caroline Gas Field Development Inquiry as a case study of a situation where the potential cumulative effects of the proposed development (in this case a major facility) in a multi-use land base was addressed. In contrast, he noted that "*the incremental process of application approvals seen at Waterton allowed cumulative effects to become evident, yet no review of the total wellsite development scenario has been performed.*" (Creasey, p95). Further in his paper we note Mr. Creasey's hindsight comment that: "*If an inquiry had been called at the initial stages of the Waterton field development, a regional plan for gas well drilling and exploration could have been developed. This would have aided the developer(s) and the public by providing a plan and a context for subsequent developments.*" He cautions that there would still be uncertainty involved in gas field delineation and development (Creasey, p112).
82. It may seem extreme to suggest that this single wellsite application should trigger a full public review of the land-use planning regime for this region, but given the repeated concern by so many parties for over a decade, it is surely worthy of the Board's attention.
83. We would suggest that it is not too late for just such an inquiry for the developments proposed and anticipated for Shell's Screwdriver Creek - Carbondale area, given the acknowledged sensitivity of the area, the acknowledged uncertainties regarding ecosystem thresholds, given the absence of any updated revised IRP that the government agencies or the public can feel committed to, and given the intersecting jurisdictions that come into play when considering regional scale public wildlife resources whose ranges are transboundary on the landscape. Not least, by any means, is the proximity of all these newly proposed activities to the Hamlet of Beaver Mines where some of our members reside.
84. Alternatively, the Board might want to use its investigative powers to seek the additional information deficiencies that seem to permeate the present IRIS EA, and to address the issue of thresholds in a more neutrally scientific environment than can be achieved in a hearing like this. For instance, I am sure that the Board could readily access the many reports and discussion papers that Dr. Bergman, Area Biologist – Fish and Wildlife Division, Chris Shank, Provincial Biodiversity Specialist – Fish and Wildlife Division, and John Stadt, Forest Ecology Specialist – Public Lands and Forests Division, and many others, contributed to the C5 Planning process with respect to attaining important ecosystem and biodiversity objectives, particularly as they relate to the focal wildlife species that IRIS has accepted in its EA. Such a move would certainly be in the spirit of the IL93-9 guidelines as they were originally articulated.
85. I can attest that for an individual to access that suite of information through the Freedom of Information and Privacy Commission is a long and potentially exorbitantly expensive process.

86. To address at least some of the present problems associated with the prior permitting of MSLs by the Public Lands Division, and possibly to address the issue of government staff providing information to the Board, the Board might want to consider the sort of survey and third party review that was carried out by the Department of Environment in 1999, with the assistance of former ERCB Chair Gerald DeSorcy. In that survey of Alberta Environment staff and other stakeholders involved in certain major public hearing processes, Mr. De Sorcy reviewed the performance of government staff in providing information to the Review Panels. There is no reason why such a similar review could not be carried out within the strictly provincial context of these EUB Public Hearings, with the aim of addressing the current dysfunction that exists within Alberta Sustainable Resources Development, with regard to the Fish and Wildlife Division's mandate to protect Alberta's wildlife under the Wildlife Act.

Reference materials

IRIS Environmental Systems Inc, November 2006.
Screwdriver Creek Decision Report # 2000-17
Natural Resources Conservation Board (NRCB)
ERCB's Whitney Creek Decision
Shell's Carbondale Pipeline, Decision Report #D 95-6
1985 Castle Sub-Regional IRP

Exhibits

- Revised Castle River Sub-Regional Integrated Resource Plan, Draft for Public Review, April 2, 2001
- Cumulative Effects and the Wellsite Approval Process, by Roger Creasey, 1998
- Spinning Wheels in the Castle: A Lost decade for sustainability in Southwestern Alberta, by Steven Kennett, Canadian Institute for Resources Law Occasional Paper #14, 2003
- Bringing it Back: A restoration framework for the Castle Wilderness. David Sheppard et al. 2002
- Summary of Overall Conclusion and Decision Respecting the Public Interest, from the Natural Resources Conservation Board Decision Report #9201. December 1993

Castle-Crown Wilderness Coalition v. Flett, 2004 ABQB 515
Castle-Crown Wilderness Coalition v. Alberta, 2005 ABCA 283
Alberta Environmental Protection: Initial Review. Castle Mountain Resort Facility Expansion. 2002
Letter from CROWPAC to Minister Coutts, April 11, 2006
Text of letter to Premier Klein, March 2006 from Grizzly Bear Biologists
S.E. Slopes Task Force Report – June 2004

DeSorcy Consulting Services Ltd. Report to Alberta Environment. Survey of Participation in Hearings
August 20, 1999

Materials accessed through Freedom of Information and Privacy Act are listed by reference date.

