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# albertaviews

THE MAGAZINE ABOUT ALBERTA FOR ALBERTANS // JULY/AUGUST 2013

LOCAL  
FOOD  
GUIDE

## Protecting the Source

How Alberta can heal its headwaters—  
before we run dry

JULY/AUGUST 2013

## LEGISLATURE

## Just a Fracking Few

From Alberta Hansard for Nov 29, 2012. Laurie Blakeman (Lib) is MLA for Edmonton-Centre. Diana McQueen (PC) is MLA for Drayton Valley-Calmor, and Minister of Environment and Sustainable Resource Development. McQueen suggested that "very few wells" have been fracked in Alberta; however, according to Canadian Association of Petroleum Producers, 167,000 wells had been fracked in this province as of late 2011.

**Blakeman:** Thanks very much, Mr. Speaker. The government has failed to follow the science and do the work to be able to prove or disprove whether fracking has affected water, and particularly failed to do a baseline study of water until after coal-bed methane production and fracking had been done for some time, so we have no information from before this activity started. To the minister of the environment: How does the minister plan to overcome this lack of scientific fact?

**The Speaker:** The hon. minister.

**McQueen:** Thank you, Mr. Speaker. As I said the other day in the House here with regard to similar kinds of questions, what we have been doing and what we will continue to do as a department and as a government is to make sure that, first and foremost, the groundwater mapping is done in this province. We've done a significant amount of that. We've put \$16-million towards groundwater mapping, and we will continue on top of that to make sure that baseline testing is done.

**The Speaker:** The hon. member for Edmonton-Centre, without preamble.

**Blakeman:** Thank you, Mr. Speaker. To the same minister: does the minister recognize that this lack of science is affecting the industry? They would like to be able to prove that fracking that's done with proper standards and well casings is safe, but without proof they can't do it.

**The Speaker:** The hon. minister.

**McQueen:** Thank you, Mr. Speaker. Indeed, we are working not only with the industry but also with the ERCB and the Ministry of Energy to make sure that we are doing baseline testing, that we are looking at hydraulic fracturing. We are looking, in fact, at how much water will be used, and we are doing consultation in the new year on this particular subject because water is the most important resource for Albertans. We know that. This government knows that, and that is why we are doing the work that we are committed to doing.

**The Speaker:** The hon. member.

**Blakeman:** Thank you very much, Mr. Speaker. Does this minister understand that baseline testing has to be done before you start the activity?

**McQueen:** Well, absolutely, Mr. Speaker. That's a silly question. We know that, and that's why we're doing all of the groundwater mapping first and foremost, and then we are doing—I'll slow down so people can hear and understand—the base water testing, and we are doing studies, and we're working with

Albertans to go and have a discussion in the new year about hydraulic fracturing as it pertains to water use. Yes, we know that. There have been very few wells drilled in this province with hydraulic fracturing, and that's why we're taking the time with industry, with the regulator, ERCB, with the Department of Energy, and with Albertans to make sure that we get this right as we develop this resource.

**The Speaker:** Hon. member, let's be careful with terms like "that's a silly question," please. I'm sure that that was in the heat of the moment. No question, in a member's opinion who is giving the question, is silly. I'll just remind you of that.

## ROSEBUD

## Not Our Problem

From "How Alberta Will Fight Fracking Folk Hero Jessica Ernst: In famous flaming water case, regulator to argue 'no duty of care' to landowners or groundwater," by Andrew Nikiforuk, for The Tyee, Jan 16. The Energy Resources Conservation Board (ERCB) was recently replaced by the Alberta Energy Regulator, which also assumed environmental regulatory responsibility for the oil and gas industry from Alberta Environment and Sustainable Resources Development.

Alberta's main oil and gas regulator will argue in an Alberta court this Friday that it owes "no duty of care" to protect groundwater from hydraulic fracturing, and that a regulator can violate the basic rights of citizens if it regards them as an "eco-terrorist." In a landmark case that has attracted global attention, Jessica Ernst, a 55-year-old scientist and oil-patch consultant is suing the ERCB, Alberta Environment and Encana for contaminating her water well with methane and other chemicals nearly a decade ago.

The \$33-million lawsuit effectively puts the practice of hydraulic fracturing on public trial. The high-pressure injection of large amounts of water, sand and chemicals to shatter hydrocarbon-bearing rock formations can cause earthquakes, contaminate groundwater and result in significant releases of methane into the atmosphere.

Originally filed in 2007, the Ernst lawsuit alleges that Encana drilled and fracked gas wells into the local groundwater supply between 2001 and 2004 near Rosebud, Alberta, and polluted her water well. Instead of upholding its own policies and investigating the contamination, the ERCB then violated Ernst's rights under the Canadian Charter of Rights and Freedoms by banishing the landowner from the board's investigation and complaint process, adds the claim. "What the Ernst claim is saying to the Canadian public is that groundwater contamination by shallow hydraulic fracturing happens," says Murray Klippenstein, the Toronto lawyer representing the landowner. "The claim says that it happened to her and this injustice should be recognized and properly redressed in the public interest. The power and carefulness of the courts shall be the solution here. Her case has implications

for many jurisdictions."

Neither Encana nor the ERCB has yet filed statements of defence on incidents that took place nine years ago. At the time, industry drilled and fracked thousands of shallow wells in a coal formation in central Alberta, resulting in scores of groundwater complaints, protests and public meetings.

Encana, whose CEO Randy Eresman abruptly resigned last week, is no stranger to controversy. The company, which is struggling with debt and an over-reliance on controversial shale-gas production, remains the subject of a major US government groundwater study in Pavillion, Wyoming, that has linked hydraulic fracturing to aquifer contamination.

Michigan authorities are also investigating the company for allegedly colluding with Chesapeake Energy to keep land prices low. Encana, the target of a mysterious bombing campaign in northern BC in 2008, also received record fines from Colorado's Oil and Gas Commission for contaminating water in 2004.

A common complaint among Alberta landowners is that the ERCB reacts slowly to public concerns. It was one of the continent's last oil and gas regulators, for example, to table regulations on hydraulic fracturing. Several recent court decisions also show that ERCB has a history of not upholding its own laws. In 2010 the Royal Society of Canada, the nation's top scientific organization, criticized the board for a 2007 incident in which the regulator spied on landowners and damaged "its credibility as independent quasi-judicial board."

In a court document filed on December 5, 2012, lawyers representing the ERCB argue that a regulator charged to develop oil and gas resources in the public interest owes no duty of care to protect a citizen's groundwater. Furthermore, the Ernst lawsuit does "not indicate omissions on the part of the ERCB, but a failure of the ERCB to act in accordance with the plaintiff's expectations."

Klippenstein says the ERCB's arguments are both unusual and unorthodox. "I'm taken aback by the position that the ERCB is openly arguing before the court. I think most Albertans would not be comfortable with a regulator that says it is basically immune from legal accountability in a democracy no matter how incompetent and negligent they are. That's a very unusual position for a regulator."

A mine regulator owes a duty of care to miners to ensure their workplace is safe, and municipalities owe a duty of care to their residents to ensure building codes are enforced, adds Klippenstein. Why should an oil and gas regulator not be held accountable for "negligent failure to comply with established government policy?" he asks. In addition, the board argues its governing statutes provide immunity not only "for negligence but gross negligence, bad faith and even deliberate acts." "If indeed the legislature wishes to grant such sweeping and total immunity to a government agency that has such an important role in the lives of rural Albertans, it must do so specifically and with clear wording," replies an Ernst legal brief.

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# GET LITERARY

PROSE & POETRY: Selections from Alberta's Literary Mags

CALGARY OLYMPIC PLAZA  
Sunday, August 18 from 1 - 2:30 pm  
with Poet Laureate Kris Demeanor  
Featuring Kathleen Brown, Kat Main,  
Marcello Di Cintio, Stuart Ian McKay,  
Juleta Severson-Baker and more

In the case of inclement weather we will gather at  
the Central Library 616 Macleod Trail SE

Get literary under the prairie skies as contributing authors from Alberta Views, Eighteen Bridges, FreeFall,  
filling Station, On Spec and Prairie Journal perform their most YCC- and YEG-worthy pieces.

Bring sunscreen, blankets and mittens - it's summer in Alberta after all.

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