



## UNIVERSITY OF ALBERTA

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2004 May 5

The Honorable Mike Cardinal, M.L.A.  
Minister for Sustainable Resource Development  
420 Legislature Building  
10800 97 Avenue  
Edmonton T5K 2B6

Dear Mr. Cardinal:

I am writing to express concerns about an exchange of lands north of Bow Island between SRD Public Lands and Mr. Louis Ypma and Mr. Jerry Holtman. In my capacity as President of the Alberta Chapter of The Wildlife Society, the world's largest organization for professional wildlife scientists, I FOIPed your offices for information about this land exchange and subsequently have sought legal counsel.

The proposed land exchange has not been consummated, yet already Albertans have lost 4 sections of native grassland that was known to provide habitats for burrowing owls (*Athene cunicularia*) that are classified as "at risk" provincially and federally listed as an endangered species. In addition the native prairie lands were known to provide habitats for long-billed curlews (*Numenius americanus*) which is of special concern according to COSEWIC and "may be at risk" in Alberta, and Swainson's hawk (*Buteo swainsoni*) listed as sensitive in Alberta. The destruction of habitats for these species, in particular for burrowing owls, constitutes a clear violation of Alberta's Wildlife Act and the provincial commitment to the Accord for the Protection of Species at Risk.

We also note that before the land exchange was completed Mr. Ypma plowed the entire area during the peak of nesting season in mid-June 2003 and planted it into cereals. This was done within 3 days of his receiving a proposal from Public Lands suggesting that the province would entertain the land exchange, but the land exchange has not yet happened. There can be no question that Mr. Ypma violated the Public Lands Act because he did not have an agricultural disposition to plow this property. As well, any intentional destruction of nests or eggs without authorization is a violation of the Alberta Wildlife Act. Any incidental taking of nests or eggs without authorization, intentional or not, is a violation of the federal Migratory Birds Convention Act, 1994.

We are very disturbed by the highly irregular and unethical procedures that were followed during this land exchange. A wildlife survey was conducted during 2002 October (a season when migratory endangered species would not be on the site) by a consultant, Greg Wagner, who stated:

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“Poston et al. (1990) rate this area as being locally important to Burrowing Owls. Searches of the BSOD database reveal that four at risk wildlife species (Burrowing Owl, Long-billed Curlew, Pronghorn, and Swainson’s Hawk) have been observed on the study area.”

Yet, in obvious disregard for these facts, Public Lands prepared a briefing document for you that incorrectly and inappropriately stated that “This assessment did not identify any species ‘at risk’.”

The loss of native prairie in Alberta is a very serious matter for conservation in Alberta. Seven of nine “at risk” species in this province occur in SE Alberta because the area has been extensively developed for agriculture, oil and gas. Concerns about the serious wildlife consequences of the proposed land exchange were raised by several provincial wildlife biologists, yet their pleas were ignored by Public Lands. The Wildlife Society continues to be concerned about the failure of your Ministry to give professional wildlife biologists due respect and consideration in resource management decisions in this province. Richard Quinlan summarized the concern in an e-mail that we obtained through our FOIP:

“I agree with Joel [Nicholson] that this is very serious. It is perhaps the worst example in recent history of negligence by Public Lands Division regarding referral of a key resource issue. It clearly shows that we cannot continue with the inadequate referral process that has been forced upon us since 1993. We can no longer accept the reversion to simply being advisors to the process, but rather need to be equal partners in review of development proposals, with a requirement for mutual agreement on approvals. The rationalization for being advisors was that the land management agency has the mandate and will pay the price if our advice is not sought or not followed. This example shows that this is not the case. It shows the flaw of logic in our reversion from the mutual agreement requirement of the ‘80s to the advisor role initiated in the ‘90s. We need to ensure the flawed process is corrected.

With respect to this specific folly, I suggest this should be taken up with our joint Executive Director for the region and should also be dealt with between the ADMs.”

Because this land exchange violated provincial regulations under the Public Lands Act and the Wildlife Act, and was in violation of the Migratory Bird Treaty with the United States and Mexico, and federal regulations under the Migratory Bird Convention Act, 1994, your failure to follow process could merit judicial review. This land exchange was a serious mistake. The 4 sections of public land and 2 sections of private land that have been plowed by Mr. Ypma and Mr. Holtman have been lost and it will take decades to restore these lands to anything close to their wildlife value prior to plowing.

We believe that two actions on your part seem necessary. First, you should ensure that only those lands of equal or superior conservation value be considered by the government in exchange. The lands that Mr. Ypma and Holtman have produced to date do not meet this criterion as stated by Fish and Wildlife’s Non-Game Biologist, Joel Nicholson, who visited the properties proposed for exchange on 2003 June 19, and noted several problems with the proposed land exchange such as roads, oil and gas development, and planting to crested wheatgrass. He concludes:

“Overall, I do not believe this land trade to be in the interests of the wildlife or the public land resource in Alberta. The proposed lands are not consistent with the criteria previously laid out by Fish and Wildlife staff. I am also very concerned that Public Lands staff making these assessments for wildlife values (as has occurred in this case) as they are not professional biologists and do not have the specific biological expertise needed to make these judgements.”

Second, we implore you to change your current approach to fully engage the expertise of the wildlife biologists on your staff and to make them full partners with Public Lands and Forestry in land-management decisions. Clearly the current system does not work effectively to ensure protection of fish and wildlife resources in Alberta, and neither Public Lands or Forestry has the professional staff qualified to perform wildlife surveys and to evaluate the legality and appropriateness of land-management decisions. I have been repeatedly impressed by the dedication of your Fish and Wildlife staff who are highly qualified wildlife and fisheries biologists, including several who are Certified Wildlife Biologists (The Wildlife Society) or Professional Biologists (Alberta Society of Professional Biologists). Your Fish and Wildlife professionals merit mutual respect along with your staff in Public Lands and Forestry. Specifically, we request that you renew a commitment to the provincial government's insightful "Report of the Task Force: Internal Referral Systems of Alberta Forestry, Lands and Wildlife" (May 1989).

Our motivation for writing this letter is to ensure that SRD's performance on this land exchange is not precedent setting and to request changes in policy regarding land exchanges. We believe that a public forum should be engaged for all land trades, but this is not a current requirement. We would like to have you explain what action items you will implement to ensure that such serious losses do not occur in the future.

Sincerely,

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cc: Ken Ambrock, Assistant Deputy Minister, Alberta Sustainable Resource Development  
The Honourable David Anderson, Minister of the Environment, Hull, Quebec  
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Bill Gummer, Regional Director, Environmental Conservation, Canadian Wildlife Service, Edmonton  
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Dr. Kevin Taft, Leader of the Alberta Liberal Party  
Greg Wagner, Athene Environmental Ltd, High River  
Louis Ypma and Jerry Holtman, c/o SLM Spud Farms Ltd, Taber