

## RAILWAY RECLAMATION: ISSUES AND OPPORTUNITIES<sup>1</sup>

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### HISTORY AND LEGISLATION

As of August 15, 1978 the *Land Surface Conservation and Reclamation Act* required, among other things, the reclamation of railways covered under the *Railway Act of Canada*. Railways abandoned before that date were not subject to the legislation.

On September 1, 1993, Alberta's *Environmental Protection and Enhancement Act* came into effect. The Act, and the *Conservation and Reclamation Regulation*, again required that these lines be reclaimed following abandonment and added the requirement that operators obtain a reclamation certificate. In neither case did the Acts refer to the construction or operations phases of railways since the lines are for the most part constructed and operated under federal legislation.

In 1994, in response to requests for information from the railway industry with respect to the criteria for railway reclamation, a joint government/industry/public Steering Committee was struck to discuss issues. The Steering Committee assigned the task of developing reclamation criteria to a Working Group composed of members from Alberta Environmental Protection, Alberta Agriculture, Food and Rural Development, three railway companies (CN, CP, CWR), the Farmers' Advocate, and the Alberta Association of Municipalities, Districts and Counties..

The first task of the Working Group was to establish a clear understanding of which railway lines were affected by the legislation. The Working Group recommended changes to the definition of "railway" in the Act and regulations to include railways not covered under the *Railway Act of Canada* (e.g., lines operating under provincial jurisdiction such as Central Western Railways).

The Working Group also recommended clarifying that railway lines abandoned before August 15, 1978 were not subject to the Act, and that railway lines abandoned between August 15, 1978 and September 1, 1993 would require reclamation but be exempt from the requirement for a reclamation certificate. The latter exemption recognizes that no detailed reclamation criteria were in place between the two dates. However, with no reclamation certificate, the operator of the railway line retains liability for reclamation issues relative to the requirements outlined in the criteria. These changes will be formally implemented when the *Conservation and Reclamation Regulation* is amended in September, 1996..

When the Regulation is amended, an Information Letter entitled *Reclamation Criteria for Abandoned Railways* will be released. The Information Letter, and the associated reclamation certificate application form represents the results of the Working Group.

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## RECLAMATION OPPORTUNITIES

Like most things in real life, one person's opportunity is another's issue. The following are two examples of this:

In many cases, railway lines bisect land parcels resulting in fragmentation of farming practices. Reclaiming railways to allow landowners to rejoin their land parcels would seem to be a natural choice. However, this would require that each landowner buy the reclaimed land adjacent to their own land. The railways have indicated a preference to sell the line in large blocks rather than have the added expense of dealing with many purchasers.

Reclaiming railways to be multi-use trails, forming part of the proposed cross-Canada trail system, seems to be a natural opportunity - no new land is required, the trail bed is already prepared, rivers and streams are already crossed, and the lines go between places that logically fit the trail concept. Indeed, in the United States the Rails to Trails Conservancy actively promotes the conversion of abandoned railways to this use resulting in approximately 5,000 km of trails (see their internet home page at <http://www.rail-trail.org/fredwert/>). There are over 300 km of rail trails in Ontario. However, the idea of uncontrolled access to land adjacent to their farms and neighbourhoods has many rural Albertans concerned about damage to their property. Concerns include vandalism, litter, fences being cut, livestock being spooked, loud vehicle traffic and parties. There is also the issue of who will maintain the trail in suitable shape, especially structures and controlling weeds.

## RECLAMATION ISSUES

The Working Group and the Steering Committee agreed that reclamation of railway lines was important and that criteria outlining the expectations of government would help operators. The criteria would also help adjacent landowners understand what to expect when the lines were reclaimed. Some of the issues that arose during the discussions are outlined below:

### Landuse

Farmers expect to be able to crop the reclaimed railway line just as they expect to be able to crop a reclaimed wellsite. Managers of public land want to ensure that land use is not restricted and that the vegetation on the line is suitable in native prairie areas. Legislation generally supports the return of the original land use, which necessitates return of original contour and watercourses.

The Working Group recognized several impediments to meeting these goals:

- many railways were designed as permanent features so no topsoil was saved;
- railway beds were constructed from material adjacent to the bed itself or imported from pits - removing the bed would require significant disturbance to the adjacent environment and considerable cost;
- railways have been in place so long that new water systems (e.g., sloughs, stream beds) have developed adjacent to them;
- much of the original disturbance may have revegetated naturally; and
- some older abandoned railways, overgrown with shrubs and trees, have been shown to provide good wildlife habitat and travel corridors in areas where such habitat is often limited.

Taking all these factors into consideration, the Working Group recommended criteria that require:

- identification and remediation of all contamination to meet provincial standards;
- removal of infrastructure (rails, ties, poles, pipes, etc.);
- removal of the ballast (unless the railbed is to be used as a road);
- recontouring where unstable or erosive conditions are found or created through removal of bridges or culverts; and
- revegetation (unless the railbed is to be used as a road or trail).

The original contours are not expected to be re-established, because of cost and the potential removal of valuable wildlife habitat, although operators are encouraged to work with adjacent landowners to ensure that safe access across the line is possible.

### Liability for Structures

The main point of contention was who is responsible for structures (e.g., bridges and culverts) that remain in place. Safety is obviously the key issue for bridges. Significant concerns exist for culverts because of the potential to become plugged or to collapse, resulting in upstream damage to property and the environment. Public land managers were adamant that lines abandoned on public land would have to have all structures removed. Landowner representatives were very concerned about the potential transfer of liability to purchasers and adjacent property owners.

Interpretations by various lawyers of the legislation and the laws surrounding conditions of sale and purchase did not clarify issues. The criteria were drawn up to read that bridges and culverts were to be removed unless specified to the contrary in the purchase and sale agreement. In the latter case, the purchaser then becomes responsible for the structures. The results of future sales, reclamation and possible litigation will determine the need for future revisions to the criteria.

### Responsibility for Remediation and Reclamation

The Act is quite clear in specifying that the operator of the railway is responsible for remediation of contaminants and reclamation of the line. The Act is also clear that until a reclamation certificate is received, the operator remains liable for reclamation issues (i.e., those requirements outlined in the criteria).

Some recent purchase and sale agreements include provisions transferring any remediation and reclamation liability, not specified, onto the purchaser. The clauses suggest that, as the purchaser has made his own assessments of the line and is purchasing the line in an "as is" condition, the purchaser has accepted the liabilities for the property. Again legal advice from various parties produced mixed messages with respect to whether the legislation or the signed purchase agreement has priority. The Department still believes that the Act says the operator is responsible.

### Summary

The Working Group and the Steering Committee have developed a workable set of reclamation criteria that will ensure the return of a safe, stable, non-erosive landscape. The criteria try to take into account the wishes of potential purchasers who may want some of the facilities such as culverts or ballast or bridges left in place while at the same time protecting the interests of those who do not want these facilities.

The criteria are not set in stone. To date only one request for a reclamation certificate has been received since the criteria have been developed. A small section of line in Edmonton was given a reclamation certificate in the fall of 1995. As we develop more experience with the criteria (see paper by Mark Polet for an example) we may find that they require changes to become more effective and efficient. The Steering Committee will meet periodically to review the criteria and determine the need for modifications.

A number of legal issues arose during the development of the criteria. Unfortunately, only experience gained over time will tell which legal interpretations are the correct ones.

The biggest test of the criteria will come when lines become abandoned and are put up for sale. The buyers of the lines will judge the success of the industry's reclamation efforts with their cheque books.



CANADIAN LAND RECLAMATION ASSOCIATION

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***Conservation and Reclamation:  
An Ecosystem Perspective***

Canadian Land Reclamation Association's  
21st Annual Meeting

Calgary, Alberta  
September 18-20, 1996

# **Conservation and Reclamation:**

## **An Ecosystem Perspective**

Canadian Land Reclamation Association's  
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