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Canada Transportation Act Review Totally Fails Farmers

—*by Terry Boehm, Saskatchewan grain farmer and NFU President, 2009 to 2013*

The Canada Transportation Act (CTA) Review, conducted by a panel hand-picked by the previous Harper government, repeats a tired litany of platitudes – *deregulation will lead to efficiency*; *the railways once freed of regulation will invest in their businesses thereby improving service*; *grain should not be treated any different than any other commodity*; *the revenue cap should be eliminated*; *the system must be fully commercialized*; and *common carrier obligations must be assessed on a system wide basis* – the list goes on and on.

These arguments fly in the face of the practices of the railways for well over 120 years. In the 1980s the railways promised they would double-track their mainlines to improve service once the Crow Rate was ended. They got what they asked for. What did we get? No double tracks and the service declined! Then the railways wanted to abandon branch lines. The cost of the collapse of the branch line system was offloaded on to farmers. We have to store our whole crop on the farm in ever bigger and more numerous grain bins, haul further distances with bigger trucks, and in many cases buy branch lines and finance shortline railways. Invariably, we get to pay higher freight rates with each Transport Act Review and the legislative changes that follow.

Without regulation, grain freight rates will become discriminatory and so expensive that prairie agriculture will lose any hope of just returns for farmers. Railways seek to maximize their profits not by investing in new infrastructure, but by extracting as much as they can from farmers. Their shareholders expect this.

The CTA Review panel failed to ask the question: Why have the railways not invested much more in rolling stock and staff to improve service? Even with the revenue cap on grain the railways are very generously compensated. The standard railway measure of returns, called the contribution level, is far in excess of the railways own norms by $150 million/year (for grain alone). This, one would think, would bear questioning by the review panel. Instead, they recommended first changing, and then ending the revenue cap within seven years.

My freight rate is $43per tonne from Saskatoon plus loading and unloading costs (elevation charges). This means that a 100-tonne hopper car generates $4,300 each time it is loaded for the railways. A standard 100-car unit train, generates $430,000 hauling grain to the West Coast. One would think that about half a million dollars in revenue for each 100-car train would be sufficient.

The CTA Review panel calls for one third of grain cars to be allocated by a premium bid car service. Shippers would bid to get faster service or access to cars, and service would become even poorer for cars outside of the premium bid car fleet. Ultimately, the premium rate will be the rate farmers will pay.

In Canada, federal railways have common carrier obligations and cannot discriminate who they will do business with. This means that the railways must move a properly loaded car to its destination. If they do not comply, level of service actions can be brought against them and the Canada Transportation Agency can order them to service the customer. The CTA Review panel recommends that the test for determining whether a level of service complaint can be brought is whether the railways are serving the system *as a whole* rather than its individual customers.

Farmers are captive shippers and rail freight rates are one of their biggest costs. They are price takers and do not have the ability to set prices for what they produce. This is why grain has always been treated differently in the freight rate regime in Canada. We should not forget that agriculture and prairie grain exports are one of the biggest positive contributors to Canada's balance of payments and her economy.

What the CTA Review panel should have done is call for a full costing review of the railways and for the sharing of efficiency gains to accrue to farmers by adjusting the revenue cap downward. They should have looked at the revenue cap and called for a reformulation of its calculation to take into account that costs for the railways have declined significantly, such as fuel. They should have protected common carrier obligations rather than recommending weakening them.

Farmers rightly expect rate controls, good service, and rate adjustments downwards because railway profits are excessive. Enough is enough! – *nfu* –

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Landgrabbing takes a new twist with Surface Capital

In mid-April, 2016 the Western Producer ran a story about a new company, Surface Capital, that claims it is looking to buy surface rights leases from farmers in Alberta, Saskatchewan and Manitoba. The story mentioned that this new company is owned by the same investor group that owns the farmland investment company, AgCapita, which was profiled in both editions of Losing Our Grip, the NFU's 2010 and 2015 reports on landgrabbing in Canada.

The NFU did some digging to find out what lies beneath Surface Capital, its plans and their implications for farmers.

What is a surface rights lease?

An oil company that owns mineral rights below ground needs to get an agreement with the owner of the land's surface before it can get access to the land to drill a well, run a pipeline or flowline, build an access road, power line or set up a battery site to collect the oil and/or gas from below. Surface Capital is apparently seeking to acquire a portfolio of these agreements, contracts commonly known as surface rights leases. There are approximately 700,000 surface rights leases in Saskatchewan and Alberta.

Each province has its own surface rights law and regulations. In every case, the landowner cannot refuse the mineral rights holder access to the land. However, the landowner does have the right to compensation, which is usually negotiated and detailed in a surface rights lease agreement. These agreements provide for annual payments and the leases are automatically renewed as long as the oil company is operating. Payment amounts can be renegotiated at the intervals specified in each province's rules. When a surface rights lease is terminated the oil company must seal the abandoned well and reclaim the site, returning it as near as possible to its original condition. Annual surface lease payments continue until provincial authorities receive paperwork verifying reclamation of the site has been completed. In Saskatchewan and Manitoba there is a provision for oil companies to pay a cash payment to the landowner in lieu of complete remediation. If paid cash in lieu, the landowner assumes the remaining environmental liabilities on the site.

Surface rights disputes between landowners and oil companies are heard by boards in each province, according to that province's laws and regulations. Defaults on annual payments have gone up dramatically following the drop in oil prices. In Alberta, there is a process that empowers the Surface Rights Board to pay annual rent money owed to surface lease holders, with the amounts paid out counted as a debt owed to the government by the delinquent oil company.

What are the implications of selling surface rights?

Surface Capital suggests it will save farmers the headache of dealing with oil companies that default on their annual payments, and that its up-front payment for their surface rights leases could help farmers fund their retirement so they can avoid selling the land itself. On April 14, 2016, *Western Producer* quoted Stephen Johnston of AgCapita saying that Surface Capital is "trying to amass a portfolio of surface leases and hold it as an investment for its shareholders." These statements raise a whole series of questions.

The surface lease is an interest in property, so the surface lease holder can use any portion of the leased land that the energy company does not require for its operations (which in the case of suspended wells is nearly all of the lease) for their own purposes, including agriculture, with the energy company's permission, provided it is allowed under the municipality's land use restrictions. Lenders consider surface leases when evaluating land for mortgages. If a surface lease on mortgaged land were sold, the financial institution would want to know, as it would have implications for the loan's security.

While a lump sum payment may seem attractive, selling the surface rights lease also means giving up all negotiating power with the oil company that owns the mineral rights under the ground. Losing control of the surface rights could result in the land becoming unsellable, as the value of the land would be impaired. The surface rights holder might get permission from the oil company to use the land for a purpose that conflicts with the farmer's plans, and there is no recourse to stop it. If the oil company defaults and stops operating without cleaning up the site, it is unlikely that Surface Capital would demand proper reclamation, and any payment it got in lieu of reclamation would go to its shareholders, not the farmer who owns the land. All leaks, spills, contaminated soils, etc., would become the landowner's responsibility alone. The farmer would be liable for the cost of environmental cleanup, which could easily impair the value of the land well beyond its sale price.

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AgCapita is one of a group of companies, including EnerCapita, EquiCapita and PetroCapita, that are managed by many of the same people and funded by millionaire investors, including many in the oil business. Richard Mellis, named as the contact person for Surface Capital, is a Vice President of PetroCapita and was previously a consultant on land, environment and regulatory management services to several junior oil companies and energy trusts. Petrocapita Oil owns and operates 153 oil wells, nine produced-water disposal facilities, a central oil processing facility, fluid haul trailers, motor graders and well site processing equipment. It is not hard to imagine how owning surface rights leases could help these "Capita" companies and their investors.

Perhaps Surface Capital plans to apply to the Alberta government's Surface Rights Board for the payments owed landowners by oil companies that have stopped working the site without formally abandoning it. Perhaps Surface Capital plans to buy and hold the surface rights leases until the price of oil increases, then seek new companies to operate the wells. Surface rights payments would then be paid out to the investors instead of the farmers. They might even be planning to sell surface rights leases to the oil companies operating at the site (possibly companies owned by Surface Capital's investors) which would allow the oil company to pay itself the annual surface rent and get off the hook for abandoning the well and reclaiming the site when currently producing wells stop producing and for the non-producing wells the company currently holds.

It is not clear what Surface Capital's status is. We have been unable to find evidence that it exists as a legal entity. There are no records of it being registered as a corporation in any province. The *Western Producer* article suggests the company plans to sell shares as investments, which would bring it under the Securities Acts of provinces where it is doing business. The Securities Commissions have not seen any offering memorandum from Surface Capital as of our publication deadline, and are investigating. If you have any information that might be related to Surface Capital's activities, please contact the NFU National Office, as we will be keeping an eye on this story too. *– nfu –*

Canada Pension Plan Investment Board buys 40% of Glencore Agri

On April 6, 2016 the Canada Pension Plan Investment Board (CPPIB) closed a deal to acquire a 40% stake in Glencore Agri, Glencore International's agricultural division, for US $2.5 billion.

In 2012, the CCPIB set a goal to invest $5 billion in agriculture, focusing on buying farmland in Canada, USA, Australia, New Zealand and Brazil. CPPIB described such investment as "it has historically provided stable returns and will be a new source of diversification for the CPP Fund. CPPIB believes that rising populations and incomes in some developing economies will increase demand for agricultural products." CPPIB now owns 120,000 acres in the USA and in 2014, purchased 115,000 acres in Saskatchewan. In 2015, the Saskatchewan government blocked the CCPIB's plans for further purchases with amendments to the province's *Farmland Security Act*. Buying the stake in Glencore Agri accelerates the CPPIB's agriculture investment strategy by expanding its scope beyond land holdings alone. With the Glencore deal, CCPIB obtains equity in 667,000 acres of farmland in Australia, Kazakhstan, Ukraine and Argentina.

The Glencore-CPPIB transaction puts the Canadian public into a somewhat troubling relationship with farmers, as the success of our national pension fund will depend, to a certain extent, on Glencore maximizing its income at the expense of prairie farmers. The irony is sharpened, knowing that a major part of Glencore's agricultural assets were created through the work of farmers to achieve more control over their own economic destiny by organizing co-operative grain marketing and handling companies so they would not be forced to deal with the private grain trade.

The Grain Growers Grain Company, established in Manitoba 110 years ago, was the first large farmer grain cooperative on the prairies. By 1912 it was handling 28 million bushels of grain, had 27,000 members and had a terminal at Thunder Bay (then Fort William). In 1911, the Saskatchewan Cooperative Elevator Company formed, and in 1913, the Alberta Cooperative Elevator Company was established. The Alberta organization joined with the Grain Growers Grain Company to form United Grain Growers, or UGG, in 1917. The Saskatchewan and Alberta Wheat Pools were each set up in 1923; the next year Manitoba Wheat Pool was established. In 1926 the members of the Saskatchewan Cooperative Elevator Company voted in favour of it being sold to the Pool. Farmers were successful in getting the single desk Canadian Wheat Board established in 1935. The prairie grain cooperatives operated as farmer-run businesses that included all members in their success for decades.

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The 1989 Free Trade Agreement with the USA, NAFTA in 1994 and the end of the Crow's Nest Pass freight rate benefit in 1995 brought about major changes in the prairie agricultural economy. Several co-ops scaled up through mergers and/or restructured in response to the emerging situation. In 1993, the UGG restructured to allow some of its shares to be sold on the stock market. In 1996 the Saskatchewan Wheat Pool restructured in a similar way, though only farmer-members were entitled to full voting rights. In 1998 the Alberta and Manitoba Pools joined to form Agricore Cooperative Limited. In 2001 UGG and Agricore merged to form Agricore United.

In a highly controversial decision, the Saskatchewan Wheat Pool restructured as a business corporation in 2005 and ceased being a cooperative. When it took over Agricore United in 2007 the merged company rebranded as Viterra. At that point, the combined assets of Agricore United and Sask Wheat Pool included seven export terminals, over half of the Thunder Bay and Vancouver port capacity and 58% of western grain handling capacity. Virtually all of this value was created by farmers working together on the principle of "one member, one vote" to build market power and create wealth for mutual benefit. This success is a testament to the efficiency of co-operatives in finding the balance between collective and individual interests while assembling and deploying resources to create useful outcomes.

The Competition Bureau approved the Pool-Agricore merger on the condition that Viterra reduce its dominance within Canada by selling Cargill the Vancouver Terminal and some grain elevators and by selling a number of elevators to Richardson International. (Cargill is one of the four multinationals that dominate world grain trade. Richardson is Canada's largest privately held grain company, and was one of the private traders that spurred farmers to develop the co-ops a century ago.)

In 2012, the federal government dismantled the farmer-directed single desk Canadian Wheat Board. This was a key factor in the decision by Glencore International, a multinational mining, metal, oil and commodity trading corporation based in Switzerland, to take over Viterra in a $6.1 billion deal. By then, Viterra had also acquired significant Australian capacity, including 109 grain elevators, eight port terminals, 17 retail depots and six malting facilities.

The Canadian Competition Bureau's approval of Glencore's acquisition required Viterra to sell most of its retail farm input business to Agrium and 23% of its Canadian grain handling and processing assets to Richardson International. Agrium had recently acquired the Australian Wheat Board (AWB) when it was privatized in 2010. It kept the AWB's retail input business and immediately sold the grain handling side to Cargill. Today, Agrium is the world's largest farm input retailer, as well as being a major global fertilizer manufacturer and potash mining company. Viterra is still Canada's largest grain handler, with 1.8 million tonnes of grain storage capacity.

By mid-2015, Glencore was $30 billion in debt due to a severe downturn in mineral prices. In September it announced plans to sell some of its agricultural assets to maintain its credit rating. On April 6, 2016 it agreed to sell 40% equity in its agriculture division to the CPPIB for US $2.5 billion. The CPPIB outbid sovereign wealth funds from Singapore, Qatar and the Saudi Arabian Livestock Investment Corporation (which partnered with Bunge to create G3 and take over the assets of the former Canadian Wheat Board in 2015). CPPIB gets representation on Glencore Agri's board of directors and the authority to eventually choose to buy more equity or trigger a public offering to sell its shares.

In May 2016, media reported Glencore Agri may sell an additional 9.9% of its equity. While agricultural asset sales will help Glencore reduce its debt, the company may intend to use the money it receives to invest in physical infrastructure such as storage facilities so it can purchase more grain when prices are low to hold and sell when prices rise. With a large enough storage capacity, such a strategy would also function to depress prices to farmers.

Farmer resistance to the private grain trade through the development of grain co-ops and the establishment of the single-desk Canadian Wheat Board shows how farmers obtained significant economic power by working together economically and politically. Since the early 1990s, the wealth they created in the form of large enterprises and institutions has been taken over by private interests as a result of domestic and international political decisions that give priority to corporate ownership and control of the grain sector.

Perhaps it is better that CPPIB, rather than a foreign sovereign wealth fund such as SALIC, acquired the 40% equity stake in Glencore Agri. However, CPPIB's interests are now aligned with Glencore's, seeking to maximize shareholder returns in a system that requires some to lose so others can gain.

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