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NATIONAL

Court challenge launched to halt new oilsands development on caribou land

By Bob Weber, The Canadian Press

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EDMONTON - As U.S. Speaker of the House Nancy Pelosi discussed oilsands concerns in Ottawa, a court action began Wednesday in Edmonton that could deliver another hit to the beleaguered industry.

Environmental and aboriginal groups hope to use the Species At Risk Act to force federal Environment Minister Jim Prentice to protect woodland caribou herds in northeastern Alberta that are rapidly shrinking in the face of oilsands and forestry development.

"What we're asking is that the court order the minister to recommend an emergency protection order for the caribou of northeastern Alberta," said Barry Robinson, a lawyer with the group Ecojustice.

The groups filed two notices in Federal Court Wednesday saying that legislation obliges Prentice to step in to protect the herds, which studies suggest have declined to one-tenth their historic size.

Woodland caribou in Alberta are considered a threatened population under the act, which forces Ottawa to develop a recovery plan for it. Environment Canada is working on that plan, but the herds are shrinking so quickly that emergency protection is needed, Robinson said.

"We said: 'Fine, do whatever you think is necessary to get a good recovery strategy. But in the interim, let's get some protection for these herds.' "

Robinson, who is representing the Pembina Institute and the Alberta Wilderness Association, said the Alberta government hasn't stepped up, either. The province's caribou recovery strategy specifically rejects limiting new mineral or forestry leases within caribou habitat.

"The government of Alberta has been ineffective in restricting industrial activity and human disturbance in the caribou ranges in northeastern Alberta," the notice of application says.

Prentice is failing to live up to requirements of federal law by not stepping in to protect the herds, the application argues. As well, three aboriginal bands living in the area say that allowing the caribou to gradually disappear from their traditional territory violates treaty rights.

"The applicant First Nations have the constitutionally protected right to hunt woodland caribou for sustenance," their application says.

Both applications ask a judge to order Prentice to bring an emergency protection plan to cabinet that would block all new development in the region, which is home to the great majority of the oilsands industry.

"What we're asking for is that there be no new industrial activity in the existing caribou ranges," said Robinson. "Oilsands would probably be the biggest one."

An Environment Canada spokesman said the government would not comment on matters before the court.

The filings came as Alberta Premier Ed Stelmach prepared for an evening meeting with Pelosi, who is meeting with government, industry and environmental groups over the oilsands during a two-day trip to Ottawa. The court action also follows a series of damaging independent reports that suggest the industry's environmental impact is higher than official figures suggest.

Federal studies say that four of Alberta's caribou herds are declining and the status of the other three is unknown.

One study by biologist Stan Boutin, whose affidavit accompanied the application, says two herds have declined by three-quarters in the last 10 to 15 years alone. Some now number fewer than 200 animals and are at risk of disappearing completely by 2030.

The primary cause, he says, is habitat disruption.

Forestry has cut nearly 110,000 hectares of habitat, amounting to almost three per cent of caribou range. As well, the area now has about 35,000 oil and gas wells, 66,000 kilometres of seismic lines, 13,000 kilometres of pipelines and 12,000 kilometres of roads.

Studies suggest caribou avoid those disturbances. They also make it easier for predators to attack the herds.

"Given that the creation of linear features due to energy sector development is the most prominent human-caused habitat change in caribou range ... it is likely that these changes are the primary contributor to the declines in caribou," says Boutin's report.

A report commissioned by the Alberta government recommended a moratorium on timber and mineral lease sales in the habitat of the most endangered herds, but that was rejected.

Robinson said the application could be heard in court sometime over the next six months.

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