

A high-speed photograph of water splashing, with a stream of water falling from the top right and creating a large splash in the center. The water is clear and blue, with many bubbles and droplets visible.

Addressing EAC
*W*ATER ACT
Public Consultations

Consultation Draft

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Communities, Land
and Environment

General recommendations from participants

In Fall 2015 the Government of Prince Edward Island supported a comprehensive series of public consultations to provide all residents of the province with the opportunity to share their thoughts and feelings on how government, businesses, communities and individuals can protect and manage our water resources. The consultation process was open to everyone, and was led by a panel drawn from the Environmental Advisory Council.

Altogether, **434** concerns/ recommendations were received during the public and one-on-one consultations. These were grouped into **six key themes**; namely

- i) **water governance and legislation,**
- ii) **water quality,**
- iii) **watershed management,**
- iv) **environmental flows and ecosystem health,**
- v) **water quantity and conservation, and**
- vi) **new approaches to water resource protection.**

How we addressed the concerns/recommendations

This paper shows how the *Water Act* will address the concerns and recommendations that were voiced. The recommendations are listed as they appeared in the Environmental Advisory Council's Report¹ followed by the relevant Part and Section of the Act that addresses it.

i) Water governance and legislation

1. bring the following pieces of legislation together within one, all-inclusive act; namely
 - *Environmental Protection Act* (relevant components only)
 - Water Well Regulations
 - Drinking Water and Wastewater Facility Operating Regulations
 - Sewage Disposal Systems Regulations
 - Watercourse and Wetland Protection Regulations, and
 - A Code for Plumbing Services Regulations
- **See Part VIII** (Regulation making authority) – The Watercourse and Wetland Protection Regulations and a Code for Plumbing Services Regulations are retained within the *Environmental Protection Act*.
2. integrate water policy initiatives found in the 'Report of the Task Force on Land Use Policy' to:

¹ Public consultations on a *Water Act* for Prince Edward Island September 2015 – January 2016
<http://www.gov.pe.ca/wateract/>

- support municipalities in developing and implementing shared servicing of regional water supplies and wastewater treatment;
 - ensure water conservation is adopted in the Code for Plumbing Services Regulations, and
 - ensure that municipal utilities establish effective water conservation programs.
- **See Part VI, Sections 45-46 and Part VIII (Regulation making authority)**
3. consolidate and define the process for approval/rejection and regulation of high-capacity wells and surface sources of water supply;
 4. ensure water extraction rates are consistent with protecting the long-term availability of groundwater, the maintenance of the environmental stream flow that protects and secures aquatic, riparian and estuarine ecosystems, and the integrity of peatlands and wetlands;
 5. clarify the rules and regulations regarding the seasonal management of water resources;
- **See Part I, Section 2; Part V, Sections 38-40; Part VIII (Regulation making authority)** - The *Water Act* will consolidate the approval process for water extraction from groundwater and surface water bodies under a single regulation. The *Act* also sets out a series of principles governing water extraction activities. These include protection of the long-term availability of groundwater and the maintenance of environmental stream flows as well as the importance of taking in to account seasonal patterns in stream flow or the effects of a changing climate.
6. ensure transparency on the status of our water resources and the decision-making processes that affect that status;
- **See Part II, Sections 16 - 18 and Part IV, Section 24-26**
7. provide a set of uniform guiding principles for all government decisions involving water resources, including, but not limited to
 - defining access to water;
 - defining a set of nature based rights for all living creatures (and their supporting ecosystems);
- **See Part I, Section 2** – The Act acknowledges access to water for basic domestic purposes as being of the highest priority, while at the same time, recognizing the importance of maintaining healthy aquatic ecosystems.
- developing clear rules for water extraction; (**Part V and Part VIII (Regulation making authority)**)
 - adopting and enforcing standards for water quality;

- **See Part II, Section 4** – The Act gives the Minister the authority to prepare standards and objectives with respect to the protection of water resources as well as affording the Department with powers of investigation and enforcement. **See Part VIII, Section 73** for the framework for development or adoption of specific standards for such things as drinking water quality, wastewater effluents etc.
 - penalizing polluters for the discharge of pollutants onto the land base, and discharging contaminants directly or indirectly into the aquifer, or water bodies (also known as the ‘polluter pays principle’); and
- **See Part III, Section 21** – The Act prohibits the discharge of contaminants to watercourses or where they may affect groundwater except as permitted with an appropriate approval. Part I and III will hold the person responsible for the release of a contaminant responsible for repairing the subsequent damage they have caused to the environment. **See Part VII, Section 62-64.** In cases where the responsible party has failed, or is unable to repair the damage, Government will have the authority to carry out these repairs and recover the costs.
 - prohibiting the practice of hydraulic fracturing (‘fracking’).
- **See Part II, Section 7** – The Minister has the authority to halt a proposed activity if it is not considered in the public interest having regard to the purpose of this Act. The Minister may, at any time, with the approval of the Lieutenant Governor in Council, decide that no approval be issued in respect of the proposed activity, matter or thing, if notice is given to the proponent, together with reasons

ii) Water quality

8. implement all remaining recommendations of the *Report of the Commission in Nitrates in Groundwater*, especially enforcing the rules regarding fields under regulated crop production – a mandatory three-crop rotation without exception (Report of the Commission in Nitrates in Groundwater - Recommendation 7.1);
 9. establish a nutrient management/accounting program with required limits for nutrient loading in ‘at risk’ watersheds and wetlands (Report of the Commission in Nitrates in Groundwater - Recommendation 7.2);
 10. identify and implement remedial actions in watersheds with high nitrate levels including reduction in fertilizer inputs; management of soil organic matter; reduction in land under potato production; strict controls over subdivision development; and the encouragement of wetland restoration (the Report of the Commission in Nitrates in Groundwater - Recommendation 8.1).
- **See Part IV, Sections 24-37** – The Act provides for the establishment of ‘Water Management Areas’, where following consultation with stakeholders, plans tailored to the challenges faced by individual watersheds or groups of watersheds will be formulated.

11. safeguard and enhance drinking water through adherence to national health-based standards for drinking water that protect against both naturally-occurring and man-made contaminants that may be found in drinking water;
 - **See Part VIII, Section 73** – The current regulations governing the operation of drinking water supply systems in the Province already adhere to national health-based standards for drinking water (the Guidelines for Canadian Drinking Water Quality, published by Health Canada).
 12. ensure that source water from streams, rivers, lakes or underground aquifers, used to provide drinking water for human consumption, is protected from contamination (also known as well-field protection);
 - **See Part IV, Sections 36-37** – The current regulations governing the operation of drinking water supply systems in the province already require that municipal water supply systems develop well-field protection plans. The Act will strengthen the plans by formally designating Well-Field Protection Areas by the Province and supporting water protection provisions in Provincial regulation.
 13. penalize polluters for the discharge of pollutants onto the land base, and contaminants² directly or indirectly into the aquifer or water bodies (also known as the ‘polluter pays principle’);
 - **See Part III, Section 21** –The Act prohibits the discharge of contaminants to watercourses or where they may affect groundwater except as permitted with an appropriate approval. Part I and III will hold the person responsible for the release of a contaminant responsible for repairing the subsequent damage they have caused to the environment. **See Part VII, Section 62-64.** In cases where the responsible party has failed, or is unable to repair the damage, Government will have the authority to carry out these repairs and recover the costs.
 14. provide government environment officers, water managers and stakeholders with the fiscal, legislative and enforcement tools necessary to monitor, identify, assess and penalize polluters who release contaminants into surface waters from
 - agricultural activities,
 - municipal, and industrial waste water discharge,
 - domestic septic systems,
 - urban storm water discharge,
 - highway maintenance and construction and
 - forestry operations.
 - **See Part II, Sections 4,15** – The Act provides extensive powers to investigate the release of contaminants. Violations of the Act or regulations can be addressed through enforcement actions including the issuance of ‘Water Protection Orders’ and ‘Emergency Field Orders’ (**See Part III, Sections 21-23**) the suspension or termination of approvals (**See Part II, Section 10**) or fines, restitution, or other court actions (**See Part VII, Section 72**).
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iii) Watershed management

15. ensure that key areas of each watershed remain sufficiently forested to improve their capacity to stabilize soil, reduce soil erosion, and clean and filter surface waters;
 16. establish a siltation strategy for the province to protect aquatic life from excessive suspended sediments in fresh, estuarine, and coastal waters.
 17. establish guidelines for municipalities to maintain and increase the amount and width of urban forest buffers and green spaces, and refrain from infilling ditches in and around urban developments to increase the opportunity for storm water to be absorbed into the ground;
 18. remove fragile sloped land bordering watercourses from row crop production (including but not limited to corn and potatoes);
 19. establish a nutrient management/accounting programme with required limits for nutrient loading in 'at risk' watersheds and wetlands (Report of the Commission in Nitrates in Groundwater - Recommendation 7.2);
 20. use cross-compliance legislation to link water permitting to best land management practices (including, but not restricted to programs such as ALUS) designed to implement conservation farm management and nutrient management plans;
- **See Part IV, Sections 31-33** – The Act provides for the establishment of 'Water Management Areas', where specific challenges faced by individual watersheds or groups of watersheds can be identified, and addressed.
21. increase funding to land management programs such as ALUS;
 22. monitor, implement and enforce a minimum three-year crop rotation, with no exceptions.
- **See Part IV, Sections 30-31**
- **Note:** 21 does not fall within the scope of authority of the Environment Division.

iv) Environmental flows and ecosystem health

23. place a premium on protecting habitats for aquatic life and prohibit high capacity water extraction (diversion) near the headwaters of streams and rivers;
 24. where appropriate, create legislation requiring the repair of degraded ecosystems and the re-introduction of lost species;
- **See Part III, Sections 20-21 and Part IV, Sections 30-33** – Water Protection Orders can be used to authorize the repair of damaged habitat. The designation of 'Water Sustainability Plan Areas' and 'Aquatic Ecosystem Protected Areas', allows for the protection and repair of key aquatic habitats.

25. incorporate measures into the planning process that reduce, or mitigate, the adverse impact of human activities on the province's water resources;
 - **See Part IV** – The entire part, Water Management Areas, is intended to assist in the planning process.
26. develop strategies that support timely responses to climate change;
 - **See Part I, Section 2 and Part II, Sections 11, 16** – The Province will be required to monitor water resources to detect any trends (related to climate change or not) and to use these data to assess, and where necessary adjust legislation, policies etc. to accommodate the effects of threats to our water resources.
27. protect the integrity of the province's aquatic ecosystems, including fresh water streams, estuaries, and wetlands, through legislation that will set water extraction limits that do not affect environmental flows below a fixed threshold, and that do not adversely impact fish spawning grounds during the breeding season;
 - **See Part II, Section 8 and Part IV, Sections 30-33** – Approvals for the extraction of water from watercourses or wells may not interfere with the availability of water for domestic purposes, or the maintenance of sufficient stream flow to support characteristic fish populations.
28. make more efficient and effective provisions to protect the integrity of our water resources, including groundwater, fresh surface water, and estuarine ecosystems, and the aquatic industries or sectors these water resources support. Measures would include
 - harmonizing provincial and federal provisions for the discharge of wastewater and ensuring that effluent quality standards meet or exceed nationally recognized standards;
 - **See Part II, Section 4** – Regulations under the Act dealing with wastewater system effluent will be amended to be harmonized by agreement with federal wastewater effluent standards.
 - providing legislated protection for sensitive areas such as well-fields, at risk watersheds, the headwaters of streams and river, freshwater riparian and aquatic habitat, wetlands, fish spawning grounds and shellfish-producing estuaries.
 - **See Part IV** – The creation of Water Management Areas will allow the implementation of regulations to protect such features as municipal well-fields (Municipal Water Supply Areas and Well-Field Protection Areas), provincially significant sensitive aquatic ecosystems (Aquatic Ecosystem Protection Areas), and at risk watersheds (Water Sustainability Plan Areas).

v) Water quantity and conservation

29. tailor water usage to respective watersheds and develop a watershed budget and water allocation system in consultation with local advisory groups, communities, and municipalities. The mechanism should provide users with greater certainty and a clearer understanding of how water allocation will vary with availability;
 - **See Part IV, Sections 30-35** – The creation of Water Management Areas will address the long-term security of water supply. Stakeholder consultation will be an important part of the planning process.
30. maintain the moratorium on all high capacity wells for the purposes of irrigation until such time as scientifically validated sustainable watershed budgeting and water allocation systems can be developed and approved on a watershed-by-watershed basis;
 - **See Part I, Section 2 and Part II, Sections 7-8** – Water withdrawal approvals for industrial water uses (including irrigation) will not be permitted if they are likely to interfere with the availability of water to meet expected domestic needs, or with the maintenance of sufficient stream flow to support characteristic fish populations.
31. establish and monitor legislated water quantity targets to help sustain riparian and aquatic habitats and provide a clean and secure water supply for all Islanders;
 - **See Part I, Section 2 and Part II, Section 8** – Approvals for water extraction granted by regulations will be determined on their potential impact on aquatic ecosystems. The Act commits the Province to monitoring stream flow (**Part II, Section 16**), so that water extraction will not interfere with access to water for domestic purposes or with the integrity of aquatic habitat (**Part II, Section 8**).
32. require monitoring, reporting and enforcement of permitted water use amounts by all major users (including agricultural/industrial and municipal) and strengthen water conservation provisions in publically and privately operated agencies, utilities, and businesses; and
 - **See Part II, Section 10 and Part VIII, Section 73** – Approvals for the withdrawal of water will include conditions for monitoring and reporting water use. **Part II, Section 18** requires the Minister to create a publicly accessible registry of water extraction approvals.
33. establish water use efficiency standards for all water users.
 - **See Parts VIII, Section 73** – (Regulation making authority)

vi) New approaches to water resource protection

34. establish local water advisory groups that will work with government to monitor, educate, inform, advice and provide guidance on water management and water allocation issues within each community watershed;

- **See Part IV, Sections 24-37** – Stakeholder participation will be an important element of many facets of the *Act* particularly in relation to the development of water management area plans. The Minister has the authority to coordinate the “work and efforts” of a range of groups, including interest groups “respecting the management of water resources” (**See Part II, Section 4**).
- 35. maintain authority for management of the *Water Act* solely with the provincial government; and
- **See Part I, Section 3-4** – The Crown has control over provincial water resources.
- 36. create appropriate powers to delegate specific authority, and provide support through adequate funding to non-government agencies - such as watershed groups, municipalities, regional authorities, and or a new position of environmental ombudsman. In this regard, all agencies (government and non-government) should be provided with adequate supports to help them create practical management plans, develop monitoring programmes, advance their research interests (based on sound science), and or advise or regulate the health and maintenance of watersheds and their associated ecosystems.
- **See Part II, Section 4 and Part VII, Section 59** – The delegation powers of the minister are set out in the *Act*.

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