

# Comments on Draft Water Act

From



WINTER RIVER - TRACADIE BAY  
WATERSHED ASSOCIATION

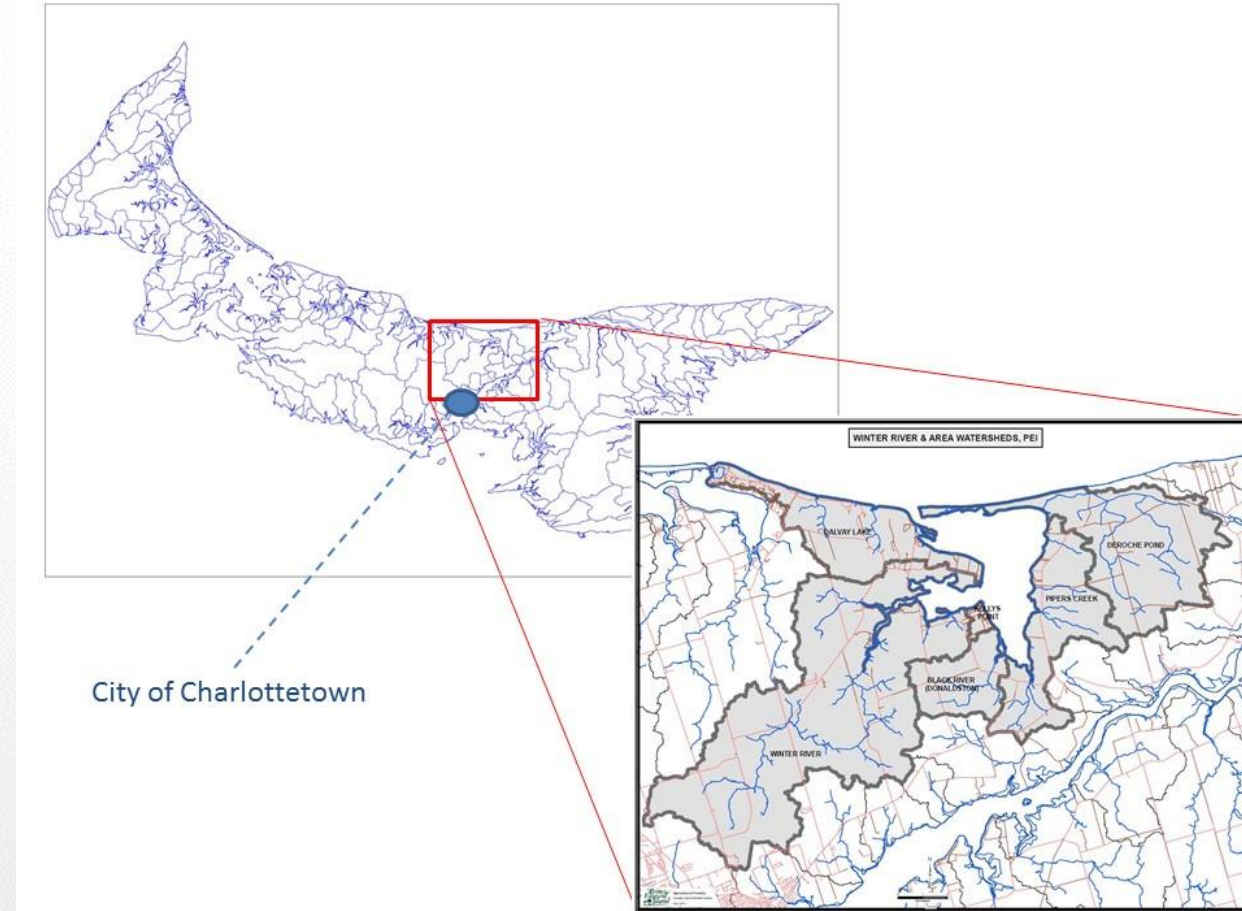
Presented on April 12, 2017 in Poole's Corner, PEI



# Background:

## Winter River – Tracadie Bay Watershed

- Water quality and overall ecosystem health are concerns of our group, like most watershed groups.
- But as in our November 2015 presentation, we will focus more on water quantity issues here.
- Quantity issues are due to Winter River providing all water for the City of Charlottetown\*
  - Scheduled to be reduced to ~75% later this year, once the Miltonvale Wellfield becomes operational.



\* A few times, small amounts have been supplied by the Malpeque pumping station.



# Draft Act: Our favorite parts

- Reviewing the draft Water Act, we found that many of our concerns were incorporated to some extent in the Act:
  - Environmental flows
  - Making more information on water issues available to the public
  - Introducing the Precautionary Principle (Section 2e)



*Some of our favourite photos*





# Environmental Flow Rates: The general rules

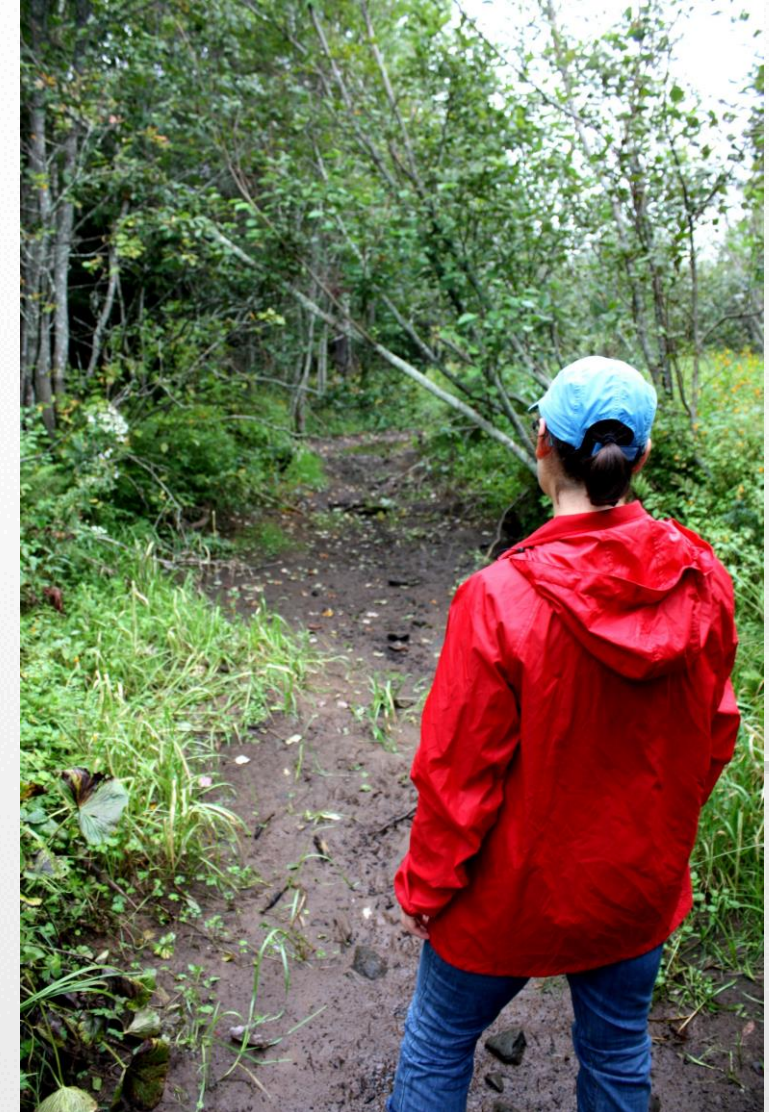


8. The Minister may by order direct that an approval to withdraw water for commercial purposes, industrial purposes or recreational purposes shall not be given if, in the opinion of the Minister, the withdrawal would interfere with

(a) the availability of water for domestic purposes; or

**(b) the maintenance of sufficient water flow in a watercourse for environmental flow needs.**

1.L. "environmental flow needs" means the volume and timing of water flow in a watercourse required for the proper functioning of the aquatic ecosystem of the watercourse;



Brackley 2015-09-11: Zero flow for environment



# Environmental Flow Rates: Loopholes

- Section 8 does not mention municipal water supply permits
  - Municipalities supply commercial, industrial, recreational, and domestic water.
- If municipalities are covered by section 8, they can still bypass environmental flow rules by creating a Municipal Water Supply Area (Part IV)

35 (b): “respecting the amount of water that may be withdrawn in the designated area for municipal water supply systems, including **recommending an amount that may exceed limits on water withdrawals or water withdrawal approvals that would otherwise apply**”



*2016-08-01: Fish rescue from a remaining pool of water, no flow due to municipal water extraction*





# Environmental Flow Rates: Closing the Loophole



- While researching this issue, CBC received the following statement from the Department of Communities, Land and Environment:
  - *“Section 8(b) is the standard. In an exceptional circumstance, 35(b) would allow the Minister to recommend a regulation to Cabinet that would permit a municipality to exceed the limits set out by 8(b), giving a municipality time to come into compliance”*
- If this section of the Act is only to allow time to come into compliance, we recommend the following revision:

“respecting the amount of water that may be withdrawn in the designated area for municipal water supply systems, including ~~recommending~~ temporarily allowing the continuation of an amount that may exceed limits on water withdrawals ~~or water withdrawal approvals~~ that would otherwise apply;”
- This would ensure no new permits are allowed to exceed capacity, and that the environmental flow rules cannot be indefinitely ignored.



Staff member at Brackley branch – chest waders were not necessary this day!

2016-08-16: 3.5km of dry stream above this point.



# Environmental flow needs: Another Loophole



- Water Management Area can request an exemption from rules:
  - 73. (1) The Lieutenant Governor in Council may make the regulations...**
    - r) respecting the process to apply for an **exemption from the application of some or all of the provisions of regulations made with respect to a designated area;**
- So a municipal water supply area could request an exemption from ALL of the provisions laid out in Part IV and cabinet could approve it.



*Message on behalf of the ecosystem in Winter River - written in the stream bed of the Brackley branch, where there was no water (2015-09-11).*



# Environmental Flow Rates: Common standards



- The current draft Act allows too many ways for municipalities to avoid the environmental flow considerations.
- Allowing cities to avoid the environmental flow rules, but enforcing them on rural areas could lead to increasing tensions between urban and rural Islanders.
- Charlottetown is moving in the right direction with projects like Miltonvale wellfield, and looking toward another wellfield in the future.
- But all municipalities need clear direction from the province to continue moving towards sustainable water use and compliance with the rules that everyone else must follow.



*Enhancement project at healthy Friston branch, far away from any high capacity wells. 1.3 km of flowing stream above this point on 2016-08-11.*



# Needed: User Pay Principle

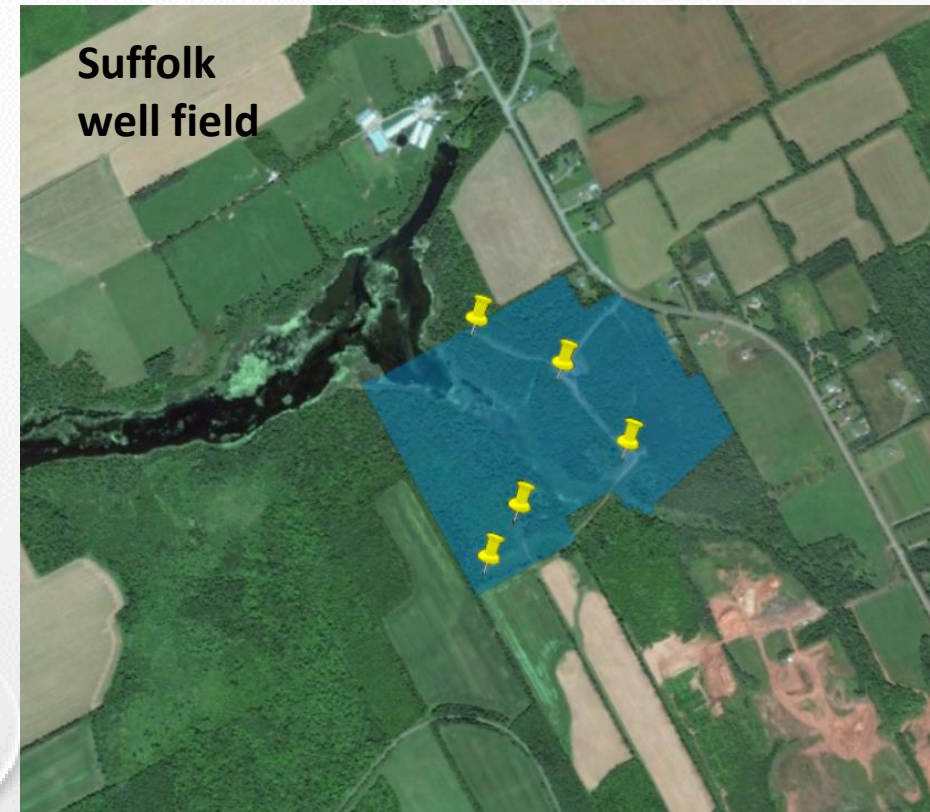
- The User Pay Principle is similar to the Polluter Pay Principle.
- User pays principle (from Quebec C-6.2)
  - “4. The **costs related to water resource use, including protection, restoration, improvement and management costs, are to be borne by users ...** on the basis of environmental, social and economic consequences and the polluter pays principle.”
- European Union, Water Framework Directive
  - “water-pricing policies provide adequate **incentives for users to use water resources efficiently**”
  - “The prices users pay for water should cover the operational and maintenance costs of its supply and treatment and the costs invested in infrastructure. The directive goes further and requires that prices paid by users also **cover environmental and resource costs**. This is a key step towards implementing the economic principle that **polluters and users should pay for the natural resources they use and the damage they create.**”
- We recommend including aspects of this principle, with exceptions such as basic personal water use as a human right.



# User pay principle vs Current draft Act



- Current Act legislates protection zones around wells at neighbours' expense, rather than requiring users to make protection arrangements (ex. buy land).
  - 37. Where a well-field protection plan is satisfactory... the Minister may recommend ...
    - (b) to regulate, **limit or prohibit activities**, matters or things that contribute or may contribute to the degradation of the quality of groundwater within the designated area;
- A process designed for the good of the water users, burdens nearby land owners, especially those who owned farms before wells were established.
  - 29. Land is not injuriously affected by reason only that
    - (a) ...the land is **designated as water management area** ...;
    - (b) regulations that relate to the designation of a water management area, **...impose prohibitions**, conditions, limitations or other requirements in relation to all or any part of the land; ...and **no compensation shall be paid** to the owner of the land ...
- Lack of compensation for neighbors externalizes the true costs of water protection, the opposite of the User Pay Principle.



Parcel of land owned by Charlottetown in blue, high capacity wells yellow. Some wells constructed ~30m from active agricultural field.

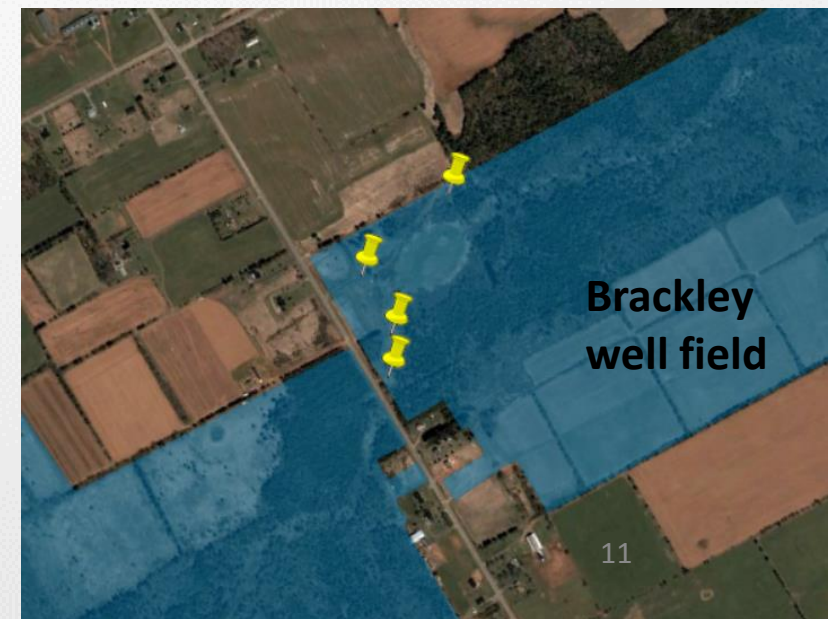
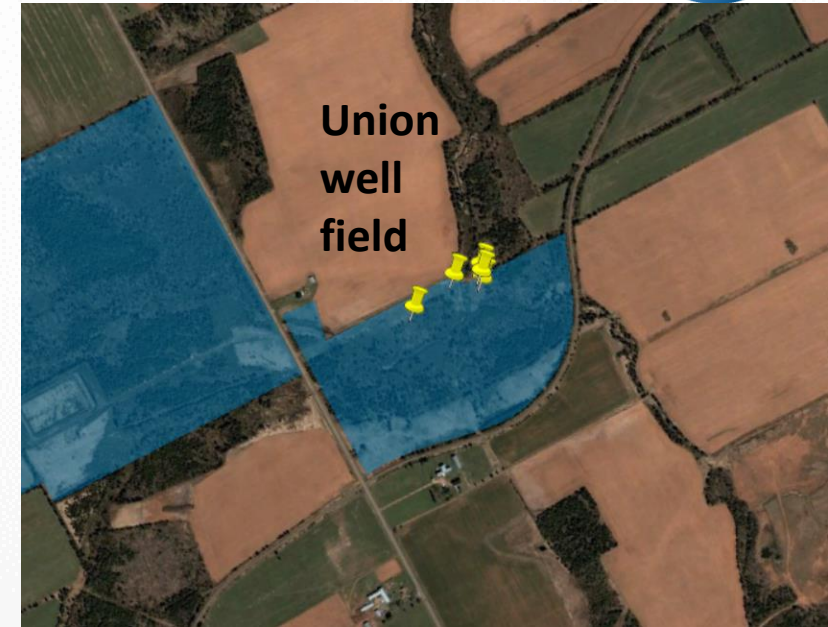




# User pay principle: compensation

- Lack of compensation copied from NB, but not in line with other similar acts in other provinces.
- **Newfoundland** (SNL2002 Chapter W-4.01: Water Resources Act)

“42. (1) Where a public water supply area is established ... and it detrimentally affects the owner of property, that owner is entitled to receive compensation for that injury from the person who operated the waterworks ...”
- A program similar to ALUS (but funded by the water users) could be created to pay farmers for implementing practices that enhance protection of municipal wellfields.
  - This type of collaborative method might avoid creating another urban vs rural issue.
  - Or protect all groundwater equally, for the benefit of all Islanders.

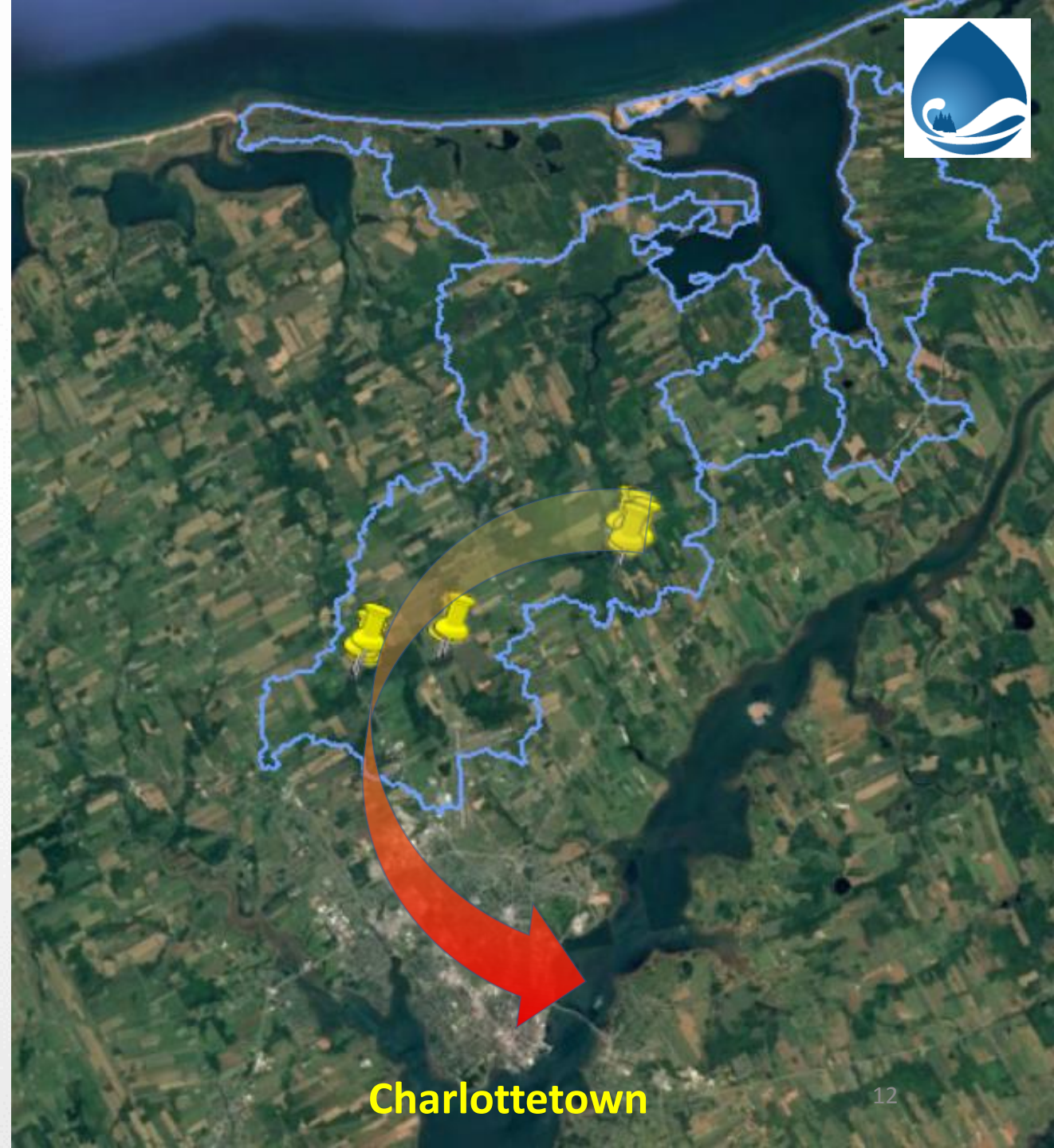




# Water Exports

- Banning water exports from PEI is a good step, but it doesn't address an existing problem.
- Water is being exported from the Winter River watershed in the process of supplying Charlottetown with water.
- Other provinces have banned the movement of water between watersheds (ex. BC, ON).
- Small scale exports, across small distances might not cause much issue, but the levels exported from Winter River clearly do have a negative impact.

*High capacity municipal wells as yellow markers, general direction of water flow towards Hillsborough River*





# What we hope to see in the regulations



- Unambiguous definitions
  - Ex. Section 2b on water pricing - "sufficient quantity", "reasonably affordable" and "adequate standard of living" (which should not mean low water prices for businesses who are earning profits through the use of water).
- Responding to drought
  - Protections for Environmental Flows need to take into consideration drought conditions. Business as usual water management during a drought could lead to significant environmental impacts
- Opportunities for meaningful public input on the content of the regulations

def·i·ni·tion  
defə'niSH(ə)n  
noun  
a statement of the exact meaning of a word,  
especially in a dictionary.



# Support for previous suggestions



Themes mentioned by other groups, or suggestions that we have previously made that we will quickly reiterate:

- Requirements for consultation with stakeholders and a general public engagement process during the implementation of the Act, and regulated activities.
- Shall vs May. Below are some of the top places where we think “shall” is more appropriate”

**16. (2)** The Minister may establish a program to monitor the province’s water resources for the purposes of

- (a) assessing the presence and extent of contaminants in water resources;
- (b) evaluating the state of aquatic ecosystems; and
- (c) developing a deeper understanding of different components of groundwater and aquatic ecosystems.

**18. (4)** For greater certainty, the Minister may make information ... available to the public electronically on-line, including through the Internet. (referring to publicly accessible registry of approvals & compliance)

**30. (1)** The Minister may, by order, establish a process by which a water sustainability plan is to be developed for the purposes of preventing or addressing threats to

- (a) the quality of water resources;
  - (b) the quantity of water resources;
  - (c) the environmental flow needs of a watercourse; or
  - (d) the health of aquatic ecosystems,
- in a watershed, an assemblage of watersheds or a part of a watershed.

**32. (1)** The Minister may, by order, establish a process by which an aquatic ecosystem protection plan is to be developed for the purpose of protecting a watershed, an assemblage of watersheds or a part of a watershed that contains a provincially significant aquatic ecosystem.



It is possible to have good quality water and healthy ecosystems across PEI, but it will take a committed effort, and input of time and money.

We will continue working toward this goal, and encourage all Islanders to help. Everyone from small children to important decision makers can have a positive impact. Thank you.

