

February 18, 2021

CONSULTATION DRAFT

WATER ACT

WATER WITHDRAWAL REGULATIONS

Pursuant to section 76 of *Water Act* R.S.P.E.I. 1988, Cap. W-1.1, Council made the following regulations:

INTERPRETATION

1. (1) In these regulations
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| | Definitions |
| (a) “Act” means the <i>Water Act</i> R.S.P.E.I. 1988, Cap. W-1.1; | Act |
| (b) “geothermal well” means a well made for geothermal purposes only; | geothermal well |
| (c) “groundwater exploration permit” means a valid and current permit issued pursuant to section 2; | groundwater exploration permit |
| (d) “high capacity well” means a well that is or is designed to be pumped at a rate of 345 cubic metres per day or more, except where otherwise provided; | high capacity well |
| (e) “low capacity well” means a well that is or is designed to be pumped at a rate greater than 25 cubic metres per day but less than 345 cubic metres per day; | low capacity well |
| (f) “open-loop system” means an earth energy system designed to use groundwater or surface water for the purpose of extracting or rejecting heat by use of a liquid-source heat pump; | open-loop system |
| (g) “return well” means a well that, as part of an open-loop system, accepts discharge water and returns it to the aquifer from which it was withdrawn; | return well |
| (h) “water withdrawal permit” means a valid and current permit issued pursuant to section 5. | water withdrawal permit |
- (2) In these regulations, a reference to the drilling, construction or reconstruction of, or the withdrawal of water from, a high capacity well for the purpose of agricultural irrigation, does not include the drilling, construction or reconstruction of, or the withdrawal of water from, a high capacity well for the purpose of research approved by the Minister in respect of agricultural irrigation.
- agricultural irrigation does not include research

Diversion not
considered
withdrawal

(3) For greater certainty, the diversion of water within a watercourse or wetland for the purpose of maintaining a dewatered work area located in whole or in part in the watercourse or wetland is not considered to be a withdrawal of water from a watercourse or wetland.

GROUNDWATER EXPLORATION PERMIT

Groundwater
exploration permit
required, high
capacity well or
water supply system

2. (1) For the purpose of section 48 of the Act, a person may undertake the drilling, construction or reconstruction of a high capacity well or a well that supplies or is designed to supply water to a water supply system, if the person holds a groundwater exploration permit.

Application for
groundwater
exploration permit

(2) The owner of the land on which a high capacity well or a well that supplies or is designed to supply water to a water supply system is to be drilled, constructed or reconstructed, or a person who has the written permission of the owner, may apply to the Minister for a groundwater exploration permit.

Issuance of
groundwater
exploration permit

(3) On receipt of an application in the form required by the Minister and any fee required in the Schedule to these regulations, the Minister may issue a groundwater exploration permit to the applicant if the Minister is satisfied that the drilling, construction or reconstruction of the well

- (a) will not have an unacceptable adverse effect; and
- (b) is consistent with the policies and objectives of the Minister with respect to managing and conserving water resources in the watershed in which the well is or is to be located.

Factors determining
unacceptable
adverse effect

(4) In determining whether the drilling, construction or reconstruction of the well will have an unacceptable adverse effect, the Minister shall consider the following factors in respect of the watershed in which the well is or is proposed to be located,

- (a) the availability of water in the watershed;
- (b) the proximity of the well to other wells, watercourses and wetlands in the watershed; and
- (c) the potential impact of the well on the watershed and on other wells, watercourses and wetlands in the watershed.

No permit for
agricultural
irrigation purposes

(5) Notwithstanding subsection (3), a groundwater exploration permit shall not be issued for the drilling, construction or reconstruction of a high capacity well for the purpose of agricultural irrigation, except in respect of the reconstruction of a high capacity well from which the withdrawal of water for the purpose of agricultural irrigation was authorized under the *Environmental Protection Act* R.S.P.E.I. 1988, Cap. E-9, immediately before the coming into force of this subsection.

(6) A groundwater exploration permit authorizes the permit holder to drill, construct or reconstruct a high capacity well or a well that supplies or is designed to supply water to a water supply system to explore its viability and the possible effects of the withdrawal of water from the well on water resources and related aspects of human or animal health or on an aquatic ecosystem.

Purpose of groundwater exploration permit

(7) A groundwater exploration permit shall be valid for a period of one year from the date of issuance, unless sooner revoked.

Validity period

(8) Where activities authorized under a groundwater exploration permit have commenced but have not been completed before the expiry of the permit, the holder of the permit may apply to the Minister, in the form required by the Minister and accompanied by any fee required in the Schedule to these regulations, to extend the permit for a period of up to one year.

Extension of validity

(9) A groundwater exploration permit shall not be extended more than once.

No second extension

(10) The holder of a groundwater exploration permit shall ensure that a copy of all data, reports and other information obtained pursuant to an activity conducted under the permit are submitted to the Minister within 30 days of the completion of the activity.

Requirement to submit data, reports, other information

WATER WITHDRAWAL PERMIT

3. No person shall withdraw water from a well, watercourse or wetland for the purpose of supplying water to a water supply system unless the person holds a water withdrawal permit.

Prohibition, withdrawal to supply water supply system

4. (1) For the purpose of section 40 of the Act, a person may withdraw water from a well, watercourse or wetland at a rate that exceeds 25 cubic metres per day, if the person holds a water withdrawal permit.

Water withdrawal permit required, > 25 m³/day

(2) For the purpose of subsection (1), where a person withdraws water from more than one well, watercourse location or wetland location, or from a combination of these and

Rate of withdrawal, multiple sources

(a) the water is directed to a single water supply or water storage structure, such as a water transmission line or a holding pond;

(b) in the case of multiple wells, the wells are within a radius of 15 metres of each other; or

(c) the effect of the water withdrawal on groundwater is similar to that which would occur as a result of withdrawal from a single well, the total water withdrawn by the person from all of these sources shall be included in calculating the rate of withdrawal per day from each source.

Exception, geothermal well	<p>(3) Notwithstanding subsection (1), a water withdrawal permit is not required to withdraw water from a geothermal well that forms part of an open-loop system, provided that</p> <p>(a) the difference between the rate at which water is withdrawn from the well and the rate at which water is returned to a return well in the system is 25 cubic metres per day or less; and</p> <p>(b) the maximum rate at which water is withdrawn from the well is less than 345 cubic metres per day.</p>
Exception, fire suppression	<p>(4) Notwithstanding subsection (1), a water withdrawal permit is not required to withdraw water from a watercourse or wetland at a rate that exceeds 25 cubic metres per day for the purpose of fire suppression.</p>
Exception, permit not required for certain uses	<p>(5) Notwithstanding subsection (1), but subject to subsection (6), a water withdrawal permit is not required to withdraw water from a well, watercourse or wetland at a rate that exceeds 25 cubic metres per day for any of the following purposes:</p> <p>(a) to fill a swimming pool not exceeding 100 cubic metres in volume;</p> <p>(b) to fill a mobile container for use in the application of crop protectants;</p> <p>(c) to fill a mobile container for use in dust suppression or similar activities on roads;</p> <p>(d) to remediate contaminated water, as part of a remedial action plan approved by the Minister under the <i>Environmental Protection Act</i> Petroleum Hydrocarbon Remediation Regulations (EC655/06).</p>
Exception does not apply	<p>(6) A person shall not withdraw water from a watercourse at a rate that exceeds 25 cubic metres per day for a purpose described in subsection (5) without a permit where the minimum width of the water in the watercourse at the time and location of the withdrawal is less than one metre.</p>
Application for water withdrawal permit	<p>5. (1) The owner of land adjacent to a watercourse or on which a well or wetland is located, or a person with the written permission of the owner, may apply to the Minister for a water withdrawal permit to withdraw water from the well, watercourse or wetland.</p>
Minister may require tests, data, information or plan	<p>(2) The Minister may require an applicant to do any of the following in support of an application:</p> <p>(a) conduct tests, collect data or obtain information;</p> <p>(b) submit test results, data or information to the Minister;</p> <p>(c) submit a drought contingency plan, acceptable to the Minister, for reduced water use during drought conditions.</p>
Issuance of water withdrawal permit	<p>(3) On receipt of an application in the form required by the Minister and any fee required in the Schedule to these regulations, and on</p>

compliance with any requirements under subsection (2), the Minister may issue a water withdrawal permit to the applicant if the Minister is satisfied that the withdrawal of water from the well, watercourse or wetland for the purpose of supplying a water supply system or at a rate that exceeds 25 cubic metres per day, as the case may be,

- (a) will not have an unacceptable adverse effect; and
- (b) is consistent with the policies and objectives of the Minister with respect to managing and conserving water resources in the watershed in which the well, watercourse or wetland is located.

(4) In determining whether the withdrawal of water will have an unacceptable adverse effect, the Minister shall consider the following factors:

Factors determining
unacceptable
adverse effect

- (a) in respect of the watershed in which the well, watercourse or wetland is located and adjacent watersheds,
 - (i) the cumulative effect on the watersheds of the withdrawal of water from all sources within the watershed,
 - (ii) the potential effect of the withdrawal of the water on the aquatic ecosystems in the watersheds,
 - (iii) the sufficiency of water available to support the withdrawal of water from the watershed under existing permits and the permit under application,
 - (iv) the potential effect of the withdrawal of the water on other users of water in the watersheds, and
 - (v) the potential effect of the withdrawal of the water on water flow in any watercourse or wetland within the watersheds;
- (b) where the well, watershed or wetland is located in a water management area, the contents of any plan for the water management area;
- (c) where the well, watershed or wetland is located in a coastal area, the potential effect of the withdrawal of the water on salt water intrusion, and the potential effect of changes in salt water intrusion on other users of water in the coastal area.

(5) Notwithstanding subsection (4), the withdrawal of water is considered to have an unacceptable adverse effect where

Unacceptable
adverse effect

- (a) the cumulative effect on a watershed of the withdrawal of water from all sources within the watershed results in the reduction of water flow in any watercourse or wetland in the watershed by an amount greater than the amount equal to 35% of the mean base flow in the watercourse or wetland during August and September; or
- (b) the cumulative amount of water withdrawn from a watercourse or wetland from a particular location and upstream of that location exceeds the amount equal to the difference between the monthly 70% flow duration and 70% of the median monthly flow in the watercourse or wetland, as the case may be.

Priority of uses	<p>(6) Where there is insufficient water in a watershed to permit the withdrawal of water for all purposes and meet the environmental flow needs of the aquatic environment in the watershed, the Minister shall prioritize the purposes for which water may be withdrawn from the watershed in descending order as follows:</p> <ul style="list-style-type: none"> (a) fire suppression; (b) domestic water use by individual household wells or through municipal water supply systems; (c) industrial, commercial or other water uses prioritized based on the degree to which the use serves the public interest.
No permit for agricultural irrigation purposes	<p>(7) Notwithstanding subsection (3), a water withdrawal permit shall not be issued for the withdrawal of water from a high capacity well for the purpose of agricultural irrigation, except in respect of a high capacity well from which, immediately before the coming into force of this subsection, the withdrawal of water for the purpose of agricultural irrigation was authorized under the <i>Environmental Protection Act</i> or undertaken in circumstances described in subsection 4(2).</p>
Well considered high capacity	<p>(8) In subsection (7), a high capacity well includes a well deemed to have a water withdrawal rate of 345 cubic metres or more per day under subsection 4(2).</p>
Terms of permit	<p>6. (1) A water withdrawal permit shall state in respect of the withdrawal of water under the permit</p> <ul style="list-style-type: none"> (a) the maximum rate at which the water may be withdrawn; (b) the maximum amount of water that may be withdrawn within a specified period; and (c) the purpose for which the water may be withdrawn.
Prohibition, withdrawal contrary to permit	<p>(2) No holder of a water withdrawal permit shall withdraw water from the well, watercourse or wetland covered by the permit at a rate, in an amount or for a purpose not authorized by the permit.</p>
Prohibition, withdrawal when low water flow	<p>(3) Notwithstanding the terms of a water withdrawal permit, no holder of a water withdrawal permit shall withdraw water from the watercourse or wetland covered by the permit when the water flow in the watercourse or wetland is below the amount equal to 70% of the median monthly flow in the watercourse or wetland, as the case may be, except where the watercourse or wetland contains a pond located at the head of tide.</p>
Validity of water withdrawal permits	<p>(4) A water withdrawal permit may be valid for a period of up to five years and expires on the date stated on the permit, unless the Minister sooner revokes the permit or it becomes invalid under subsection (5).</p>
Water withdrawal permit ceases to be valid	

(5) A water withdrawal permit ceases to be valid when, in respect of the land adjacent to the watercourse or on which the well or wetland is located from which water is being withdrawn under the permit,

- (a) there is a change in ownership of the land; or
- (b) where the holder of the permit is not the owner of the land, the owner of the land rescinds his or her permission, in writing, for the holder of the permit to withdraw water from the well, watercourse or wetland.

7. The holder of a water withdrawal permit shall provide data collected from any flow measuring device or water level measuring device, or data respecting the calibration of these devices, as required by the Minister.

Data to be provided on request

8. (1) The holder of a water withdrawal permit may apply to the Minister, within the 60 days preceding or following the expiry of the permit, to renew the permit.

Application to renew water withdrawal permit

(2) The Minister may require an applicant to do any of the following in support of an application:

Minister may require tests, data, information or plan

- (a) conduct tests, collect data or obtain information;
- (b) submit test results, data or information to the Minister;
- (c) submit a drought contingency plan, acceptable to the Minister, for reduced water use during drought conditions.

(3) On receipt of an application in the form required by the Minister and any fee required in the Schedule to these regulations, and on compliance with any requirements under subsection (2), the Minister may renew a water withdrawal permit if the Minister is satisfied that the continued withdrawal of water from the well, watercourse or wetland, as the case may be, up to the same maximum rate and amount and for the same purpose

Requirements for renewal

- (a) will not have an unacceptable adverse effect; and
- (b) is consistent with the policies and objectives of the Minister with respect to managing and conserving water resources in the watershed in which the well, watercourse or wetland is located,

and subsections 5(4), (5) and (6) apply, with any necessary changes.

9. (1) The holder of a water withdrawal permit may apply to the Minister to amend the permit with respect to the maximum rate at which water may be withdrawn, the maximum amount of water that may be withdrawn within a specified period or the purpose for which the water may be withdrawn under the permit.

Application to amend water withdrawal permit

(2) The Minister may require an applicant to do any of the following in support of an application:

Minister may require tests, data, information or plan

- (a) conduct tests, collect data or obtain information;
- (b) submit test results, data or information to the Minister;

(c) submit a drought contingency plan, acceptable to the Minister, for reduced water use during drought conditions.

Requirements for amendment

(3) On receipt of an application in the form required by the Minister and any fee required in the Schedule to these regulations, and on compliance with any requirements under subsection (2), the Minister may amend a water withdrawal permit if the Minister is satisfied that the withdrawal of water from the well, watercourse or wetland at the requested maximum rate, in the requested maximum amount or for the requested purpose

(a) will not have an unacceptable adverse effect; and

(b) is consistent with the policies and objectives of the Minister with respect to managing and conserving water resources in the watershed in which the well, watercourse or wetland is located, and subsections 5(4), (5) and (6) apply with any necessary changes.

No amendment for agricultural irrigation purposes

(4) Notwithstanding subsection (3), a water withdrawal permit shall not be amended to authorize the withdrawal of water from a high capacity well for the purpose of agricultural irrigation.

Well considered high capacity

(5) In subsection (4), a high capacity well includes a well deemed to have a water withdrawal rate of 345 cubic metres or more per day under subsection 4(2).

Application to transfer water withdrawal permit

10. (1) The holder of a water withdrawal permit may apply to the Minister to transfer the permit to the owner of the land adjacent to the watercourse or on which the well or wetland is located from which water may be withdrawn under the permit, or to a person with the written permission of the owner of the land.

Requirements for transfer

(2) On receipt of an application from the holder of the water withdrawal permit, in the form required by the Minister, and any fee required in the Schedule to these regulations, the Minister may transfer the water withdrawal permit if the transferee undertakes, in writing, to accept the transfer and abide by the terms and conditions of the permit.

Terms and conditions remain the same

(3) For greater certainty, on transfer, the terms and conditions of a permit, including the expiry date, remain as they were immediately before the transfer unless altered by the Minister.

GENERAL

Service of notice and reasons for decision

11. (1) For the purpose of subsections 6(7), 10(2) and 12(2) of the Act, the notice of and reasons for a decision of the Minister made under these regulations in respect of a groundwater exploration permit or water withdrawal permit shall be served on the applicant or holder of the

permit, as the case may be, within 14 days of the decision, in a manner set out in clauses 67(2)(a) to (d) of the Act.

(2) For the purpose of section 68 of the Act, an applicant for or the holder of a groundwater exploration permit or water withdrawal permit has a right to appeal a decision of the Minister made under the Act or these regulations in respect of the permit. Right to appeal

12. Where water is being withdrawn from a well, watercourse or wetland pursuant to an authorization continued under subsection 77(5) of the Act and, in the opinion of the Minister, the withdrawal contravenes or does not comply with the Act, these regulations or the policies and objectives of the Minister with respect to managing and conserving water resources, the Minister may require the holder of the authorization to submit a plan indicating how the holder will bring the water withdrawal into compliance on the expiry of the authorization or five years after the date subsection 77(5) of the Act came into force, whichever occurs first. Transitional

13. These regulations come into force on Commencement

SCHEDULE**FEES**

1. The fee payable for an activity in column A in the table below is set out in column B of the table, adjacent to the activity.

Column A	Column B 5-year Fee (\$)
1. Groundwater exploration permit	50
2. Groundwater exploration permit extension	25
3. Water withdrawal permit - well < 25 m ³ /day supplying water supply system	50
4. Water withdrawal permit renewal or amendment – well < 25 m ³ /day supplying water supply system	25
5. Water withdrawal permit – low capacity well	100
6. Water withdrawal permit renewal or amendment – low capacity well	50
7. Water withdrawal permit – high capacity well ≤ 1,000,000 m ³ /yr	2,000
8. Water withdrawal permit renewal or amendment – high capacity well ≤ 1,000,000 m ³ /yr	1,000
9. Water withdrawal permit – high capacity well > 1,000,000 m ³ /yr	3,000
10. Water withdrawal permit renewal or amendment – high capacity well > 1,000,000 m ³ /yr	1,500
11. Water withdrawal permit – watercourse or wetland	2,000
12. Water withdrawal permit renewal or amendment– watercourse or wetland	1,000
13. Water withdrawal permit transfer	25

2. A fee for the issuance or renewal of a water withdrawal permit may be pro-rated for permits valid for less than 5 years.

EXPLANATORY NOTES

SECTION 1 defines terms used in these regulations and clarifies that the purpose of agricultural irrigation is distinct from the purpose of research approved by the Minister in respect of agricultural irrigation. It also clarifies that the diversion of water within a watercourse or wetland for the purpose of maintaining a dewatered work area is not considered to be a withdrawal of water from the watercourse or wetland.

SECTION 2 provides that a person may undertake the drilling, construction or reconstruction of a high capacity well or a well that supplies a water supply system if the person holds a groundwater exploration permit. It provides for the owner of land on which the well is or will be located, or a person with the permission of the owner, to apply for a groundwater exploration permit. It sets out the requirements for the issuance of a groundwater exploration permit and factors the Minister shall consider in determining whether the drilling, construction or reconstruction of the well will have an unacceptable adverse effect. It prohibits the issuance of a groundwater exploration permit for the drilling, construction or reconstruction of a high capacity well for the purpose of agricultural irrigation, except for the reconstruction of a high capacity well that was authorized for use for agricultural irrigation immediately before the Act came into force. It sets out the purpose of a groundwater exploration permit. It provides that a groundwater exploration permit is valid for one year and provides for a one time extension of the permit for up to one year. It also sets out reporting requirements for the holder of a groundwater exploration permit.

SECTION 3 prohibits the withdrawal of water from a well, watercourse or wetland for the purpose of supplying water to a water supply system without a water withdrawal permit.

SECTION 4 provides that a person may withdraw water from a well, watercourse or wetland at a rate that exceeds 25 cubic metres per day, if the person holds a water withdrawal permit. It provides for the calculation of the rate of withdrawal from multiple sources in specified circumstances. It sets out exceptional circumstances where a water withdrawal permit is not required to withdraw water at a rate that exceeds 25 cubic metres per day for certain purposes and circumstances where the exception does not apply.

SECTION 5 provides for the owner of land adjacent to a watercourse or on which a well or wetland is located, or a person with the owner's permission, to apply for a water withdrawal permit to withdraw water from the well, watercourse or wetland. It sets out the requirements for the

issuance of the permit and factors the Minister shall consider in determining whether the withdrawal of water will have an unacceptable adverse effect. It sets out specific circumstances where the withdrawal of water is considered to have an unacceptable adverse effect. It requires the Minister to prioritize the purposes for which water may be withdrawn where there is insufficient water in a watershed to permit the withdrawal of water for all purposes. It prohibits the issuance of a water withdrawal permit for the withdrawal of water from a high capacity well for the purpose of agricultural irrigation, except in respect of a high capacity well from which the withdrawal of water for that purpose was authorized by the *Environmental Protection Act* or undertaken in circumstances described in subsection 4(2) immediately before the *Water Act* came into force. It provides that, for the purpose of subsection 5(7), a high capacity well includes a well deemed to have a water withdrawal rate that equals or exceeds 345 cubic metres per day under subsection 4(2).

SECTION 6 requires that a water withdrawal permit shall state the maximum rate at which water may be withdrawn, the maximum amount of water that may be withdrawn within a specified period and the purpose for which the water may be withdrawn under the permit. It prohibits a permit holder from withdrawing water contrary to the terms of the permit. It prohibits a permit holder from withdrawing water from a watercourse or wetland when the water flow is below a certain level, unless the watercourse or wetland contains a pond at the head of tide. It provides that a water withdrawal permit may be valid for up to five years, expiring on the date specified on the permit unless it is sooner revoked, there is change in the ownership of the land adjacent to the watercourse or on which the well or wetland is located from which the water is being withdrawn or the owner of that land revokes permission for the permit holder to withdraw water from the well, watercourse or wetland.

SECTION 7 requires the holder of a water withdrawal permit to provide data collected from any flow measuring device or water level measuring device, or data respecting the calibration of those devices, to the Minister, as required by the Minister.

SECTION 8 provides for the renewal of a water withdrawal permit.

SECTION 9 provides for the amendment of a water withdrawal permit but prohibits the amendment of a permit to authorize the withdrawal of water from a high capacity well for the purpose of agricultural irrigation. It provides that, for the purpose of subsection 9(4), a high capacity well includes a well deemed to have a water withdrawal rate that equals or exceeds 345 cubic metres per day under subsection 4(2).

SECTION 10 provides for the transfer of a water withdrawal permit.

SECTION 11 provides for service of a notice of and reasons for a decision of the Minister made under these regulations in respect of a permit and the right to appeal the decision.

SECTION 12 provides for the Minister to require a person who holds an authorization to withdraw water continued on the coming into force of the Act to submit a plan respecting compliance with the Act and these regulations on the expiry of the authorization.

SECTION 13 provides for the commencement of these regulations.