

January 6, 2006

Our File: 33

Equus Consulting Group Inc.
#250, 9707 – 110 Street
Edmonton, Alberta
T5K 2L9

To Whom It May Concern,

RE: Comment on the South Saskatchewan River Basin Draft Water Management Plan

The Environmental Law Centre (ELC) is a charitable organization incorporated in 1982 to provide an objective source of information on environmental law and policy in Alberta and Canada. The ELC's mission is to ensure that laws, policies and legal processes protect the environment.

The ELC is pleased to provide its submission to Equus Consulting Group Inc. regarding the *Draft (Approved) Water Management Plan for the South Saskatchewan River Basin in Alberta*¹ (the *Draft Plan*).

Recognizing Interests Beyond the Basin

Water management planning is a local, regional, provincial, national and international issue. While planning has very specific impacts at the basin and sub-basin level, there is also a need to recognize the broader impacts regionally and nationally. Interests in water and watershed management are particularly acute beyond the basin boundary when one considers apportionment agreements between provinces or with the United States. Similarly, in areas where water use creates significant pressures for diversions within and between watersheds in Alberta, the scope of interests to be considered is broadened.

Specific basin will plans also impact broader planning and vision development for water and watershed management in other basins. This is particularly true for the first approved plans which are likely to be used as precedence for other basins. As such the importance of having the approved water management plans closely and carefully reflecting a vision for water management is heightened.

This vision is currently articulated in *Water for Life: Alberta's Strategy for Sustainability*² (*Water for Life*), the provincial strategy for addressing Alberta's water management concerns.

¹ Alberta Environment, (18 October 2005), online: Alberta Environment <http://www3.gov.ab.ca/env/water/regions/ssrb/draft_plan.html>.

² (Edmonton: Alberta Environment, 2003), online: *Water for Life* <<http://www.waterforlife.gov.ab.ca>>.

The broad interests of Albertans in water management planning are to be pursued within the framework of the *Water for Life* goals. For reference, the *Water for Life*'s goals include:

- safe, secure drinking supply;
- healthy aquatic ecosystems; and
- reliable quality water supplies for a sustainable economy.³

Plan Recommendations and Comments

The ELC's recommendations and conclusions provided below are guided by *Water for Life*'s goals and objectives and by Alberta's legislative framework dealing with water and watershed management.

The ELC recommends that the *Draft Plan* not be approved in its current form. On a general level, statements regarding "balance" that appear in the *Draft Plan* are purely subjective and are based on erroneous assumption. These statements should be removed. For example, the *Draft Plan* states that it "reflects the balance that the Government of Alberta is striving to achieve between protecting the aquatic environment of the SSRB's main rivers, and the water diversion and consumption that contributes to economic prosperity in Southern Alberta."⁴ This statement reflects a false assumption in the first instance and fails to acknowledge the goals of *Water for Life*. The false assumption is that the goals of protecting the aquatic environment and diversions for economic prosperity are conflicting and require balancing. This view reflects the notion that healthy aquatic ecosystems do not assist in sustainable economies and vice versa. A *Water for Life* goal is to have a sustainable economy, and without getting into definitional nuances, it is proposed that this requires and implies a healthy aquatic ecosystem.

Furthermore, this statement suggests that the current allocations and water use in the SSRB is reflective of a balanced system, something that is certainly controvertible if not false. The *Draft Plan* should discuss with candour the way in which healthy aquatic ecosystems have been degraded and how this degradation has continued as a result of past allocations. Much of the basin is now put in the position of working hard to restore ecological health and it is questionable whether this will ever be achieved.

Questions Regarding Groundwater Assessment and Allocations

The *Draft Plan* states "groundwater that is hydraulically directly connected to surface water is subject to [the] plan"⁵. This statement requires clarification as the *Draft Plan* does not detail how allocations and withdrawals of groundwater that are hydraulically connected to surface waters have been assessed and incorporated into the modeling exercises in the use and allocation of the river flows. The water allocation study done by Alberta Environment for the SSRB did not consider groundwater allocations and

³ *Ibid.* at page 7.

⁴ *Supra* note 1 at pages 1 and 4.

⁵ *Ibid.* at page 4.

diversions.⁶ This type of information is necessary to develop a complete picture of the impacts of current groundwater withdrawals on surface waters.

The ELC nevertheless supports the *Draft Plan* recommendations aimed at limiting further allocations and conservation being applied to allocations of groundwater hydraulically connected to surface water.

Establishing Water Conservation Objectives for the SSRB

1. Placing water resource limits on the Bow, Oldman, and South Saskatchewan River Sub-basins

The ELC supports the recommendation that Alberta Environment stop accepting applications for new water allocations for the above named sub-basins. Further allocations would be contrary to the goals of *Water for Life*, particularly in light of a vast array of water conservation initiatives that should first be pursued. The recommendation of taking a Crown reservation for the purpose of assessing First Nation requirements, storage of peak flows, protection of the aquatic environment, and innovative initiatives with a very low net use of water, is also supported by the ELC. The recommendation is merely a first step in pursuing the stated goals of *Water for Life*.

2. Place water resource limits on the Red Deer River Sub-basin

The ELC does not support the recommendation of making 600,000 dam³ available for further allocation in the Red Deer River sub-basin. The ELC disagrees with this recommendation because it fails to properly balance the three goals of *Water for Life*. This recommendation should be rejected as part of an approved water management plan because the 600,000 dam³ allocation may unnecessarily and significantly undermine the health of the aquatic environment.⁷

The rationale behind this allocation amount appears to be based less on sound management and proactive conservation, and more on economic development. This economic focus appears to be based on the fact that the other sub-basins have been allowed to allocate significantly more of their basin's flow⁸. This comparison to the Bow, Oldman and South Saskatchewan fails to adequately address that these sub-basins are currently in need of drastic measures to remedy past degradation to aquatic ecosystem health. It also reflects a race to the bottom based solely on economic arguments, including the push for the Special Areas Diversion, which are highly contentious and, arguably, not in the best interest of the majority of Albertans.

⁶ Alberta Environment, *South Saskatchewan River Basin Water Allocation* publication, published in May 2003, revised January 2005) available online at http://www3.gov.ab.ca/env/water/regions/ssrb/pdf_phase2/SSRBWaterAllocations_Jan2005.pdf

⁷ See Alberta Environment and Alberta Sustainable Resource Development, *Instream Flow Needs Determinations for the South Saskatchewan River Basin*, Alberta, Canada, by Clipperton, Kasey G., Koning, Wendell C, Locke, Allan G.H., Mahoney, John M., Quazi Bob, 1 December 2003, online: SSRB Background Studies <<http://www3.gov.ab.ca/env/water/regions/ssrb/studies.asp>> and Alberta Environment, *Report on Strategic Overview of Riparian and Aquatic Condition of the South Saskatchewan River Basin*, by Golder and Associates, January 2003, online: SSRB Background Studies <<http://www3.gov.ab.ca/env/water/regions/ssrb/studies.asp>>

⁸ See for instance Question and Answer #11 of Alberta Environment, *Questions and Answers on the South Saskatchewan River Basin Draft Management Plan*, undated, online: SSRB Draft Management Plan <http://www3.gov.ab.ca/env/water/regions/ssrb/pdf/QandA_SSRB_Plan.pdf>.

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Recognize the Limitations in the *Water Act*

The *Draft Plan* indicates that monitoring of the aquatic environment should occur on the Red Deer River to facilitate an adaptive management approach if the aquatic environment becomes degraded. This is proposed as a management response to continued allocations of up to 600 000 dam³ as recommended by the sub-basin Advisory Committee. This proposal is fatally flawed, as adaptive management is not tenable under the provisions of the *Water Act*. Adaptive management requires the flexibility to respond to management changes. The current licence regime has few and relatively restricted legal mechanisms to provide for “adaptive management” and return water to the Red Deer River once licences have been granted.

Furthermore, on a more practical level, adaptive management is likely to be politically difficult in light of the proposed allocation, in part, being aimed at the Special Areas Diversion. The practical limitations of returning flow back to the river for ecosystem health once hundred’s of millions of dollars of public money is spent and reliance on the water diversion is established, cannot be overlooked.

The ELC recommends that any approved water management plan establish a more protective approach to the Red Deer River, reject the 600 000 dam³ recommendation, and acknowledge the limits of adaptive management under the current legislative scheme. The ELC submits that the healthy status of the Red Deer River and the goals of *Water for Life* support its recommendations in this regard. Where other basins are now in the pursuit of a healthy aquatic ecosystem, the Red Deer River has the enviable position of primarily aiming to maintain and support the current status of the basin that is by-in-large healthy.

Recognizing Process Shortcomings

The current watershed planning decision-making process and the terms of reference underlying this process are not without flaws. In particular, the process, being voluntary and yet not consensus based, may reflect significant biases on the part of the participants. A review of the variety of participants in each regions sub-basin group is reflective of the diversity of participation (or lack thereof) and this in turn must be considered when assessing the recommendations.

Ultimately, the Alberta Government and, in particular, Alberta Environment, must ensure that the broader vision and objectives of prudent and progressive environmental health management are incorporated in any approved water management plan. The ELC believes that the policy objectives of *Water for Life* are laudable but to be of value they must be supported in legislative and policy decisions, including any decision to approve a water management plan.

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It is in this context that broader issues must be discussed and addressed. For instance, the Special Areas Diversion undoubtedly played a role in the recommendation for the Red Deer River Basin allocation. The diversion supports the government stated goal of increasing primary agricultural production by \$10 billion dollars by 2010⁹ and yet the sustainability and long term impacts of the Special Areas diversion has failed to be adequately assessed. Indeed, some have argued and will continue to argue that spending money to reduce irrigation is what is required to successfully maintain healthy aquatic ecosystems and sustainable economies. This, in turn, may decrease the net provincial revenue from primary agricultural production. The ELC recommends an in-depth analysis of whether the Special Areas Diversion constitutes a sustainable economic and environmental endeavour, as mandated by the goals of *Water for Life*.

Private Licence Holders to Support WCO's

The ELC supports the recommendation that private individuals or organizations be able to apply and hold licences in support of water conservation objective (WCO) under the *Water Act*¹⁰. This would require amending section 51(2) of the *Water Act* and further clarity relating to cancellation, suspension and renewal of licences when they are issued for the purpose of supporting WCO's.¹¹

Water Allocation Transfers and Holdbacks

The ELC supports the recommendation regarding continued authorization, use and promotion of transfers and holdbacks for the furtherance of protection of the aquatic and upland environment.

We thank you for the opportunity to provide comments on the *Draft Plan*. If you have any questions regarding our comments, please do not hesitate to contact us at (780) 424-5099.

Yours truly,

Jason Unger
Staff Counsel

cc: Hon. Guy Boutilier, Environment Minister, Alberta Environment
Doug Ohrn, Alberta Environment

⁹ See Alberta Agriculture, Food and Rural Development, *A Place to Grow: Alberta's Rural Development Strategy*, (February 2005), online: Rural Development Initiative <<http://www.rural.gov.ab.ca/strategy/grow-feb2005.pdf>> at page 10. The document refers to the 2000 Ag Summit as the source of the proposed increase in Alberta's agricultural sector.

¹⁰ R.S.A. 2000, c. W-3, *as amended*.

¹¹ See *Ibid.* at sections 55(1)(f)(i) and 60(3)(e)(i).

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