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Our File: 33

Water for Life Strategy Renewal  
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Via Facsimile: (403)215-6749

To whom it may concern,

**RE: *Water for Life Strategy Renewal***

## **Introduction**

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. As part of the Centre's environmental law and policy reform work, the ELC monitors and recommends law reforms pertaining to several water related issues, including preservation and management of wetlands, fisheries and aquatic habitat, and water and watershed planning. The ELC is therefore pleased to provide comments in relation to the renewal of *Water for Life: Alberta's Strategy for Sustainability*<sup>1</sup> (*Water for Life*) that was recently initiated by the Government of Alberta.

The ELC has reviewed the Alberta Water Council's workbook<sup>2</sup> and the comments provided below follow the general structure of the workbook. Specifically, the comments provided deal with the following:

- Identification of broad water management issues in Alberta,
- Identification of positive trends under *Water for Life*,
- Identification of barriers and issues arising under *Water for Life*,
- Identification of issues around progress to date under *Water for Life*, and
- Renewal of *Water for Life* principles, goals, directions and themes.

## **Water management issues in Alberta**

Issues of water quality and quantity vary greatly from region to region in Alberta. Each region feels distinct pressures on water supply, water demand and water quality making generic water management

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<sup>1</sup> (Edmonton: Alberta Environment, 2003), online: Water for Life <<http://www.waterforlife.gov.ab.ca/docs/strategyNov03.pdf>>.

<sup>2</sup> See Alberta Water Council *Water for Life Strategy Renewal: Alberta's Strategy for sustainability*, workbook, July 2007

across the province difficult. Nevertheless, there are some general water management issues that apply at the provincial scale, and these include:

- A lack of flexibility or adaptability in law and policy tools, leading to the potential to frustrate environmental outcomes in basins where water allocation currently exceeds environmental instream flow needs;
- A disconnect between water supply expectations of many water users (or sectors) and the goal of maintaining healthy aquatic ecosystems; and
- A general lack of policy and actions in relation to minimizing point source and non-point source impacts on surface and groundwater and, in particular, the issue of cumulative impacts on water quality.

### **Positive trends arising from *Water for Life***

The *Water for Life* document and the resulting planning and advisory structure (as represented by the Alberta Water Council, WPACs, and Watershed Stewardship Groups) has undoubtedly given rise to some significant benefits in water management processes. The following benefits are particularly worthy of note:

- Dialogue around water law and policy has increased (in the planning and advisory process as well as in the media) due to continuing discussion around *Water for Life* goals, objectives and engagement of stakeholders;
- Knowledge and public concern around resource management appears heightened, measured through media coverage of water issues, in which the framework of *Water for Life* and participants therein play a significant part;
- The building of relationships between stakeholders that did not previously exist; and
- *Water for Life* has provided an increased opportunity for public involvement in water management planning and the opportunity to share and discuss progressive water management policy tools.

A qualifier to these positive advancements is that water and watershed management planning could, conceivably, be further ahead without the *Water for Life* strategy, through progressive, government led watershed management planning. With the requisite leadership, devotion of resources and regulatory framework it is plausible that watershed planning could be achieved in a more timely manner.

### **Barriers to implementing action under *Water for Life***

The planning and multi-jurisdictional nature of water and watershed management planning has no shortage of barriers. Barriers are often created and maintained by existing law and policy, limiting the ability to management water resources in a flexible and adaptive manner. Primary barriers to achieving the goals of *Water for Life* include:

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- Stakeholder entrenchment. The legal and policy framework of how water is allocated or managed and how point and non-point source impacts on water are regulated (or not regulated) often favour the *status quo* and stakeholder entrenchment. Providing incentives for parties to move on specific issues can be difficult where legal rights have been entrenched in legislation;
- Leadership. Progressive, goal oriented, water and watershed management planning requires that the government lead the process and that there is a willingness to regulate environmental impacts when required;
- Participation “burn out”. Participation in planning processes only lasts as long as stakeholders feel that their interests are being acted upon. Having a fair, consistent and equitable planning process is essential to long term planning successes. Currently, the Alberta Water Council, through the Shared Governance and Watershed Planning Framework Project Team, is looking at many of these issues; and
- Insufficient clarity and understanding around what constitutes a “healthy aquatic ecosystem”.

Additional issues arise out of the Alberta Government’s move towards a “shared governance” model of water and watershed management as espoused by *Water for Life*, and these include:

- A lack of consistent and timely planning to ensure that the healthy aquatic ecosystem goal of *Water for Life* is achievable. While a place-based approach is appropriate in many regards there is a need for guidelines to direct planning, particularly where specific standards of water quality and quantity in surface and groundwater have yet to be established. In the absence of a substantive guiding document, the process remains open to being dominated by special interests and this, in turn, may result in blocking or stalling actions that must be taken to ensure that all of the goals of *Water for Life* are equitably treated in the planning process;<sup>3</sup> and
- A lack of consistency and fairness in the planning process. The Water Planning and Advisory Council (WPAC) process needs to be evaluated for its efficacy in how it treats all participants, whether proceeding in the absence of a true consensus model will undermine the value of the process, and guidance around maintaining accountability and transparency around issues of non-consensus. WPACs are not proxies for a democratic decision-making process, they are councils made up of specific interest groups that may or may not represent the majority of individuals within a watershed. For this reason, power and capacity inequities in WPAC planning processes must be recognized and addressed.

The barriers and issues surrounding water and watershed management are surmountable and opportunities exist to have these issues addressed. These opportunities include the current renewal process, the production of a detailed and substantive guiding document in the watershed planning framework, and opportunities to harness current public concern to promote political leadership and action to implement the goals of *Water for Life*.

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<sup>3</sup> This “equitable” treatment of goals presumes that the Government of Alberta retains some authority and mandate in pursuing the *Water for Life* goals and has not fully delegated its responsibilities to ensure that healthy aquatic ecosystems are maintained.

### ***Water for Life* progress to date: information and expectations**

Has information about progress under *Water for Life* been satisfactory? While actions outlined in *Water for Life* have been the subject of periodic review and reporting, this information does not appear to be widely disseminated nor does it include relevant information about current barriers to action that may be stalling progress under the strategy. The ELC recommends that information about progress under *Water for Life* include a delineation of reasons for non-action on specific (non-consensus) issues and recommends an increase in transparency regarding delays that are occurring under the strategy. Increased transparency in this regard would provide motivation to participants in the planning and advisory processes to be forthright and candid about resisting action on specific items by way of broadly informing the public of the source and reasoning for delays. An example of having more transparency includes providing reasoning for delayed policy initiatives, such as the delays associated with the wetlands policy.

Expectations of progress for any policy instrument are often closely linked with the resources devoted to the implementation. Further, implementation of a policy tool depends heavily on the leadership role taken by the government. Both in funding and in leadership, progress under *Water for Life* has been slow. Adequate resources for pursuing watershed management planning remains a significant issue and the Alberta Government leadership role requires renewed emphasis. The Government of Alberta and, in particular, Alberta Environment, must take on a leadership role beyond that of observer and facilitator. Government wide commitment to watershed planning processes should be reflected in departmental guidelines that indicate how plans will be implemented into day-to-day decisions. If plan implementation poses a risk of fettering a specific decision-making power the government should pursue legislative amendments that would ameliorate these concerns. For instance if a specific department must make a decision on resource use and the consideration of watershed management plan opens up the decision maker to legal challenge, legislative or regulatory amendments should be made to minimize this possibility.

Notwithstanding these issues, *Water for Life* and its stated goals are still valid. Under these broad goals there is significant room for improvement and a need to renew the focus of *Water for Life* on updated provisions regarding the principles, goals, directions and themes.

### **Renewal of *Water for Life* principles**

The “first in time, first in right” (FITFIR) principle of water allocation should not be considered sacrosanct unless there is certainty that the outcomes or goals of *Water for Life* can be achieved within a FITFIR system. One key concern with the FITFIR management system in watersheds where current allocations have degraded aquatic ecosystems is that, as a legal management tool, it is not flexible or adaptive. Other water allocation and management systems may allow for an “adaptive management” approach that addresses changing circumstances and these systems should be evaluated under *Water for Life*. This does not preclude preservation of FITFIR as the final management system in Alberta but the ELC recommends that legislative amendments that provided more flexible water management options be explored.

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The ELC further recommends the addition of a central principle to *Water for Life*; that of source water protection. Source water protection should become a central tenet of *Water for Life* as all of the strategic goals (safe and secure drinking water, healthy aquatic ecosystems, and a sustainable economy) are served by this principle.

The ELC also recommends the addition of “demand management” as a principle under *Water for Life*. A demand management principle mandates that planning and management take place in reference to a specific activity’s demand on available water sources (and not on ensuring constant and ever increasing supply). This principle should be guided by a requirement to review and adopt those development alternatives that minimize demand for water. The final goal being that demand for water in a watershed is maintained at a level below that required to sustain the ecological integrity of a watershed, thereby maintaining a healthy aquatic ecosystem.

Other principles espoused in *Water for Life* need to be further refined. Unclear terms undermine the goals of the strategy. For instance, what does “within the capacity of individual watershed” and “healthy aquatic ecosystems” mean?<sup>4</sup>

### Renewal of *Water for Life* goals, directions and themes

For ease of reference (and to reflect the questions presented in the questionnaire<sup>5</sup>) the ELC has outlined its renewal comments regarding *Water for Life* goals, directions and themes in the charts below. The charts provide the ELC’s perspective on the priority that should be given to each item (ranked as low, medium and high) and outlines some core issues and actions that should be considered.

#### Renewal of goals

Goal	Priority	Issues and actions
Safe, secure drinking water supply in Alberta	Medium - High	<p>Water quality remains a significant issue (due to eutrophication, pesticides, non-point source contaminants, etc.). Dealing with non-point source and cumulative impacts has yet to be substantively addressed. Also, significant knowledge gaps in relation to the security of supply remain.</p> <p>While much of the province’s water is relatively high quality, the policy solutions to non-point and cumulative sources of pollution are likely long term, necessitating an immediate start to actions.</p> <p><b>Priorities within this goal</b> Source water protection should become a central action point under this goal. Water treatment has been the primary focus to date while source water protection creates a more preventative and holistic approach to drinking water quality.</p>
Healthy Aquatic	High	Risks to aquatic ecosystem health are not contained and may be increasing. Over allocation of water for diversion, eutrophication

<sup>4</sup> *Water for Life*, supra note 1 at 6.

<sup>5</sup> See Alberta Water Council, *Water for Life: strategy renewal*, July 2007, online: Water for Life <[http://www.waterforlife.gov.ab.ca/awc/renewal/pubs/Renewal\\_Workbook.pdf](http://www.waterforlife.gov.ab.ca/awc/renewal/pubs/Renewal_Workbook.pdf)>.

Ecosystems		<p>and cumulative non-point sources impacts on the aquatic environment remain poorly understood. Few actions are in place under <i>Water for Life</i> to address these impacts.</p> <p><b>Priorities within this goal</b> Scientifically based in-stream flow needs and water quality requirements for major surface waters and tributaries for the preservation of aquatic ecosystem health must be transparently assessed and protected as soon as possible.</p> <p>An increased focus on land use impacts on aquatic health is required. <i>Water for Life</i> should outline steps for identifying, assessing and addressing sources (both point and non-point) of impacts on the integrity of aquatic ecosystems.</p>
Reliable, Quality Water Supplies for Sustainable Economy	High	<p>Maintaining a constant source of water supply in highly allocated basins remains a significant issue, particularly in certain watersheds.</p> <p>Land use planning and industrial approval processes fail to consider impacts on aquatic ecosystems and potential climatic impacts.</p> <p>The traditional cost/benefit analysis that occurs during administrative and regulatory decision-making fails to adequately consider ecosystem services and environmental values.</p> <p><b>Priorities within this goal</b> Clarity should be provided around what a “sustainable economy” consists of and how it will be achieved.</p> <p>Actions should be pursued to promote and integrate demand side management and a soft path<sup>6</sup> approach to water management in Alberta.</p> <p>Work on evaluating the environmental value of water should continue.</p>

<sup>6</sup> Soft path water management is a holistic and long-term approach to managing water resources. For more information regarding soft path and demand management see Oliver M. Brandes and David B. Brooks, “The Soft Path for Water In a Nutshell”, (May, 2006), online: Polis Project on Ecological Governance <[http://www.polisproject.org/PDFs/nutshell\\_revised\\_lowres.pdf](http://www.polisproject.org/PDFs/nutshell_revised_lowres.pdf)>.

## Renewal of Directions

Directions	Priority	Issues and actions
Knowledge and Research	High	<p><i>Water for Life</i> has initiated significant work in knowledge and research<sup>7</sup> but significant knowledge gaps remain. The lack of knowledge around maintaining healthy aquatic ecosystems may cause delay in actions and may detrimentally marginalize this goal (relative to other goals).</p> <p><b>Priorities within this direction</b> Action items should be pursued to incorporate understanding of how climatic variation may impact water quantity and quality and the health of aquatic ecosystems.</p> <p>Research into health aquatic ecosystems should be given high priority under the renewed <i>Water for Life</i>. Delays pursuing knowledge under this <i>Water for Life</i> goal may lead to irreparable harm to aquatic ecosystems.</p> <p>Guidelines should be established to integrate precaution and consideration of uncertainties into the regulatory decision-making process. For instance, where the economic benefit is certain but the impact on the aquatic ecosystem requires further study, establish how a regulatory decision-maker will respond.</p>
Partnerships	High	<p>The formation of WPACs is central to the shared governance direction of the Government of Alberta but issues with the decision making process within the WPACs exist. These issues include:</p> <ul style="list-style-type: none"> <li>• A lack of funding for the gathering of knowledge and capacity at the WPAC level,</li> <li>• A lack of government leadership on establishing and advocating for specific outcomes,</li> <li>• No substantive guidelines to watershed plan implementation,</li> <li>• A lack of a decision-making framework, whereby the logic, reasoning and use of science to justify planning decisions is transparent and broadly available, and</li> <li>• A lack of a consistent approach to consensus decision-making, including guidelines around identification and transparency around non-consensus items.</li> </ul> <p><b>Priorities within this direction</b> To assist in the Partnerships direction <i>Water for Life</i> should</p>

<sup>7</sup> Knowledge and research initiatives of note include funding of the Alberta Water Research Institute and research regarding groundwater resources in Alberta.

		<p>include:</p> <ul style="list-style-type: none"> <li>• A framework around planning for water conservation objectives based on the definition provided in the <i>Water Act</i>,</li> <li>• Sufficient funding to ensure capacity and knowledge needs of WPACs are addressed, and</li> <li>• A watershed plan implementation strategy that outlines relative authority, responsibility and legal or policy tools for plan implementation.</li> </ul>
Conservation	High	<p>Progress on conservation actions and measures is slow.<sup>8</sup> The ELC expects that broad based conservation goals will be strongly opposed by most sectors and may require a regulatory response.</p> <p><b>Priorities within this direction</b> To assist in the Conservation direction <i>Water for Life</i> should:</p> <ul style="list-style-type: none"> <li>• Establish a regulatory framework for source water protection,</li> <li>• Establish a system to monitor and publicly report water use by all sectors,</li> <li>• Initiate a regulatory review for future incorporation of conservation measures,</li> <li>• Amend the <i>Water for Life</i> focus on “productivity” to that of “conservation” (particularly in over allocated basins), and</li> <li>• Identify, assess and prioritize impacts on source water (both in terms of water quality and quantity).</li> </ul>

<sup>8</sup> See Alberta Water Council, *Review of Implementation Progress of Water for Life, 2005-2006* at p. 28, online: Water for Life <[http://www.waterforlife.gov.ab.ca/awc/docs/Review\\_Report\\_05-06.pdf](http://www.waterforlife.gov.ab.ca/awc/docs/Review_Report_05-06.pdf)>. .



**Renewal of themes**

Theme	Priority	Issues and actions
Governance and Management	High	<p>Currently, the planning process lacks clarity around stakeholder responsibility, authority and implementation, undermining achievement of goals and relevance of watershed management plans. Established working groups under the Alberta Water Council may address some of these issues in the near future.</p> <p>While many Government of Alberta departments participate in watershed planning processes there are limited mechanisms through which cross-departmental compliance with plans will be achieved.</p> <p><b>Priorities within this theme</b> To assist in this theme <i>Water for Life</i> should:</p> <ul style="list-style-type: none"> <li>• Develop a cross ministry and cross jurisdictional tools for implementation and integration of watershed management plans;</li> <li>• Provide clarity regarding the relative priority (or hierarchy) of plans and policies (such as Land Use Framework, Watershed Plans and Energy Policy), integration with municipal development plans, area structure plans and land use bylaws. This may require review and amendment to various law and policy instruments; and</li> <li>• Establish guidelines around implementation of watershed plans, including an outline of the responsibilities and authorities of each member within the governance structure.</li> </ul>
Funding	High	<p>Participants in the watershed planning processes consistently site funding as ongoing issue. The Government of Alberta has failed to budget for the development of watershed management plans and the cost of scientific research required to inform these plans.</p> <p>The ELC lauds the more recent funding announcements for water monitoring and research. However, much of the funding of planning remains reactionary and insufficient in many cases.</p> <p><b>Priorities within this theme</b> Ensure funding is sufficient for full watershed planning and implementation to take place. Sufficient resources to address knowledge and capacity deficiencies as they arise are required.</p> <p>The Government of Alberta should consider an endowment fund to assist watershed planning and stewardship programming.</p>

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Increased Public Awareness	Medium	<p>Public awareness and concern regarding environmental issues has increased in recent years<sup>9</sup> and media coverage indicates that issues of water quality and quantity are top of mind. However, public awareness regarding environmental issues this is not necessarily reflected in government action. The government must respond to public awareness and step into a leadership role to ensure watershed and water management outcomes are established and fully implemented.</p> <p><b>Priorities within this theme</b> Take steps to ensure full transparency in policy development and put in measures to minimize opportunities for “end runs” around the <i>Water for Life</i> process.</p>
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### Conclusion on priorities and issues

The ELC concludes that, with some significant amendments and government commitment, *Water for Life* can continue to be a valuable strategy for water and watershed management in Alberta. However, there are several overriding concerns that the Government of Alberta must address if the strategy is to continue to produce results.

First, there is a need for the Government of Alberta to recognize that complete reliance on “partnerships” will sometimes fail to arrive at outcomes in a timely manner. The Government of Alberta must be prepared to step in and be a leader in environmental protection where partnership processes appear to be stalling. A renewed leadership role must be adopted by the entire Government of Alberta to guide the watershed planning process and pursue all the goals of *Water for Life* and to ensure that irreparable harm does not befall the province’s aquatic ecosystems.

Second, watershed planning initiatives must be accompanied by resources to ensure sufficient capacity to conduct thorough research, to monitor impacts on aquatic resources and to produce and implement plans.

Third, there is a need to immunize the watershed planning process from being undercut by other planning and policy initiatives. There is currently the opportunity to have multiple and potentially conflicting planning processes and plans in place in Alberta. Further, current policy development may prove to be in conflict with watershed planning objectives. These conflicts in policy and planning tools must be integrated or there must be expressed acknowledgement of the relative hierarchy of policy tools within the Alberta Government. For example, watershed plans may end up conflicting with the land use framework or with policies being produced by Alberta Energy. Clarity as to whether a hierarchy of policy will be recognized by the Government of Alberta is essential to informed participation of the public under *Water for Life*.

Fourth, the ELC recommends that *Water for Life* be revised to incorporate source water protection as a primary, cross cutting objective that will assist in obtaining the stated goals of the strategy. Demand

<sup>9</sup> See Government of Alberta, *It’s Your Future, Survey Results*, October 2004, online: Alberta Finance <[http://www.finance.gov.ab.ca/surveys/itsyourfuture\\_results.pdf](http://www.finance.gov.ab.ca/surveys/itsyourfuture_results.pdf)>.

side water management should also receive renewed emphasis whereby planning and development occurs within a framework of maintaining the ecological integrity of the watershed.

Finally, to ensure that planning participants maintain devotion to the planning process it is necessary to pursue a framework (that the ELC understands has been initiated) to ensure fairness and consistency in the planning process.

If you have any questions or concerns regarding any of the foregoing please do not hesitate to contact me.

Yours truly,

Jason Unger  
Staff Counsel

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