



June 26, 2025

Our File: 7110

Honourable Rebecca Schulz
Minister of Environment and Protected
Areas
Alberta Environment and Protected Areas
9915 108 St NW,
Edmonton, AB T5K 2G8

Honourable Grant Hunter
Associate Minister of Water
Alberta Environment and Protected Areas
9915 108 St NW,
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Via Email

RE: Environmental Law Centre recommendations on Water Availability and Proposed Water Act Amendments

Dear Minister Schulz and Associate Minister Hunter,

The Environmental Law Centre (ELC) is Alberta's oldest public interest environmental law organization. Since it was founded in 1982, the ELC has been providing credible, comprehensive and objective legal information regarding natural resources, energy, and environmental law and policy in the Province of Alberta. The ELC's mission is to educate and champion for strong laws and rights so all Albertans can enjoy clean water, clean air, and a healthy environment.

The ELC is pleased to provide comments in relation to the phase 2 consultation about water availability and the proposed changes in the Water Act. We have set out the ELC's perspective around risks of *Water Act* changes and have identified whether the proposed changes should proceed based on identified environmental risks, risks related to water management and regulation generally (i.e., administration and enforcement of the regulatory system) and risks to other water users.

First, we wish to present some guiding principles under which our assessment of the proposed amendments are considered.

1. Changes to the law which increase the amount of consumptive water use by licence holders or exempt diversions and use of water from regulatory oversight are intricately linked and inseparable from the health of the aquatic environment.

2. Intensification of use, augmentation of return flow quantity or quality, and changes in hydrology and operation of works all carry risks to both users and the environment that should be understood.
3. Using existing tools for review and reassignment (i.e. transfers) of water under licences are preferred to amendments that may foundationally alter the nature and scope of how licences were issued and the practical use of licence volumes including:
 - the appurtenance of water to prescribed lands;
 - the prescribed and implied return flows and water quality of those flows as granted in licenses;
 - altering the geographic scale and scope of deemed licences foundationally alters the historical use of water. The practical effect of which is to delegate water management further to deemed licence holders, thereby further fettering the discretion of the government to make water management decisions (through water allocation transfers and otherwise).
4. To realize environmental objectives, all tools under the Act should be engaged in the fullest, including water conservation holdbacks during transfers, setting of water conservation objectives and engaging in water management planning.

A summary of the ELC's central recommendations are found immediately below. The proposed amendments are not restated in this section, rather we refer to the government's Discussion document, [*Enhancing Water Availability Engagement on Proposed Amendments to the Water Act to Improve Water Availability*](#).

ELC summary of recommendations

Recommendation 1: The ELC supports proposed amendments that are focused on consistent monitoring and reporting of water licence diversions and other relevant conditions of licences.

Recommendation 2: The ELC recommends against the proposed amendments related to point of use and point of diversion. Certain proposed amendments appear to amend approaches to water management in a way that is better achieved through water allocation transfers which are already enabled under the Act. If amendments to the *Water Act* related to point of use, point of diversion of licence, reuse of water, and interbasin transfers proceed, a further amendment requiring the Director to form an opinion that the amendment or licence decisions will provide a "net benefit to the aquatic environment" is recommended. This "net benefit"

qualifier should replace the “adversely affect the ability to conserve or manage a water body” portion of s. 54.

Recommendation 3: The ELC supports proposed amendments on increasing transparency in relation to the water allocation transfer system.

Recommendation 4: There are several recommendations that appear to be focused on increasing efficiency through deregulation including amalgamating basins (i.e. Peace/Athabasca), exempting certain classes and volumes of water from licence requirements, and wastewater and stormwater licence exemptions. The ELC recommends that the government pursue a separate and rigorous regional and strategic assessment of proposed amendments regarding streamlining and deregulation.

Recommendation 5: Crown ownership of the resource should be reflected in management relating to wastewater treatment and accounting for uses of wastewater that removes water from the hydrological cycle. This should include considerations of industrial licence volumetric pricing as Crown water rent. The ELC recognizes that this is expressly rejected in the discussion document but maintains that this should be investigated and considered.

Recommendation 6: Proposed amendments around timelines for authorizations and for limits to supplemental information requests should not proceed. Many site specific information needs around hydrology, hydrogeology, aquatic ecology, and water users may arise in application processes. Arbitrary curtailment of information gathering and restricted timelines increases the risk of decisions being made in the absence of relevant information.

Recommendation 7: The ELC recommends not proceeding with amendments to licences where return flow expectations and obligations are potentially augmented. Any changes to return flow requirements or creation of credit systems reflects a significant departure from expectations of the conduct of a licence holder at the time of its issuance and may have repercussions for other users and the aquatic environment.

Recommendation 8: The ELC recommends not proceeding with amendments that would allow the Director to amend licences to access water bodies during low flows. Conditions related to water conservation objectives, instream objectives, and environmental flow needs (as reflected in prohibitions on withdrawals during “low flows”), as the case may be, should be retained.

Recommendation 9: If amendments are considered for water reuse (from stormwater, wastewater or otherwise), the *Water Act* should include a provision that requires the Director

to form an opinion that such reuse will be a “net benefit” to the aquatic environment. This “net benefit” determination should be informed by guiding regulations and/or policy.

Recommendation 11: The ELC recommend amending the Act to create a delegated office for environmental flows that would be responsible for monitoring, research, and public reporting on water conservation objectives (WCO), instream flow needs, identifying areas and opportunities for WCO licences, and bringing forth scientific information around instream flow needs in water management planning and reviews of water allocation transfers.

Set out in Table 1 below are specific risks and observations related to the proposed amendments

Table 1: Risks, Observations, and ELC recommendations for proposed *Water Act* amendments

Streamlining	Risks and other observations	ELC view on proposed amendment
Point of use	Practical alteration of original licence from a use and return flow perspective. (appurtenance of licence to land in s.58). Further diminishes regulatory and management function of GOA through transfer system.	ELC recommends retaining focus on public review transparency around transfers under the Act.
Point of diversion	Practical alteration of original licence from a use and return flow perspective. (appurtenance of licence to land in s.58). Further diminishes regulatory and management function of GOA through transfer system.	ELC recommends retaining focus on public review transparency around transfers under the Act.
Director Amendments	A clear and apparent risks arise for aquatic environment to enable diversions during low flow periods of time. Unclear as to risks as “low flows” is not defined.	In the absence of statutory protections for environmental base flows, conditions around low flows should not be amended (i.e. if low flow is at or below WCO then diversions should not be permitted).
Notice provisions	Functionally notice should be provided.	ELC supports the proposed amendment.
Time limit on authorizations	Time limits may arbitrarily undermine evidence gathering and may result in rushed decisions. Some approvals and licences have unique circumstances which may require more time and information.	ELC recommends against regulatory time limits on authorizations as it fails to account for complexity and information needs for specific circumstances.
Limits to supplemental information request	Decision making should be made with sufficient information to understand the impacts.	ELC recommends against limits on supplemental information requests.

	Allows proponents to avoid gathering of information by ensuring decisions even in absence of fulsome responses to information requests.	If such a provision is put in the Act it should be accompanied by a “deemed refusal” of an application where the final request is not substantively or appropriately answered.
Exemptions	Exemptions and increasing scope of exemptions creates a <i>de facto</i> priority which is contrary to the notion of FITFIR which is adopted in the <i>Water Act</i> . This may result in increased risk (cumulatively or in isolation) to aquatic environments and other users. For example, using the proposed approach, stopping exempt diversions would require regulatory amendments in times of shortage.	Limited exemptions may be enabled however there should be baseline qualifiers to when exemptions apply (for example low flows). Streamlining comes with risks. Decisions to deregulate specific diversions should not be considered separate from issues surrounding drought and supply constraints
Standardizing water monitoring and reporting	Risks and other observations	ELC view on proposed amendment
New monitoring and reporting conditions	Minimal risk as administrative and compliance challenges are a current and ongoing risk.	ELC supports the proposed amendment.
Applying conditions on monitoring and reporting to deemed licences	Minimal risk as administrative and compliance challenges are a current and ongoing risk.	ELC supports the proposed amendment.
Amalgamation of licences while preserving priority of original allocations	The tradeoff of amalgamating licences is recognized in the <i>Water Act</i> as being that the amalgamated licence would take on the most junior priority of the amalgamated licences.	The ELC does not support the proposed amendment (and maintain the Act as it is).

	This carries risks of compliance/enforcement confusion, loss or undermining of protective provisions, and may undermine appurtenance of allocations.	Where the Director allows amalgamation, then most protective provisions should be maintained.
Defining licences in good standing	There are few risks related to identifying licences in good standing, so long as compliance and discretion under the Act to amend, suspend and terminate licences are not undermined.	Should not be used to perpetuate “sleeper” licences. Definition should include compliance with all relevant licence conditions .
Transparency to support Water Licence Transfers	Risks and other observations	ELC view on proposed amendment
Collecting information on details such as prices paid for water licence transfers	To date, there is limited “public review” of transfers. Transfer market should be transparent for Albertans to understand costs and benefits accrued to private parties for public resource.	Public review of transfers should be established along with significant transparency for public to understand benefits and costs of transfer.
Publishing information to support water licence transfers	Some may see economic disclosure as causing harm. Environmental risks increase with increased likened uses (resulting from increased efficiency of the transfer market)	Amendments are supported but there is still need for clarity in environmental protection.
Enabling low risk inter-basin transfers	Risks and other observations	ELC view on proposed amendment
Establish new criteria for lower risk inter-basin transfers	There is heightened risk for interbasin transfers that can lead to transport of invasives and other ecological impairment. Interbasin transfers are ecologically risky and should be a last resort, not normalized.	The ELC recommends maintaining the current legislative approach to interbasin transfers. If limited classes of interbasin transfers are of interest, specific consultation

		should occur in geographic locations where the transfers may occur (e.g. injection of wastewater in Peace/Athabasca)
Introduce alternative approval process for lower risk inter-basin transfers	Removal of legislative process decreases transparency and public debate of transfers relative to Ministerial decisions or cabinet deliberations (which are not public).	<p>The ELC recommends maintaining the current legislative approach to interbasin transfers.</p> <p>For interbasin transfers, the ELC recommends not only public consultation but environmental assessment under the <i>Environmental Protection and Enhancement Act</i>.</p> <p>Prior to any legislative changes the GOA should conduct an open and participatory strategic and regional assessment of “low risk” interbasin transfers</p>
Adjusting definitions of major river basins	This would remove all oversight for interbasin transfers in impacted basins	<p>The ELC recommends maintaining the current legislative approach to interbasin transfers.</p> <p>This appears to be focused on deregulating certain transfers and is unlikely to remedy availability concerns.</p>

Water Reuse	Risks and other observations	ELC view on proposed amendment
Wastewater	<p>Primacy should be to treat and return polluted water to source watersheds. This requires an assessment of the net benefit of wastewater reuse and justification for failure to treat.</p> <p>Use of wastewater (particularly for enhanced recovery and other energy purpose) should account for lost public value. (Monetizing consumptive and polluting uses). Cost cutting benefits are likely to accrue to proponents who may then benefit financially from reuse agreements.</p>	<p>The ELC recommends the creation of clear policy and guidelines for remediation of wastewater and setting out a “net benefit to the aquatic environment” test for reuse applications.</p> <p>The ELC recommends consultation around industry volumetric pricing to promote conservation and to reflect public resource values. (It is acknowledged that this is specifically rejected as part of the Phase 2 consultation.)</p>
Rainwater	<p>Limited risks so long as rainwater harvesting has appropriate limits.</p>	<p>The ELC supports the clarification of the definition under the Act.</p> <p>Limited rainwater exemptions could be used to reflect current practice (so long as impacts on the aquatic environment are understood and avoided and/or minimized).</p>
Stormwater reuse	<p>A stormwater reuse exemption raises concerns around how pre- and post- development volumes will be assessed,</p>	<p>Retain licencing for stormwater systems.</p>

	<p>monitoring and regulated without a licence in place. This creates compliance challenges and risks.</p> <p>Impacts on stormwater systems (on overall hydrology and related environmental outcomes) must be understood and this requires site specific assessment.</p>	<p>There is potential to develop a “code of practice” and regulations for this matter.</p>
Return Flow	<p>Volumes were allocated based on certain understandings of return flows. Augmenting the system to recategorize the nature of consumptive and non-consumptive uses brings risks to the aquatic environment and to other users.</p>	<p>Net credit system should NOT be put in place without extensive analysis of instream repercussions. This will require extensive consultation.</p>

It is recognized that water availability is a concern in relation to economic development and security of municipal water supplies. However, it should be recognized that many of the proposed amendments to the Act may carry the risk of undermining the intent and scope of original licences resulting in direct, indirect and or cumulative effects on other water users and on the aquatic environment.

Please do not hesitate to contact me with any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Unger", with a large, stylized flourish at the end.

Jason Unger
Executive Director

CC:

Jaclyn Schmidt
Kate Rich