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Cooper Institute

**Submission concerning
Consultation on the PEI Water Act Draft**

**Charlottetown, PEI
April 10, 2017**

Cooper Institute was the first presenter to the Prince Edward Island Environmental Advisory Council on October 13, 2015 as part of a wide ranging consultation giving suggestions for the spirit and content of the proposed PEI Water Act. At that stage we, and many other organizations, recommended that the original time line for that phase was too short and fast-paced. We were gratified that the Minister recognized the wisdom of our request.

The process of assessing the draft of the Water Act is even more rushed than the original plan for the 2015-2016 consultation. This time there seems to be a panic to get this Act introduced in the current sitting of the Legislature. This rush is upsetting to a lot of people. We ask the Minister and the Department officials who wrote this draft: Do you really not want to hear what Islanders have to say? This is not a time for “same-olds”, when Acts were the property of a Minister and their Department. We are happily in a new age of democracy and we expect a new attitude. As residents and citizens who have high stakes in the protection of PEI water, we believe that this Act will affect all of our lives and the well-being of future generations. We need to get it right. Islanders need to be permanently involved.

We were impressed with the report of the 2015-16 process and the care taken to hear and reflect what you heard and we see some of that in the draft.

One of Cooper Institute’s key recommendations was that the Act have a values statement in the form of a preamble. We are thrilled that many of the values which we listed are in the Act, not in a preamble, which would have been much weaker than what is actually presented in the draft. Most of the values we identified in our original presentation are part and parcel of the act in Part I (2). Thank you. Here is a partial list of our suggested values which we can identify in the draft:

- Water must be protected
- Water is not a commodity to be bought and sold
- Water is not a resource to be extracted at will
- Water is held in common; it is easily destroyed by private ownership “rights”
- Water is a public trust: Government has a major role as protector
- The first victims of water misuse are the most fragile inhabitants of the earth: the most delicate plants and animals
- Time is running out (this is concern about possible diminishing of water quantity and quality).

A value that seems to be missing from the draft is

- Access to water that supports life is a basic human and ecological right

One of our recommendations on October 13, 2015 dealt with the incredible pressure on the Minister, the Department, and Cabinet by influential circles which may see the Act as curtailing their interests. We see this to be especially true in relation to hydraulic fracturing and high capacity wells. It is true that both of these water uses could be considered included in the Act (Section 7) in the form of general controls on water usage, permit procedures, etc. If “all things were equal” this might suffice. However Islanders know from experience that industrial sector interests are insatiable. Their pre-dominance in food production and processing (not only farming but also enterprises like AquaBounty) gives us cause to worry. Related to this, we would prefer fewer “mays” and more “shalls” in the Act.

The moratorium on high capacity wells for farming is still in place--for one more year. The Minister has declared that "... Something of that nature would be put into regulation. Work will begin on that once the draft act becomes the full act and presented on the floor of the legislature... Regulations are changed much easier and that's why you put things of that detail in regulation." This is disconcerting: to put the control of either high capacity wells or of hydraulic fracturing in regulations makes these crucial issues sitting ducks for intense lobbying of the Cabinet which can change regulations behind closed doors at any Cabinet meeting.

In the area of water quality, the "elephant in the room" is the level of nitrates and other chemicals flowing into the water system in the form of run-offs from the land. Most people are aware that as helpful as buffer zones may be, they are ineffectual in stopping the flow of contaminated water into Island water ways. It is true that the Water Act was intended to encompass companion acts. However, the Act would be enhanced by specific statement of the role of the following in protecting the quantity and quality of PEI water: equitable land ownership; responsible land use; enforceable crop rotation and the diligent control of the chemicals and pesticides on the land.

For Cooper Institute, which dedicates its work to the goal of engaging the community, we see the necessity of on-going resident engagement in the implementation of the Act and Regulations . This is where new styles of transparency are needed. It is not sufficient to pop some information up on the website, which currently is not really accessible to a large percentage of the population. We recommend multiple media of communication to advise Islanders what is happening with water quality and quantity. We need a deliberate effort on the part of the Department to keep the dialogue going. We suggest developing a qualified non-governmental organization (NGO) as a monitor to carry out formal input on the Act, Regulations, and ensuing policies. Note: A quasi-judicial commission would not qualify for this. This monitoring group will need from time-to-time to "translate" for the community the meaning of new events and new scientific findings.

Our final remarks on the Water Act draft:

- There seems to be an honest intent to protect the quality and quantity of PEI water.
- The control of water and its protection are clearly vested in the government (in Her Majesty, even).
- We welcome the ban on the exportation of PEI water
- There seem to be some deterrents in the form of monetary penalties for polluters or abusers of water. This will help.
- While the Water Act has its share of lawyer-speak, it is relatively easy reading for lay people. Thank you for that.

Respectfully submitted,

Cooper Institute