# Making the Province Care for Our Water and Land[3]

## A Tale of Two Water Use Reports

*Sadly, sadly, the sun rose; it rose upon no sadder sight*
*than the man of good abilities and good emotions,*
*incapable of their directed exercise,*
*incapable of his own help and his own happiness ...*[4]
Charles Dickens

It is refreshing when independent experts look at Alberta's water use management system. They give us an honest appraisal of a system that is handicapped by misinformation and historical baggage.

Alberta's water use management system has been the subject of several independent reviews including the 1995 Water Management Review Committee, the Minister's Forum in 2002, the Alberta Water Council's 2006 "issues and gaps" analysis, and last year's report from the Minister's Advisory Group.[5] Each review has highlighted serious defects in how the provincial government cares for the water we depend on. These defects are not new, they continue to be pointed out by experts and not fixed by the government.

The recommendations of the Minister's Advisory Group are among the most revealing. In clear, concise language, the Advisory Group zeroed in on major deficiencies in the Province's management of water:

- lack of standards to protect the health of our rivers – standards developed for the Bow, Oldman, and Red Deer Rivers that the government has failed to apply
- under-performance of the much-touted system for transferring water rights
- loopholes allowing people to keep water rights they can't use and profit from selling water rights freed up with government subsidies
- the absence of a "registry" to protect buyers of water rights from being misled about the soundness of their purchase
- the frustration of groups involved in protecting watersheds because the government has not given them a clear, meaningful role in decision-making.

While the Minister's Advisory Group provided penetrating analysis, the same can not be said of a report from the government's Water Council.[6]

A Water Council project team spent a year reviewing the water rights transfer system, the method by which a person who has a valid water licence can sell all or part of the allocated water to someone else. After amassing a staggering collection of factual errors and flawed assumptions,[7] the project team came to the astonishing conclusion that only a few cosmetic changes are needed to a transfer system incapable of delivering the results the team wanted.

What the project team wanted was seldom obvious. They were all over the map – creating a patchwork of objectives, many without a clear rationale, and proposing vague solutions that are either ineffective or window dressing for what the government already does.[8]

This was particularly true when the Water Council team considered the most important reason for transferring water rights: potential benefit to the economy.

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3 Some of this material originally appeared in *Moving Beyond Now*'s water series.

4 *A Tale of Two Cities*

5 Water Management Review Committee, Report, 1995, Equus Consulting Group, *Water for Life, Minister's Forum on Water: Summary*, Alberta Environment, 2002, Westhoff Engineering, Wendy Aupers & Associates, and Waxwing Synthesis and Resolution, *Initial List of Issues and Gaps: Water Policy Scoping and Issue Identification*, Alberta Water Council, 2006, and Minister's Advisory Group, *Recommendations for Improving Alberta's Water Management and Allocation*, 2009

6 Alberta Water Council, *Recommendations for Improving Alberta's Water Allocation Transfer System*, Government of Alberta, 2009

7 See the Appendix for the lists of factual errors and flawed assumptions.

8 See the Appendix for what the Project Team wanted, their rationales, and proposed solutions.

At the beginning of its report, the team promised it would reveal how to create a viable water rights market and ensure sustainable economic development.[9] That promise quickly faded. In fact, the idea of sustainable economic development was never mentioned again.

Instead, the Water Council team became fixated on finding ways to get "higher gross domestic product, more money circulating in a community, more tax dollars, etc."[10] In other words: growth for growth's sake, that shameful tradition of throwing money at a problem in the hope the problem will solve itself.

The Water Council team abandoned its quest for economic viability and sustainability because it wanted to achieve the "overarching objective" of encouraging the efficient reallocation of water.[11] What the team meant by efficiency was restricting the authority of regulators and the role of the public so licensees, investors, and the government can cash in faster on the sale of water rights.

Not all members of the Water Council team can be blamed for what happened. Two members – lawyers with extensive knowledge of water law[12] – fought a rearguard action against much of the wishful thinking that ended up in the report.

Apparently, other members of the Water Council team were baffled that very few water transfers have occurred in Alberta even though different methods of transferring water have existed for seventy to eighty years.[13] Faced with this dismal record of encouraging people to sell water rights, they blamed the complex, time-consuming nature of approving transfers.

They were mistaken. Most water transfers are complex and time-consuming. Thorough and conscientious work by regulators and early, continuous, and unconditional engagement with the public are absolutely necessary to ensure that the ecosystem, the rights of other users, and Alberta's commitments to Saskatchewan and the Northwest Territories are protected.

## The Failed State of Alberta's Water Market

*A zero price for water sends the message that water is limitless.*[14]
Henry Vaux

The provincial government has failed for over a decade to create a market for water rights in Alberta.[15]

Water rights transfer once held great promise for increasing economic productivity. By encouraging people to conserve and then sell water, it was hoped transfers would lead to more efficient use of water and promote sustainable development.

Unfortunately, water rights transfers have been less than popular.

The lack of success is due to a fundamental problem. The provincial government has forgotten that a market needs prices that accurately reflect the value of the resources used. The water market is fatally

9 *Recommendations for Improving Alberta's Water Allocation Transfer System*, p. 5
10 *Recommendations for Improving Alberta's Water Allocation Transfer System*, p. 17 (Footnote 3: definition of "higher value needs.")
11 *Recommendations for Improving Alberta's Water Allocation Transfer System*, p. 18
12 Maureen Bell, Conservation Trust of Canada and Judy Stewart, Alberta Lake Management Society
13 *Water Resources Act*, RSA 1980, c. W-5, s. 11(4)-(7) and 23
14 Henry Vaux, Rosenberg International Forum on Water Policy, "Source Water Protection Successes and Failures Around the World," *Our Place in the Headwaters – Managing the Commons*, November 5, 2008
15 The effort to create a water market began in earnest with the passage of the *Water Act* that set up an expanded and, it was hoped, better process for transferring water rights. As previously under the *Water Resources Act* (the *Water Act*'s predecessor), transfers could be authorized by the provincial Cabinet. A second, public process was added which required a water management plan authorizing transfers. The first plan authorizing transfers was approved in 2002 for the South Saskatchewan River Basin.

flawed because it lacks the one thing any viable market needs: a realistic price on the raw material – in this case, water.[16]

Currently, except for a small, one-time licensing fee and the "water rentals" charged for hydroelectric use, people do not pay for the privilege of taking water out of our lakes, streams, and aquifers.

Yet, Albertans want a realistic price on water. When the provincial government asked them, two-thirds wanted a price put on water used by industrial and agricultural operations. Half agreed a price should also be charged for household use. The reason for wanting a price on water was to encourage conservation – the key benefit water rights transfers are supposed to provide.[17]

Despite public support, the Alberta government has avoided the issue of water pricing. The reason, as one Cabinet minister once explained, is the fear that agricultural producers won't stand for it.

This fear, however, is based on a misreading of who would be significantly affected by water pricing.

Most farmers and ranchers rely on lakes, streams, and aquifers to water their livestock and meet other basic requirements. Precipitation and soil moisture does the rest. The amount of water they use is so small it is unlikely to be worth the administrative hassle to charge for it.

The people who would be upset by a price on water are irrigators. They use large amounts of water – in southern Alberta, over 95% of all water consumed.[18]

Irrigators were not supposed to be in a position where they would resent a price on water. For over a hundred years, governments – first federal, then provincial – have dreamed irrigation would trump the risks of farming.

Unfortunately, the dream didn't come true. For farmers running their own irrigation districts and private investors like the CPR, the financial burden of dams, canals, and other structures proved too expensive. Governments were forced to step in with bail-outs, hand-outs, and takeovers of facilities that had fallen into disrepair.

Hand-outs and government ownership continue to this day. Direct provincial subsidies to irrigation top $50 million a year with millions more are spent on government facilities that supply water for irrigation.[19]

The irrigation industry has tried to justify these special government perks. They have only succeeded in proving that irrigation – on the grand scale practiced in Alberta – is not a paying proposition without taxpayers' money.

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16 The provincial government understands the vital role prices play in managing demand and encouraging conservation among water users, other resource users, polluters, and consumers, but has not translated that into a pricing system. For examples of the kind of information available to provincial decision-makers, see
- Marbek Resource Consultants, *Analysis of Economic Instruments for Water Conservation*, Canadian Council of Ministers of the Environment, 2005
- Alberta Environment, "Resource/Infrastructure use fees and charges," "Product fees and taxes," and "Pollution fees and taxes," and "*Market based instruments and fiscal mechanisms*, n.d.
- Alberta Environment, *Cold Lake-Beaver River – Surface Water Quantity and Aquatic Resources - State of the Basin Report*, 2006, pp. 57-62
- Alberta Environment, *A Guide to Alberta's Full Cost Accounting Program*, 2008, p. 3
- Clay J. Landry, *Saving Our Streams Through Water Markets: A Practical Guide*, Political Economy Research Center, 1998
- Susan McFarlane and Erik Nilsen, *On Tap: Urban Water Issues in Canada*, Canada West Foundation, 2003,
- David V. J. Bell, *The Role of Government in Advancing Corporate Sustainability*, Sustainable Enterprise Academy, 2002, pp. 13-14

17 *Results from Completed Workbooks: Data Tables*, Alberta Environment, sub-report no. 1, section b 2002, p. 6

18 J. M. Crosby, "South Saskatchewan Region," *Atlas of Alberta Lakes*

19 Government of Alberta, *Alberta Environment – Annual Report: 2008-2009*, p.79 and *Agriculture and Rural Development – Annual Report: 2008-2009*, pp. 45, 56, & 119

Because of its fragile financial condition, the irrigation industry feels it deserves the additional subsidy of not having to pay for the water that was supposed to make it a self-reliant sector of society.

We could feel sorry for the irrigation industry. However, as with any other subsidized business, we need to wean irrigation off its dependence on government money.

The obvious answer is to cut back the financial subsidies irrigation receives. We should, but the dams, canals, and other facilities that supply irrigation water also deliver water to communities and industries. The amounts of water are tiny compared to what irrigation uses but – until alternate financial and delivery arrangements are made – the government needs to ensure those facilities are kept in good working order.

Pricing of water is the logical first step for bringing financial self-sufficiency to irrigation. It will encourage more diligent efforts at conserving water, allow irrigation licences to be right-sized to match economic realities, and, in the process, free up water that can be used to fuel more sustainable development.

## Matching Water Use Management With Albertans' Expectations

*I have nothing but contempt for the kind of governor*
*who is afraid, for whatever reason,*
*to follow the course that he knows is best for the State ...*[20]
Sophocles

Albertans expect four things from the provincial government's allocation of water: a secure supply for their homes, more efficient use of water, sustainable development, and protection of aquatic ecosystems.[21]

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[20] *Antigone*

[21] **"a secure supply for their homes"**

- *Results from Completed Workbooks: Data Tables*, Alberta Environment, sub-report no. 1, section b 2002, p. 3
  - Eighty-seven per cent of workbook respondents though that "a safe, secure drinking water supply" should be an objective for the province's water strategy.
- *Results from Random Telephone Survey: Summary Report*, Alberta Environment, 2002, p. 5
  - The respondents' most important water challenge facing Alberta (39% of respondents) was " access to safe/clean water/no pollution/contamination." The second most important challenge (27% of respondents) was "water shortages/scarcity."

**"more efficient use of water"**

- *Results from Completed Workbooks: Data Tables*, Alberta Environment, sub-report no. 1, section b 2002, p. 6
  - Sixty per cent of workbook respondents favor encouraging "more efficient use of water through pricing to reduce overall use." Seventy-nine per cent favor setting "targets for water conservation for various sectors using best management practices."
- *Results from Random Telephone Survey: Summary Report*, Alberta Environment, 2002, p. 7
  - The vast majority of respondents agree (score of 4.1 on a 5-point scale) that "the province should explore ways to increase water conservation, even if this increases costs to the person using water."
- Equus Consulting Group, *Water for Life, Minister's Forum on Water: Summary*, Alberta Environment, 2002, letter, p. 2, executive summary, and main text, p. 3
  - "The provincial government must ... place a greater emphasis on conservation."
  - "The provincial government to increase its commitment to "wise use of water."
  - "Albertans must implement improved water conservation practices."

**"sustainable development"**

- *Results from Completed Workbooks: Data Tables*, Alberta Environment, sub-report no. 1, section b 2002, p. 3
  - Eighty-seven per cent of workbook respondents believe that "reliable, quality water supplies for a sustainable economy" should be an objective for the province's water strategy.
- *Results from Random Telephone Survey: Summary Report*, Alberta Environment, 2002, p. 7
  - The vast majority of respondents agree (score of 4.3 on a 5-point scale) that "if there are water shortages in the future, the province should put a higher priority on preserving natural aquatic environments, even if this limits economic growth and jobs."

**"protection of aquatic ecosystems"**

- *Results from Completed Workbooks: Data Tables*, Alberta Environment, sub-report no. 1, section b, 2002, pp. 3 & 7
  - Eighty-seven per cent of workbook respondents believe that "healthy, sustainable ecosystems" should be an objective for the province's water strategy.

Yet, despite concerns those expectations are not being met, the water use management system continues to operate pretty much as it did a hundred years ago.

So, what are the problems and how can they be fixed?

To start, Alberta's water use is governed by the "first-in-time, first-in-right" philosophy (FITFIR). FITFIR requires that, during a water shortage, people with newer licences must wait until those with older licences have taken all the water they're allowed.

FITFIR fails, though, when towns, villages, and rural communities with newer licences are cut-off because there isn't enough water to go around. Luckily, during past shortages in Alberta, the risk of communities going dry has been avoided by ignoring FITFIR.

Ignoring the law is never a good idea, but one simple change would solve the problem. Override FITFIR by giving communities priority to a guaranteed supply of water for household use.

The true believers in FITFIR consider this idea sacrilegious. Yet, top priority during a shortage is what the government has already granted to people with their own water systems.[22] Extending that right to the rest of Albertans who rely on community waterworks is simply common sense.

FITFIR is also a drag on economic development. Most water tied up in licences with high priorities is for irrigation, an activity that, as already noted, requires large subsidies from the government. Newer, self-sufficient water users are forced to reduce their competitiveness by shelling out cash to buy those subsidized water rights or take other expensive steps to protect against the possibility of being cut-off during a shortage.

The solution often proposed is to revamp FITFIR. The Lougheed government did that in 1984 when it passed legislation forcing hydroelectric providers, who were legally exempt from FITFIR, to join the queue when there is a water shortage.[23]

Whether or not the 1984 change to FITFIR was proper, dislodging irrigation from its lofty position in the FITFIR hierarchy is a different story. It would be a formidable challenge for the government to overcome the obstacles involved. After all, the price for the seemingly straightforward effort to trim surplus water from the Western Irrigation District's licence is estimated to cost taxpayers $85 million in compensation.[24]

Instead of reforming FITFIR, the provincial government is promoting water transfers as the way to fix the situation. However, with no price on water and the financial cushion provided by subsidies, there is little economic incentive for licensees to conserve water and use it efficiently. Licensees who do not have to pay for water will be less interested in selling their water rights and less willing to accept a realistic price if they do.

But what would a practical and beneficial pricing system for water look like?

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- Eighty-ones per cent of workbook respondents favor maintaining " an amount of water in aquatic environments that will protect ecosystems even though it may limit human use."

- *Results from Random Telephone Survey: Summary Report*, Alberta Environment, 2002, p. 7
  - The vast majority of respondents agree (score of 4.3 on a 5-point scale) that "if there are water shortages in the future, the province should put a higher priority on preserving natural aquatic environments, even if this limits economic growth and jobs."
- Equus Consulting Group, *Water for Life*, *Minister's Forum on Water: Summary*, Alberta Environment, 2002, main text, p. 2
  - "The provincial government must specifically define the quality and quantity of water required in natural water systems to ensure environmental sustainability and must ensure this allocation is maintained."

22 *Water Act*, RSA 2000, c. W-3, s. 27

23 *Water Resources Act*, RSA 1980, c. W-5, s. 78(1) deleted (SA 1984, c. 67, s. 9)

24 *Alberta Hansard*, 27th Legislature, First Session, Issue 6e, April 21, 2008 and Renata D'Aliesio, "Fund to settle water rift hits $85 million," Calgary Herald, March 17, 2008

First, it would exempt essential or desirable uses such as household use, water for firefighting, water for natural ecosystems, and water for grazing managed in a way that does not degrade streams and adjacent land.

Second, those who receive water from provincially-owned facilities would be charged a user fee to cover the cost of delivering water. The rest of us pay for the privilege of having water delivered to our homes and businesses. Getting water from provincially-owned facilities should be no different.

Third, a one-size-fits-all royalty on annual allocations would be assessed based on the market rate and the government's costs for administering water rights. The idea sometimes bandied about of having irrigators and others pay less than everyone else is just another ill-advised subsidy.

Fourth, water pricing would be revenue-neutral. It would not be a tax grab, but a realignment of what Albertans already contribute to provincial coffers.

Fifth, if necessary, water pricing would be phased in to allow water users to adjust to a realistic water market. By putting in a pricing system, the provincial government would fulfill its mandate to be a leader in more efficient and effective water use.[25] In the short-term, though, there may be a need to allow people to adjust to a better way of doing business.

With such a pricing system in place, we can fairly, effectively, and with minimum pain make water a contributor to sustainable economic development.

## Triple-E Water Rights: Enforced, Efficient, Even-Handed

*True, I talk of dreams,*
*Which are the children of an idle brain,*
*Begot of nothing but vain fantasy.*[26]
William Shakespeare

Putting in a realistic pricing system and fixing FITFIR, though, is not enough. For those things to succeed, we needs water rights administered in a way that is even-handed and scrupulous in applying science and the law. To do otherwise is to build the water allocation system on ignorance, disorder, personal preferences, and wishful thinking.

The first administrative change is to protect water for ecosystems based on what ecosystems need.

Currently, the government prefers protecting aquatic ecosystems with what are called "water conservation objectives" (WCOs). Unlike other water rights, which are based on water needs, WCO water rights are reduced when there is potential conflict with current and future withdrawal uses.[27] As a result, environmental needs can not compete on a level playing field within the FITFIR system.

The second administrative change is sound enforcement. FITFIR depends for success on timely, effective enforcement, something that has been sadly lacking.

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25 Alberta Environment, *How we will continue to be a leading edge jurisdiction for the 21st century* and Alberta Government, *Water for Life: A Renewal*, 2008, p. 7 & 14

26 *Romeo and Juliet*

27 Alberta Environment, "Water Conservation Objectives." "In most cases, the outcome is a balance between leaving water in the river for the environment and diverting it for use." This is probably in conflict with the *Water Act* which established WCOs. (See *Initial List of Issues and Gaps*, pp. 25-26.) There is a view expressed by some (though not in print) that water requirements for ecosystems must be reduced because some withdrawal licences are restricted by what are called instream flow objectives. This is a fallacy. The full demand for withdrawal uses is enshrined in their licences and then restrictions are placed on the licence to protect other uses, sometimes including the aquatic ecosystem. In contrast, the demand for water to protect aquatic ecosystems is restricted – arbitrarily and without transparency – before it is legalized in a WCO. In river basins where WCOs matter – those like the South Saskatchewan Basin which are already heavily allocated – the FITFIR seniority of withdrawal licences will automatically restrict any rights to water for aquatic ecosystems. As a result, it is unnecessary to restrict aquatic ecosystem demand before a WCO is issued.

The classic case of non-enforcement is the licence of the Eastern Irrigation District (EID). Not satisfied with one of the largest water allocations in Alberta, the EID for many years regularly exceeded a condition in its licence limiting diversions during periods of low flow.

Restrictions on low flow diversions share the pain among licensees during times of water shortages. Defying this restriction, the EID expanded to the point where over a third of its irrigated land depended on unlicensed water.

A senior official was called in to fix things. In collaboration with the EID, he decided not to enforce the already generous licence, but, instead, agreed to have a new licence issued that suspended the low-flow restriction and gave the EID 21% more water to use during the irrigation season.[28] The EID showed their appreciation for this bonanza by asking the government for the right cash in on some of the extra water by selling it to municipalities, industries, and others.

At least, in the EID's case, as with most large licences, the government measures the EID's diversions and knew how much water was being taken. For the majority of licences, water use enforcement relies on spot checks, data supplied by licensees, or – in rare situations – labor-intensive surveillance. Only the last method can produce reasonable results.

Effectively enforcing FITFIR requires data collection that guarantees thoroughness and immediate resolution of conflicts. Closely monitoring water use by some licensees and not others is unfair and betrays the trust Albertans place in their government.

Good data will also solve one of the trickiest enforcement problems: licensees who do not use water. A person who fails to exercise the rights granted in a licence can have those rights cancelled. If no longer used, water rights can also be cancelled unless there is a reasonable prospect they will be used again.[29]

Being able to transfer unused water rights represents a windfall to a licensee who either can not or will not use them. Cancellation, stringently applied, is the only way to solve the problem. Anything else encourages speculation and panders to the unambitious, unrealistic, or over-extended.

Even with decent data, enforcement is never easy. It is far more difficult when the government does not carefully limit new licences or water rights transfers. The problem is a lack of standards.

Unlike most western provinces and U.S. states, Alberta does not require administrators to protect existing water users when issuing a new licence. With a licence transfer, administrators must only ensure no impairment of water use by those already licensed, a standard far below what is in force in most other jurisdictions in western North America.[30]

Lack of protection for existing water users is a recipe for giving out more water rights than the enforcement system can handle. Water users suffer unnecessary interference in their operations and taxpayers foot the bill.

Then, there is the problem of ground water. Currently, ground water is managed separately from surface water unless there is an obvious connection between the two.

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28 Alberta Environment and Eastern Irrigation District, *Adapting the Past to Meet the Future*, presentation to the Bow River Basin Advisory Committee meeting, April 3, 2002, pp. 8-9, 14-15, 19, & 29. The two presenters were Peter Watson, Director, Southern Region, Alberta Environment and David Hill, Eastern Irrigation District. The new licence increased the EID's minimum flow requirement for leaving water in the Bow River downstream of the Bassano Dam from 100 cubic feet per second to 400 cubic feet per second (cfs), an increase that will be virtually unnoticeable in a river the size of the Bow. If the 400 cfs minimum is not met, the former low flow restriction on diversions will apply.

29 *Water Act*, RSA 2000, c. W-3, s. 55(1)(f)

30 Bob Morrison, "What Really Matters – Part 2: Long-Term, Short-Term, and Changed Water Rights," *Moving Beyond Now*, v. 1, no. 2 (May, 2003), pp. 1-11

Unfortunately, this flies in the face of scientific evidence that most ground water is connected to surface water.[31] Water wells are, in most cases, diverting water from licensees who rely on surface water. Significant on smaller streams important to the cattle industry, the problem will only be solved when the government requires those who use ground water to prove there is no connection to surface water.

The third administrative problem keeping FITFIR from operating effectively is the faint hope that building more dams will fix situations with too many water rights and too little water.

Good places to build dams are already developed. This became clear when studies of the Meridian and Pekisko sites – both on the books for years – showed that dams would, at best, repay 26¢ to 35¢ of every dollar spent.[32]

Building dams can no longer be the last refuge of the provincial government. Instead, for FITFIR to succeed, efficient conservation of both water and taxpayers' money must be the focus of the Province.

## Renewing the *Status Quo*

*It can change as much as it likes. As long as it stays the same.*[33]
Adrian Mourby

After many years of promises, the Alberta government says it is ready to make the allocation system better. Indications are the system will only get worse.

The linchpin in the Government's efforts to improvement water management is its *Water for Life* strategy. Recently, for no apparent reason, the *Strategy* was "renewed."[34]

Now, renewal is something you need to do when things have changed. Very little, though, has changed since 2003 when *Water for Life* was created. Certainly *Water for Life* has not changed. As the government admits, the renewal is merely a continuation of the government's current approach.[35]

The government, though, feels that *Water for Life* has itself created changes. These changes are:[36]

- Understanding and knowledge have improved significantly.
- Drinking water is safer across the province.
- Partnerships are an important element in how water is managed.

Sadly, the evaluations of *Water for Life* conducted by the Alberta Water Council do not support these grand claims.[37] Despite much writing about plans, strategies, frameworks, assessments, reviews, criteria, systems, and programs, no data have been brought forward to show that these changes have occurred. It appears the *Water for Life* renewal is based on the assumption that water management has improved simply because the government has done things such as establish a water research institute, assess drinking water facilities, and create more partnerships. Although those things may be well-intentioned, they do not necessarily make water management better and could make it worse.

As well, the government feels that a lot of other things have changed. Most of the changes the government lists,[38] though, are not changes since 2003. Population and economic growth, the effects of climate change, the importance of ground water, the need for increased knowledge, the need for the

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31 See, for example, Thomas C. Winter, Judson W. Harvey, O. Lehn Franke, and William M. Alley, *Ground Water and Surface Water: A Single Resource*, pp. 2-21, U.S. Geological Survey, Circular 1139, 1998

32 Alberta Government, "Study shows costs outweigh benefits of Meridian Dam," March 11, 2002 and Alberta Environment, *Summary Report*, Pekisko-Stimson Water Management Study, 1989, p. 8

33 Adrian Mourby, "Sark: Times change, even on this tiny island," *The Independent*, March 16, 2008

34 Alberta Government, *Water for Life: A Renewal*, 2008

35 *Ibid*, p. 1

36 *Ibid*, p. 4

37 Alberta Water Council, *Water for Life: Recommendations for Renewal*, 2008, Alberta Water Council, *Review of Implementation Progress of Water for Life, 2005-2006*, 2007, and Alberta Water Council, *Review of Implementation Progress for Water for Life, 2004-2005*, 2005

38 *Water for Life: A Renewal*, p. 5

best way to allocate water, and Albertans' concerns about aquatic health, potential shortages, and their involvement in conservation and protection were already significant issues when *Water for Life* was first put together. The only things that actually have changed are the creation of the *Land-use Framework* and more emphasis by the government on partnerships intended to increase local commitment to protecting watersheds and ensuring local sustainability. Again, the government is talking about things it has done without any proof that those changes are meaningful, much less important or beneficial.

The government has also changed some of its water management principles. It only admits to one change in principle since 2003 when there are, in fact, five: one modified principle and four new ones. The changes, though, are not significant. The modified principle is still a commitment to water right transfers and first-in-time, first-in-right. The four new principles are merely restatements of outcomes, actions, and other commitments that were already part of *Water for Life* (Appendix - Table A-1).

The change that may have led to the renewal of *Water for Life* is the Alberta Water Council's recommendation that *Water for Life* should be organized around two themes: safeguarding water sources and accelerating action to protect water sources.[39] However, if this was the reason for the renewal, it appears to have had little effect on the government.

When the versions of *Water for Life* from 2003 and now are compared (Appendix - Table A-2), most of the goals, outcomes, and actions identified in the renewed *Water for Life* are repetition of what was created in 2003. There are improvements such as a commitment to viable, sustainable governance and a promise to work with aboriginal communities and the federal government to ensure safe drinking water. These improvements are offset by less protection and action since, for example, objectives will no longer be established through watershed plans and the goal of knowledge and research has been downgraded from ensuring that Albertans are knowledgeable to simply providing access to knowledge.

In other cases, what seems like an improvement is not. A slightly greater emphasis on implementation is something that was already anticipated in the 2003 version of *Water for Life* and the extension of water conservation objectives (WCOs) to all major basins is not necessarily an advantage since WCOs are a compromise between water use and environmental protection, apparently in conflict with the *Water Act*.[40]

There may have been other changes that led to the need to renew *Water for Life* such as less enthusiasm and commitment, lost opportunities, and disappointing results. There are hints in the evaluations conducted by the Alberta Water Council that these may be the reasons why renewal was necessary. However, the evaluations do not explicitly state this.

Nonetheless, *Water for Life* is what it was before – an effort to dress up what was already being done as if new. As a result, five years after *Water for Life* came into existence, key issues continue to be ignored or receive little attention. These issues include:[41]

- evaluation of policies and programs to identify strengths and weaknesses
- the need for pre-emptive regulation of unsafe activities related to drinking water supplies
- better licensing to protect existing water users and the aquatic environment
- enforcement and cancellation of water rights
- effective and enforceable flood damage reduction
- fees for the services provided by government-owned water management facilities
- royalties for water
- the capability to use adaptive management
- a negotiating instead of an advisory role for the public
- managing land use to protect water quality
- demand management
- adequacy of financial and technical resources.

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39 *Ibid*, p. 6

40 *Initial List of Issues and Gaps*, *supra* n. 63, pp. 25-26

41 Bob Morrison, "Alberta's Draft Water Strategy: Watershed Proposal or Just More of the Same," *Moving Beyond Now*, v. 1, no. 2 (May, 2003), pp. 19-26, Bob Morrison, "Alberta's Water Strategy: Watering Down Reality," *Moving Beyond Now*, v. 1, no. 2 (supplement – December, 2003), and Bob Morrison, "Getting Ready for the Past: The *Water for Life* Strategy," *Moving Beyond Now*, v. 1, no. 6 (November, 2005), pp. 3-8

Despite whatever good intentions are behind it, *Water for Life* is at best insignificant. At worst, *Water for Life* is an excuse for inaction, a diversion from the tough issues.

Canadian journalist Walter Stewart once described financial regulators as those who if nothing needs to be done, they're the best ones to do it. *Water for Life* is a godsend for those who want nothing done. For the rest of us, *Water for Life* is something to overcome.

## A Foregone Conclusion

*What's past is prologue.*[42]
William Shakespeare

Despite apparent lack of concern for what is happening with our water, the government is plainly worried about what is happening to our land. As it admits in its *Land-use Framework*, the old rules no longer work.

It is impossible to pin down what the government believes the problems are. However, we can get a sense of what the government is worried about by seeing what is and what is not in the *Land-use Framework*.

Ted Morton, then Alberta's Minister of Sustainable Resource Development, has said the provincial government's *Land-use Framework* "ushers in a new era of stewardship for Alberta's air, land, water and wildlife." According to the government, credit for creating such a strong *Framework* belongs to Albertans for the comments they provided during the *Framework*'s development.[43]

Reading the *Framework* provides a different story. The new era looks a lot like the old one and comments provided by Albertans and recommendations from the government's working groups have, for the most part, been ignored or misinterpreted.

The *Framework* initially looks like it will be a good plan for the future, something that begins with the past and successfully guides people to a better future. It acknowledges that "sticking with the old rules will not produce the quality of life we have come to expect." It also establishes a clear goal for the future: "we want our children to enjoy the same quality of life that current generations have."[44]

The *Framework* makes it clear, though, that – except for some potential gaps – provincial policies and strategies are not among the old rules that need changing.

Instead of improving the provincial government's policies and strategies, the *Framework* is designed to:[45]

- provide continuity with past provincial policy
- reconcile, align, and integrate provincial policies at the regional level
- address "areas of provincial public interest"
- provide "an understanding" of provincial priorities
- establish regional planning that "is the most effective way to implement provincial policy."

In other words, the *Framework* is a tool for the provincial government to get what it wants. The outcome of the *Framework* will be a foregone conclusion: the fulfillment of the government's desires.

## Stifling Competition

*The definition of the alternatives is the supreme instrument of power.*[46]
E. E. Schattschneider

It would be nice to assume that provincial policies and strategies are not part of the problem with our system of managing land use. Such an assumption is illogical. The dominant influence on the way we use

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42 *The Tempest*
43 Alberta Government, "Final Land-use Framework reflects Albertans' input," news release, December 3, 2008
44 Alberta Government, *Land-use Framework*, 2008, p. 6
45 *Land-use Framework*, pp. 7, 19, 21, 23, 26, 29, & 45
46 E. E. Schattschneider, *The Semisovereign People*, Dryden Press, 1975, p. 66 cited in T. F. Schreker, *Political Economy of Environmental Hazards*, Law Reform Commission, 1984, p. 3

land in Alberta has been the provincial government. It has, among other things, fostered urban and rural sprawl through its policies on highways, infrastructure subsidies, and decentralization, sanctioned the proliferation of utility corridors with preferential treatment for long-distance transmission lines, and nurtured premature expansion of the oil and gas industry by adhering to Ernest Manning's doctrine of encouraging "greater market growth than would otherwise occur."[47]

The provincial government's Planning and Decision Making (PDM) Working Group identified conflicts among provincial government policies and encouraged the provincial government to provide clearly articulated policy direction on land use management.[48] The government's Conservation and Stewardship Working Group agreed that provincial policy lacks clarity.[49]

The PDM Working Group made four recommendations for a process to address conflict and lack of clarity:[50]

- clear, detailed "relationship between existing/emerging policies and planning processes … at the onset of regional planning"
- "a better bridge between the LUF [*Land-use Framework*]and application of planning at the regional and local levels"
- implementation as important in "solidifying policy direction" and addressing "emerging policy challenges"
- "an initial interpretation that speaks to balancing the major policies."

Instead of adopting these recommendations, the dominant theme of the *Framework* is better integration of the provincial agenda into municipal, corporate, and individual decision-making.

There is not, however, a clearly defined provincial agenda. Provincial policies and strategies are as diverse as the needs of Albertans, needs that are pitted against each other in the competition for scarce resources.

For the provincial government, the solution to this competition is to avoid public debate over government priorities by having provincial agencies form a common front through policy integration.[51] The *Framework* is part of the effort to achieve a common front.

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47 For analysis of the provincial government's treatment of the oil and gas industry, see Royalty Review Panel, *Our Fair Share*, 2007, Bob Morrison, "Will Alberta's economy grow up?," *Calgary Herald*, November 3, 2007, and Bob Morrison, "Provincial Tories invite Harper's interference," *Edmonton Journal*, October 6, 2008. For examples of provincial interference in the energy market, see

- Ed Stelmach, "Address to the Calgary Chamber of Commerce," February 5, 2009 and Renata D'Aliesio, "Tories bail out energy juniors," *Calgary Herald*, February 6, 2009
- Alberta Government, "Alberta to offer transitional royalty rates to promote new drilling," November 19, 2008
- Alberta Government, "Alberta surges ahead with climate change action plan," July 8, 2008
- Alberta Government, "New deep resource programs promote high-cost oil and gas development," April 10, 2008
- Energy Resources Conservation Board, *Upstream Petroleum Industry Flaring, Incinerating, and Venting*, Directive 060, November 16, 2006, section 2 which allows flaring, burning, and releasing of "waste" gas if it is "uneconomic."

For analysis of provincial treatment of long-distance transmission lines, see Enmax, *Fostering the Efficient Development of Alberta's Electricity Infrastructure through Changes to the Transmission Regulation*, May, 2008. For analysis of provincial grants to municipalities, see Bob Morrison, "Is Financial Assistance to Alberta Municipalities Fair?" *Moving Beyond Now – Calgary 2010*, Issue #2 (September 27, 2010). The Ernest Manning quote is from Paul Chastko, *Developing Alberta's Oil Sands*, University of Calgary Press, 2004, p. 124 citing the Alberta Government's "Oil Sands Development Policy" of February, 1968, pp. A7-A8.

48 Sierra Systems Group, *Multi-Stakeholder Working Groups Review Report*, 2008, Appendix 3, pp. 9-10,15, & 17

49 *Multi-Stakeholder Working Groups Review Report*, Appendix 4, p. 6

50 *Multi-Stakeholder Working Groups Review Report*, Appendix 3, pp. 9-10

51 As an example of the provincial government's desire for policy integration, the Alberta Ministries of Energy, Sustainable Resource Development, and Environment embarked on the *Sustainable Resource and Environmental Management* (SREM) initiative to strengthen the ways they work together and take joint responsibility to achieve agreed-upon natural resource and environmental outcomes. The *Land Use Framework* is a product of SREM. Other SREM projects include the *Upstream Oil and Gas Policy Integration Project* and *Information-Sharing Initiative*.

Prior to decisions being made, policy integration within the provincial government is not desirable. As the provincial government found during development of the *Framework*, the public fears integration will provide "a 'loophole' for economic considerations to trump all others."[52] The important, informative debates among agencies about what is best for Alberta will not be exposed to public scrutiny. Only information and options compatible with provincial government's political priorities will be brought forward.

## A Public-Public Partnership

*Government is too big and too important to be left to the politicians.*[53]
Chester Bowles

The idea of the provincial government alone determining Alberta's priorities is not consistent with public views. The public overwhelmingly supports provincial officials working with other governments "to ensure effective land-use planning" and the provincial government taking "a more direct role in working with regional and local governments and stakeholders to achieve provincewide objectives." [54]

The public also expects the provincial government to involve them in decisions on priorities. They feel that current priorities favor economic development to the detriment of the environment and that the provincial government needs to be more accountable and move "toward a proactive approach that recognizes multiple interests and needs."[55]

A solution to the problem of the provincial government being the sole judge of priorities was developed by the government's Planning and Decision Making Working Group. They recommended that[56]

- regional advisory councils and the provincial government's Land-use Secretariat "work cooperatively in the development of plans"
- regional advisory councils should replace the Land-use Secretariat as advisors to the provincial Cabinet
- regional advisory councils "should take a more active role in the plan development process."

The first proposal was not accepted. Instead, regional advisory councils will be consulted while the Land-use Secretariat develops plans by working "in conjunction with [provincial] departments with an interest in land use." The second proposal was accepted. Regional advisory councils will "provide advice [*sic*] and receive direction from the Cabinet." The third proposal resulted in regional advisory councils being given the additional responsibility to "advise and participate in public and stakeholder consultation for the planning process." They were not, however, granted the authority to work in conjunction with the Land-use Secretariat in developing public and stakeholder consultation, much less in developing regional plans.[57]

It must be demonstrated that the theories politicians and other public servants operate under are best for the province and what is best for the province is best for a region. Although the provincial government might argue that its interests represent the public interest, the public has its doubts. They want the *Framework* to be a partnership between the public and its government.

## Sustaining Sustainability

*We can't stop living to save the world*.[58]
Phone-in show caller.

Debate over provincial priorities – if allowed to occur outside the confines of provincial offices – will focus on sustainability. Although a stronger commitment to sustainability than normally offered by government, the *Framework*'s promise of the same quality of life for our children is vague. The *Framework* does not provide an answer to how the needs of the future will be balanced against the demands of the present.

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52 Praxis Group, *Land-use Framework Workbook Summary Report*, 2007, p. 29
53 Attributed.
54 *Workbook Summary Report*, pp. 18 & 47
55 *Ibid*, pp. 2, 8, 11-12, 18-19, 29, & 46
56 *Multi-Stakeholder Working Groups Review Report*, Appendix 3, p. 9
57 *Land-use Framework*, p. 29
58 Joe, caller to *Wild Rose Forum*, CBC Radio, January 17, 2007

The *Framework* is built on the assumption that we know or can very quickly figure out what sustainability is. This is a mistake. As the provincial government's energy policies have shown, sustainability is open to interpretation and, if not thought out clearly, results in something that is unsustainable.[59]

There is not enough knowledge and agreement to be able to say what sustainability is. The only thing we can say for certain is that climate change, depletion of resources, and other problems have made our lifestyles unsustainable. Knowing that, sustainability begins with a quest for stability:[60]

> *… a state of no environmental or social deterioration, that allows us to eliminate environmental and social deficiencies which pose a threat to that stability and raise environmental and social performance to a sustainable level.*

Because we can chose whatever level of sustainability we want ("wasteland," pseudo-natural ecosystem, etc.), sustainability depends on what we mean by quality of life. Yet, the *Framework* is unclear on what quality of life is, merely identifying it as what "we have come to expect."[61]

Although the *Framework* recognizes that "Albertans' well-being is more than just jobs and economic development" and "includes significant environmental, social and cultural dimensions,"[62] quality of life is locked into the narrow perspective of the provincial government's outlook. The issue of international competitiveness is raised, but other national and international constraints are not a consideration. Climate change is mentioned, but is identified as something that Albertans must be "prepared to respond to and adapt to"[63] rather than eliminate our role in causing it.

Alberta is not an island immune to global problems and with no responsibility to share in solving those problems. Sustainability is a question of how much development is too much, a question that can only be realistically judged in a global context of how our actions affect others and how their actions affect us.

Even when we do not need to consider the global implications of our choices we must still deal with the fact that, as the *Framework* acknowledges, "land is a limited, non-renewable resource."[64] Other resources such as water and air are also limited – and non-renewable if contaminated, mismanaged, or over-allocated. In dealing with scarcity, there are inevitably situations where the use of resources leaves no option except to prohibit additional use or curtail existing uses.

The *Framework* avoids this issue by making a distinction between limits on "new economic development" and limits on the effects of development.[65] It is an artificial and unproductive distinction. Each limit on an

**What Are the Views of the Public?**

Aside from information sessions (for which results were not provided), the provincial government used two formal methods to measure public views as it developed the *Land-use Framework*:

- a workbook by a consultant that could be submitted by mail or on-line
- a combination of an on-line questionnaire and a workbook with the workbook distributed to people who had been contacted by the government during a previous consultation process.

Neither method definitively represents the views of Albertans since neither method used random sampling techniques to select participants. As discussed below, only the results from the consultant-designed workbook were considered usable. When the views of "the public" are referred to here, it is the results from the consultant-designed workbook that are being used.

Of the two methods, the consultant-designed workbook is more reliable because it examined a broader range of topics, covered those topics in greater depth, used statements and questions that were clearer and more distinct, evaluated results in a more systematic and coherent fashion, and did not introduce additional bias, as distribution of the other workbook did, by imposing extra constraints on the opportunity to participate.

In addition to the methodological weaknesses of the questionnaire/workbook combination, the results derived by that method were evaluated in a manner that is inaccurate and misleading. In particular, statements from the questionnaire were misinterpreted or reported incorrectly, dissimilar responses were grouped together, "neutral" responses were interpreted as indicating agreement, and probability statistics were applied to the results, something that is invalid with a non-random sample. The results could not be used in a meaningful way.

59 "Will Alberta's economy grow up?" and "Provincial Tories invite Harper's interference"
60 "Is Financial Assistance to Alberta Municipalities Fair?" *supra* n. 44, pp. 21-22
61 *Land-use Framework*, p. 6
62 *Ibid*, p. 15
63 *Ibid*, p. 23
64 *Ibid*, p. 4
65 *Ibid*, p. 31

activity limits the activity. In some cases, limiting the effects of an activity will mean a new activity is not feasible or an old activity can no longer continue.

To some, limiting development means that we have to sacrifice our quality of life. Yet, quality of life is rarely defined and, when a definition is provided, it boils down to growth for growth's sake.

Growth for growth's sake is not quality of life. It is blind faith that more development and the money it generates will magically produce health, security, and happiness. It is another and possibly the most flagrant example of throwing money at a problem in the hope the problem will solve itself.

We can do much better than that. We can make money a means to an end by linking sustainability and quality of life in a way that manages growth so it delivers health, security, and happiness without jeopardizing the economic, environmental, and social capital that makes economic growth possible.

## Moral Sustainability

> *And to those nations like ours that enjoy relative plenty, we say we can no longer afford indifference to suffering outside our borders; nor can we consume the world's resources without regard to effect. For the world has changed, and we must change with it.*[66]
>
> Barack Obama

Sustainability is about choices and choices are about what we value. Depending on what kind of sustainability we end up with, people will win or lose financially, in terms of health and security, etc. Sustainability is therefore a moral issue. Sustainability must become part of the values at the core of our belief systems.

The provincial government's Conservation and Stewardship (CS) Working Group approached the morality of sustainability by recommending that a risk management approach be used by decision-makers to "identify when/where it is appropriate to consider very cautious and/or preventative measures." The CS Working Group identified situations in which it would be necessary to exercise caution and/or prevention:[67]

- there may be no recourse to reverse a decision
- the consequences of a decision will be significant
- adverse human health effects or irretrievable land pollution could result.

The provincial government did not adopt this recommendation. On the contrary, it adopted a position that growth and development should not be stopped or shut down even if doing so would "save the environment."[68]

In consultation leading up to the *Framework*, the public also commented on the morality of sustainability. People made it clear they want a rebalancing of priorities to achieve sustainability and greater conservation of environmental resources. In particular, the public is willing to accept limits to recreation, residential, energy, agricultural, and forestry development to gain more watershed protection and protected areas. Except for limits on agriculture, the public is also willing to accept limits on development to gain more habitat protection. The public's willingness to accept limits extends to restricting residential development to protect agriculture.[69]

Despite the public's desire to see a rebalancing between economic development and environmental protection, the *Framework* has shifted away from the commitment from the original draft that "land-use planning and decision-making will operate within" defined thresholds for air, land, water, and biodiversity.[70] Instead, "land use planning and decision-making will be based on balancing" environmental thresholds with economic and social considerations.[71]

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66 Barack Obama, *Inaugural Address*, January 20, 2009
67 *Multi-Stakeholder Working Groups Review Report*, Appendix 4, p. 7
68 *Land-use Framework*, pp. 6 & 31
69 *Workbook Summary Report*, pp. 2, 3, 11, 12, 15-16, 32, & 46-47
70 Alberta Government, *Draft Land-use Framework*, 2008, p. 18
71 *Land-use Framework*, p. 31

## Limiting Limits

*Hell hath no limits.*[72]
Christopher Marlowe

As a result, the *Framework* will put limits on limits. It will not limit new development when there are economic and social arguments against doing so even if future quality of life could be jeopardized.

Instead of applying realistic limits, the purpose of the *Framework* is to "effectively balance competing economic, environmental and social demands." This balance is to be judged in terms of sustaining a growing economy, a healthy and prosperous way of life, and the use of natural resources for economic gain. Ecological sustainability is only identified as something to be promoted.[73]

As a result, sustainability in the *Framework* is an issue of using resources without ensuring that the environment or society is sustained at a level that ensures a viable quality of life. The objective of maintaining the same quality of life for our children is based on the assumption that economic growth means quality of life.

Consultation concerning the *Framework* showed that the public feels the current balance between economic development and environmental protection is too focused on development. A wide variety of concerns were identified including lack of monitoring, jurisdictional inconsistencies, social impacts, and urban sprawl.[74]

The public stressed that "Alberta needs a long-term comprehensive growth management plan for land-use."[75] In commenting on the issue, the public identified the criteria they felt should be used in deciding to limit growth (Table 1).

The criteria identified by the public are clear on the direction Alberta should take in limiting growth. Limits must be identified before development occurs, the limits must be objective and scientific, and the key factors for setting limits are: environmental protection, infrastructure, human services, quality of life, agriculture, and recreational "rights." Most significantly, the resistance to limits is not that they threaten growth, but that they might result in economic decline.

The *Framework* is based on a misreading of the public's economic concerns about sustainability. The *Framework* will limit limits if they might get in the way of a growing economy.[76] This is not the public's concern. Instead, people do not want limits to trigger or deepen economic hardship.

**Table 1**
**Key Criteria**
**Acceptable and Unacceptable Limits on Growth**

| Limits on Growth Are Acceptable | Limits on Growth Are Not Acceptable |
|---|---|
| ▪ Adopting limits in the interest of environmental protection.<br>▪ Sustainability must inform the use of limits.<br>▪ Limits are identified before development occurs.<br>▪ The planning process should be transparent including public input.<br>▪ Development should not exceed the capacity of cities and towns to meet infrastructure and human service demands.<br>▪ Protection of agricultural land warrants setting limits.<br>▪ Preservation of Albertans' quality of life, now and in the future, is paramount<br>▪ Ensure quality of life. | ▪ Limits must be informed by objective and scientific knowledge rather than special interests.<br>▪ Do not trigger or deepen economic hardship by imposing limits.<br>▪ Temporarily suspend limits if they fuel economic downturns.<br>▪ Setting limits is unnecessary when development is well planned and environmental impacts are negligible.<br>▪ Do not infringe on the rights of Albertans to enjoy natural areas and engage in recreational activities. |

Source: Praxis Group, *Land-use Framework Workbook Summary Report*, 2007, p. 17

72 *The Tragical History of Dr. Faustus*
73 *Land-use Framework*, pp. 6, 8, 23, 33, 34, & 52
74 *Workbook Summary Report*, pp. 11-12
75 *Workbook Summary Report*, p. 17
76 *Land-use Framework*, p. 6

The *Framework* has adopted a philosophy that is part of the "old rules" that no longer work for land use planning and decisions. Growth is treated in the *Framework* as inevitable and desirable. Limits on growth are to be balanced against the need to "sustain the momentum" of the economy.[77]

The assumption that growth is inevitable and desirable turns rational decision-making on its head. It presumes that an unknown, speculative future is better than what we already have. It does not place on the shoulders of those who advocate more development the responsibility to prove that additional human activity is desirable, superior to current conditions, and sustainable.

## Confronting Complexity

*Simplicity is the most deceitful mistress.*[78]
Henry Adams

Yet, how do we judge whether or not more development is better? We do it by dealing with complexity.

Dealing with complex systems like land use management is much more than integrating decisions with one set of desires – in this case, the desires of the provincial government. It involves four key tasks: to understand initial conditions, to understand linkages and interactions, to understand how, for better or worse, change occurs, and to understand human and physical risks and uncertainties.[79]

Understanding initial conditions is Job #1. Planning and decision-making are reduced to mere guesswork unless people know how things currently work (or do not work) and how they got to be the way they are. Unless initial conditions are well-defined and understood, participants in planning and decision-making will not know if they are repeating past mistakes, reinventing the wheel, or even making a difference.

The *Framework* is not capable of dealing with initial conditions. Although it mentions that a systems approach will be used,[80] the *Framework* is not a system for understanding the system.

The *Framework* promises systems for regional planning, managing cumulative effects, managing information, and "continuous improvement."[81] However, the descriptions of those systems are abstract and there is little acknowledgement that systems already exist for those things. As well, the strengths and weaknesses of the existing systems have not been evaluated. We are simply left with the provincial government's unhappiness that it is not getting what it wants.

The systems proposed in the *Framework* rest on the erroneous assumption that people agree about what is wrong with land use management and what they think is wrong, actually is wrong. The comments received from the public and the issues raised by the government's working groups show that there are a wide variety of conflicting views on why the current land use management system is not adequate.

Unable to explain initial conditions, the *Framework* will be unable to successfully handle the other three tasks for managing complex systems. It will be a mystery how components of the land-use system are linked and interact, how change occurs, and the risks and uncertainties that we face. Built on ignorance and presumptions, the land use management system that emerges from the *Framework* will be defenceless against the political, economic, and bureaucratic forces that will try to exploit or undermine it.

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77 *Ibid*, pp. 6 & 23
78 Henry Adams, *The Education of Henry Adams*, 1905
79 Bob Morrison, "Can Chaos Theory Solve the Puzzles of Planning?" *Moving Beyond Now*, v. 1, no. 1 (August, 2002), pp. 13-15
80 *Land-use Framework*, pp. 7, 39, & 53
81 *Ibid*, pp. 23, 31, 38, & 39

## Missing Ministries

*There stood the urchin, as you will divine,*
*Something between a hindrance and a help.*[82]
William Wordsworth

One way to get a better handle on complexity is to ensure key players are involved in the *Framework*. Three key agencies which directly or indirectly "set rules for land use"[83] are missing from the *Framework*.

Two of those provincial agencies have a direct influence through their use and management of land:

- **Ministry of Infrastructure:** Builds or leases facilities for government offices, health care, and schools and manages land for transportation/utility corridors (TUCs) in Calgary and Edmonton.
- **Ministry of Transportation:** Plans and builds provincial highways and provides financial assistance to municipalities for roads, water and wastewater systems, and other infrastructure.

  The provision of highways, roads, government offices, schools, and other public facilities is based on provincial government policies including the drive for rural stabilization and decentralization and the provincial government's capital plan. Subsidies for rural stabilization and decentralization encourage dispersed settlement and keep alive uneconomic businesses. Subsidies embedded in the government's capital plan[84] can also be major factors in encouraging dispersed settlement and supporting uneconomic activities.

  As for TUCs, they were created "to facilitate the development of the cities of Calgary and Edmonton, their surrounding regions, and the province" by acquiring land for high-speed roads, pipelines, power lines, and municipal utilities such as water and sewage lines.[85] If as the provincial government currently intends, TUCs are used exclusively for roads and utilities, then they will continue to pave the way for more urban and rural sprawl. If instead, roads and utilities in the TUCs are provided only where they support sustainable land use, then excess land within the TUCs can be re-allocated to retail, office, residential, and industrial uses.

The other provincial agency missing from the *Framework* is:

- **Ministry of Finance and Enterprise:** Manages the system of provincial taxes, fees, and other forms of revenue, manages the province's financial assets, leads regulatory reviews, analyzes economic trends, provides economic forecasts, and manages risk related to public assets.

  The Ministry of Finance and Enterprise is a key agency to have involved in the *Framework*. It advises on or administers financial assistance, capital planning, and the rules on taxes and user fees for land and other public resources. Among provincial agencies, it has the most comprehensive knowledge of economic contingencies and the pros and cons of regulatory actions, taxes, and pricing. The financial issues the Ministry handles have a significant influence on how land is used and the success and sustainability of that use.

Actions taken under the *Framework* will be weaker and less effective without the direct involvement and eventual buy-in from those ministries.

82 William Wordsworth, "Michael," *Lyrical Ballads with Other Poems*, v. 2, 1800
83 *Land-use Framework*, pp. 11-12
84 Alberta Government, *The 20-Year Strategic Capital Plan*, 2008, p. 14
85 Alberta Infrastructure, *Transportation/Utility Corridor (TUC) Program Policy*, 2004, p. 2

## Money Matters

*This would be a great world to dance in if we didn't have to pay the fiddler.*[86]
Will Rogers

The expertise within the Ministry of Finance and Enterprise will be invaluable when considering the impact on the sustainability of land use because of pricing and subsidization of resources and infrastructure.

In particular, government financial arrangements have a significant influence on why Alberta's landscape is – for better or worse – the way it is. Government funding and incentives encourage development such as roads, urban expansion, utility corridors, and resource extraction. Taxes, fees, royalties, and other market-based price signals promote and prohibit certain behaviors. They also allow governments to receive a share of resource revenue to be able to manage the economic, social, and environmental impacts that occur when development goes ahead.

The *Framework* recognizes that better market-based instruments can play a role in making land use more efficient, socially valuable, and environmentally sound. However, a narrow view of market-based instruments has been adopted in the *Framework*. Market-based instruments are only identified as a way to motivate behavior rather than to compensate society for opportunities lost or impacts created through the allocation of resources.[87]

As well, regulation is not considered a market-based instrument, but is identified as a way in which market forces are "facilitated."[88] This is an illusion since regulatory measures are market-based and oppose some market forces while facilitating others.

The provincial government's Conservation and Stewardship Working Group recommended that a full-cost accounting system be developed for valuing ecological functions so that economic, social, and environmental trade-offs can be equally compared.[89] This recommendation was echoed by the government's Monitoring and Evaluation Working Group which recommended full cost-benefit analysis to balance environmental and social indicators with "our current focus on economic indicators."[90]

The provincial government did not incorporate either working group's recommendation into the *Framework*. Instead, it removed the commitment to "evaluate the effectiveness of programs and practices, including sustainable funding mechanisms" that was in the *Draft Framework*.[91]

Market-based instruments will be part of the *Framework*'s conservation and stewardship strategy. However, market-base instruments will be limited to providing rather than protecting ecological goods and services.[92] The environment, if protected, will supply goods and services without us having to "provide" them. As a result, under the *Framework*, market-based instruments will only be used to restore ecological goods and services by mitigating damage. They will not be used to prevent damage in the first place.

The *Framework* does not identify the principles that will be used to create a system of market-based instruments to conserve land and other resources and encourage stewardship. Criteria that would make such a system realistic and successful are:

- compensation from the users of land and other resources for the economic, infrastructure, environmental, and social impacts they cause

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86 June 27, 1930 from Donald Day, ed., *The Autobiography of Will Rogers*, Houghton Mifflin, 1949, p. 228

87 *Land-use Framework*, pp. 33-34 & 52. The *Framework* only commits to evaluating market-based "incentives" to encourage public land stewardship, while promising to develop "applicable incentives and market-based instruments" for private land stewardship. This would put private land owners at a competitive disadvantage if pricing or taxes are used to influence their activities but not influence similar activities on public land.

88 *Land-use Framework*, p. 52

89 *Multi-Stakeholder Working Groups Review Report*, Appendix 4, p. 11

90 *Multi-Stakeholder Working Groups Review Report*, Appendix 5, p. 10

91 Alberta Government, *Draft Land-use Framework*, 2008, p. 19

92 *Land-use Framework*, pp. 33-34

- a mature market in which land and other resources are priced based upon all considerations including the willingness of Albertans to be compensated for giving up publicly-owned resources through sales or approvals
- a substantial and fair contribution to the revenue required to meet the long-term needs of Albertans for education, health care, police and fire protection, and other goods and services provided by governments
- no government funding or concessions on taxes, fees, royalties, etc. that assist or encourage development and resource use that are unsustainable.

## It's the Efficiency, Stupid

*To waste, to destroy, our natural resources, to skin and exhaust the land instead of using it so as to increase its usefulness, will result in undermining in the days of our children the very prosperity which we ought by right to hand down to them amplified and developed.*[93]
Theodore Roosevelt

One of the most encouraging aspects of the *Framework* is Strategy 5: the promotion of efficient land use. With Strategy 5, the *Framework* has found the crux of the problem: we have allowed our activities to spread across the province in ways that fail to treat land as the "limited, non-renewable resource"[94] it is.

Even though Strategy 5 is not well-integrated with the other aspects of the *Framework*, it covers the key objectives that can save us from ourselves:[95]

- minimize the amount of land for permanent facilities
- develop "green" technology to reduce our impacts
- increase density of use
- make better use of existing infrastructure
- reduce the frequency and length of travel.

Strategy 5 was added to the *Framework* based on a recommendation from the provincial government's Growth and Resource Management (GRM) Working Group.[96] Strategy 5, though, does not include key recommendations from the GRM Working Group:

- Goals:
  - "Save taxpayers from the high cost of building infrastructure to serve development that has spread far from our traditional population centers."
  - Conserve unique ecological areas.
- Objectives:
  - Minimize industrial "impacts on water, natural resources, and the air shed."
  - Conserve agricultural land.
  - "Develop well-planned, effective infrastructure corridors … that use the least amount of land."
- "A value and pricing mechanism for functional land, goods, and services."

## Accumulating Impacts

*If you don't crack the shell, you can't eat the nut.*[97]
Proverb

If we are not efficient with our land use, we will build up a debt of economic, social, and environmental impacts that could have been avoided. The *Framework* recognizes this in its proposal for a system for managing cumulative effects. The proposal, though, has little substance.

The Southern Foothills Study[98] (SFS) shows some of the work that will need to be done to set up a system for managing cumulative effects.

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93 Theodore Roosevelt, *Seventh Annual Message to Congress*, December 3, 1907
94 *Land-use Framework*, p. 20
95 *Land-use Framework*, p. 36
96 *Multi-Stakeholder Working Groups Review Report*, Appendix 2, pp. 8 & 15-17.
97 Attributed, Persian or Russian

First, the SFS established a baseline. This included a description of the current state of the environment and its future state if current practices continue.

Second, the SFS examined the inability of regulatory agencies such as the Energy Resources Conservation Board and Alberta Environment to judge whether the impacts of new development are unacceptable or in need of more stringent requirements. A cumulative effects management system can not work effectively unless it is known what factors – lack of information, lack of policy, lack of legislation, lack of initiative, lack of skill, or lack of resources – are keeping agencies from doing a better job.

Third, the SFS pinpointed the problem that decision-makers are poor at dealing with incremental, non-crisis resource management problems. Understanding how decision-makers decide and identifying their strengths and weaknesses are key to making cumulative effects management work.

Fourth, the SFS tackled the problem of what is "excessive" human activity. Knowing what is excessive is fundamental to achieving sustainability and we can only know what excessive is if we have determined the individual and cumulative thresholds we can not or should not cross.

These lessons from the SFS were not incorporated into the *Framework*.

## Absolute Angst

*A good Parson once said, that where Mystery begins, Religion ends. Cannot I say, as truly at least, of human Laws, that where Mystery begins, Justice ends?*[99]
Edmund Burke

As noted, the *Framework* has abandoned defined environmental thresholds for a "balance" which allows economic and social considerations to override the limits on our activities that are necessary for those activities to be sustained. This is in keeping with the *Water for Life* philosophy that decision-makers should be allowed to exercise discretion rather than having to meet prescribed standards in a plan.

Giving decision-makers discretion may, in limited cases, be necessary. Rules can not cover all eventualities and it is not advisable to have hard and fast rules when the pros and cons of methods for accomplishing objectives are debatable.

Beyond those uncertainties, decision-makers are servants of a plan. Contrary to the belief that it is wrong to "fetter" decision-makers by requiring them to comply with a plan, a plan is supposed to do just that: force decision-makers to do what they are supposed to do. To be effective, a plan must be "dictatorial" in its implementation.

This is a matter of accountability. To allow efficient day-to-day administration in the public and private sectors, decision-makers must be able to operate independently of outside supervision. A plan provides the necessary supervision by prescribing checks and balances that eliminate decisions that are not in the public interest.

Some people believe that an outcomes-based approach, as used in the *Framework*, is not prescriptive. This is a red herring. An outcomes-based approach is prescriptive because it establishes results that decision-makers are expected to achieve.

However, a successful outcomes-based approach is not one that simply identifies broad goals like those included in the *Framework*. When outcomes are made up of vague material such as guidance, context statements, and desired results, they will be ineffective because, as with the provincial government's *Land-Use Policies*,[100] there are no standards by which decisions can be judged.

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98 Southern Foothills Study
99 Edmund Burke, *A Vindication of Natural Society*, 1757
100 Alberta Government, *Land Use Policies*, 1996

If rules are clear, specific, and mandatory, it is quite easy to evaluate a decision against thresholds and be consistent about it. Evaluation and consistency are extremely difficult when the rules are fuzzy and open to a decision-maker's discretion. To ensure that outcomes are achieved, a strategy must regulate the behavior of decision-makers, with each decision evaluated against thresholds that must not be violated. Decision-makers need to know what their jobs are – whether the job is using land, approving development, monitoring results, administering prices and subsidies, or enforcing the law.

This means prescribing thresholds for, among other things, the level of training, technology, knowledge, and acceptable financial and environmental risks needed to ensure success. To do otherwise is to invite problems that could have been avoided but, instead, have to be fixed after the fact. We know this from catastrophes like Love Canal, the Walkerton tragedy, man-made droughts, man-made global warming, unsustainable deforestation, and the collapse of fisheries. We also know this from the incremental, cumulative deterioration of ecosystems and communities that sufficiently prescriptive thresholds could have nipped in the bud.

The reliance on vague thresholds comes from a desire to be flexible, to give decision-makers the ability to cope with unforeseen issues. However, a decision-maker should not try to cope with the unforeseen by allowing exceptions to a plan. It is inappropriate to allow exceptions to a plan since a plan is based on a balancing of competing interests that is far more systematic and comprehensive than a decision-maker alone can provide.

The flexibility of exceptions is a sanctuary for those who fear absolutes because absolutes strip away the power to consider personal factors when making a choice. Without those absolutes, a decision-maker can relax thresholds to suit the demands of time, limited resources, outside influence, and bias. Each exception cheats the thresholds so that collectively the impacts from decisions exceed acceptable limits and we are left with a series of deviations from a plan rather than the results we wanted.

## Perfecting Plans

*If you see any horseshoes floating downstream, look under them for my cayuses. Deep-water navigation by pack train ain't what it's cracked up to be.*[101]
Soapy Smith

Plans are supposed to save us from bad decisions. Yet, plans have a poor track record. They tend to produce expedient decisions that are ineffective – and unsustainable when you can actually assess whether they are sustainable or not.

The factors that lead to poor plans are many. They include the problems that plagued the provincial government's Integrated Resource Management program (IRM) of which the *Framework* is a continuation.[102] Among the significant difficulties that IRM encountered were:[103]

- pressures from individual sectors of society
- conflict among sectors
- lack of political support
- deregulation
- lack of funding
- downsizing

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101 Quoted in Lewis R. Freeman, "The Mother of Rivers: An Account of a Photographic Expedition to the Great Columbia Ice Field of the Canadian Rockies," *National Geographic*, v. 47, no. 4 (April, 1925), p. 425

102 *Land-use Framework*, pp. 6-7. It is unclear how plans developed under IRM and other planning activities will fit into the *Framework*. (*Multi-Stakeholder Working Groups Review Report*, 2008, Appendix 3, p. 18)

103 Steven A. Kennett, "Reinventing Integrated Resource Management in Alberta: Bold New Initiative or 'Déjà Vu All Over Again'?" *Resources*, no. 77 (Winter, 2002), Canadian Institute of Resources Law, pp. 1-7, Steven A. Kennett, "A Checklist for Evaluating Alberta's New Land-Use Initiatives," *Resources*, no. 95 (Summer, 2006), Canadian Institute of Resource Law, pp. 1-8, and Daniel Farr, Steven Kennett, Monique M. Ross, Brad Stelfox, and Marian Weber, *Al-Pac Case Study Report – Part 2: Regulatory Barriers and Options*, National Round Table on the Environment and the Economy, 2004 cited in Westhoff Engineering Resources Ltd., Wendy Aupers & Associates, and Waxwing Synthesis and Resolution Inc., *Initial List of Issues and Gaps: Water Policy Scoping and Issue Identification*, Alberta Water Council, 2006, p. 45

- lack of follow-up planning
- limited use of performance measures to resolve conflict
- lack of clear, integrated policy.[104]

Despite various promises – including clear, consistent criteria, choices based on science, adequate resources, and no political expediency[105] - the *Framework* does not provide a planning system that will overcome these problems.

Three key weaknesses in the *Framework*'s planning system are:

- limited funding
- an unrealistic timeline
- reliance on "collaborative" planning.

Minister Morton has said that $7 million would be available in the first year to implement the *Framework*, with a promise of more to come.[106] It is unclear if this was "new" money, money already committed to existing programs, or money diverted from those programs.

From 1992 to 2006, there was a dramatic decline in the budget for the environmental protection provided by the provincial ministries of Sustainable Resource Development and Environment (Table 2). There are different ways to judge this decline in funding. However, regardless of how we measure it, funding has not kept pace with Alberta's growth, racking up a deficit of between $2 billion and $6 billion (as of 2005).

The *Framework* identifies several of the problems that have not been fixed as environmental protection funding fell behind Alberta's growth. These include:[107]

- balancing and coordinating economic growth with social and environmental goals
- resolving conflicts between competing user groups
- reducing the loss of productive farm and ranch land
- predicting the needs of future generations
- defining responsible land use
- establishing a stewardship ethic
- acquiring the science, evidence, and experience to make well-informed decisions
- developing an accurate, timely, and accessible information management system
- developing an effective system for managing cumulative effects
- implementing a sound monitoring, evaluation, and reporting system
- responding to economic, environmental, and social change
- developing clearly defined and consistently followed decision-making criteria and processes
- integrating policies and strategies
- resolving issues with aboriginal peoples
- protecting public resources (e.g., fish, wildlife, wetlands) on or adjacent to private lands
- developing market-based instruments for protecting the environment and rewarding good practices
- making more efficient use of land
- minimizing the amount of land taken for residential, commercial, industrial, transportation, utility, and intensive recreation uses
- creating balanced and effective management of surface and subsurface developments
- promoting diverse and environmentally sound economic activity
- defining the carrying capacity of the environment.

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104 Lack of clear provincial policy may not be the problem. Policies such *Alberta's Commitment to Sustainable Resources and Environmental Management*, *A Place to Grow*, *Fish and Wildlife Policy*, *Water for Life*, and *Land Use Policies* may be insufficiently detailed, inadequate, ignored, poorly implemented, or in conflict, but they are generally pretty clear.

105 *Land-use Framework*, pp. 16, 20, 29, 38, and 39

106 Panel Discussion, *Our Place in the Headwaters – Managing the Commons*, November 6, 2008, Cochrane, Alberta

107 *Land-use Framework*, pp. 5, 13, 15-17, 19-21, 23, 31, 33-34, 36, 38-39, and 41

| Table 2<br>Deficit in Funding<br>Alberta Ministries<br>of Sustainable Resource Development and Environment<br>(Fiscal Years 1992/1993 to 2005/2006) | | |
|---|---|---|
| **Indicator** | **Deficit** | |
| | **2005$** | **%** |
| **Deficit relative to population growth** | 2.32 billion | 43% |
| **Deficit relative to inflation** | 2.57 billion | 45% |
| **Deficit relative to growth in provincial revenue** | 5.44 billion | 62% |
| **Deficit relative to growth in the economy** | 6.19 billion | 65% |
| Source: Adapted from Westhoff Engineering Resources Ltd., Wendy Aupers & Associates, and Waxwing Synthesis and Resolution Inc., *Initial List of Issues and Gaps: Water Policy Scoping and Issue Identification*, Alberta Water Council, 2006, pp. 58-60. | | |

This is an extensive agenda of unsolved problems. The problems are not unique to Alberta and the search for answers to these problems elsewhere has been expensive, time-consuming, and lacking in solutions that are comprehensive and effective.[108] Unless the provincial government has discovered solutions that have eluded others, even $7 million of new money – although welcome – is unlikely to have much impact on the outstanding tasks the provincial government has allowed to build up.

Yet, according to the *Framework*, these intractable problems are supposed to be largely solved in three or four years.[109] By 2009, the two most important regional plans and the "metropolitan" plans for the Edmonton and Calgary regions were to be finished, a new policy to minimize flood risk completed, and strategies put in place for conservation and stewardship, transportation/utility corridors, and management of recreational use of public lands. Now, as 2010 draws to a close, those goals are far from being met and the goals for 2012 – five more regional plans, systems for information management and monitoring, better aboriginal relations, solutions to fragmentation and conversion of agricultural land – have disappeared from public view if not from the government's agenda.

It took the provincial government over two-and-a-half years to come up with the *Framework*, a general outline of a decision-making structure. It is doubtful if this dismal record of high expectations and chronic under-achievement will be reversed and even a small portion of the jobs described in the *Framework* completed in the foreseeable future.

However, even if realistic amounts of money and time are available, the *Framework*'s process of "collaborative" decision-making is not appropriate.

Collaborative decision-making (Table 3) is the latest term used to describe how some governments like to work with others. Collaborative decision-making is designed to suit the needs of the decision-maker. Incorrectly named, it only allows people to provide advice, but not participate in decision-making. Collaborative decision-making is also based on the assumptions that

- there will be conflict that requires centralized, top-down intervention
- the interests of those affected by decisions should be determined by their affiliation
- decision-making is a right exercised at the discretion of the decision-maker
- decisions are to be accepted based on trust.

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[108] The provincial government has not examined in a systematic way the myriad of approaches to solving land use management problems. It did ask consultants to look at policies used in some jurisdictions (UMA/AECOM, *Jurisdictional Review of Land Use and Land Management Policy*, Alberta Sustainable Resource Development, 2007). The most striking aspect of the policies that were identified is how they are generally isolated initiatives rather than part of a cohesive package and rely almost exclusively on intervention by government to reward or discourage behavior. Although some information was provided on the applicability of the approaches, their effectiveness remains unknown.

[109] Read correctly in terms of the grammar used, the *Framework*'s timeline extends over three years. It may be that four years was intended.

| Table 3<br>Characteristics of Collaborative and Participatory Decision-Making | | |
|---|---|---|
| | **Collaborative Decision-Making** | **Participatory Decision-Making** |
| **Involvement of outsiders** | Advice | Informed consent |
| **Underlying assumption about conflict** | Conflict leads to intervention | Common interests lead to resolution of conflict |
| **Problem-solving** | Centralized, top down | Decentralized, bottom up |
| **Basis for interest recognition** | Affiliation | Merit, knowledge |
| **Basis for decision-making authority** | Right | Privilege |
| **Decision-making** | Discretionary | Mandatory |
| **Basis for accepting decisions** | Trust | Accountability |

The *Framework*'s rationale for using the collaborative approach is that "Albertans are looking for stronger provincial leadership to introduce the changes necessary to better balance our economic growth with our social and environmental values."[110]

The public, however, clearly wants something else. Although the public called "for greater provincial leadership in the area of land-use planning," they wanted this to be based on a "shared decision-making model." The public's main concern about letting the provincial government make decisions by itself was because of the government's "ad hoc approach to land-use planning … which has meant inadequate protection of the environment and the interests of Albertans, now and in the future." They wanted provincial leadership "balanced with public participation" and feared that "collaborative decision-making would offer interest groups and the vocal minority undue influence."[111]

What the public wants is best described as participatory decision-making (Table 3), a process designed to suit the needs of those affected by decisions with decisions based on informed consent. Instead of the assumptions behind collaborative decision-making, the assumptions of participatory decision-making are that

- common interests lead to resolution of conflict
- problem-solving is based on decentralized, bottom-up involvement
- the interests of those affected by decisions will be recognized according to merit and knowledge
- decision-making is a privilege
- decisions are based on mandatory criteria
- decision-makers are accountable to those they affect.

The principles that guide the *Framework* recognize the need to eliminate *ad hoc* decisions (Table 4). However, collaborative decision-making is not consistent with those principles. It places the provincial government in a preeminent position where others are not partners in decisions and the government is not held accountable by the mandatory application of scientific evidence[112] and clearly-defined criteria and processes. It also allows the government to exclude the views of those who in the government's opinion are not directly affected by a plan or decision. Among those whose interests would be excluded are future generations and people who are concerned with provincial, national, and global issues.[113]

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110 *Land-use Framework*, p. 15

111 *Workbook Summary Report*, pp. 2, 29, & 34

112 The *Land-use Framework* makes a distinction between science and "evidence and experience" (p. 16). Science is the search for knowledge. Evidence and experience are part of that search. Although some efforts at science are better than others, the criteria for judging evidence and experience are that they must be collected and explained in a way to allow people to judge whether they are valid or not. If evidence and experience are not treated as science, then it will be possible for a person to claim that others are not qualified to judge his or her knowledge.

113 For a discussion of how consultation restricted to those directly affected limits decision-making to site-specific issues, see *Initial List of Issues and Gaps*, *supra* n. 63, pp. 32-34.

**Table 4**
**Guiding Principles for the *Land-use Framework***

| | |
|---|---|
| **Sustainable**<br>Development which meets the needs of the present without compromising the ability of future generations to meet their own needs. Contemporary land-use decisions will balance current economic, environmental and social benefits with the consequences for future generations. This principle of inter-generational responsibility applies to all forms of human land use (residential and industrial, agriculture and forestry, energy and transportation).<br><br>**Accountable and responsible**<br>All levels of government, the private sector and the community at large will share accountability for responsible land use.<br><br>**Supported by a land stewardship ethic**<br>This means accepting the responsibility to ensure that our land-use decisions are mindful of consequences for future generations. This responsibility applies to urban planning, forestry and agriculture, habitat and wildlife, watersheds and riparian areas, and all other decisions affecting land use. Where appropriate, market mechanisms will be used to promote stewardship practices.<br><br>**Collaborative and transparent**<br>Albertans, landowners, land users and governments will work together.<br><br>**Integrated**<br>Policies, planning and decisions will integrate current and new land use on public and private lands and co-ordinate land, air, water, biodiversity, economic development and social objectives within the region. | **Knowledge-based**<br>Government decision-making and choices will be informed by science, evidence and experience, including traditional knowledge of aboriginal peoples.<br><br>**Responsive**<br>Land-use decision-making processes will be responsive to changing economic, environmental and social factors over time and will be improved through periodic review. If there are negative unintended consequences, Cabinet will review policies for possible corrections or repeal.<br><br>**Fair, equitable and timely**<br>Decision-making criteria and processes will be clearly defined, consistently followed, and not subject to political expediency. Decision-making bodies will be provided with the capacity to perform their responsibilities in a timely manner.<br><br>**Respectful of private property rights**<br>Decisions will respect the laws of property ownership and the positive role of free markets in making societal (public) choices.<br><br>**Respectful of the constitutionally protected rights of aboriginal communities**<br>The Government of Alberta will continue to work with aboriginal communities' governments, while respecting the special role and relationship of the federal government regarding the aboriginal peoples. The Government of Alberta recognizes that consultation should take place on matters that impact treaty or constitutionally protected rights of First Nations and Métis peoples. |

Source: Alberta Government, *Land-use Framework*, 2008, pp. 15-17

## The Risks of Regionalism

*We are going to work to maintain the strength and vitality of our smaller centres. We know the cities can take care of themselves.*[114]
Don Getty

The centerpiece of the *Framework* is the development of regional plans. Regional plans are the primary way in which provincial policies and strategies will be imposed on municipalities and the private sector.

Regional plans, though, will not be developed nor enforced by a regional government or planning body. Instead, regional plans will be developed by the provincial government's Land-use Secretariat with advice provided by regional advisory councils whose members are selected by the Province.

As for enforcement of regional plans, the *Framework* is silent except for a cryptic comment that "compliance issues … will be resolved within existing review and appeal systems."[115] Provincial departments, municipalities, and other decision-makers are either "required to comply" or "be consistent" with regional plans – the *Framework* says both.[116] Despite this confusion, leniency will be shown to

[114] Cited in Jack Masson with Edward C. LeSage, Jr., *Alberta's Local Governments: Politics and Democracy*, University of Alberta Press, 1994, p. 23
[115] *Land-use Framework*, p. 27
[116] *Ibid*, pp. 2, 3, 19, 23, 26, & 27

municipalities since their development plans are only expected to "align with and address" provincial directions rather than "implement regional planning directions" as was stated in the *Draft Framework*.[117]

The *Framework*'s approach to regional plans is not what the public wants. The public supports creation of regional planning bodies and wants to be involved in the government's decision-making instead of merely providing advice.[118]

The public also wants stringent compliance. For public land, they want strong regulations and enforcement to ensure that resource users are accountable for their actions. In terms of private land use, the public support incentives and rewards but with rules and enforcement to back them up.[119]

The *Framework* does not tell us why planning and implementation by regional governments or planning bodies was not adopted nor why stringent compliance is not included. Aside from the fondness for provincial control and discretion evident in the *Framework*, four other factors are at work.

First, there is reluctance to challenge the existing boundaries and responsibilities of municipalities. Local autonomy is viewed as protecting people's quality of life – despite recognition by municipalities that regional management is needed for such things as protective services, solid waste, water supply, wastewater treatment, and land use planning.

The primary threat to quality of life has been perceived to be the continual and some would say rapacious expansion of urban centers, especially the cities of Edmonton and Calgary. The threat is perceived to bring, among other things, higher taxes, greater restrictions on re-development, and the "big-city" problems of crime, noise, and conflict over values.

Second, there is a residue of distrust of regional planning bodies. The regional planning commissions that once existed in Alberta are perceived to have been ineffective. The performance of regional planning commissions, though, was merely a symptom of problems the *Framework* is supposed to resolve. These problems were and still are political deficiencies:

- no common agreement on what good government is
- no commitment to preserving agricultural land
- the provincial government's reliance on subsidies – both financial and in terms of building infrastructure – that support dispersed land use and the Manning Doctrine of "greater market growth than would otherwise occur."

Third, regional governments are a threat to the provincial government's authority. Unlike local and national governments that have a "natural"[120] reason for existing, a provincial government is merely one way of more efficiently administering territory.

Regional governments offer the same advantage of increased administrative efficiency. As well, with growing globalization, regions – especially the regions of large cities – are gaining economic leverage in dealings with their provincial and national governments. [121]

Although deeply entrenched – constitutionally and practically, the authority of the provincial government can be eroded by the increasing economic clout of regions. Regions with greater economic independence become municipalities with greater political independence. From the provincial government's point-of-view, achieving the goal of aligning municipal decisions with provincial desires requires keeping "municipalities from becoming fiscally independent."[122]

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117 *Draft Land-use Framework*, p. 16 and *Land-use Framework*, p. 26

118 *Workbook Summary Report*, pp. 2, 18-19, 29, & 32

119 *Ibid*, pp. 21-23

120 A local government has a "natural" reason for existing because of the need people have to cooperate or simply get along with others who live or work close at hand. A national government has been traditionally considered "natural" because of the need for an ethnic group or groups to form a state to promote and protect their interests.

121 See, for example, Edward C. LeSage, Jr. and Lorna Stefanick, "New Regionalist Metropolitan Action: The Case of the Alberta Capital Region Alliance," Canadian Political Science Association meetings, Winnipeg, June, 2004, pp. 1-2

122 Masson, *Alberta's Local Governments*, *supra* n. 74, p. 34

Fourth, the power base of the ruling party in Alberta has traditionally been and remains in smaller communities and rural areas outside Edmonton and Calgary.[123] Regional government endangers that power base because of reasons already mentioned: the threat to local autonomy and the greater relative strength of Edmonton, Calgary, and their regions. The current ruling party will not jeopardize its political security as the previous ruling party did by appearing to ignore its most fervent supporters.[124]

## Making Definitions Definite

*Accuracy is twin brother to honesty and inaccuracy to dishonesty*.[125]
Charles Simmons

The *Framework* is based on a faith that complex problems can be managed with simple methods. Faith in simplicity, in turn, is rooted in a belief that effective administration is "sabotaged" by "the full search for the facts and by the full compliance with the letter of the law."[126]

Faith in simplicity is also reflected in the ways in which terms are defined in the *Framework*. Most definitions in the *Framework* reflect not only a poor understanding of science, but a narrow awareness of the issues. Among the terms not accurately defined in the *Framework* are:

### *Biodiversity*

Although there are different ways of defining biodiversity,[127] the *Framework*'s definition is neither precise nor explicit and, if applied, will not be a useful indicator.

**The *Framework*'s "Biodiversity"**
The assortment of life on earth—the variety of genetic material in all living things, the variety of species on earth and the different kinds of living communities and the environments in which they occur.
SOURCE: *Land-use Framework*, p. 51

Scientific approaches to biodiversity concentrate on measuring the variety and variability of species within an ecosystem. In contrast, the *Framework* definition measures biodiversity by the variety of genetic material and species around the world and by differences between "communities" or "environments" rather than the variety and differences within those communities. More importantly, contrary to the *Framework*'s outcome of maintaining the "abundance of native species and their natural habitats,"[128] the *Framework*'s definition applies to all species and habitats whether they are indigenous or introduced.

### *Ecological Goods and Services*

The *Framework* recognizes that ecological goods and services are essential to sustaining a healthy and prosperous way of life. However, ecological goods and services are only considered in terms of economic and social benefits, excluding environmental benefits. It is assumed, incorrectly, that only "a healthy environment and biodiversity" can provide these benefits. This means that situations where the ecology

123 Although the ruling parties of the past eight decades have enjoyed support from all parts of the province, it is the areas outside Calgary and Edmonton where support has been greatest. In the 2008 provincial election, for example, Progressive Conservative candidates received 44% of the votes in Edmonton and Calgary ridings, but 62% of the votes elsewhere in the province (Elections Alberta).

124 The ability of the Progressive Conservatives to replace Social Credit was due in large part because the Conservatives were able to exploit a perceived neglect of areas outside Edmonton and Calgary (Masson, *Alberta's Local Governments*, *supra* n. 74, p. 20).

125 Charles Simmons, *A Laconic Manual and Brief Remarker*, Robert Dick, 1853, p. 20

126 Morris Janowitz, Deil Wright, and William Delaney, *Public Administration and the Public – Perspectives Toward Government in a Metropolitan Community*, University of Michigan, Institute of Public Administration, 1958, Michigan Governmental Studies no. 36, p. 15

127 See, for example, "Scientific Definitions of Biodiversity," California Biodiversity Council, "Biodiversity Theory," Quebec Biodiversity Website, and "Biodiversity," *Stanford Encyclopedia of Philosophy*.

128 *Land-use Framework*, p. 23

has been degraded will be under-valued and likely written off. As well, carbon dioxide sequestration is identified as a natural process, which it is not.[129]

It is also assumed that ecological goods and services "are available to all of society." This is erroneous since ecological goods and services are distributed unevenly due to differences in ability to afford the "luxury" of those goods and services, private ownership of resources, and variation among parts of the province in terms of natural capital and the positive and negative consequences of preservation and development.

**The *Framework*'s "Ecological Goods and Services"**
Economic and social benefits resulting from the natural processes of a healthy environment and biodiversity. These are available to all of society and are essential to sustaining a healthy and prosperous way of life. They include groundwater recharge, flood and erosion control, wildlife habitat, productive soils, carbon dioxide sequestration and abundant clean air and water.
SOURCE: *Land-use Framework*, p. 51

## *Ecosystems*

The *Framework*'s ecosystem definition assumes, incorrectly, that an ecosystem is only defined and, therefore, viable and valuable because of function, that is, interaction among its components. Instead, the structure of an ecosystem is equally important (as the definition implies when discussing ecosystem health).

**The *Framework*'s "Ecosystems"**
The interaction between organisms, including humans and their environment. Ecosystem health/integrity refers to the adequate structure and functioning of an ecosystem, as described by scientific information and societal priorities.
SOURCE: *Land-use Framework*, p. 51

More importantly, the *Framework* defines the health, integrity, and adequacy of an ecosystem according to "scientific information and societal priorities." Although societal priorities will determine the condition of and the value we place on an ecosystem, that does not mean the ecosystem will be healthy, sound, or even adequate for human needs.

## *Economic*

The *Framework* assumes that wealth is the only economic indicator to consider. Although wealth is important, it is not the only nor even the most important factor. Other factors such as income, production, distribution, consumption, information, skills, ethics, regulatory systems, happiness, and the efficiency of transactions are essential ingredients of the economy.

**The *Framework*'s "Economic"**
Relating to the wealth of a community or nation.
SOURCE: *Land-use Framework*, p. 51

The *Framework* is also not clear on what it considers "wealth." Is wealth to be measured in purely monetary terms or will it include natural and social capital? [130]

## *Private and Public Lands*

The *Framework*'s notion of what is private and what is public land is incomplete. The definition of public land does not include land owned or managed by the federal government, municipalities, other local authorities (e.g., irrigation and drainage districts), First Nations, and Métis colonies. It is unclear how the *Framework* will deal with land administered by private-public arrangements such as P3 projects, leases, and forest management agreements.

The *Framework* notes that private lands are used and managed within existing legislation, but does not put the same caveat on the use and management of public lands.

**The *Framework*'s "Private Lands"**
Land privately owned by individuals, groups, companies or organizations that make decisions about how it is used or managed within existing legislation.

**The *Framework*'s "Public Lands"**
Land owned by the provincial government, which makes decisions about how it is used and managed, including for agriculture, forestry, resource development, habitat conservation and protection of watersheds and biodiversity.
SOURCE: *Land-use Framework*, p. 52

## *Social*

The *Framework*'s definition of social is very narrow. What is social is more than "organization." What is social is defined by relationships, values, beliefs, behavior, and

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129 According to the provincial government's Energy Resources Conservation Board, "sequestration" is "the permanent disposal of $CO_2$, into a subsurface environment." (Alberta Carbon Capture and Storage Development Council, *Accelerating Carbon Capture and Storage in Alberta: Interim Report*, 2008, p. 20)

130 For an exploratory, international survey of all aspects of wealth, see The World Bank, *Where is the Wealth of Nations?: Measuring Capital for the 21st Century*, 2006.

economic, institutional, and physical infrastructure. Things like "culture, health and well-being and safety" are not "related factors," but essential ingredients of what is social.

Environmental factors are also not included in the *Framework*'s definition of social. Since society is from a human perspective the ultimate ecosystem, natural factors, including the influence of geography, are a component of what is social.

**The *Framework*'s "Social"**
Relating to society or its organization, including living in organized communities and related factors such as culture, health and well-being and safety.
SOURCE: *Land-use Framework*, p. 52

### *Stewardship*

Stewardship is not correctly defined for the *Framework*. Stewardship is personal and more than an ethic. It includes accountability, behavior, and competence in looking after something such as air, fish, wildlife, and water. Although it is possible for individuals collectively to exercise stewardship, such stewardship is not limited to "industry, communities and governments," but can be and often is a responsibility carried out by other organizations such as religious and environmental groups.

**The *Framework*'s "Stewardship"**
An ethic whereby citizens, industry, communities and governments work together to responsibly care for and manage Alberta's natural resources and environment.
SOURCE: *Land-use Framework*, p. 52

## Strengthening the Status Quo

*I've seen the future and it's much like the present, only longer."*[131]
Dan Quisenberry

The most prominent aspects of the *Land-use Framework* are:

- the provincial government's desire to apply its priorities to decisions by municipalities and the private sector
- conflicts among provincial policies and strategies that will be resolved behind closed doors
- protection of economic momentum
- a vague understanding of what is wrong with the current system of land use management
- an incomplete perspective on market-based instruments
- rapid development of regional plans with limited resources and without public involvement in decision-making
- no regional governments or planning bodies
- poorly defined terms.

This is not a way to plan for a future that is sustainable at a level acceptable to current and future generations. The necessary information, clarity, precision, and openness to better ideas will not be available to make reliable predictions of, among other things, the impacts on the environment, the economy, and human behavior.

One prediction, though, can safely be made and that is that the *Framework* is a recipe for the *status quo*. The *Framework* will maintain provincial policies and strategies since the provincial government does not intend to change them. The *Framework* will also maintain discretionary decision-making. Provincial and municipal governments will be at liberty to interpret rather than implement plans.

As well, the *Framework* will maintain the *status quo* of economic management. The public's desire for a re-balancing of economic, social, and environmental factors has come out second best to the provincial government's eagerness to maintain economic growth.

More importantly, the *status quo* will be maintained because the *status quo* is comforting when trying to understand and manage a complex system like land use management. The *status quo* is supported by and benefits powerful interest groups inside and outside government. Challenging the *status quo* makes those interest groups uncomfortable. Their discomfort will not ease and will likely increase if a compelling case for change can be made.

131 Quote DB

Others involved in planning under the *Framework* are unlikely to feel much more comfortable. The kind of information needed to support change, if even available, will be complicated and involve difficult trade-offs. In the short time allotted, the default setting of the *status quo* enjoys a powerful advantage.

Management of Alberta's land use system is an example of ***path dependence***, that is, decisions "limited by the decisions one has made in the past."[132] As the *Framework* makes clear, the limitations of past decisions are a threat to our ability to provide for our future. To overcome these limitations, it will be necessary to eliminate or neutralize the "mechanisms of reproduction" that allow the mistakes of the past to be repeated. This will involve several strategies:[133]

- adding a new layer of standards (such as in regional plans) to counteract inappropriate procedures that the provincial government will not modify or abandon
- destabilizing the old equilibrium by either improving the provincial government policies or expanding the essential information and interests that determine who will be allowed to be partners (explicitly or implicitly) in provincial decisions
- reducing the influence of elites that benefit from existing decision-making by reducing the moral basis for their legitimacy
- exploiting current problems and external influences to create solutions that block or impede inappropriate behavior.

## Fulfilling the *Framework*'s Future

*Alligator handling is not so much a skill as a willingness.*[134]
Diane Ackerman

At some point within the next decade, the provincial government will likely declare the *Framework* a success. The government will have gotten what it wanted, gained enough distance from past mistakes to take the pressure off its decision-makers, or simply worn down *Framework* participants to the point that anything looks like success.

It is doubtful that success will include achieving the two primary objectives of the *Framework*: fixing the old rules that are no longer effective and ensuring the quality of life for our children. As the *Framework* stands, its loopholes, gaps, and roadblocks are simply too numerous and imposing.

The efficiency, effectiveness, and sustainability of the *Framework* can be increased, though. In terms of the *Framework* itself, although the content is unlikely to change, the provincial government can, as has been done with *Water for Life*:

- Create a provincial advisory committee to oversee implementation of the *Framework* – a recommendation made by the government's Planning and Decision Making Working Group.[135]

  This will give land use issues the prominence they deserve and level the playing field in the competition between land and water users for government attention and resources.

In terms of making the *Framework* work despite it deficiencies, it is necessary to consider the many outcomes identified in the *Framework*.[136] Looking at the outcomes, though, it is clear that many of the outcomes are not actually outcomes of the *Framework*. Instead, they are preconditions, data collection tasks, knowledge gaps, policy analysis needs, and components of process and implementation.

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132 "Path dependence," *Wikipedia*. Path dependence is sometimes confused with historicism. Path dependence, though, does not accept or promote the inevitability, morality, or potential for change in the past or the future, but instead attempts to understand why change does or does not occur.

133 In part, derived from Taylor C. Boas, "Conceptualizing Continuity and Change: The Composite-Standard Model of Path Dependence," *Journal of Theoretical Politics*, v. 19, no. 1, pp. 46-48 and Bob Morrison, "The Irrational Economist and the Moral Decision-Maker," *Moving Beyond Now*, v. 1, no. 7 (March, 2008), pp. 13-15.

134 Diane Ackerman, "Crocodileans," *The New Yorker*, October 10, 1988, p. 72

135 *Multi-Stakeholder Working Groups Review Report*, Appendix 3, pp. 7, 9, & 13-14

136 *Land-use Framework*, pp. 23-24

Viewed from that perspective, it is possible to sketch out an illustration of how planning and decision-making should occur – a key component missing from the *Framework*. Shown in Figure 1, this illustration allows us to see where improvements can be made in implementing the *Framework*.

Viewed as a whole, Figure 1 is, to put it mildly, messy and exhausting. Yet, when different parts of the diagram are examined, several things come to mind that the provincial government can do to make the *Framework* work effectively. These are:

- Identify the extent to which global competiveness and respect or lack of respect for the intrinsic value of nature must be taken into account in developing regional plans.

  Global competiveness and attitudes toward nature are among the most important factors that influence the success of planning and decision-making. Unless those factors are clearly identified, plans and decisions risk being ineffective and even irrelevant. Opportunities to change, counteract, or take advantage of international conditions and public sentiment will be minimized or missed entirely.

- Build confidence in decision-making processes and improve the quality of land-use decisions by:

  a. as recommended by the provincial government's Monitoring and Evaluation Working Group, conduct "a comprehensive review of the existing legislative framework and its capacity to deliver the LUF"[137]
  b. review draft legislation to support implementation of the *Framework*[138] with independent experts and the public
  c. expand the promised evaluation of provincial policy gaps[139] to demonstrate to what extent existing policies and strategies are efficient, effective, and compatible with Alberta's future needs.[140]

  The *Framework* promises to generate better decisions and improve public confidence in those decisions. However, as the *Framework* makes clear, decision-making capability and the public's confidence in decision-making are being eroded by increased development.

  It will be easy for members of the public and representatives on regional advisory councils to view the *Framework* as a cynical exercise in justifying what the provincial government intends to do anyway. By releasing information for comment and candidly assessing the effectiveness of existing policies and strategies, the provincial government will show its commitment to doing what is right, rather than what is pre-ordained.

- Provide a comprehensive evaluation of the quality and quantity of the data needed to develop and implement each regional plan and prepare a specific and properly-funded program for data collection and analysis to ensure that the necessary information is available to planners, the public, and decision-makers.

  Although promises are made in the *Framework* that government choices "will be informed by science, evidence and experience," the only *Framework* outcome that specifically involves data collection is the identification of "significant historical resources."[141] Before a regional plan begins, the available data must be capable of meeting the need for information upon which to base sound decisions.

- Analyze existing settlement development and land use to determine the factors that currently, and could in the future, encourage or discourage efficient settlement patterns.

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137 *Multi-Stakeholder Working Groups Review Report*, Appendix 5, p. 7
138 *Land-use Framework*, p. 43
139 *Ibid*, pp. 45-46
140 The province's future needs are discussed in various places in the *Framework*. See, for example, pp. 12-13, 15-16, 19-20, 23-24, 31, 36, & 43-46.
141 *Land-use Framework*, p. 24

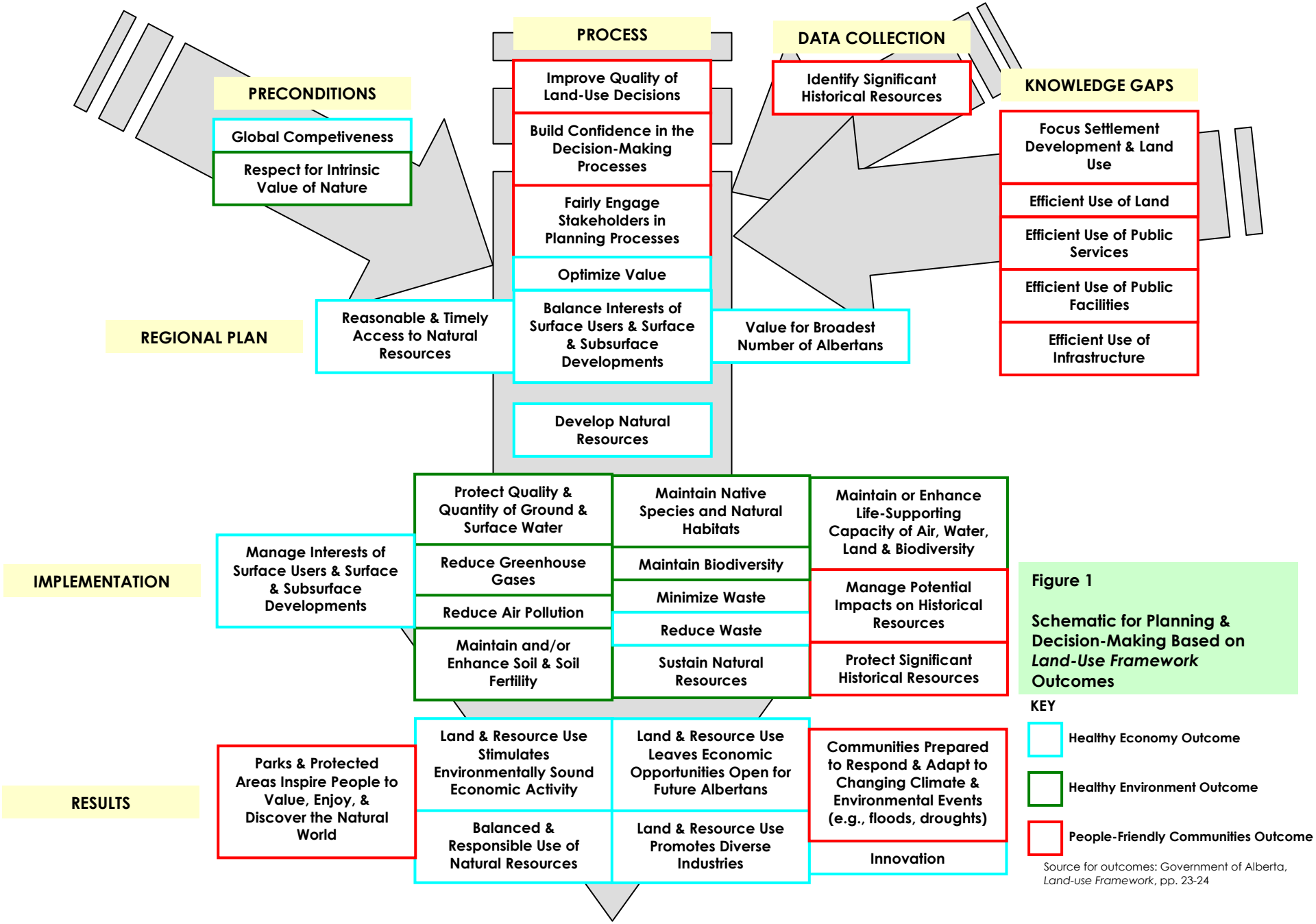


**Figure 1**

**Schematic for Planning & Decision-Making Based on *Land-Use Framework* Outcomes**

Source for outcomes: Government of Alberta, *Land-use Framework*, pp. 23-24

Settlement can occur "naturally" or be motivated by government policy and financial programs. Before a plan can deal with the issue of the "efficiency" of settlements, there must be a credible and informative explanation of how the efficiency of settlement is promoted or hindered by economic, social, and environmental factors, including government actions.

- Base the involvement of the public and regional advisory councils in planning and decision-making on the principle of informed consent, that is:[142]

> *Within mutually agreeable constraints of time and resources, all potentially affected Albertans have every opportunity to provide advice on, understand, and voluntarily concur with plans and decisions – before plans and decisions are made.*

Regional plans – if effective – are indispensable to future sustainability. It is essential that those who will implement a plan and those whose interests will be advanced or hindered must be directly involved in planning and decision-making. Merely asking for advice is insufficient.

This will put non-aboriginal people on a level playing field with aboriginal people who are, by law, entitled to consultation with the provincial government that continues throughout the decision-making process.

**Consultation With Aboriginal People**

The provincial government has committed "to meet Alberta's legal duty to consult aboriginal communities whose constitutionally protected rights under section 35 of the *Constitution Act, 1982 (Canada)* are potentially adversely affected by development."*

The term "aboriginal people" applies to First Nations and Métis.** Their aboriginal and treaty rights can not be infringed by the *Charter of Rights and Freedom*.***

The provincial government, like the federal government, has a duty to consult aboriginal people if aboriginal or treaty rights may be adversely affected by a decision it will make. Consultation must be meaningful, include "good faith efforts to understand each other's concerns and move to address them," be appropriate to the significance of the issue, and continue throughout the decision-making process. When necessary, the provincial government must accommodate the interests of aboriginal people in a decision.****

The duty to consult aboriginal people does not apply to third parties to the government's decision such as private companies. It is not known if a municipality would be considered a third party or an arm of the provincial government with a duty to consult.

* *Land-use Framework*, p. 41
** *The Constitution Act, 1982*, Part II, "Rights of the Aboriginal Peoples of Canada," s. 35(2).
*** *The Constitution Act, 1982*, Part I, "Canadian Charter of Rights and Freedoms," s. 25.
**** *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 S.C.R. 511 – quote from paragraph 49 and *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74, [2004] 3 S.C.R. 550. For examples of commentaries on the duty to consult and accommodate, see
- John M. Olynyk, *The Haida Nation and Taku River Tlingit Decisions: Clarifying Roles and Responsibilities for Aboriginal Consultation and Accommodation*, Lawson Lundell LLP, 2005
- Thomas G. Rothwell, *Haida Nation v. British Columbia, Taku Tlingit First Nation v. British Columbia: Implications for Environmental Lawyers*, n.d.
- Thomas F. Isaac and D. Anthony Knox, "The Crown's Duty to Consult and Accommodate Aboriginal People," McCarthy Tétrault, November 22, 2004
- Shawn Denstedt, Terri-Lee, Oleniuk, and Matthew Kraemer, "The Duty to Consult: Fulfilling Mandated Obligations if Not Enough," *Osler Update*, August 7, 2007
- M. Jill Dougherty, "Duty to consult with First Nations: A municipal obligation?" *WeirFoulds LLP – Government Update*, Winter, 2008

142 Adapted from Bob Morrison, "Civilized Ill-Will, Self-Evident Rationality, Faith-Based Consent, and Selfless Authoritarianism," *Moving Beyond Now*, v. 1, no. 3 (July 2004), p. 6

- Develop a methodology people can use to optimize land use, including determining:

    a. reasonable and timely access to natural resources
    b. the value of resource use to the broadest number of Albertans
    c. balance among land users
    d. effect on future generations and sustainability
    e. ability to achieve the results expected from the *Framework*.

    Complex issues like land use require complex methods to evaluate information, weigh the pros and cons of options, and produce answers that actually are answers. The methods must be penetrating, precise, predictive, and persuasive. They must also be inclusive so that all interests, including those of future generations, receive fair consideration.

    Alberta is facing issues of scarcity. There will inevitably be situations where the use of land and other resources leaves no option except to prohibit additional use or curtail existing uses. A key to success is to know what would be lost by making a decision, put an economic, environmental, and social value on proceeding or not proceeding, and then make the trade-offs necessary for a decision with a full and fair understanding of the implications.

    Three of the four working groups established by the provincial government recommended that tools for making trade-offs be created.[143] The types of tools they envisioned included analysis of policy gaps, risk analysis, modeling, and techniques used in other jurisdictions.

- Evaluate provincial and municipal policies and initiatives that have been created for:

    a. issue identification
    b. priority, objective, and standard setting
    c. financing
    d. allocation and approval
    e. monitoring
    f. compliance
    g. coordination
    h. reporting.

    Planning involves consideration of the full cycle of problem-solving from the recognition of a problem to its solution to new problems that arise during implementation. Until we understand and can explain the way in which current and past problem-solving has succeeded or failed, our efforts to predict the success of future actions will be reckless guesswork.

- Identify and evaluate the current limits on growth already used by the provincial government.

    Collecting and assessing the limits to growth already in provincial policies, strategies, and programs will provide a starting point for determining how to create limits that ensure sustainability.

- Apply the *Framework*'s cumulative effects management system at the provincial level and include extra-provincial considerations.

    The *Framework*'s cumulative effects management system will be used at the regional level and "where appropriate" at local levels.[144] Provincial policies, strategies, programs, and decisions must also be evaluated in terms of cumulative effects. To ensure sustainability, each level of cumulative effects management must include consideration of national and global issues and impacts.

- Place a moratorium on conversion of agricultural and recreational land to other uses, including residential and oil and gas development until regional plans are completed.

    Regional plans will be perceived as a threat to the development plans of individuals and organizations. The temptation will be to hurry up proposals so they can be approved before a

[143] *Multi-Stakeholder Working Groups Review Report*, Appendix 3, pp. 8, 10, &17, Appendix 4, pp. 16 & 19, and Appendix 5, pp. 13, 14, & 18

[144] *Land-use Framework*, p. 31

regional plan takes effect. A moratorium will ensure a level playing field among those who want to develop their land and will avoid hasty decisions being made that undermine the goals of the *Framework*.

- Adopt a preliminary regional plan according to the schedule in the *Framework* to identify uses for which the moratorium can be safely lifted. Prepare a final regional plan after the systems for information management, monitoring, evaluation, and reporting are in place and have been used.

  The systems proposed in the *Framework* for information management, monitoring, evaluation, and reporting will not be finished until 2012. These systems are "essential" to land-use planning,[145] yet the top-priority plans (Calgary, Capital Region, Lower Athabasca, South Saskatchewan) are to be completed before the information systems are in place.

- Implement biodiversity action plans and delay regional plans until those action plans are in place.

  Action plans are promised in the *Framework* for the "conservation and sustainable use of Alberta's biodiversity" to "support and inform development of regional plans."[146] Yet, except for a biodiversity monitoring program, these action plans are not included in the implementation schedule for the *Framework*.

- Include the Ministries of Infrastructure, Transportation, and Finance and Enterprise in the development of regional plans.

It would be naïve to believe that, without encouragement, the provincial government will do these things to improve implementation of the *Framework*. To paraphrase one political theorist, the provincial government needs to have its feet held to the flames of public opinion.[147] It will be up to the public and regional advisory councils to do this.

In addition, from their own perspectives, people can help make up for the *Framework*'s deficiencies by:

- Identifying the strengths and weaknesses of existing land use management.

- Defining what quality of life means.

- Identifying the criteria that should be applied to limit existing and future use of land and resources to sustainable levels.

- Becoming conversant with the key factors influencing the sustainability of land use, including
  - market-based instruments (e.g., pricing, subsidies, and regulatory measures)
  - the relationship between our activities and global issues such as resource depletion and climate change
  - the ability of decision-makers to deal with incremental, non-crisis resource management problems.

- Encouraging the provincial government to allocate enough money, time, and other resources to management systems and regional planning so the solutions that emerge from the *Framework* will actually work and be sustainable.

- Insisting that the provincial government be clear and realistic in the terminology it uses.

- Participating as often and as much as possible through the opportunities for involvement provided by the provincial government and other stakeholders.

145 *Ibid*, p. 38
146 *Ibid*, p. 33
147 Roger Gibbins, President and CEO, Canada West Foundation, *The House*, CBC Radio, December 22, 2007, 28:50

## Final Thoughts

*There is no worse heresy than that the office sanctifies the holder of it.*[148]
Lord Acton

The provincial government has forgotten that it is merely one client of the systems for managing water and land use. Provincial government policies and strategies require scrutiny beyond the boundaries of government offices. The effectiveness of *Water for Life* and the *Land-use Framework* will depend on the extent to which the provincial government, rather than dictating constraints, considers and acts upon alternatives to its current policies and practices.

Decision-making will improve if the government remains neutral and allows its agencies, stakeholders, and members of the public to compete for a better future by bringing forward the full range of issues, facts, and options for consideration. In particular, unless we reject the *Land-use Framework*'s goal of maintaining the same quality of life into the future, the playing field for competing interest needs to be expanded so that Alberta's role in meeting global challenges such as climate change, depletion of resources, and the political and moral implications of scarcity are examined.

Management of water and land needs to be a partnership between the provincial government and the public. This will improve the realism, acceptability, and ultimately the implementation of decisions. It will also improve transparency and accountability and speed things up by focusing the attention of provincial officials on working directly with others, rather than providing their advice in the backrooms.

148 John Emerich Edward Dalberg-Acton, "Letter to Mandell Creighton (April 5, 1887)," *Essays on Freedom and Power*, The Free Press, 1949, p. 364

## Appendix

*Factual Errors and Flawed Assumptions in the Alberta Water Council's Recommendations for Improving Alberta's Water Allocation Transfer System*

| **Factual Errors** | |
|---|---|
| **What the Report Said** | **What is True** |
| "*Water for Life: Alberta's Strategy for Sustainability* (2003), is a comprehensive long-term plan for the management of Alberta's water resources." (p. 5) | The Water Council's own issues and gaps analysis showed that *Water for Life* is not comprehensive. (Westhoff Engineering, Wendy Aupers & Associates, and Waxwing Synthesis and Resolution, *Initial List of Issues and Gaps: Water Policy Scoping and Issue Identification*, Alberta Water Council, 2006) |
| "In the past, water management focused on identifying that portion of annual volume required for conveyance and transboundary commitments. The remainder was then available to allocate to licence-holders for social and economic uses such as municipal drinking water or agricultural irrigation." (p. 6) | The reality is the other way around. Water management in Alberta has been and is still today primarily devoted to making water available for use. As the provincial government acknowledged in 1991, Alberta's water law is "primarily a mechanism for allocating water until supplies are exhausted." (Alberta Environment, *Water Management in Alberta: Challenges for the Future*, p. 5)<br><br>Conveyance flows are sometimes a significant concern, primarily on smaller streams but their purpose is to make sure that water is available throughout the system for use. Transboundary commitments only became a concern in the mid-20th century, a half-century after most of the water rights in the water-tight South Saskatchewan system had been given out. |
| "Based on geography and climate, Alberta's water supply has always provided a variable volume. Yet the historical system of water allocations is based on fixed volumes contained in licences. This system does not necessarily respond well to seasonal and annual variation, and in particular, to years of low flows." (p. 8) | The historical system of water allocations actually took into account seasonal variation reasonably well. It was based on an annual fixed volume, but also on rates of diversion that varied with the season, being highest during periods of flood and lowest during periods of low flow. This provided an incentive for licensees to manage their annual fixed volume more efficiently for water-short years. During the last twenty-five years, there has been a concerted effort by irrigators and Alberta Environment to eliminate seasonal rates of diversion and the ability to enforce them. |
| "During extensive public consultation for the *Water for Life* strategy, some stakeholders said "Alberta must preserve the 'first-in-time, first-in-right' (FITFIR) principle" while others questioned whether it was the best system to allocate water." (p. 8) | When the public was asked about the 'first-in-time, first-in-right' principle during public consultation for the *Water for Life* strategy, they were clear they wanted something more flexible that would eliminate inappropriate uses, allocate water based on its most beneficial, or valued, uses, and account for future needs and conditions. (Equus Consulting Group, *Water for Life, Minister's Forum on Water: Summary*, Alberta Environment, 2002, main text, p. 3 and *Results from Completed Workbooks: Data Tables*, Alberta Environment, sub-report no. 1, section b 2002, p. 5) |
| "The priority of the WCO licence becomes the date on which the WCO is approved by the Province." (p. 12) | The priority of a licence for implementing a WCO can be prior to the date the WCO is approved since more senior rights can be acquired through purchase or holdback (*Water Act*, RSA 2000, c. W-3, s. 51(2) & 81(3)(c)) |
| "All of the recommended improvements to the water allocation transfer system and water allocation transfer market are for naught if no water is made available for new users." (p. 25) | Existing users and the environment will still benefit. |
| "Licences are for an annual amount and are not able to be held over year after year, unless a licensee has their own storage option." (p. 25) | Irrigation districts receiving water from the government-owned Waterton-St. Mary Headworks are allowed to hold over their allocation from year-to-year even though they do not own the storage. |

| Factual Errors | |
|---|---|
| **What the Report Said** | **What is True** |
| "In order to move unused water into the market and 'create' more water available for population growth and economic development, while respecting established environmental limits, an improved water allocation transfer system must:<br>▪ Allow existing licence-holders of unused water to manage water shortage risk to their existing operations." (p. 27) | Allowing unused water to manage risk is merely one option, not a "must." For example, instead, unused water can be cancelled from a licence (see their definition of unused water – p. 26) and either allocated to other uses or added to a risk-pool from which users can purchase water.<br><br>Suspension of a licence is also an option. |
| Figure 5, the representation of a "Never Diverted" allocation as being subject to the criterion of "reasonable prospect of use." (p. 31) | This is incorrect. The criterion of "reasonable prospect of use" only applies to resuming a right not to a right that was never exercised. The diagram should show a direct connection to the "Licence Cancelled" box. |
| In Figure 5, the "Licence Cancelled" box. (p. 31) | This is incorrect. Licences may also be suspended. |
| "Return flows are important and, if of good quality, can contribute to aquatic health." (p. 32) | This is a bit of sleight of hand. The water in return flow has already been withdrawn upstream, reducing aquatic health. Counting return flows – the leftover water that could not be exploited – as a contribution to aquatic health is merely a way to feel good about the damage that has already occurred. |

| Flawed Assumptions | |
|---|---|
| **Assumption** | **Flaws** |
| "Of the 15 member groups represented on the WATSUP Team, 13 member groups believe that the *Water Act* (1999) is flexible, provides for a comprehensive planning framework, and can accommodate a market structure. Thus, these 13 member groups propose that regulatory enhancements under the existing legislation, rather than major legislative changes, can address the risks and issues stated above. Improvements to the system can ensure the water allocation needs of current and future Albertans are met." (p. 10) | As documented in *Moving Beyond Now*'s water series, the *Water Act* does not provide a comprehensive planning framework.<br><br>Underlying this assumption is the belief that the water rights market is neutral. In Alberta, this is not true. A level playing field does not exist because of free water delivery to most customers of provincially owned water management facilities, government subsidies to irrigation districts and municipalities, and, with two small exceptions, the absence of water use charges that reflect the price society is willing to accept for allowing water to be withdrawn.<br><br>Although there may be social or political reasons for these kinds of interference in the marketplace, they discriminate against water users who can pay their way. More importantly, these forms of public assistance make subsidized water users less interested in selling their water rights or less willing to accept a realistic price if they do. Under those conditions, it is unlikely any improvements can ensure future needs are met. |
| "Carrying out this work in a multistakeholder, collaborative and consensus-based process ensures these improvements are to the benefit of all Albertans, now and in the future." (p. 5) | Convening a selected group of people together, most of whom have a significant stake in the *status quo*, does not ensure anything. |
| After a brief review of experience in other jurisdictions "concluded that its mandate was to stay within the *first-in-time, first-in-right* system. Consequently, a more substantive review of systems in other jurisdictions was not conducted." (pp. 5-6) | Virtually all of the other jurisdictions they did look at are first-in-time, first-in-right jurisdictions, most of which have far more experience with transfers. A brief review of experience is insufficient to understand the usefulness and complexities of transfers. |
| Establishing regulatory measures for protected water "is a prerequisite to a water market." (p. 11) | Establishing regulatory measures for protected water is not necessarily a prerequisite for a water market. "Protected water" can instead be allowed to "compete" in the market with other uses, be the result or residual of market activity, or not even be a consideration. They have, in particular, assumed, without providing a compelling rationale, that establishing government-imposed limits on protected water must be separate from market activity. |
| "Because the concept of allowing non-government organizations to hold licences for instream flow purposes is new in Alberta, a conservative approach is suggested." (p. 16) | This assumes that experience in other jurisdictions is of no value, something the project team could not evaluate since they prematurely halted their research into that experience. |

| Flawed Assumptions | |
|---|---|
| **Assumption** | **Flaws** |
| "Minimize conflict by allowing lower value users to obtain fair value for their existing investment." (p. 17) | No evidence to support this. Conflict may actually increase because, with government subsidies bankrolling lower value users, those lower value users will be more reluctant to reach an amicable settlement with a buyer and more likely to escalate disagreements by bringing them to the media or the government. |
| "Enable each licence-holder to make market choices based on their own private cost and benefits, making it more efficient and effective than government who may not have access to this information." (p. 17) | No evidence to support the assumption that government action is less efficient or less effective. The assumption is unlikely to be true given the extensive experience and heavy involvement of government in building and operating facilities (e.g., dams, canals, pipelines) and providing grants, technical assistance, and regulatory oversight. |
| A higher value use is one "that offers more benefit to society overall," that is, translates into "a higher Gross Domestic Product, more money circulating in a community, more tax dollars, etc." (p. 17) | No evidence to support this assumption. It also assumes that higher Gross Domestic Product, etc. equals more benefit to society. |
| "An improved water allocation transfer system would also need an application and approval process that is administratively streamlined and timely, with efficient ease of transfers in the market." (p. 21) | "Efficient ease" is merely a desire on the part of the project team, not a fact. The transfer system may require significant regulatory oversight and longer timelines to ensure that economic, social, and environmental benefits are achieved. |
| "The use of amendments rather than transfers for a change of use can circumvent the water allocation transfer market" (p. 24) | Based on the information publicly available, amending a licence to change the use is not allowed under the *Water Act* (see *Water Act*, RSA 2000, c. W-3, s. 1(1)(m)(i), 35(1)(a) & (c) and 169(2)(i) & (l)). The government has suppressed a report that supposedly justifies the conclusion that transfers can be made through an amendment. |
| "Some licensees hold large volumes of unused water, which in some cases is water beyond their regular operational needs. This water is held as part of a licensee's risk management strategies for use in emergencies, variable or low-flow periods, drought situations, for re-filling storage capacity, dilution or conveyance needs or to allow for future economic growth." (p. 26) | Speculation. No documented evidence is provided that these are the reasons or all reasons licensees hold large volumes of unused water.<br><br>All reasons listed are regular operational needs – even planning for and accommodating future growth – but that does not mean they justify holding extra water rights beyond what is allowed under the law. |

## *The Alberta Water Council's Project Team's Objectives, Rationales, and Solutions*

| What the Project Team Wanted | Rationale | Solutions |
|---|---|---|
| **Economic Viability and Sustainability** | | |
| Ensure "a viable market that moves water to support sustainable economic development." (p. 5) | None. | None. |
| **Access to Information** | | |
| Provide "certainty to regulators and the public as to the amount and nature of remaining water available for allocation and transfer." - as it relates to "protected water." (p. 11) | No rationale provided. It is unclear if the intent is to ensure that instream uses are protected at a viable level or to ensure that instream considerations will not interfere with the "smooth" functioning of the "market." | Use water conservation objectives (WCOs) – a method of compromising between instream and withdrawal needs, not a method of protecting instream needs in their own right. |
| "A public record and public access to information about the market such as who is buying and selling, the paid price, the volume, *etc*." (p. 22) | "Accountability requires transparency." | Creation of a market administrator or Crown agency. Unclear of why a new position or agency is needed or will be more effective. |

| What the Project Team Wanted | Rationale | Solutions |
|---|---|---|
| Transfer system "be user-friendly and meet the needs of all participants." (p. 36) | None. | Create a three-tier system of approval based on level of risk to society.<br><br>Random review of two lower risk tiers to ensure "applications were sound and factually correct and any deficiencies corrected."<br><br>Unclear how these measures are user-friendly and meet needs of all participants. |
| "Publish information on transfer decisions to increase public awareness and transparency." (p. 42) | "Appropriate information necessary for the Director to make a decision and for the effective operation of the water allocation and transfer system should be fully transparent and available online to the extent reasonably practical, and in a timely fashion" | This objective is the method. Unclear what is "appropriate information," "effective operation" of the system, and "reasonably practical." |
| "The price paid for water allocation transfers needs to be identified for the public record." (p. 44) | "To help establish a base or floor price for the market" | A necessary ingredient for the water rights market, but no method provided as to how this would be done. |
| "The data and information needs of the water allocation transfer system be identified and measures taken to build the appropriate systems." (p. 45) | None. | "A survey of existing licensees could be conducted to look at potential buyer and seller needs for an information platform."<br><br>They had potential buyers and sellers at the table. Why didn't they either identify those needs and/or conduct a survey?<br><br>Measures recommended: apply metering and reporting requirements, electronic licence inventory, balance commercial confidentiality with transparency, and upgrade decision-making tools and models.<br><br>Unclear if these things are necessary or feasible. They have been talked about before and in limited situations acted upon. What are the specific problems that need resolving or obstacles that need to be overcome? |
| **Clear and Consistent Rules** | | |
| Provide "certainty to regulators and the public as to the amount and nature of remaining water available for allocation and transfer." - as it relates to "protected water." (p. 11) | No rationale provided. It is unclear if the intent is to ensure that instream uses are protected at a viable level or to ensure that instream considerations will not interfere with the "smooth" functioning of the "market." | Use water conservation objectives (WCOs) – a method of compromising between instream and withdrawal needs, not a method of protecting instream needs in their own right. |
| "Provide clear and consistent rules for all players." (p. 17) | "To avoid replicating some of the social and environmental damage a market can inadvertently create." | The apparent rules provided (efficiency, transparency, due process, flexibility, discretion, and no significant harm) are not clear and, with the inclusion of flexibility and discretion, not consistent. |
| Provide "increased certainty for businesses, municipalities, and the environment." (p. 17) | "To avoid replicating some of the social and environmental damage a market can inadvertently create."<br><br>"Allow water users to manage both short and longer term risk through the use of transfers" | The recommendations do not deal specifically with how risk will be reduced. Unclear how any recommendation would reduce risk since no evaluation of personal, corporate, or market behavior was conducted. In particular, without that kind of evaluation, participants in the market are likely to "consume" a reduction in risk (if any) thus maintaining their level of risk or making it worse. |

| What the Project Team Wanted | Rationale | Solutions |
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| "Market rules are clear, transparent and consistent with due process for all participants." (p. 18) | "The overarching objective for implementing a water allocation transfer market in Alberta is to incent 'the efficient reallocation of water.'" | Clarity, transparency, and consistency may lead to greater effectiveness but less efficiency. The report does not resolve the potential conflict with the efficiency objective. |
| "Clear criteria to test that the principle of 'does no significant harm' is met." (p. 19) | None. | What the criteria are and how they can be best implemented was not covered in the report. |
| "A clear governance structure with a high level of provincial oversight, enforcement mechanisms, transparency and protection of public interests." (p. 21) | None. | The methods for accomplishing this are:<br>▪ "delegation of operational responsibilities to a market administrator or Crown agency to oversee the water allocation transfer market. The administrator would be responsible for oversight and accountability, monitoring, and transparency of the market."<br>▪ "the Government of Alberta is responsible for regulatory decision-making and enforcement and statutory requirements."<br><br>No documentation or rationale is provided as to why a new position or agency is better than existing options or why other provincial responsibilities should not be delegated. The difference is not explained between regulatory decision-making and the other regulatory responsibilities (e.g., oversight, accountability, monitoring, and transparency). |
| "A market governance structure with clear accountability and authorities including delegation of operational responsibilities to a market administrator or Crown agency to oversee the water allocation transfer market. The administrator would be responsible for oversight and accountability, monitoring, and transparency of the market." (p. 22) | ▪ "Monitoring will be critical to ensure that water quantity and quality objectives are being met."<br>▪ "The overall monitoring and enforcement processes will need to be improved to support the market."<br>▪ "Accountability requires transparency. There needs to be a public record and public access to information about the market such as who is buying and selling, the paid price, the volume, *etc*." | No documentation or rationale is provided as to why a new position or agency is better than existing options.<br><br>It is unclear why monitoring is critical, but enforcement is not.<br><br>The improvements to monitoring and enforcement are not identified.<br><br>Equating accountability, transparency, and access to information is good, but no information is provided as to how that can be accomplished. As well, other aspects of accountability and transparency are not dealt with. |

| What the Project Team Wanted | Rationale | Solutions |
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| "Make the rules governing the use or re-allocation of unused water clear, concise, and understandable." (p. 27) | ▪ "Unused or rarely used water (in licences with large volumes) has implications for both the environment and the amount of water available for diversion and transfer on the market."<br>▪ "Leaving water unused may be a lost opportunity as it could be moved to a higher value use (*e.g.* specialty cropping, economic development, new businesses, *etc*.) and benefit users who need it. It may also lead to speculation and issues of unfairness and market uncertainty as those licensees with significant amounts of unused water could be perceived to have an unfair advantage in the water transfer system."<br>▪ "Unused water that currently remains in the river may also be important for its contribution to ecosystem protection." | The team's objectives are not to enforce the law regarding unused water, but instead to "allow existing licence-holders of unused water to manage water shortage risk to their existing operations" and "enable rapid decision-making about which unused water licence allocations are available to the market." Instead of recommending that the law be enforced, all members of the team except two proposed a ten-year amnesty program. |
| "Criteria that clarify the circumstances when licensees would be permitted to hold unused water." (p. 29) | ▪ "There may also be good reasons for a licensee to hold unused water. These might include, but are not limited to, the following:<br>o Risk management (*e.g.* drought management, variable production/operational needs),<br>o Growth expansion for short (5 years), medium (10 years) or long term (25 years),<br>o Storage,<br>o Conveyance flow,<br>o To meet the WCO/IFN or other environmental objectives, and<br>o Where there is a commercial arrangement or contract in place to build something." | The team wants a list of reasons for determining whether a licensee has a reasonable prospect of using unused water and thus avoiding cancellation or suspension of the licence. However, they have not evaluated the reasons for cancelling or suspending a licence already in the legislation. |
| "Be user-friendly and meet the needs of all participants." (p. 36) | None. | The recommendations do not deal with how to achieve "user-friendliness" and how a regulatory system can meet the needs of everyone. |

| What the Project Team Wanted | Rationale | Solutions |
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| "There must be clear grounds, criteria, and content requirements for those filing Statements of Concern." (p. 40) | "To minimize undue delays and bureaucracy." | The team seems, without documentation or justification, to be quite concerned with the Statement of Concern process. Although they do not provide helpful advice in this area, they appear to believe this is a simple matter.<br><br>However, the purpose of the Statement of Concern (SOC) is unclear: Is it to inform the decision-maker or merely a "ticket" to allow people to participate in decision-making? As well, it is debatable whether there is a difference between those whose SOCs must be considered by the decision-maker and those whose SOCs can be ignored. (Westhoff Engineering, Wendy Aupers & Associates, and Waxwing Synthesis and Resolution, *Initial List of Issues and Gaps: Water Policy Scoping and Issue Identification*, Alberta Water Council, 2006, pp. 30-34) |
| **Protection of Society and Aquatic Ecosystems** | | |
| "society (including water users and the greater public interest) and the aquatic ecosystem are measurably no worse off than under a non-market system." (p. 17) | "To avoid replicating some of the social and environmental damage a market can inadvertently create." | There is a significant difference between "measurably no worse off" and the recommended criterion of "no significant harm." The team has not achieved this objective. |
| Allow "lower value users to obtain fair value for their existing investment." (p. 17) | "To avoid replicating some of the social and environmental damage a market can inadvertently create."<br><br>"Minimize conflict" | The team has not shown how obtaining fair value will minimize conflict. It has also not shown why the market would not provide "fair value" and not provided recommendations to avoid situations where values are "unfair."<br><br>Conflict may actually increase because, with government subsidies bankrolling lower value users, those lower value users will be more reluctant to reach an amicable settlement with a buyer and more likely to escalate disagreements by bringing them to the media or the government.<br><br>It is questionable if this objective is valid in a market-driven system. |
| "Enable each licence-holder to make market choices based on their own private cost and benefits." (p.17) | "To avoid replicating some of the social and environmental damage a market can inadvertently create."<br><br>Making the transfer system "more efficient and effective than government who may not have access to this information." | It is self-evident that, regardless of what system is adopted, licensees will always be able "to make market choices based on their own private cost and benefits." The team has not provided information to refute that premise or show how they would fix the inability to make market choices.<br><br>No evidence to support the assumption that government action is less efficient or less effective. The assumption is unlikely to be true given the extensive experience and heavy involvement of government in building and operating facilities (e.g., dams, canals, pipelines) and providing grants, technical assistance, and regulatory oversight. |
| "All transfers are subject to the 'does no significant harm' principle. (p. 18) | "The overarching objective for implementing a water allocation transfer market in Alberta is to incent 'the efficient reallocation of water.'" | The team assumed that efficient reallocation and doing no significant harm are compatible. It is likely they are not. Since the team is relying on the compromised environmental protection of WCOs and do not identify credible mechanisms for protecting other users and society in general, they have not offered ways of making those two objectives compatible. |

| What the Project Team Wanted | Rationale | Solutions |
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| "The market be subject to the principles of efficiency, transparency, due process, flexibility and 'does no significant harm.' (p. 18) | "The overarching objective for implementing a water allocation transfer market in Alberta is to incent 'the efficient reallocation of water.'" | The team assumed that efficient reallocation and transparency/due process/flexibility/no significant harm are compatible. It is likely they are not. Since the team is relying on the compromised environmental protection of WCOs and do not identify credible mechanisms for protecting other users and society in general, they have not offered ways of making those objectives compatible. |
| "Clear criteria to test that the principle of 'does no significant harm' is met." (p. 19) | None. | The team does offer criteria for determining significant harm:<br>— The size of the transfer, diversion point and rate relative to the size of the stream.<br>— Changes to timing.<br>— *Environmental Protection and Enhancement Act* (EPEA) water quality effluent standards in terms of what concentration can be released into a stream given its flow.<br><br>The criteria do not cover the key factors: the needs of the aquatic and riparian ecosystems, the needs and rights of other users, and the costs to society.. |
| "The water allocation transfer market meets the following criteria: maximizes productive and allocative efficiency, minimizes administrative and transaction costs, assures healthy aquatic ecosystems and economic development, facilitates change and innovation, and is robust." (p. 21) | "The water allocation transfer market should also operate under a number of criteria that optimize it. Criteria provide the metrics upon which performance measures can be developed to assess if objectives are being met. Alberta's water allocation transfer market should:<br>▪ Maximize productive and allocative efficiency. This means a) water is available to new entrants, b) there is an incentive for innovation and increased productivity and c) there is security of access to water. This ensures efficient use.<br>▪ Minimize administrative and transaction costs. The system is optimized to ensure a) the minimum need for government involvement while still providing an assurance role, b) it includes a simple, clear and transparent process for willing buyers and sellers to come together, c) there is access to information on transfers to help with price seeking, and d) the system overall is not prohibitively expensive to build or to operate, or the system is built to provide some cost recovery to offset the system.<br>▪ Ensure environmental effectiveness by following the concept of 'no significant harm.'<br>▪ Ensure a fair, equitable, and transparent process with equal access to education and system mechanics. Paid prices are determined in the market through the buyers and sellers and made public to all.<br>▪ Facilitate change and innovation.<br>▪ Be robust under extreme pressure and continue to work in severe conditions such as a drought. As such, it a) accommodates both temporary and permanent transfers and is designed to operate effectively with other mechanisms; b) is robust enough to accommodate groundwater and potentially other sources of licensed water; and c) ensures compliance among licensees." | The job of the market is not to ensure that water is available to new entrants to provide security of access. If they wanted this to be a role of government, the team should have identified what regulatory measures are needed.<br><br>The team has not shown that the system is prohibitively expensive to build and why the government should be concerned or responsible for costs if it is.<br><br>Except to charge people to file Statements of Concern, the team has not identified how costs will be recovered.<br><br>The team has not shown how "no significant harm" will assure healthy aquatic ecosystems.<br><br>The team has not demonstrated how the system will assure economic development.<br><br>The team has not shown why the process should be equitable and provide equal access to education and system mechanics.<br><br>The team has not demonstrated why and how the system should/will "facilitate" change and innovation.<br><br>The team has not demonstrated how the system will be robust and the measures to achieve that.<br><br>The team has not demonstrated how compliance will be achieved, particularly since they are ambivalent on enforcing the law concerning unused water. |

| What the Project Team Wanted | Rationale | Solutions |
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| "A clear governance structure with a high level of provincial oversight, enforcement mechanisms, transparency and protection of public interests." (p. 21) | None. | The methods for accomplishing this are:<br>▪ "delegation of operational responsibilities to a market administrator or Crown agency to oversee the water allocation transfer market. The administrator would be responsible for oversight and accountability, monitoring, and transparency of the market."<br>▪ "the Government of Alberta is responsible for regulatory decision-making and enforcement and statutory requirements."<br><br>No documentation or rationale is provided as to why a new position or agency is better than existing options or why other provincial responsibilities should not be delegated. The difference is not explained between regulatory decision-making and the other regulatory responsibilities (e.g., oversight, accountability, monitoring, and transparency). |
| No impairment of "the rights of households, traditional agriculture, or other licences." (p. 26) | "As per the *Water Act*" | The team did not evaluate how effective or efficient the current procedures are. |
| **Efficiency** | | |
| "Provide an efficient means of reallocating water from lower-value to higher-value uses." (p.17) | "To avoid replicating some of the social and environmental damage a market can inadvertently create." | The team has focused almost exclusively on the goal of efficiency, but their idea of efficiency has been administrative efficiency and increasing the pace of transfers. They have not demonstrated that there will be greater economic efficiency. |
| "water in a market is considered a financial asset with opportunity costs if it is not used productively and efficiently." (p.17) | "To avoid replicating some of the social and environmental damage a market can inadvertently create." | The team's recommendations will make water a financial asset to sellers. However, the team has not demonstrated that their recommendations will lead to more productive and efficient use of water.<br><br>The assumption underlying the team's recommendations is that the water rights market is neutral. In Alberta, this is not true. A level playing field does not exist because of free water delivery to most customers of provincially owned water management facilities, government subsidies to irrigation districts and municipalities, and, with two small exceptions, the absence of water use charges that reflect the price society is willing to accept for allowing water to be used in a certain way.<br><br>Although there may be social or political reasons for these kinds of interference in the marketplace, they discriminate against water users who can pay their way. More importantly, these forms of public assistance make subsidized water users less interested in selling their water rights or less willing to accept a realistic price if they do. |
| "It is in the best economic interest of each licence-holder to conserve or improve the productivity and efficiency of their water use as either a costs savings or as an ability to generate revenue." (p. 17) | "To avoid replicating some of the social and environmental damage a market can inadvertently create." | The team has not evaluated how licensees evaluate their economic interest, particularly with the subsidies and limited enforcement built into the system. As a result, they have been unable to provide evidence that the recommendations they propose will change behavior. |

| What the Project Team Wanted | Rationale | Solutions |
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| Provide "increased certainty for businesses, municipalities, and the environment." (p. 17) | "To avoid replicating some of the social and environmental damage a market can inadvertently create."<br>"Allow water users to manage both short and longer term risk through the use of transfers" | The recommendations do not deal specifically with how risk will be reduced. Unclear how any recommendation would reduce risk since no evaluation of personal, corporate, or market behavior was conducted. In particular, without that kind of evaluation, participants in the market are likely to "consume" a reduction in risk (if any) thus maintaining their level of risk or making it worse. |
| Make the water transfer market "more efficient and effective than government" can. (p. 17) | "To avoid replicating some of the social and environmental damage a market can inadvertently create." | No evidence to support the assumption that government action is less efficient or less effective. The assumption is unlikely to be true given the extensive experience and heavy involvement of government in building and operating facilities (e.g., dams, canals, pipelines), and providing grants, technical assistance, and regulatory oversight. |
| "The overarching objective for implementing a water allocation transfer market in Alberta is to incent 'the efficient reallocation of water.'" (p. 18) | "This objective serves Alberta in two specific ways: 1) to manage risk and 2) to allow parties to acquire new water allocations." | The team has not demonstrated that their incentives – less regulation, easier access to water, assistance to lower value users – will increase efficiency and reduce risk. Parties are already "allowed" to acquire new water allocations so that is not an issue.<br><br>It is unclear how any recommendation would reduce risk since no evaluation of personal, corporate, or market behavior was conducted. In particular, without that kind of evaluation, participants in the market are likely to "consume" a reduction in risk (if any) thus maintaining their level of risk or making it worse. |
| Ensure "that water is reallocated efficiently." (p. 18) | "The overarching objective for implementing a water allocation transfer market in Alberta is to incent 'the efficient reallocation of water.'" | The team has focused almost exclusively on the goal of efficiency, but their idea of efficiency has been administrative efficiency and increasing the pace of transfers. They have not demonstrated that there will be greater economic efficiency. |
| "The primary objective to reallocate water efficiently." (p. 18) | "The overarching objective for implementing a water allocation transfer market in Alberta is to incent 'the efficient reallocation of water.'" | The team has focused almost exclusively on the goal of efficiency, but their idea of efficiency has been administrative efficiency and increasing the pace of transfers. They have not demonstrated that there will be greater economic efficiency. |
| "The market be subject to the principles of efficiency, transparency, due process, flexibility and 'does no significant harm.' (p. 18) | "The overarching objective for implementing a water allocation transfer market in Alberta is to incent 'the efficient reallocation of water.'" | The team assumed that efficient reallocation and transparency/due process/flexibility/no significant harm are compatible. It is likely they are not. Since the team is relying on the compromised environmental protection of WCOs and do not identify credible mechanisms for protecting other users and society in general, they have not offered ways of making those objectives compatible. |

| What the Project Team Wanted | Rationale | Solutions |
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| "The water allocation transfer market meets the following criteria: maximizes productive and allocative efficiency, minimizes administrative and transaction costs, assures healthy aquatic ecosystems and economic development, facilitates change and innovation, and is robust." (p. 21) | "The water allocation transfer market should also operate under a number of criteria that optimize it. Criteria provide the metrics upon which performance measures can be developed to assess if objectives are being met. Alberta's water allocation transfer market should:<br>▪ Maximize productive and allocative efficiency. This means a) water is available to new entrants, b) there is an incentive for innovation and increased productivity and c) there is security of access to water. This ensures efficient use.<br>▪ Minimize administrative and transaction costs. The system is optimized to ensure a) the minimum need for government involvement while still providing an assurance role, b) it includes a simple, clear and transparent process for willing buyers and sellers to come together, c) there is access to information on transfers to help with price seeking, and d) the system overall is not prohibitively expensive to build or to operate, or the system is built to provide some cost recovery to offset the system.<br>▪ Ensure environmental effectiveness by following the concept of 'no significant harm.'<br>▪ Ensure a fair, equitable, and transparent process with equal access to education and system mechanics. Paid prices are determined in the market through the buyers and sellers and made public to all.<br>▪ Facilitate change and innovation.<br>▪ Be robust under extreme pressure and continue to work in severe conditions such as a drought. As such, it a) accommodates both temporary and permanent transfers and is designed to operate effectively with other mechanisms; b) is robust enough to accommodate groundwater and potentially other sources of licensed water; and c) ensures compliance among licensees." | The job of the market is not to ensure that water is available to new entrants to provide security of access. If they wanted this to be a role of government, the team should have identified what regulatory measures are needed.<br><br>The team has not shown that the system is prohibitively expensive to build and why the government should be concerned or responsible for costs if it is.<br><br>Except to charge people to file Statements of Concern, the team has not identified how costs will be recovered.<br><br>The team has not shown how "no significant harm" will assure healthy aquatic ecosystems.<br><br>The team has not demonstrated how the system will assure economic development.<br><br>The team has not shown why the process should be equitable and provide equal access to education and system mechanics.<br><br>The team has not demonstrated why and how the system should/will "facilitate" change and innovation.<br><br>The team has not demonstrated how the system will be robust and the measures to achieve that.<br><br>The team has not demonstrated how compliance will be achieved, particularly since they are ambivalent on enforcing the law concerning unused water. |
| "An application and approval process that is administratively streamlined and timely, with efficient ease of transfers in the market." (p. 21) | None. | The team has not demonstrated that their recommendations will actually accomplish this, particularly because they have not evaluated the existing system to determine where it is not streamlined, timely, and efficient. |
| "Enable rapid decision-making about which unused water licence allocations are available to the market." (p. 27) | "In order to move unused water into the market and 'create' more water available for population growth and economic development, while respecting established environmental limits." | The team has not demonstrated how more rapid decision-making or their recommendations related to that will move more water into the market, make it available for population growth and economic development, and respect environmental limits. |
| "Regulatory requirements on return flow not act as a hindrance or disincentive to conservation and efficiency efforts." (p. 33) | The section on return flows is so disjointed and, in places contradictory, that it is difficult to say what the rationale is. | The team's recommendations want everything and do not identify ways to prioritize and resolve the competing interests around return flows. |

| What the Project Team Wanted | Rationale | Solutions |
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| "Be cost-effective and less administratively burdensome so that water is moved in a timely and efficient manner. (p. 36) | "The transfer application and approval process required to make the water allocation transfer system work" | The team has assumed in this objective and related recommendations that the transfer system is broken. |
| "There must be clear grounds, criteria, and content requirements for those filing Statements of Concern." (p. 40) | "To minimize undue delays and bureaucracy." | The team seems, without documentation or justification, to be quite concerned with the Statement of Concern process. Although they do not provide helpful advice in this area, they appear to believe this is a simple matter.<br><br>However, the purpose of the Statement of Concern (SOC) is unclear: Is it to inform the decision-maker or merely a "ticket" to allow people to participate in decision-making? As well, it is debatable whether there is a difference between those whose SOCs must be considered by the decision-maker and those whose SOCs can be ignored. (Westhoff Engineering, Wendy Aupers & Associates, and Waxwing Synthesis and Resolution, *Initial List of Issues and Gaps: Water Policy Scoping and Issue Identification*, Alberta Water Council, 2006, pp. 30-34) |
| **Innovation** | | |
| "Stimulate innovation." (p.17) | "To avoid replicating some of the social and environmental damage a market can inadvertently create." | The team has not demonstrated how their recommendations will stimulate innovation. |

| What the Project Team Wanted | Rationale | Solutions |
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| "The water allocation transfer market meets the following criteria: maximizes productive and allocative efficiency, minimizes administrative and transaction costs, assures healthy aquatic ecosystems and economic development, facilitates change and innovation, and is robust." (p. 21) | "The water allocation transfer market should also operate under a number of criteria that optimize it. Criteria provide the metrics upon which performance measures can be developed to assess if objectives are being met. Alberta's water allocation transfer market should:<br>▪ Maximize productive and allocative efficiency. This means a) water is available to new entrants, b) there is an incentive for innovation and increased productivity and c) there is security of access to water. This ensures efficient use.<br>▪ Minimize administrative and transaction costs. The system is optimized to ensure a) the minimum need for government involvement while still providing an assurance role, b) it includes a simple, clear and transparent process for willing buyers and sellers to come together, c) there is access to information on transfers to help with price seeking, and d) the system overall is not prohibitively expensive to build or to operate, or the system is built to provide some cost recovery to offset the system.<br>▪ Ensure environmental effectiveness by following the concept of 'no significant harm.'<br>▪ Ensure a fair, equitable, and transparent process with equal access to education and system mechanics. Paid prices are determined in the market through the buyers and sellers and made public to all.<br>▪ Facilitate change and innovation.<br>▪ Be robust under extreme pressure and continue to work in severe conditions such as a drought. As such, it a) accommodates both temporary and permanent transfers and is designed to operate effectively with other mechanisms; b) is robust enough to accommodate groundwater and potentially other sources of licensed water; and c) ensures compliance among licensees." | The job of the market is not to ensure that water is available to new entrants to provide security of access. If they wanted this to be a role of government, the team should have identified what regulatory measures are needed.<br><br>The team has not shown that the system is prohibitively expensive to build and why the government should be concerned or responsible for costs if it is.<br><br>Except to charge people to file statements of concern, the team has not identified how costs will be recovered.<br><br>The team has not shown how "no significant harm" will assure healthy aquatic ecosystems.<br><br>The team has not demonstrated how the system will assure economic development.<br><br>The team has not shown why the process should be equitable and provide equal access to education and system mechanics.<br><br>The team has not demonstrated why and how the system should/will "facilitate" change and innovation.<br><br>The team has not demonstrated how the system will be robust and the measures to achieve that.<br><br>The team has not demonstrated how compliance will be achieved, particularly since they are ambivalent on enforcing the law concerning unused water. |
| **Conservation** | | |
| "It is in the best economic interest of each licence-holder to conserve or improve the productivity and efficiency of their water use as either a costs savings or as an ability to generate revenue." (p. 17) | "To avoid replicating some of the social and environmental damage a market can inadvertently create." | The team has not evaluated how licensees evaluate their economic interest, particularly with the subsidies and limited enforcement built into the system. As a result, they have been unable to provide evidence that the recommendations they propose will change behavior. |
| "Place an economic value on water that would change Albertans' image of water as free and abundant and possibly drive a conservation ethic." (p. 17) | "To avoid replicating some of the social and environmental damage a market can inadvertently create." | The team has not demonstrated what Albertans' image of water is, how Albertans view conservation, and how the transfer system with or without their recommendations would change Albertans' opinions for the better. |

| What the Project Team Wanted | Rationale | Solutions |
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| "Encourage water conservation and water reuse." (p. 33) | This comes from the section on return flows that is so disjointed and, in places contradictory, that it is difficult to say what the rationale is. | The team's recommendations want everything and do not identify ways to prioritize and resolve the competing interests around return flows.<br><br>The return flow section is the only part of the report that deals in a substantive way with conservation. The other discussion of "conservation" is a section devoted to promoting water shortage response and drought planning. The topic of transfers is only touched upon in that section by suggesting that assignments and transfers are an option. |
| "Regulatory requirements on return flow not act as a hindrance or disincentive to conservation and efficiency efforts." (p. 33) | The section on return flows is so disjointed and, in places contradictory, that it is difficult to say what the rationale is. | The team's recommendations want everything and do not identify ways to prioritize and resolve the competing interests around return flows.<br><br>The return flow section is the only part of the report that deals in a substantive way with conservation. The other discussion of "conservation" is a section devoted to promoting water shortage response and drought planning. The topic of transfers is only touched upon in that section by suggesting that assignments and transfers are an option. |
| Encourage "water conservation (*i.e.* water conserved can be transferred). (p. 33) | This comes from the section on return flows that is so disjointed and, in places contradictory, that it is difficult to say what the rationale is. | The team's recommendations want everything and do not identify ways to prioritize and resolve the competing interests around return flows.<br><br>The return flow section is the only part of the report that deals in a substantive way with conservation. The other discussion of "conservation" is a section devoted to promoting water shortage response and drought planning. The topic of transfers is only touched upon in that section by suggesting that assignments and transfers are an option. |
| **Risk** | | |
| "Allow water users to manage both short and longer term risk through the use of transfers." (p. 17) | "To avoid replicating some of the social and environmental damage a market can inadvertently create." | The team has not demonstrated the advantages of transfers in better management of risk. |
| "Allow existing licence-holders of unused water to manage water shortage risk to their existing operations." (p. 27) | "To move unused water into the market and 'create' more water available for population growth and economic development, while respecting established environmental limits." | The team has not demonstrated how more rapid decision-making or their recommendations related to that will move more water into the market, make it available for population growth and economic development, and respect environmental limits.<br><br>Allowing unused water to manage risk is merely one option, not a "must." For example, instead, unused water can be cancelled from a licence (see their definition of unused water – p. 26) and either allocated to other uses or added to a risk-pool from which users can purchase water. They also did not identify suspension of a licence as an option. |
| **Conflict** | | |

| What the Project Team Wanted | Rationale | Solutions |
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| "Minimize conflict by allowing lower value users to obtain fair value for their existing investment." (p. 17) | "To avoid replicating some of the social and environmental damage a market can inadvertently create." | No evidence to support the idea that conflict will be minimized.<br><br>The team has not shown how obtaining fair value will minimize conflict. It has also not shown why the market would not provide "fair value" and not provided recommendations to avoid situations where values are "unfair."<br><br>The recommendations do not deal specifically with how risk will be reduced. Unclear how any recommendation would reduce risk since no evaluation of personal, corporate, or market behavior was conducted. In particular, without that kind of evaluation, participants in the market are likely to "consume" a reduction in risk (if any) thus maintaining their level of risk or making it worse.<br><br>It is questionable if this objective is valid in a market-driven system |
| **Economic Growth** | | |
| "A higher Gross Domestic Product, more money circulating in a community, more tax dollars, *etc*." (p. 17) | "To avoid replicating some of the social and environmental damage a market can inadvertently create." | This is the team's definition of "higher value water needs." The team has not demonstrated that these are actually higher value needs in terms of economic efficiency, viability of the market, or sustainable development. |

| What the Project Team Wanted | Rationale | Solutions |
|---|---|---|
| "The water allocation transfer market meets the following criteria: maximizes productive and allocative efficiency, minimizes administrative and transaction costs, assures healthy aquatic ecosystems and economic development, facilitates change and innovation, and is robust." (p. 21) | "The water allocation transfer market should also operate under a number of criteria that optimize it. Criteria provide the metrics upon which performance measures can be developed to assess if objectives are being met. Alberta's water allocation transfer market should:<br>▪ Maximize productive and allocative efficiency. This means a) water is available to new entrants, b) there is an incentive for innovation and increased productivity and c) there is security of access to water. This ensures efficient use.<br>▪ Minimize administrative and transaction costs. The system is optimized to ensure a) the minimum need for government involvement while still providing an assurance role, b) it includes a simple, clear and transparent process for willing buyers and sellers to come together, c) there is access to information on transfers to help with price seeking, and d) the system overall is not prohibitively expensive to build or to operate, or the system is built to provide some cost recovery to offset the system.<br>▪ Ensure environmental effectiveness by following the concept of 'no significant harm.'<br>▪ Ensure a fair, equitable, and transparent process with equal access to education and system mechanics. Paid prices are determined in the market through the buyers and sellers and made public to all.<br>▪ Facilitate change and innovation.<br>▪ Be robust under extreme pressure and continue to work in severe conditions such as a drought. As such, it a) accommodates both temporary and permanent transfers and is designed to operate effectively with other mechanisms; b) is robust enough to accommodate groundwater and potentially other sources of licensed water; and c) ensures compliance among licensees." | The job of the market is not to ensure that water is available to new entrants to provide security of access. If they wanted this to be a role of government, the team should have identified what regulatory measures are needed.<br><br>The team has not shown that the system is prohibitively expensive to build and why the government should be concerned or responsible for costs if it is.<br><br>Except to charge people to file statements of concern, the team has not identified how costs will be recovered.<br><br>The team has not shown how "no significant harm" will assure healthy aquatic ecosystems.<br><br>The team has not demonstrated how the system will assure economic development.<br><br>The team has not shown why the process should be equitable and provide equal access to education and system mechanics.<br><br>The team has not demonstrated why and how the system should/will "facilitate" change and innovation.<br><br>The team has not demonstrated how the system will be robust and the measures to achieve that.<br><br>The team has not demonstrated how compliance will be achieved, particularly since they are ambivalent on enforcing the law concerning unused water. |
| **Flexibility** | | |
| "Market rules provide flexibility to move water to higher value uses." (p. 18) | "The overarching objective for implementing a water allocation transfer market in Alberta is to incent 'the efficient reallocation of water.'" | The team has not demonstrated that their recommendations will achieve flexibility that will create greater efficiency. |
| "The market be subject to the principles of efficiency, transparency, due process, flexibility and 'does no significant harm.' (p. 18) | "The overarching objective for implementing a water allocation transfer market in Alberta is to incent 'the efficient reallocation of water.'" | The team assumed that efficient reallocation and transparency/due process/flexibility/no significant harm are compatible. It is likely they are not. Since the team is relying on the compromised environmental protection of WCOs and do not identify credible mechanisms for protecting other users and society in general, they have not offered ways of making those objectives compatible. |
| **Inter-basin Transfer** | | |
| "No transfers may occur between major basins." (p. 18) | None. | No recommendations on this topic. |
| **Transparency** | | |

| What the Project Team Wanted | Rationale | Solutions |
|---|---|---|
| "Market rules are clear, transparent and consistent with due process for all participants." (p. 18) | "The overarching objective for implementing a water allocation transfer market in Alberta is to incent 'the efficient reallocation of water.'" | Clarity, transparency, and consistency may lead to greater effectiveness but less efficiency. The report does not resolve the potential conflict with the efficiency objective. |
| "The market be subject to the principles of efficiency, transparency, due process, flexibility and 'does no significant harm.' (p. 18) | "The overarching objective for implementing a water allocation transfer market in Alberta is to incent 'the efficient reallocation of water.'" | The team assumed that efficient reallocation and transparency/due process/flexibility/no significant harm are compatible. It is likely they are not. Since the team is relying on the compromised environmental protection of WCOs and do not identify credible mechanisms for protecting other users and society in general, they have not offered ways of making those objectives compatible. |
| "A clear governance structure with a high level of provincial oversight, enforcement mechanisms, transparency and protection of public interests." (p. 21) | None. | The methods for accomplishing this are:<br>▪ "delegation of operational responsibilities to a market administrator or Crown agency to oversee the water allocation transfer market. The administrator would be responsible for oversight and accountability, monitoring, and transparency of the market."<br>▪ "the Government of Alberta is responsible for regulatory decision-making and enforcement and statutory requirements."<br><br>No documentation or rationale is provided as to why a new position or agency is better than existing options or why other provincial responsibilities should not be delegated. The difference is not explained between regulatory decision-making and the other regulatory responsibilities (e.g., oversight, accountability, monitoring, and transparency). |
| "Publish information on transfer decisions to increase public awareness and transparency." (p. 42) | "Appropriate information necessary for the Director to make a decision and for the effective operation of the water allocation and transfer system should be fully transparent and available online to the extent reasonably practical, and in a timely fashion" | This objective is the method. Unclear what is "appropriate information," "effective operation" of the system, and "reasonably practical." |
| "The price paid for water allocation transfers needs to be identified for the public record." (p. 44) | "To help establish a base or floor price for the market" | No method is provided as to how this would be done. |
| **Due Process** | | |
| "Market rules are clear, transparent and consistent with due process for all participants." (p. 18) | "The overarching objective for implementing a water allocation transfer market in Alberta is to incent 'the efficient reallocation of water.'" | Clarity, transparency, and consistency may lead to greater effectiveness but less efficiency. The report does not resolve the potential conflict with the efficiency objective. |
| "The market be subject to the principles of efficiency, transparency, due process, flexibility and 'does no significant harm.' (p. 18) | "The overarching objective for implementing a water allocation transfer market in Alberta is to incent 'the efficient reallocation of water.'" | The team assumed that efficient reallocation and transparency/due process/flexibility/no significant harm are compatible. It is likely they are not. Since the team is relying on the compromised environmental protection of WCOs and do not identify credible mechanisms for protecting other users and society in general, they have not offered ways of making those objectives compatible. |
| "Rules and conditions for the applicant, as well as for those that can intervene in a decision-making process." (p. 21) | None. | This is a non-objective since there are and will continue to be rules and conditions whether they are created by government or the private sector. The team has not identified what the rules and conditions should be except to put restrictions on interveners, bless, for the most part, the existing rules and conditions, and add a few modifications to reduce regulation without any evidence to show that effectiveness will improve. |

| What the Project Team Wanted | Rationale | Solutions |
|---|---|---|
| "There must be clear grounds, criteria, and content requirements for those filing Statements of Concern." (p. 40) | "To minimize undue delays and bureaucracy." | The team seems, without documentation or justification, to be quite concerned with the Statement of Concern process. Although they do not provide helpful advice in this area, they appear to believe this is a simple matter.<br><br>However, the purpose of the Statement of Concern (SOC) is unclear: Is it to inform the decision-maker or merely a "ticket" to allow people to participate in decision-making? As well, it is debatable whether there is a difference between those whose SOCs must be considered by the decision-maker and those whose SOCs can be ignored. (Westhoff Engineering, Wendy Aupers & Associates, and Waxwing Synthesis and Resolution, *Initial List of Issues and Gaps: Water Policy Scoping and Issue Identification*, Alberta Water Council, 2006, pp. 30-34) |
| **Governance** | | |
| "A clear governance structure with a high level of provincial oversight, enforcement mechanisms, transparency and protection of public interests." (p. 21) | None. | The methods for accomplishing this are:<br>▪ "delegation of operational responsibilities to a market administrator or Crown agency to oversee the water allocation transfer market. The administrator would be responsible for oversight and accountability, monitoring, and transparency of the market."<br>▪ "the Government of Alberta is responsible for regulatory decision-making and enforcement and statutory requirements."<br><br>No documentation or rationale is provided as to why a new position or agency is better than existing options or why other provincial responsibilities should not be delegated. The difference is not explained between regulatory decision-making and the other regulatory responsibilities (e.g., oversight, accountability, monitoring, and transparency). |
| "An administrator and an ultimate accountable authority." (p. 21) | None. | The methods for accomplishing this are:<br>▪ delegation of operational responsibilities to a market administrator or Crown agency to oversee the water allocation transfer market. The administrator would be responsible for oversight and accountability, monitoring, and transparency of the market.<br>▪ the Government of Alberta responsible for regulatory decision-making and enforcement and statutory requirements.<br><br>No documentation or rationale is provided as to why a new position or agency is better than existing options or why other provincial responsibilities should not be delegated. The difference is not explained between regulatory decision-making and the other regulatory responsibilities (e.g., oversight, accountability, monitoring, and transparency). |

| What the Project Team Wanted | Rationale | Solutions |
|---|---|---|
| "A market governance structure with clear accountability and authorities including delegation of operational responsibilities to a market administrator or Crown agency to oversee the water allocation transfer market." (p. 22) | ▪ "Monitoring will be critical to ensure that water quantity and quality objectives are being met."<br>▪ "The overall monitoring and enforcement processes will need to be improved to support the market."<br>▪ "Accountability requires transparency. There needs to be a public record and public access to information about the market such as who is buying and selling, the paid price, the volume, *etc*." | No documentation or rationale is provided as to why a new position or agency is better than existing options.<br><br>It is unclear why monitoring is critical, but enforcement is not.<br><br>The improvements to monitoring and enforcement are not identified.<br><br>Equating accountability, transparency, and access to information is good, but no information is provided as to how that can be accomplished. As well, other aspects of accountability and transparency are not dealt with. |
| **Enforcement** | | |
| "A clear governance structure with a high level of provincial oversight, enforcement mechanisms, transparency and protection of public interests." (p. 21) | None. | The methods for accomplishing this are:<br>▪ "delegation of operational responsibilities to a market administrator or Crown agency to oversee the water allocation transfer market. The administrator would be responsible for oversight and accountability, monitoring, and transparency of the market."<br>▪ "the Government of Alberta is responsible for regulatory decision-making and enforcement and statutory requirements."<br><br>No documentation or rationale is provided as to why a new position or agency is better than existing options or why other provincial responsibilities should not be delegated. The difference is not explained between regulatory decision-making and the other regulatory responsibilities (e.g., oversight, accountability, monitoring, and transparency). |
| "The overall monitoring and enforcement processes will need to be improved to support the market." (p. 22) | None. | The team does not say how monitoring and enforcement should be improved. |

**Table A-1**

**Comparison of Principles for *Water for Life***

| 2003 Principles | *Renewal* Principles | Change |
|---|---|---|
| All Albertans must recognize there are limits to the available water supply. | All Albertans must recognize there are limits to the available water supply. | No change |
| Alberta's water resources must be managed within the capacity of individual watersheds. | Alberta's water resources must be managed within the capacity of individual watersheds. | No change |
| Citizens, communities, industry and government must share responsibility for water management in Alberta, and work together to improve conditions within their local watershed. | Citizens, communities, industry and government must share responsibility for water management in Alberta and work together to improve conditions within their local watershed. | No change |
| Knowledge of Alberta's water supply and quality is the foundation for effective decision-making. | Knowledge of Alberta's water supply and quality is the foundation for effective decision-making. | No change |
| Albertans must become leaders at using water more effectively and efficiently, and will use and reuse water wisely and responsibly. | Albertans must become leaders at using water more effectively and efficiently, and use and reuse water wisely and responsibly. | No change |
| Alberta must preserve the "first-in-time, first-in-right" principle for granting and administering water allocations, but water allocations will be transferable to ensure societal demands and needs can be met. | Alberta currently recognizes "first-in-time, first-in-right" for existing water allocations, which can be transferable to ensure societal demands and needs can be met. | ▪First in time, first in right no longer preserved, but "recognized" for existing allocations.[149]<br>▪Allocations can be transferable rather than will be. |
| Healthy aquatic ecosystems are vital to a high quality of life for Albertans and must be preserved. | Healthy aquatic ecosystems are vital to a high quality of life for Albertans and must be preserved. | No change |
| Groundwater and surface water quality must be preserved in pursuing economic and community development. | Groundwater and surface water quality must be preserved while pursuing economic and community development. | No change |
| Alberta will continue to be a leader in drinking water quality and standards to ensure Albertans have safe, secure drinking water. | Alberta will continue to be a leader in drinking water quality and standards to ensure Albertans have safe, secure drinking water. | No change |
| | Alberta will administer and operate the water management system to meet transboundary agreements in cooperation with neighbouring jurisdictions. | New |
| | The Government of Alberta, along with our partners, will manage Alberta's water infrastructure – both provincial and district-owned – for long-term sustainability. | New |
| | Best available practices and market-based tools will be used in order to maintain flexible and adaptive water management. | New |
| | Water for Life will be integrated into other policies and plans, such as Land-use Framework planning, ensuring better resource management integration | New |

Sources: Alberta Government, *Water for Life*, 2003, p. 6 and Alberta Government, *Water for Life: A Renewal*, 2008, p. 7

[149] This appears to be a revival of the previous policy that existing rights and their priority "will be respected" rather than preserved or protected. See Alberta Environment, *Water Management Policy for the South Saskatchewan River Basin*, 1990, p. 1.

**Table A-2**

**Comparison of Goals, Outcomes, and Actions for *Water for Life***

**Safe, secure drinking water supply**

| | 2003 Goals, Outcomes, and Actions | *Renewal* Goals, Outcomes and Actions | Change |
|---|---|---|---|
| Goal | Albertans will be assured their drinking water is safe. | Albertans are assured their drinking water is safe. | Slightly stronger commitment now |
| Examples of Outcomes | A comprehensive strategy to protect Albertans' drinking water. | A comprehensive strategy to protect Alberta's drinking water. | Now protecting Alberta's drinking water rather than Albertans' |
| | Albertans have real-time access to information about drinking water quality in their community. | Timely access for all Albertans to information about drinking water quality in their communities. | Objective is no longer real-time access |
| | Alberta's drinking water infrastructure meets emerging standards and is managed for long-term sustainability. | Adherence of Alberta's drinking water infrastructure to emerging standards and management for long-term sustainability. | No significant change |
| Examples of Actions | Complete an assessment of all drinking water facilities in the province. | Review and improve the management of small drinking water systems that are currently unregulated. | Extension of previous assessment |
| | Upgrade all drinking water facilities to meet new drinking water standards as they are implemented. | Develop innovative approaches to build and assure long-term operational capacity in smaller Alberta communities. | Emphasis on "innovation" for smaller communities |
| | Design and implement regional water systems. | Design and implement regional drinking water and wastewater solutions. | No significant change |
| | | Work cooperatively with First Nations, Métis communities and the federal government to ensure safe drinking water in Aboriginal communities in Alberta. | New |

More protection for water sources | Less protection for water sources | Accelerated action | Reduced action

Sources: Alberta Government, *Water for Life*, 2003 and Alberta Government, *Water for Life: A Renewal*, 2008. The *Renewal* only provides examples of outcomes and actions so the comparison is limited to those items. Goals for knowledge and research, partnerships, and water conservation are called "key directions."

**Table 2**
**(continued)**
**Comparison of Goals, Outcomes, and Actions for *Water for Life***

**Healthy aquatic ecosystems**

| | 2003 Goals, Outcomes, and Actions | *Renewal* Goals, Outcomes and Actions | Change |
|---|---|---|---|
| Goal | Albertans will be assured that the province's aquatic ecosystems are maintained and protected. | Albertans are assured that Alberta's aquatic ecosystems are maintained and protected. | Slightly stronger commitment now |
| Examples of Outcomes | Efforts to protect aquatic ecosystems in critical areas are underway. | Protection of aquatic ecosystems in critical areas. | No significant change |
| | Water management objectives and priorities for sustaining aquatic ecosystems are established through watershed plans. | Establishment of priorities for sustaining aquatic ecosystems to be implemented through watershed plans. | Water management objectives are no longer to be established through watershed plans.<br>Priorities will now be implemented rather than established. |
| | Water is managed and allocated to sustain aquatic ecosystems and ensure their contribution to Alberta's natural capital and quality of life are maintained. | Management and allocation of water to sustain aquatic ecosystems and ensure their contribution to Alberta's natural capital and quality of life is maintained. | No significant change |
| Examples of Actions | Establish an adaptive management system for identifying issues, gathering information, developing and implementing action plans, and evaluating management actions. | Develop a provincial action plan to improve the health of significantly impacted aquatic ecosystems. | *Renewal* example is part of overall action. |
| | Establish Water Conservation Objectives for the South Saskatchewan River Basin. | Set water conservation objectives on all major basins. | Use of water conservation objectives expanded to all major basins |
| | Develop a wetland policy and supporting action plan to achieve sustainable wetlands. | Finalize and implement a new wetland policy for Alberta. | No significant change |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | More protection for water sources | | Less protection for water sources | | Accelerated action | | Reduced action |

Sources: Alberta Government, *Water for Life*, 2003 and Alberta Government, *Water for Life: A Renewal*, 2008. The *Renewal* only provides examples of outcomes and actions so the comparison is limited to those items. Goals for knowledge and research, partnerships, and water conservation are called "key directions."

**Table 2**
**(continued)**
**Comparison of Goals, Outcomes, and Actions for *Water for Life***

**Reliable, quality water supplies for a sustainable economy**

| | 2003 Goals, Outcomes, and Actions | *Renewal* Goals, Outcomes and Actions | Change |
|---|---|---|---|
| Goal | Albertans will be assured that water is managed effectively to support sustainable economic development. | Albertans will be assured that water is managed effectively to support sustainable economic development. | No change |
| Examples of Outcomes | A broad range of water management tools and techniques are implemented. | Implementation of a broad range of water management tools. | Broad range of techniques deleted |
| | Albertans understand the value of water to the economy and quality of life. | Increased awareness for all Albertans of the holistic value of water – as both a part of the economy and improved quality of life. | Awareness rather than understanding now to be pursued.<br>Value of water apparently expanded beyond economic and quality of life issues. |
| | Water management objectives and priorities to support sustainable economic development are established through watershed plans. | Establishment of water management objectives and priorities that support sustainable economic development to be implemented through watershed plans. | "Established" changed to "implemented" |
| | Water is managed and allocated to support sustainable economic development and the strategic priorities of the province. | Management and allocation of water to support sustainable economic development and the strategic priorities of the province. | No significant change |
| Examples of Actions | Review the water allocation transfer system to ensure a viable market that moves water to support sustainable economic development. | Develop and implement an enhanced surface water rights transfer system that supports sustainable economic development. | "Review … to ensure" changed to "Develop and implement" |
| | Complete a partnership framework, outlining the roles, responsibilities and relationships between government and its partners. | Develop and implement a viable governance system that supports sustainable management of water. | Governance now to be viable and supportive of sustainable management |

More protection for water sources | Less protection for water sources | Accelerated action | Reduced action

Sources: Alberta Government, Water for Life, 2003 and Alberta Government, Water for Life: A Renewal, 2008. The *Renewal* only provides examples of outcomes and actions so the comparison is limited to those items. Goals for knowledge and research, partnerships, and water conservation are called "key directions."

**Table 2**
**(continued)**
**Comparison of Goals, Outcomes, and Actions for *Water for Life***

**Knowledge and research**

| | 2003 Goals, Outcomes, and Actions | *Renewal* Goals, Outcomes and Actions | Change |
|---|---|---|---|
| Goal | Albertans will have the knowledge needed to achieve safe drinking water, efficient water use, and healthy watersheds. | Albertans will have access to the knowledge needed to achieve safe drinking water, healthy aquatic ecosystems, and reliable, quality water supplies for a sustainable economy. | Goal downgraded to having access to knowledge (rather than having knowledge). |
| | | | Goal downgraded to no longer having efficient water use and healthy watersheds. |
| Examples of Outcomes | Scientific knowledge of Alberta's water resources. | An understanding by Water for Life partners of the state of Alberta's drinking water, aquatic ecosystems, and the quality and quantity of surface and groundwater resources. | Outcome limited to "an understanding" rather than "scientific knowledge." |
| | | | Outcome limited to "partners." |
| | Ensuring all Albertans are aware of water issues and have the knowledge and tools necessary to make effective management decisions. | Easy access to knowledge and information regarding Alberta's water resources and applicable research to make informed water and related air, land and resource management decisions. | Outcome downgraded to "easy access" rather than "ensuring" awareness and knowledge. |
| | | Incorporation of education tools and strategies into all Water for Life actions. | New. However, education tools and strategies were already incorporated into all aspects of *Water for Life* |

More protection for water sources | Less protection for water sources | Accelerated action | Reduced action

Sources: Alberta Government, *Water for Life*, 2003 and Alberta Government, *Water for Life: A Renewal*, 2008. The *Renewal* only provides examples of outcomes and actions so the comparison is limited to those items. Goals for knowledge and research, partnerships, and water conservation are called "key directions."

**Table 2**
**(continued)**
**Comparison of Goals, Outcomes, and Actions for *Water for Life***

**Knowledge and research**

| | 2003 Goals, Outcomes, and Actions | *Renewal* Goals, Outcomes and Actions | Change |
|---|---|---|---|
| Examples of Actions | ▪ Complete an assessment of Alberta's surface water quality.<br>▪ Complete an assessment of all drinking water facilities in the province.<br>▪ Establish an independent, on-going review process, on a five-year cycle, for Alberta's drinking water program.<br>▪ Develop a system for monitoring and assessing aquatic ecosystems.<br>▪ Establish science-based methods for determining the ecological requirements for a healthy aquatic environment.<br>▪ Establish a provincial water information centre that brings together information from both private and public sources.<br>▪ Update water quality programs to support watershed protection and planning.<br>▪ Complete an initial assessment of the status of aquatic ecosystems, including lakes, wetlands, streams and rivers.<br>▪ Monitor, evaluate and report on the water allocation transfer system.<br>▪ Understand the state of the quality and quantity of all surface water supply in all major basins.<br>▪ Understand the state of the quality and quantity of Alberta's groundwater supply.<br>▪ Establish a waterborne health surveillance and reporting system.<br>▪ Review the water allocation transfer system to ensure a viable market that moves water to support sustainable economic development.<br>▪ Understand the state of Alberta's aquatic ecosystem. | Enhance the provincial water monitoring and evaluation program including information on wetlands, groundwater, aquatic health, water quality, drinking water and water supply. | Extension of 2003 actions, though much less detail |
| | Establish a provincial water information centre that brings together information from both private and public sources. | Enhance the Alberta water information centre to provide a web-based public information centre to report on the status of Alberta's water resources. | Extension of 2003 action |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | More protection for water sources | | Less protection for water sources | | Accelerated action | | Reduced action |

Sources: Alberta Government, Water for Life, 2003 and Alberta Government, Water for Life: A Renewal, 2008. The *Renewal* only provides examples of outcomes and actions so the comparison is limited to those items. Goals for knowledge and research, partnerships, and water conservation are called "key directions."

**Table 2**
**(continued)**
**Comparison of Goals, Outcomes, and Actions for *Water for Life***

**Partnerships**

| | 2003 Goals, Outcomes, and Actions | *Renewal* Goals, Outcomes and Actions | Change |
|---|---|---|---|
| Goal | Citizens and stakeholders will have opportunities to actively participate in watershed management on a provincial, regional and community basis. | Water for Life partners are empowered, informed and fully engaged in watershed stewardship. | Goal limited to partners and does not include "opportunities" for participation. |
| Examples of Outcomes | Provide policy advice to government. | Timely and strategic advice given to governments, industry and non-government organizations by the Alberta Water Council. | Advice is now strategic (i.e., related to implementation) and advice no longer limited to government |
| | Lead in watershed planning, develop best management practices, foster stewardship activities within the watershed, report on the state of the watershed, and educate users of the water resource. | Maintaining Watershed Planning and Advisory Councils as leaders in watershed assessment and planning. | No significant change |
| | ▪ Continue to develop on-the-ground solutions to ensure the protection of their specific watersheds.<br>▪ Improve the condition of local watersheds. | Continued work by watershed stewardship groups to take community-level action to safeguard Alberta's water resources. | No significant change |
| Examples of Actions | Government outcomes include technical and administrative support for its partners. | Continue to resource and support Water for Life partnerships. | No significant change |
| | Establish an adaptive management system for identifying issues, gathering information, developing and implementing action plans, and evaluating management actions. | Continue to develop and improve watershed management knowledge, tools and programs. | No significant change |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | More protection for water sources | | Less protection for water sources | | Accelerated action | | Reduced action |

Sources: Alberta Government, *Water for Life*, 2003 and Alberta Government, *Water for Life: A Renewal*, 2008. The *Renewal* only provides examples of outcomes and actions so the comparison is limited to those items. Goals for knowledge and research, partnerships, and water conservation are called "key directions."

**Table 2**
**(continued)**
**Comparison of Goals, Outcomes, and Actions for *Water for Life***

**Water Conservation**

| | 2003 Goals, Outcomes, and Actions | *Renewal* Goals, Outcomes and Actions | Change |
|---|---|---|---|
| Goal | Albertans will be leaders in conservation by using water efficiently and effectively. | All sectors understand how their behaviours impact water quality, quantity and the health of aquatic ecosystems, adopt a "water conservation ethic" and take action. | Leadership role eliminated<br>Understanding identified as part of goal |
| Examples of Outcomes | The overall efficiency and productivity of water use in Alberta has improved by 30 per cent from 2005 levels by 2015 (firm targets to be determined by the Provincial Water Advisory Council). | Demonstration in all sectors of best management practices, ensuring overall efficiency and productivity of water use in Alberta improves by 30 per cent from 2005 levels by 2015. This will occur when either:<br>o Demand for water is reduced; or<br>o Water use efficiency and productivity are increased. | No significant change |
| Examples of Actions | Complete an evaluation and make recommendations on the merit of economic instruments to meet water conservation and productivity objectives. | Complete an evaluation and make recommendations on the merit of economic instruments to meet water conservation and productivity objectives. | No change |
| | Prepare water conservation and productivity plans for all water using sectors. | Encourage all sectors to develop and implement sector plans for water conservation, efficiency and productivity. | Transfer of responsibility to sectors |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | More protection for water sources | | Less protection for water sources | | Accelerated action | | Reduced action |

Sources: Alberta Government, *Water for Life*, 2003 and Alberta Government, *Water for Life: A Renewal*, 2008. The *Renewal* only provides examples of outcomes and actions so the comparison is limited to those items. Goals for knowledge and research, partnerships, and water conservation are called "key directions."