

Presentation to the Environmental Advisory Council for the Water Act

October 8th, 2015

By Gary Schneider, Co-chair, Environmental Coalition of Prince Edward Island and Past member of the Round Table on Resource Land Use and Stewardship

Thank you for allowing me to make a presentation to the Council. The creation of a Water Act was born out of repeated requests to overturn the moratorium on high capacity wells for potato irrigation and the public backlash against any such change. Since opening up this contentious issue, it has been especially heartening for me to witness the breadth of concern about water across this province – everything from the safety of our drinking supply, high nitrate levels, dead fish and shellfish and degraded wildlife habitat. This is an issue in which all Islanders seem to be engaged.

The provincial government of Premier Wade MacLauchlan has an opportunity to put Prince Edward Island on the path to sustainability. The outcome of this process may very well be his legacy.

I admit that it is not an easy task. There have been many Royal Commissions and Round Tables and reports brought forward over the years to address stewardship problems in this smallest of provinces. I would like to relate my experience as a member of the provincial Round Table on Land Resource Use and Stewardship that met for two years and presented a final report in 1997. Concerns over pesticide use and other agricultural practices were key reasons for the establishment of the Round Table.

The recommendations contained in the report were compromises reached between members of the farming community, fisheries, tourism and non-governmental sectors. We all felt the recommendations would lead to progress on these issues. And there is no question that our laws are better than they were in 1997. You are no longer allowed to legally plough right up to the edge of a waterway. For the most part, cattle have been fenced out of streams.

Yet in 2015, almost twenty years since the release of the report, Islanders still face a myriad of serious problems related to water quality and quantity. Fish kills continue to occur almost every year; anoxic conditions that kill

shellfish and many other aquatic species have become so common they seldom even draw attention; homeowners are forced to drill new, deeper wells as a result of nitrate contamination; and parts of the Winter River annually dry up due to overconsumption in Charlottetown. At the same time there is pressure to remove the moratorium on high-capacity wells, which makes the public very nervous.

Despite all our technological advances and overwhelming evidence that we need to protect our environment, we are still in a mess. Why can't things change, when change is so desperately needed?

At the time of the Round Table, I felt that there were only four ways to solve agricultural problems such as fish kills and anoxic events in the province. The first option would be a whole-hearted move to organic agriculture. The second would see individual plans developed for each farm based on sound science that spelled out not only the size of the required buffer zone but also the crop rotation, the maximum size of the field, fertilizer use, the orientation of the drills and amount of organic matter that soil should contain. The third way was to not have any legislation at all, but to rigorously enforce any infractions of the federal fisheries legislation that makes it illegal to allow deleterious substances to enter waterways where fish live. The final possibility was to have blanket legislation instead of individual plans, but that this legislation would have to be strong.

At the end of the day, the compromise position on riparian zone buffers in agricultural land was to have blanket legislation. The Round Table recommendation was for legislated buffer zones **“having a minimum width of twenty (20) metres and a maximum width of thirty (30) metres, depending on surrounding topography, measured on the horizontal, from the edge of all permanently flowing watercourses.”**

Despite having a large number of farmers participating in the Round Table decision making, this and other recommendations in the report were opposed by many within the farming community. And the provincial government responded to this pressure with an even more watered-down buffer zone of 15 metres in width, and a crop rotation Act that is full of loopholes that allow farmers to grow two crops of potatoes every five years.

What has been the result of weakening what were already compromised recommendations? Almost every year, we face another fish kill and more

anoxic events in Island rivers. Even with the extremely dry weather we've been having, we're still not able to have a summer without dead sections in our streams and rivers. This is a sad reflection on the state of our environment. And it won't get any better if we just close our eyes.

It is hard for me to believe that it has been almost twenty years since the Round Table released its report and yet we still have so much work to do in solving these problems. I was thinking of my daughter as I wrote this presentation, and of the legacy that she is being left with. And I'm not particularly proud of that, despite having made a real effort to protect and improve the Island environment. With that in mind, here are my recommendations on what should be done to improve water quality and quantity on Prince Edward Island. Some of these should be included in the Water Act, while others will fit into policy and regulations. I would advise against leaving too much to policy and regulations, unless they are being developed hand in hand with the Water Act. The last thing in the world you want to do is produce an Act that sounds good but has absolutely no teeth.

1. We must face up to the serious environmental problems in this province. This year's Speech from the Throne stated that one reason people love to come to Prince Edward Island was our "pristine" water. And when I take the Marine Atlantic ferry there is always an announcement about our "pristine" Island waters. Pristine is a lovely word, but when you have dead fish floating in rivers and shellfish dying in our estuaries, attracting national and international attention in a variety of media outlets, you'd have to have a pretty low opinion of visitors' intelligence to think they would believe that. Studies are being carried out at UPEI to look at the significant amounts of nitrates and pesticides that are flowing into the Strait. We really need to start making the same progress on water that we are finally making on mental health, child abuse, drug addiction or other societal issues. We need to honestly admit there are problems and address them with seriousness and immediacy.

2. Once we admit that we actually have serious problems, we need boldness in our leadership to act on these issues. For decades now we have been tinkering on the edges of these problems, hoping that education, incentives, voluntary programs, small legislative moves, and the occasional court action would solve things. That obviously hasn't been working. As I said earlier, it is not going to be an easy task, but it is one that Islanders are impatiently waiting for.

3. The Act should focus on the well-recognized and widely adopted “Precautionary Principle” in all matters related to water. If we don’t have sufficient and sound scientific proof that opening up our aquifers to more high-capacity wells can be done safely, then we should not move ahead despite the political pressure. If we can’t be certain that fracking is not going to have negative effects, we don’t move ahead on it. If we don’t know if the export of water is sustainable, then we stay away from it.

4. In the Water Act, access to clean water should be recognized as a basic human right.

5. The Water Act should protect stream health and aquatic environments by having legally enforceable minimum environmental flows in each watershed. The overriding, guiding principle would be that we do everything we can to protect the health of the ecosystem. In medical terms, we would “first, do no harm”. Low flow levels can be very detrimental to fish and wetland wildlife. Safeguarding minimum flow levels would protect our waterways and ensure that situations such as Charlottetown’s overexploitation of water in the Winter River watershed never happen again.

6. The Act should include a “Prohibition on introducing foreign matter in streams”, a key component to BC’s new Water Sustainability Act. It says that you can’t put things in waterways, or allow things to enter waterways, that are harmful to the aquatic ecosystem. This mirrors what was in the Federal Fisheries Act before it was gutted by the Conservative government. To be in violation of the law, you don’t have to put the foreign matter, or deleterious substance, into the waterway, you just have to allow it to get there. Right now there are no regulations on the size of fields, for example, but we all know that the longer the field is that leads down to the water, the faster the water will travel and the more sediment and pesticides it will carry. The Water Act should ensure that people take responsibility for their practices.

7. In a concrete step to reduce the amount of soil and pesticides getting into our waterways, the Act should legislate an increase in the minimum buffer zone to 20 metres, with a maximum of whatever it takes to keep silt and pesticides out of a waterway.

8. The Act should remove all loopholes in the mandatory three-year crop rotation, increase monitoring and enforcement of this legislation and work to ensure that our courts uphold the will of the people.

9. The previous two recommendations should be financially supported by the provincial government, finding a fair compensation for the additional land taken out of production. Perhaps a creative solution could be to find willing partners who would be interested in purchasing the carbon sequestration that these areas could facilitate.

10. The Water Act should include a Pesticide Reduction Policy that effectively reduces pesticide use across the board. One easy action should be to follow the lead of other jurisdictions and ban cosmetic pesticides. But the Act also needs to target significant pesticide reductions in the agriculture industry and golf courses. Since 1962, there have been over 50 reported fish kills in the province, and who knows how many more that were undiscovered or unreported. As bad as this looks, it is actually much worse. Once you kill almost all the life in a river, you can't kill more fish until they recover. But that doesn't mean that pesticides aren't still entering the waterways and killing things. We've been promised a solution for decades now and it really will take strong legislative action.

11. Given the excess amounts of nitrogen present in our surface and ground water, the Act should establish clear, enforceable targets to reduce the input of nitrogen fertilizer. From 2004 to 2014, there were 182 anoxic events reported in Island rivers, and another eight in freshwater ponds. In 2012 alone, we had 29 anoxic events. That is a tremendous amount of damage done to our aquatic ecosystems and our fishing industries. The situation with our drinking water is equally frightening. In 2008, 6% of Island wells were above the 10mg/L level recommended by Health Canada. The highest levels of nitrates were found in the areas with the highest levels of potato acreage. If nitrate inputs were lowered significantly, it would take 25 years to return to non-critical levels. There really is no way to solve this other than reducing potato acreage or making producers pay for polluting the water.

12. The Act must clearly state that the province is responsible for monitoring and enforcement, not watershed groups. These organizations do a fantastic job of improving stream health, restoring biodiversity and educating the public all across the province. I've worked with many of them

and they continue to impress me with their diligence and dedication. But the provincial government should not devolve its monitoring and enforcement to watershed groups. That is the role of government.

13. In conjunction with the above recommendations, we should strengthen the water education component in our school system. Island students should learn from a young age about the importance of water to our ecologic and economic survival. We don't need them all to become hydrogeologists, but everyone should have an understanding of what good stewardship and sustainability mean. A plan for water education in our schools should be a key component in any water strategy.

A comprehensive Water Act will not only protect the quantity and quality of Island waters. It will also have an incredible impact on the economy of the province. We are presently in the process of branding PEI as "Canada's Food Island." But if we continue to have fish kills, anoxic conditions, pesticides and nitrates entering the Strait and high levels of nitrate in our drinking water, the bad publicity will do more damage than any food promotion exercise can mask. These incidents are attracting national and international attention and undermine all the efforts to shine a spotlight on the high quality of our locally produced food.

The new Act should also have a very positive impact on our tourism industry. People have lots of other places they can visit if they so choose – we're competing for the tourist dollar. But if people associate PEI with a polluted environment, many will choose to go elsewhere.

Another thing that could very well happen is that we actually start attracting more and more of the brightest minds around because they choose to come to a progressive place that is taking bold action to protect the environment. People want to raise their children in a place where they know that the environment is being looked after. They want to hear the word "pristine" and not feel as though they are being duped.

If we act boldly and take the steps that need to be taken, Prince Edward Island will quickly become a leader in sustainable agriculture and develop a worldwide environmental reputation that will make us all proud. Proper action can only lead to good things. Sound stewardship of our water and the provincial environment will restore our damaged reputation and earn the type of publicity and respect that this Island deserves.