

The Honourable Serge Rousselle

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Minister, Environment and Local Government

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Minister Rousselle:

RE: **COMMENTS FROM FRIENDS OF WATER CLASSIFICATION ON DRAFT WATER STRATEGY**

Thank you for the opportunity to comment on the draft Water Strategy released in October of 2017. Your administration is to be commended for recognizing the importance of water to New Brunswickers and attempting to grapple with their concerns, which are many.

Our views on the proposed strategy include that it is breathtakingly short on details and missing many key concepts expected in a modern approach to water in an age of climate change. It lacks an emphasis on prevention, restoration, resources, clear and measurable outcomes, recognition of the current situation or the concept of water (in)security. We deal with each of these in our letter.

What this document does reflect is a department with severe shortage of resources and expertise. This situation requires immediate attention particularly because recurring resource-extractive proposals (including water sales) will continue to elicit public outrage over water absent a clear and protective water program. This program must have an **over-arching commitment to securing water quality and quantity** into the future, regardless of “development” proposals that may come along, as well as concrete measures to achieve this commitment.

Our generation does not have the right to compromise the security of clean air, land or water that will be needed in future. This strategy, despite its good intent, must be strengthened considerably in order to protect the commons –our water--which we all own and share. Being weak in order to facilitate polluting industries and land uses is a regressive approach to resource management. Conservation must come first, and healthy activities/economic endeavours will follow. Leaving a toxic, degraded legacy to future generations because of a lax regulatory environment is unacceptable by any measure.

More Emphasis on Prevention

“An ounce of prevention is worth a pound of cure.”

With the current water strategy government appears to be retreating on attempts to be proactive and prevent problems, and drifting towards a reactive mindset. With all due respect, and as taxpayers, we say preventing problems is infinitely cheaper on the Treasury than trying to fix things up once damage is done. That is, of course, unless government chooses to pass a degraded environment on to future governments and lets THEM pay. What a sad liability to leave our children.

The 2002 **Water Classification Regulation (2002-13)** under the *Clean Water Act* was focused on preventing problems and engaging citizens in safeguarding watersheds. Inexplicably this regulation has not been implemented and a satisfactory explanation for this has never been released. A reasonable Action Step under Goal 2 is to **designate the 18 watersheds for which classification work was completed**. Having already established the baseline quality parameters for watercourses and lakes, the Designation Order could be used in the oversight of land uses negatively affecting water.

Reference to ‘deficiencies’ within the Classification Regulation appearing on p.12 of the strategy are disingenuous and misleading. Numerous government lawyers were responsible for drafting the regulation in 2002. Lawyers for the Justice Department and all other Departments reviewed the Cabinet Submission and deemed the regulation sound. The Legislative Assembly authorized the regulation and passed it into law. A 2016 legal opinion from Ms Julie Abouchar of law firm Willms and Shier, Environmental Lawyers, LLP obtained by the Friends of Water Classification, finds the regulation does not violate legal principles (it is not *ultra vires* or unconstitutional); the legal opinion also finds the regulation to be enforceable. Furthermore, the regulation has never been tried in court, a worthy test of any legislation. How can the Minister and Deputy in good conscience maintain that the regulation is ‘deficient’? Even the Ombudsman—himself a lawyer-- could not get a reasonable answer from the Department as to why it believed the water classification regulation to be wanting.(1)

Having eyes and ears in the community looking out for high quality water is as proactive as you can get. Watershed groups are performing this function but **need to have their work recognized and their watercourses designated as promised by regulation in 2002**.

Need for More Resources

A request for information made under the RTTIPPA revealed that although **6,199 WAWA permits** were issued between 2013 and 2016, only **eight (8) Ministerial orders** were issued under the *Clean Water Act* by your department. We would like to think this is a result of good stewardship and compliance but it is more likely due to a starvation budget afforded enforcement personnel. Furthermore, during the same four-year period only **22 investigations** occurred and a grand total of **27 warnings** were issued in relation to the program.(2)

The perception of inadequate oversight of potentially polluting activity near water appears to be supported by comments submitted during the public consultation period on the water strategy—members of the public are very concerned there is little to no enforcement of environmental laws, and infractions are commonplace (violation of WAWA permit conditions, infilling of wetlands, unlawful hardening of shorelines, dredging in waterways). It is similarly supported by a recent Conservation Council of NB survey showing that 76% of New Brunswickers are concerned about the management of their fresh water. (3) This lack of confidence in government’s ability to perform adequately is very concerning.

The current draft strategy does not acknowledge the dearth of resources available to the department, or even the need to seek out efficiencies in existing budgets, the inference being that everything is as it should be. There is no mention of regional offices, or their role in the management of water. Without

sufficient financial and personnel capacity, it is impossible for a water strategy to reflect the values, concerns and priorities of New Brunswickers.

Clear and Measurable Outcomes

A good strategy articulates a vision statement that is aspirational, not merely a reflection of the status quo. The current vision statement “NB’s water will be protected and managed to ensure its quality and availability for future generations” is underwhelming at best. Could it not perhaps reference concepts of **resilience, respect, biodiversity, permanency**, or even **restoration**? The term ‘quality’ can refer to both good and bad quality. Some watercourses today have poor quality—unless action is taken to restore/rehabilitate these, they can still meet the vision of the Strategy. This is hardly inspiring.

The goals 1-5 are modest in their ambition and mushy in their verbiage. Goals –to be effective in driving progress—need to be S.M.A.R.T. This stands for: Specific, Measurable, Achievable, Realistic and Time-bound. These goals and associated Action Plan steps don’t come close to being S.M.A.R.T. Perhaps that is the point. If the goals are fuzzy and the pathway confusing, then no one will be the wiser when the vision isn’t achieved, as there are no benchmarks, no timelines, no assignment of responsibilities, no success indicators and no accountability. **New Brunswick deserves better than this.**

Further, concepts like that of ‘Continuous Improvement,’ a guiding principle used to achieve business excellence, need to be applied to our relationship with nature, including approaches to water. In other words, activities should be required to not just prevent or mitigate effects, they should seek to **enhance and restore the environments they impact**. Humans’ footprint on the globe needs to be scaled back, with each incursion into nature having as an integral component, a net environmental improvement: more trees than before, lower stormwater runoff, greater biodiversity of vegetation, lower energy requirements, etc. Please consider adding this into the guiding principles. The standard of ‘no degradation’ of water resources (wording that is part of the CCME Guidelines on Water Quality) is simply inadequate and unrecognizing of the immense environmental challenges we are facing. One acts very differently around water one is trying to improve than around water one is simply ‘not degrading.’

Current Framework Weaknesses

A good strategy should reckon with existing conditions and current legislation, regulations and policies that have led to unacceptable existing conditions. From here it should identify gaps, weaknesses and opportunities to meet the goals and vision. The current strategy refers to various pieces of policy and fails to assess their adequacy for the task at hand. For example, the Biodiversity Strategy (2009) is a broadly-worded report (not a strategy by any stretch of the imagination) that has never been taken to any level of practical application. In fact, most ENGOs think of it as being dead, so far has biodiversity fallen off the radar of DERD. So to refer to it in this draft is insincere.

The same could be said for the various inchoate policies governing Wetlands and Coastal Zones, unless a commitment is made in the Strategy to finalize and IMPLEMENT these in the spirit in which they were conceived. Other policies that are as yet non-existent, such as might apply to key natural heritage and hydrological features, stormwater management and invasive species in water are overdue for

development and should be included as Action steps. Incidentally, the Conservation Council survey referenced above found that 76% of respondents think it is extremely important to invest in natural infrastructure (wetlands, forests, open spaces) as insurance against the effects of severe weather events resulting from climate change.

Finally, where are the recommendations compiled by the Working Group on Water Classification? The timing of the strategy's release suggests lack of respect for this process and for the individuals who participated.

Water Security

The phrase 'water security' has been defined as "long-term sustainable access to sufficient supplies of water of acceptable quality for humans and the environment." (4) Given the unpredictability of future weather patterns under climate disruption, there could and likely will be situations of water insecurity, that is, lack of access to drinking water, lack of base flows for aquatic life, lack of surface water for agriculture/livestock/irrigation. These stresses are real and the strategy fails to acknowledge them or indicate how individuals' water security will be maintained.

A main concern among the public is the taking of water by industry in such a way that it compromises citizens' access to drinking water or to aquatic food sources. Such was the threat with fracking, which the Liberal government wisely sought to put under moratorium. However, there are other actors waiting in the wings to take our water. Bottling companies and water exporters will soon (if not already) be eyeing NB's fresh water for their corporate gain, touting, of course, the jobs they will create. We must adopt legislation that assures citizens that their water privileges will not be curtailed in the interest of upholding corporate profits. As an over-riding principle, **privatization of water resources should be clearly prohibited**. Read any of Maude Barlow's books for the reasons why this makes eminently good—and popular, except to a few industries-- public policy.

Already boil water orders in NB are almost twice the national average. In a sense we already have water insecurity; as the Ombudsman pointed out in his 2014 report, Class A water bodies have only an illusion of protection that could be exploited by unscrupulous developers, were they to challenge the 'provisional classification' jargon used by the Department (5). If government chose to designate watersheds as requested, the water classification regulation would **give legal recognition** to high quality waterways and help protect them.

Omissions from Strategy

Returning to the theme of climate change for a moment, I refer to work completed by the Southeast Chapter of the Conservation Council on forest cover loss and gain. As the forest covers over 80% of New Brunswick (both Crown/unceded and privately-held), how it is managed profoundly affects the quality/quantity of stream flow AND susceptibility to flooding, erosion and sedimentation.

Using landsat imagery, forest cover loss and subsequent gain has been modeled using a model developed by Hansen et al and interpreted by Global Forest Watch, a program of the World Resources

Institute. In New Brunswick, forest cover loss is outstripping forest gain by almost 2 to 1. Although conventional wisdom suggests that forests return immediately following loss, that gain does little to replace the critical **ecological services** removed when mature forest is cut—until of course it attains a height of 5+m, something taken into account by the model. Further analysis reveals that of watersheds in NB almost all are subject to a high risk of flooding. This is due to the unsustainable level of forest cover loss. (6)

As Crown/unceded land has more or less been privatized through ‘results-based forestry’ there is little to no oversight of activities on harvest blocks. This is unacceptable, and can lead to site-specific infractions that go unreported and unremedied. The bigger concern, however, is the magnitude of the cutting. Clearcuts, **some of which are in excess of 350ha** (7) are damaging streams. Clearcuts allow more runoff, and result in higher stream temperatures and greater sedimentation than do native forests. In addition, the creation and spraying of softwood plantations is allowing harmful chemicals (glyphosate, for instance, is a patented industrial cleaner, herbicide and antibiotic)(8) into the environment and waterways. The diminishing width of riparian buffers is having negative impacts on stream temperatures. Coldwater fish species, for instance, cannot tolerate water temperatures in excess of 20C. Individual accounts suggest these temperatures are being exceeded in areas of heavy forest removal.

What we are saying is this: **a water strategy that neglects the role of forest management in the hydrological wellbeing of its province is overlooking the major detriment facing water, as well as a major source of risk to human and animal welfare(not to mention built infrastructure) in terms of flooding. Please add this to the strategy.**

Summary

In summary, there is much work to be done. We request immediate implementation of the *Clean Water Act* regulation 2002-13, Water Classification, as well as NEW regulatory measures that meet or exceed the current requirements. This includes the addition of measures such as **preventive, non-point source land use controls** on agriculture, forestry and rural and urban development.

The Working Group has made some good recommendations, which we urge you to adopt. This strategy is the beginning, it has many miles to go before it meets the standards that New Brunswickers expect and deserve from their government, in terms of its approach to water.

Sincerely,



Margo Sheppard

Friends of Water Classification



William C. Ayer

cc. MLAs, media, watershed groups

References

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