



**National Farmers Union**  
**Union Nationale des Fermiers**



# **The National Farmers Union District 1, Region 1**

**Submission to the**

**Consultation**

**on**

**The Draft**

**of the**

**PEI Water Act**

**Charlottetown, PEI  
April 10, 2017**

The National Farmers Union (NFU) appreciates this opportunity to comment on the 2017 draft of the PEI Water Act. We will begin by addressing what we see as omissions, followed by concerns about wording and intent. Then we will conclude with an expression of our appreciation for some aspects of the draft which we find hopeful. Most of what we have to say is based on the NFU's recommendations to the PEI Environmental Advisory Council on November 3, 2015.

### **What is Missing**

For the NFU the first and most obvious omission is that there is no indication of intent to maintain a *moratorium on high capacity wells*. From our perspective and given the community outcry during the 2015-2016 consultations, this seems almost outrageous. For real future control on high capacity wells it is imperative that this be in the Act.

We expected that the Act would establish a *permanent ban on fracking*. This omission indicates to us a lack of understanding of the potential threat of fracking to the quantity and quality of PEI water. Islanders need to be assured that no future government would approve hydraulic fracturing as a natural gas extraction process within PEI's jurisdiction.

In introducing the purpose of the Act, Part I (2), the lack of recognition of *water as a human and ecological right* is an omission.

Although many proponents of the protection of PEI water in the 2015-2016 consultations emphasized the need to base all decisions about water quality and quantity on the *Precautionary Principle*, we do not see this articulated clearly throughout the draft.

For the purposes of decision-making with respect to water management, it is unclear what is defined as pertinent information. *What criteria are used for believable data* on which to base assessments of water quality and quantity for the purpose of water management? When the term "consistent, science-based assessment processes" is used, is there room for forms of knowledge besides formalized research processes? Also important are well-informed, observations of residents which partially constitute the *knowledge of the community*, much of which is also science-based. The NFU supports the research of Dr. Michael Van den Heuvel (UPEI) and urges government to defer to his work. With respect to all research, the public needs to be able to view the raw, open source data re testing, monitoring, etc. as otherwise the data can be "customized" or spun to appease special interests.

The draft of the Water Act does not include *a concrete program to provide community oversight of the Act and its Regulations*. Many other community-based organizations in the original consultations made this recommendation. The NFU, from vast experience with the implementation of the well-designed Lands Protection Act, assure you that without constant non-governmental supervision, those whose interests may be curtailed by the Water Act, will find loopholes. They do, and will, find avenues by which to influence Government and Cabinet in the implementation of the Act and especially in interpreting the Regulations and ensuing policies.

The Act will be believable if there is a section which carefully outlines the design, mandate, accountability, process, and adequate resources for *an independent community-trusted body which will provide constant oversight*.

### **Concerns about Wording and Intent**

While recognizing that some sectors require a certain level of legalese, there are areas in the draft which concern the National Farmers Union. We refer first of all to wording which implies that some implementations of the Act seem to be based solely on personal wishes, feelings, or perceptions of the Minister rather than on objective facts, reasons, or principles.

Examples: *take actions that the Minister considers necessary...in the opinion of the Minister...as the Minister considers necessary... form that the Minister determines...considered satisfactory by the Minister...* While we may have total confidence in the judgement of a particular Minister, we are convinced that as much as possible, it is essential that the Act be objective. For the security of PEI water in the years to come, it is important that there be as little as possible left to the discretion of the Minister or the Cabinet.

Similarly, the NFU, with other organizations, is noticing that the draft Act leaves a seemingly wide discretion to the Minister by the ample use of the word *may*. Using *shall* in many of those statements would make the Act more mandatory and less arbitrary.

Context is important. The intent of the Act to be a protection of PEI Water is diminished by a lack of clarity about the context of the threats to its future quality and quantity. Recognizing that other Acts and/or proposed legislation will cover these areas, it seems appropriate to identify the following conditions in which the Act will be enforced and that *the implementation of the Water Act is contingent on: the rapid change in the consolidation of land ownership; the present and future reality of contamination of water through inordinate use of chemicals, pesticides, and herbicides on the land; the proper enforcement of crop rotation; and all detrimental farm practices.*

### **Hopeful Signs**

The National Farmers Union is especially grateful for Part I (2) of the draft, which from our perspective outlines the spirit of the Act. The purpose of the Act gives us some assurance that there is an understanding of water as an essential life source for all living things for present and future generations and that it is a component of the wider ecosystem which also must be protected. It is reassuring to see in print that the government is the guardian of water for the common good, that every Islander has a responsibility for the long term protection of the quality and quantity of water. Section (e) indicates that the precautionary principle is to be applied. We are also encouraged to see that the Act will require polluters to pay.

Respectfully submitted by  
The National Farmers Union  
District 1, Region 1