

# Public Involvement in Water Law Reform: B.C. and Alberta Compared



By Michelle Morris

Given the secrecy that too often characterizes government decision-making I think it's necessary to underline why public involvement is so important. There are a number of reasons why the public should be involved in water law and policy reform. One of the most important reasons is that water is a public resource and decisions about water inherently affect the public interest. Water law, policies, and allocations can help to determine patterns of industry, settlement, and ecology. In addition, climate change impacts will likely alter water distribution throughout the world; this means that how water is used today may not be appropriate in years to come. This sort of pressure necessitates some engagement of the polity, of citizens, in deciding how societies will respond and adapt to these challenges. Finally, involving the public in public policy reform is consistent with principles of democracy. Let's not forget that democracy, in its most fundamental or purest form, involves citizens having a say on issues impacting them.

Despite the public's interest in water law and policy reform, governments undertake widely different approaches to engaging the public in decisions about water law and policy reform. Strategies can range from genuine attempts to garner public sentiments to symbolic gestures aimed at gaining consensus on a decision already made. The governments of Alberta and British Columbia are both currently reviewing their respective water laws; this offers us an opportunity to compare how these neighbouring provinces differ in their approaches to involving the public in the vital public policy matter of water. Both provinces began water law and policy reform in 2008. That was the year Alberta Environment Minister Rob Renner announced a review of Alberta's water allocation management system and B.C. began the process of modernizing the entire *Water Act*.



*Miette from the Slough*  
24" x 24" acrylic on canvas  
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## Information Flows: One-Way or Reciprocal, Inclusive or Exclusive?

Perhaps one of the easiest ways to analyze and compare government approaches to public involvement is to ascertain the direction of information flow used in the process – do governments merely present information to the public, hear from the public on a specific matter, or is there a two-way dialogue between members of the public and the government in which information and ideas are exchanged? A two-way dialogue is the most appropriate in the context of broad water law and policy reforms as it allows for learning within the process. The quality of information provided to the public about reforms and reform options can also greatly impact the quality of public deliberation. It is likely, and understandable, that not every interested citizen is a water law and policy expert. Providing clear, concise

information and resources with which to learn further is essential to empowering members of the public to have an impact on policy.

Another crucial consideration is the types of opportunities available to be involved in public policy reform – are participation exercises restricted to surveys, multiple choice questionnaires, public meetings, written submissions, or some combination of methods? Ideally, a variety of means will be employed so that involvement opportunities are not monopolized by those who are, for example, able to take an unpaid afternoon or day off of work to participate in a public meeting. Finally, the timing of engagement exercises can indicate the importance the government places on the public's ideas and opinions. If

participation exercises take place later on in a reform process, efforts may be more prone to symbolic politics undertaken by a government aiming to gain consensus and legitimacy rather than a genuine desire to hear from the public.

According to these indicators, the B.C. government has provided the public with much better opportunities for public engagement in the *Water Act* modernization than the Alberta government has during the water allocation management system review.

### **The British Columbia Experience**

B.C.'s *Water Act* modernization process included outlining when public engagement opportunities would occur and providing a timeline for when different stages of the process would occur. All of this information is available on its website [www.livingwatersmart.ca](http://www.livingwatersmart.ca). Notably, public engagement occurred early on in the process after a review of possible policy options was published in early 2010. The B.C. government published a *Discussion Paper* on proposed reform options for the modernized *Water Act* which was supplemented by a technical background document that provided more detailed information about current policy, why reforms were desirable, and approaches to achieving policy goals. Importantly, these early documents presented a suite of options for each of four policy goals for the public to consider. After these documents were published, a series of 10 public meetings, and three meetings with First Nations, took place in spring 2010. An online blog was established during this time on which interested individuals could post questions, comments, and suggestions for future reform options. Those inclined to send email or regular mail submissions were also encouraged to do so.

B.C.'s process involved a two-way dialogue between the public and government. In fact, this two-way dialogue has occurred twice during the *Water Act* modernization process. After the first round of engagement was completed in early 2010, submissions were analyzed by government officials and reported to the public in a *Report on Engagement* which was published in September 2010. After the *Report on Engagement* was published, a draft *Water Sustainability Act* was released



*A future leader appreciating the majesty before her at Dune Point on the Red Deer River. How meaningful is the participation her parents have in affecting the future of this and other rivers in Alberta?*

PHOTO: © C. WALLIS

in December 2010. This draft outlined policy proposals for B.C.'s future water law. Interested individuals were given about a three month window to comment upon this draft.

The fact that the B.C. government provided a variety of mechanisms by which the public could advance their views was also a positive aspect of their engagement strategy. Public meetings, blogs, and traditional methods of receiving email and regular mail were utilized. This meant that individuals who could not attend the public meetings still had a way to have their voices heard. A combination of factors, including the quality and variety of reform options presented to the public, a two-way dialogue between government and citizens, the variety of means by which the public could participate, and the timing of the engagement all contributed to an approach which indicates a high degree of investment in the public's genuine participation in the *Water Act* modernization.

### **The Alberta Experience**

When compared to B.C.'s process, the Alberta government's approach is quite disappointing. Indeed, the current approach is very disappointing considering the emphasis put on public involvement in the mid-1990s *Water Act* reform and the development of Alberta's *Water for Life* policies. Although Rob Renner announced the water allocation management system review in the fall of

2008, and promised public involvement in the process would occur within 18 months, the public has yet to be involved in the process. Almost three years have passed. In the same time period, the B.C. government managed to involve the public twice in the *Water Act* modernization process. Within the first year of Alberta's announced water allocation management system review, three reports separately written by the Minister's Advisory Group (MAG), the Alberta Water Council (AWC), and the Alberta Water Research Institute (AWRI) were released. All reports are highlighted on a section of Alberta Environment's website and have been since the fall of 2009. The reports, despite slight differences, all recommend expanding water allocation transfers while retaining prior allocation water law (also known as "first in time, first in right", FIT-FIR) throughout the province. Only one reform option has been presented to the public. This seriously inhibits the facilitation of a dialogue on potential reform options.

Notably, the committees did not seriously engage with whether prior allocation, Alberta's current mechanism to license water, is appropriate as we face pressures related to climate change, population growth, and industry development. Certainly this is not the fault of the AWC which was not given the mandate to analyse prior allocation licensing. The MAG and AWRI reports do touch on prior allocation licensing briefly and state we may need to look at





Waterfall, Junction Creek, Kananaskis Country.

PHOTO: © C. WEARMOUTH

moving away from this type of licensing in the future. That said, it's difficult to believe how genuine this reform process is if "FIT-FIR" is off of the table for discussion or mentioned as something to decide on later; it is, in fact, the basis by which our water allocation system is managed. Currently water allocation transfers can only occur in the South Saskatchewan River Basin which is the only river basin that has the required cabinet-approved Water Management Plan for water allocation transfers to occur. Importantly, when Alberta's *Water Act* was reformed in the mid-1990s to allow for water

allocation transfers, proposals to do so were the most controversial and commented upon by members of the public. This level of concern indicates the interest Albertans have in how their water resources are managed. Despite this demonstrated interest, the Alberta government has yet to provide any formal opportunities for the public to have their say on Alberta's future water allocation management system. The fact that engagement opportunities will occur after the three reports made recommendations to the government also makes public engagement activities more prone to symbolic politics or to efforts by government to legitimize a decision that effectively was made long before the public was involved. Considering the combination of the paucity of information on available options to reform water allocation management, the lack of opportunities for the public to participate in the process, and the timing at which engagement activities will occur, it is difficult to believe that our provincial government is really interested in providing Albertans with genuine opportunities to become involved in the water allocation management system review.

### The Need for Improvement

Compared to B.C.'s process, then, it becomes apparent that the province of Alberta has considerable room to improve opportunities for the public to participate in the water allocation management system review. Certainly, B.C.'s process was not without problems. For example, the *Report on Engagement* stated that most British Columbians favoured in-stream flow standards to be set in the modernized *Water Act* but the draft *Water Sustainability Act* forwarded using in-stream flow guidelines. The distinction between standards and guidelines is critical; standards require decision makers to consider in-stream flows, or the amount of water required to preserve ecological integrity, in all decisions with no exceptions. Guidelines, on the other hand, may be deviated from.

This example illustrates the important fact that involvement in reform processes does not necessarily result in having an impact on policy outcomes, a fact with which many individuals who have become involved with Alberta's past public consultations are well acquainted.

Despite this situation, which we might expect in a pluralistic society in which people hold diverse views and opinions, providing the public opportunities to participate in public policy reform is at least consistent with principles of democracy. Alberta is not even going through the motions at this point in time. That B.C. provided a record of what was heard from the public during its engagement sessions is another boon to the province; information provided in the *Report on Engagement* may be used to hold the government accountable if the final modernized *Water Act* is found to diverge significantly from what the public said it wanted.

While it's true that the Alberta government involved the public in developing the *Water for Life* water strategy in the early 2000s, this policy strategy does not explicitly relate to water allocation management, the issue currently under review. And, although the public was consulted in the mid-1990s water law reform process where the *Water Resources Act* became the *Water Act*, a complication of factors, including the more than 15 years that have passed since that review and new knowledge regarding climate change impacts, demand that there be new public involvement opportunities. It's true that the 40-year presiding Progressive Conservatives are currently in the midst of a leadership contest and that a provincial election is pending and this might provide justification for putting public consultations on halt. That said, it is still very disappointing that the general public has not yet had the opportunity to participate in discussing this essential public policy issue. An approach that is more transparent, involves the public through a variety of means, provides better information about exactly why a policy approach is being advocated and what viable alternatives might be would increase the legitimacy of the process. This is desperately needed as the Alberta government looks to reforming how water is allocated in the province. The B.C. example proves that it can be done. 🌊

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