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Understanding Local Albertans' Roles in Watershed Planning — Will the Real Blueprint Please Step Forward?

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Abstract

Alberta's *Water for Life Strategy* has generally spurred expectations for the development of "watershed management plans" by provincially-sanctioned local community organizations known as "watershed protection and advisory councils" (WPACs). This paper analyses how WPACs' roles have been defined in law and in various provincial policy documents and advisory reports. The analysis focuses particularly on provincial direction as to the extent and scope of WPACs' decision-making authority and on the scope, content, and implementation of the WPACs' watershed management plans. While having broad-based support, WPACs have little provincial direction as to what they must actually accomplish. In some sense, the new land use framework sidesteps these uncertainties by providing a legislative framework for regional planning and for integrating those plans with governmental decision-making across the land and resource management spectra. However, this newer provincial initiative raises even more uncertainty about WPACs' roles.

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1.0. Introduction

“The challenge of sustainable water management is ... a governance challenge.”¹

In Alberta, the “governance challenge” is purportedly being met, in part, through the development of “watershed management plans” by provincially-sanctioned local community organizations known as “watershed protection and advisory councils” (WPACs). This approach has generally garnered widespread praise, but it has also prompted questions and concerns by WPAC participants and others that WPACs’ specific roles are not sufficiently well defined.

This lack of clarity is somewhat understandable to the extent the overall concept of “watershed management” is itself hardly clear. In its broadest sense, watershed management is a holistic or comprehensive planning effort that links management decisions with respect to both water quality and quantity. As to quality, watershed management addresses pollution from both “point sources” (*e.g.* discrete industrial or domestic discharge pipes) and runoff from agriculture, urban stormwater, logging and other land-based sources. Watershed management decisions also consider all three hydrological linkages in watershed ecosystems: up-stream/down-stream; in-stream/upland; and surface water/groundwater.²

It is widely accepted that meeting the “governance challenge” through watershed management requires integrating government decision-making at horizontal institutional scales — *i.e.* among managers of water, land and other natural resources — and at vertical scales among local, regional and national governments. However, it is also widely believed that the ideal governance model includes enabling and involving local communities in water management.³ Among the justifications for this community-based approach are that local communities are those most affected by water management decisions and have the most knowledge of and ability to implement solutions to water management problems.⁴ Promoting community involvement at watershed scales is also

¹ *Prairie Water Directive — A Collective Call to Action for Water Security in the Prairie Provinces* (Toronto: Walter & Duncan Gordon Foundation, 2009) at 34, online: <http://poliswaterproject.org/sites/default/files/PrairieWaterDirectiveWeb_Final_2009.pdf>.

² See, *e.g.*, Robert W. Adler, “Addressing Barriers to Watershed Protection” (1995) 25 *Envtl. L.* 973 at 981-991; and Michael M. Wenig, “Thinking like a Watershed” *LawNow* 28 (June/July 2004) 13.

³ See, *e.g.*, Henning Bjornlund, *Making Environment and Economics Meet for Sustainable Water Management*, paper presented at a conference of the Canadian Water Resources Association (Banff, Alberta, June 2005) at 2 (calling for a water management decision making framework “which in a meaningful way involves all citizens”); Dan A. Tarlock, “Putting Rivers Back in the Landscape: The Revival of Watershed Management in the United States” (Winter, 2008) 14 *Hastings W.-Nw. J. Env'tl. L. & Pol'y* 1059 at 1099 (noting that the “ultimate watershed protection ‘deal’ would be that local collaborative processes would set watershed and basin environmental standards”).

⁴ *E.g.* Government of Alberta, *Water for Life — A Renewal* (November 2008) at 14.

said to enhance communities' sense of watershed 'identity' — *i.e.* their belonging to, reliance on, and thus desires to protect, the watershed ecosystems in which they live.⁵

While there is widespread support among watershed-based management advocates and practitioners for strong local community involvement, there is arguably still a lack of certainty on the best model and theory for local involvement. Chief among the questions are: whether the formation and operation of watershed-based community groups should be driven or controlled by governments (the so-called 'top down' approach) or simply accepted and encouraged by governments when they are self-initiated (the 'bottom up' model). A related question is how much of a decision-making role community groups should play. Answering this question requires considerations of the scope of public 'interests' in various watershed components. Some of those interests are local in nature. For example, water supplies affect the availability of water for local extractive purposes. Obviously, there is a strong and valid interest of a given community in the availability of a given quantity of surface water flowing through the community for local uses. However, there are also regional and national interests in the economic viability of those local uses and in any economic trade offs that those local uses have for the potential unavailability of the same water supply for downstream communities. There are also strong local interests in local environmental quality, but biological diversity — at both species and ecosystems scales — is arguably a broader public concern. In other words, it is hard to accept that local communities should have the final say on whether a locally-occurring species can be sacrificed for local economic development or to promote other local interests.⁶

Besides needing to properly reflect the balance of public interests, the form of community involvement in watershed management must satisfy legal constraints imposed by constitutional, legislative, and possibly common law sources. Then again, one might say that the nature of at least some of these legal constraints should be driven by the outcome of community participation, rather than vice versa.

Designing models for appropriate community involvement also requires considering difficult issues regarding the representative character of various compositions of community or stakeholder groups and the moral and political appropriateness of various processes for community decision-making.

Alberta's *Water for Life Strategy* — the province's broad policy for water management — addresses these governance challenges by generally promoting a watershed management approach, in part, through the involvement of WPACs in

⁵ *E.g.* Gary Snyder, *Coming into the Watershed* (New York: Pantheon Books, 1994).

⁶ See, *e.g.*, Michael M. Wenig, "Federal Policy and Alberta's Oil and Gas: The Challenge of Biodiversity Conservation" in G. Bruce Doern, ed., *How Ottawa Spends 2004-2005: Mandate Change in the Martin Era* (Montreal: McGill-Queen's University Press, 2004) at 222-244.

designing and implementing “watershed management plans”. (To date, nine WPACs have been provincially sanctioned, and one watershed management plan — a “phase 1” plan focusing on water quality in the Bow River Basin — has been developed.⁷)

This paper analyses how WPACs’ roles have been defined in law and in various provincial policy documents and advisory reports. The analysis focuses particularly on provincial direction as to the extent and scope of WPACs’ decision-making authority and on the scope, content, and implementation of the WPACs’ watershed management plans. (The paper does not consider WPACs’ decision-making processes, funding, membership, and other procedural or institutional issues.)

The paper is organized by the chronological development of relevant legal and policy sources, starting with the Legislature’s enactment of the *Water Act* which provides the current legislative underpinning for provincial water management. The paper then tracks water management policies adopted under the *Water Act*, focusing particularly on the *Water for Life Strategy* and policy papers and advisory reports published after that *Strategy*.

2.0. The *Water Act*

Adopted in 1996, the *Water Act* is the primary legislative basis for the province’s management of water uses and water-related activities. Neither this Act, nor any other provincial statute, mentions WPACs or “watershed plans”. The *Water Act* nevertheless provides a considerable legislative foundation for both.

In a nutshell, the Act retained the core features of the century old licensing system for water withdrawals including grandfathering all then-existing licences (in good standing).⁸ That system in turn was based on the ‘first in time first in right’ principle (otherwise known as the ‘prior allocation’ system) for prioritizing water rights when there is an insufficient volume of water to satisfy all holders of rights to withdraw water from a

⁷ Government of Alberta, *Watershed Planning and Advisory Councils*, online: <<http://www.waterforlife.alberta.ca/543.html>>.

⁸ As with previous water legislation, the *Water Act* gives the provincial cabinet broad discretion to adopt regulations governing the licencing and other water management functions, and gives provincial water managers broad discretion — subject to any cabinet regulations — to adopt conditions in new water licences. In fact, the *Water Act* arguably bolstered this licencing discretion by stating expressly that the province can consider a broad range of environmental factors in issuing new water licences. *Water Act*, s. 51(4) (discussed in Michael M. Wenig, Arlene Kwasniak & Michael S. Quinn, “Water Under the Bridge? The Role of IFN Determinations in Alberta’s River Management” in H. Epp., ed., *Water: Science & Politics*, Proceedings of the Alberta Society of Professional Biologists, Annual Conference and Workshop, 25-28 March 2006, Calgary, Alberta at 12).

given waterbody.⁹ While generally retaining the historic licensing system, the *Water Act* modernized the province's water management model in several respects. One of these respects was a new provision stating the general legislative purpose to “support and promote the conservation and management of water, including the wise allocation and use of water”. The purpose statement also “recogniz[ed]” several principles, including: the “need for an integrated approach and comprehensive, flexible administration and management systems based on sound planning, regulatory actions and market forces”; Albertans’ “role in providing advice with respect to water management planning and decision-making”; and the “important role of comprehensive and responsive action in administering” the *Water Act*.¹⁰

The purpose statement's references to “planning” and “integrated” and “comprehensive” approaches sound like the Legislature was envisioning a watershed-based approach, even if the purpose statement did not state this expressly. However, the reference to Albertans’ role in providing “advice” strongly suggests that the Legislature did not desire any new management approach that downloaded substantive decision-making to local communities.

Besides its general statement of purpose and operating principles, the Act includes several new water management tools. Chief among these are provisions for water licence trading and for water managers’ adoption of “water management plans” and “water conservation objectives”. The Act defines the latter, commonly termed “WCOs”, as the “amount and quality of water” that is “necessary” to “protec[t]” a “natural water body or its aquatic environment” or “tourism, recreational, transportation or waste assimilation uses of water” or for the “management of fish or wildlife”.¹¹ As numeric expressions of minimum flows or other aquatic environmental benchmarks, WCOs provide a basis for defining and implementing limits on cumulative disturbances to aquatic environments. These limits can be critical management tools.¹² However, the Act does not mandate that they serve this function in the sense that their adoption is discretionary in the first instance.¹³ Once adopted, WCOs provide relevant factors for various water licensing

⁹ E.g. Wenig, Kwasniak & Quinn, *supra* note 8 at 9.

¹⁰ *Water Act*, s. 2 (opening statement) and ss. 2(c)-(d) and (f), respectively.

¹¹ Subsection 1(1)(hhh). That section states that WCOs “may include water necessary for the rate of flow of water or water level requirements” for achieving these objectives. *Ibid*.

¹² See Wenig, Kwasniak & Quinn, *supra* note 8 at 2 (noting that the “existence and effectiveness of efforts to maintain I[nstream]F[low]N[eed]s are critical benchmarks for determining whether a river management framework is sufficient to protect aquatic ecosystems.”).

¹³ Subsection 15(1) states that Alberta Environment’s relevant Director “may establish” WCOs.

decisions, but they are not *mandatory* criteria in most of these decision-making contexts.¹⁴

The Act also does not expressly call for WPAC-type involvement in developing WCOs, although it impliedly allows such involvement by stating that, in developing a WCO, the Environment Director “must engage in public consultation that the Director considers appropriate” (s. 15(2)). The mandatory nature of the Director’s duty to engage in public consultation is somewhat puzzling given the Director’s broad discretion to determine the *type* of consultation. Nevertheless, the breadth of this discretion would appear to allow the Director to consider WCOs recommended by WPACs.

The other important tool in the *Water Act*, “water management plans”, are essentially lists of “matters or factors” that water managers “must” consider in deciding whether to issue water licences and other water-related permits, and to approve water licence transfers.¹⁵ Water management plans are area-specific and while the Act impliedly enables the Minister to base the planning area boundaries on watershed lines, the Act does not mandate this watershed approach.¹⁶

As with WCOs, the Act states that water management plans *can* be adopted, but they are not legislatively mandated.¹⁷ The Act also states that plan developers can use an “integrated approach to planning with respect to water, land and other resources”.¹⁸ This approach seems consistent with an integrated watershed-based planning approach, but it is not mandatory and it is unclear how effectively water planners can “integrate” water, land, and natural resource planning when their direct regulatory authority is limited to water uses.

¹⁴ See *Water Act*, s. 29 (tying WCOs to water managers’ setting of licence priorities); s. 51(2) (allowing water managers to issue water licences to the province for the purpose of achieving WCOs); ss. 51(5), 53(3)(c) and 60(3)(c)(iii) (allowing, but not requiring, water managers to consider WCOs in deciding whether to issue water licences and ‘preliminary certificates’ and whether to grant requests to trade licences); and s. 83 (allowing water managers, in granting licence trades, to ‘hold back’ up to 10% of the traded licence’s allocation, for purposes of achieving WCOs).

¹⁵ See *Water Act*, ss. 1(1)(jjj) and 11(3)(a); see also *ibid.*, ss. 19(1), 21(3)(a), 23(3)(b), 38(2)(a), 51(4)(a), 53(3)(a), 60(3)(b), 66(3)(a), 73(3), 81(7)(i), 82(5)(a), and 83 (references to approved water management plans as required bases for various licensing and other water management decisions).

¹⁶ Under section 10, the Environment Minister “may” establish water management planning areas and an approved plan must include a “description” of the area covered by the plan (ss. 10 and 11(3)(a)(ii)).

¹⁷ Under the Act, the Environment Minister “may require” a Director “or another person” to “develo[p]” a water management plan and the provincial cabinet “may” approve any such plan, or parts of it or authorize the Environment Minister to approve any such plans. *Water Act*, ss. 9(1), and 11(1)-(2), respectively. In either case, the approval authority can add any terms or conditions it “deems appropriate” to its approval. *Ibid.*, ss. 11(1)-(2).

¹⁸ *Water Act*, s. 9(2).

The Act's water management planning provisions say nothing expressly about WPACs specifically, or even local participation more generally, but they impliedly authorize and perhaps impliedly encourage WPAC-type involvement. Under these provisions, the Environment Minister can authorize any "person", which term could include a WPAC, to develop a proposed water management plan for the cabinet or Minister's approval.¹⁹ Or, if the Environment Director or other official develops the plan, that planner can "co-operate" with any "persons" or "local authorities" in developing the plan. This cooperative effort presumably includes either obtaining WPACs' advice on drafts developed by the planner, or charging WPACs with the task of developing initial drafts themselves.²⁰ The Act also expressly allows water management planners to "consider" "other water and land management plans"²¹ which plans presumably include watershed management plans adopted by WPACs on their own. Still another provision of the Act requires water planners to "engage" in any "public consultation" that the Environment Minister "considers appropriate" in developing water management plans.²² This authority provides yet another opportunity for the Environment Minister to design an active role for WPACs in watershed planning efforts.

The Act provides virtually no other guidance on what water management "matters or factors" can be included in these plans except to say that plan development must "follow" a provincial "framework for water management planning" (hereinafter, the "Framework").²³ The Act required that the Environment Minister adopt this Framework by December 2001, following a public consultation process designed by the Minister.²⁴

In sum, the *Water Act* hints at the Legislature's preference for a watershed-based management model with strong local participation, but the Act never quite makes that preference clear. The Act nevertheless provides provincial water managers with considerable discretion to adopt that model through water management plans and WCOs, albeit without providing a clear legislative link to land and resource management for a truly integrative watershed approach.

¹⁹ *Ibid.*, s. 9(1). The *Interpretation Act* defines a "person" as including a "corporation" but does not make clear what other forms of organizations are also included in the definition. R.S.A. 2000, c. I-8, s. 28(1)(nn).

²⁰ *Water Act*, s. 9(2)(b).

²¹ *Ibid.*, s. 9(2)(d).

²² *Ibid.*, s. 9(2)(f).

²³ *Ibid.*, s. 9(2)(e).

²⁴ *Ibid.*, ss. 7(1)-(3).

3.0. Water Management Framework

As noted in part 2, the *Water Act* required the Environment Minister to adopt a “framework for water management planning” which task the Minister completed in 2001. The resulting “*Framework*” document starts by noting the province’s extensive water management planning experience but states that the *Framework* reflects a need to “formalize” water planning processes and to provide “general guidance” for those efforts.²⁵

A major part of this “guidance” consists of the *Framework*’s purported adherence to an “integrative” planning approach, echoing the *Water Act*’s references to integration and consistent with the province’s long-time commitment to “integrated water resource management”. The *Framework* explains that an “integrative” approach is one that recognizes environmental complexities and the “interconnectedness” and “interdependence” of environmental components and, hence, the need for a “holistic” approach.²⁶

The *Framework* also discusses “integration” in terms of cooperative or joint planning efforts among water, land, and other natural resource planners and managers. However, the *Framework* is largely hortatory in this respect; it establishes no mandatory or specific process for integrating multiple government decision-makers.²⁷

Notwithstanding the generality of the *Framework*’s references to integration, those references arguably support a watershed-based planning approach. In fact, the *Framework* expressly calls for a “watershed approach” under its list of water management “principles”. The *Framework* does not specifically define this concept, although it later states that water management planning boundaries will “normally” be based on watershed boundaries.²⁸

The *Framework* is also somewhat ambiguous on public involvement. While stressing the importance of consulting and cooperating with the “public”, the *Framework* states that opportunities for public involvement can range from “providing information” to “formulating recommendations” and from “membership on study management and advisory committees”, to participation in problem solving “workshops” or “consensus

²⁵ Alberta Environment, *Framework for Water Management Planning* at 1.

²⁶ *Ibid.* at 1-4, 8-9, and 25.

²⁷ *Ibid.* at 2, 4, 9, 11, and 25.

²⁸ *Ibid.* at 8 and 10. The *Framework* notes that watersheds can be delineated at different scales and eschews specifying a required scale for water management plans, but does encourage vertical linkages of planning efforts at different scales and horizontal linkages among similarly scaled watersheds. *Ibid.* at 10.

building forums.”²⁹ At another point, the *Framework* refers to the “participation” of “stakeholders”, rather than the public generally, in identifying and selecting issues.³⁰ At the end of the day, the *Framework* seems to leave it up to each plan’s terms of reference to specify opportunities for public and/or stakeholder consultation and participation.³¹ And the *Framework* makes it clear that the authority for approving water management plans rests with cabinet or the Environment Minister (when authorized by cabinet) and that Environment Directors have the final say on Terms of Reference for plans developed pursuant to the *Framework*.³²

Consistent with its desired “holistic” perspective, the *Framework* calls for an “inclusive, comprehensive and forward thinking” process for planners to identify threshold lists of issues to be addressed in water management plans. However, the *Framework* leaves it to planners to ultimately decide how many issues from those threshold lists need to actually be addressed in any given plan, noting that plans can address either a “broad range” of issues or a single issue and that “indicators of ecological integrity” can be used to prioritize issues. The *Framework* constrains planners’ discretion by stating that their choice of issues must be consistent with terms of references set and/or approved by Environment Directors and be based on broad criteria discussed in the *Framework* for prioritizing issues.³³

Finally, the *Framework* provides little guidance on *how* water management plans must address the issues that are of concern. At one point, the *Framework* explains that water management plans should provide “broad guidance”; at another point, the *Framework* expresses a desire for plans to provide “clear and strategic directions ... or result in specific actions”.³⁴ In the aquatic environment protection strategy, the *Framework* refers to numeric or narrative “objectives” that “must be understood and considered in the development of any water management plans” and that are “required to provide clear direction.”³⁵ But the *Framework* does not say whether water management plans themselves must include “objectives” for water management and how those “objectives” should be expressed so that they provide meaningful bases for managers’ decision-making. The *Framework* does note that plans can include WCOs but makes it clear that they are not required to do so.³⁶

²⁹ *Ibid.* at 8, 11, and 20.

³⁰ *Ibid.* at 19.

³¹ *Ibid.* at 3-4, 8, 11, and 20.

³² *Ibid.* at 19.

³³ *Ibid.* at 1, 10-11, 19, and 29.

³⁴ *Ibid.* at 14.

³⁵ *Ibid.* at 4 and 29.

³⁶ *Ibid.* at 15.

In sum, the 2001 *Framework* arguably fell short of its stated objective to “formalize” water management planning, because it provided only broad, general principles and lacked sufficient detail to “formalize” anything. However, the *Framework* could nevertheless be credited for laying further groundwork for WPAC-type involvement in watershed planning, by referring to the watershed approach as a guiding principle and by stressing the value of local participation and of integrative management approaches.

4.0. *Water for Life*

In the face of increasing water demands as well as generally heightened public concerns about water management, the province needed a much more sophisticated and comprehensive water management policy than that provided by the 2001 *Framework* document. The province faced this need by adopting the *Water for Life Strategy* in November 2003, following an extensive, two year public consultation on provincial water policy.³⁷ The *Strategy* adopts three goals: assuring a “safe, secure drinking water supply; “healthy” aquatic ecosystems; and “reliable, quality” water supplies for a “sustainable economy”.³⁸ The *Strategy* then lists, as a medium-term outcome for achieving the aquatic ecosystem goal, the establishment of “water management objectives and priorities for sustaining aquatic ecosystems” through “watershed plans”.³⁹ As one of its long-term outcomes for this goal, the *Strategy* lists: “[c]ommunities demonstrating leadership in watershed management”.⁴⁰

Through these introductory statements, the *Strategy* appears to raise high expectations for community involvement, through community “leadership” in “watershed management” which role, in turn, seems to be linked to “watershed planning”. Rather than directly define these concepts, the *Strategy* turns to a set of three “key directions and actions”: “knowledge and research[,] partnerships[, and] water conservation”.⁴¹ In its discussion of “partnerships”, the *Strategy* starts with a theoretical foundation by explaining that, because all Albertans “use and affect the water resources within their watershed”, “citizens, communities, industries and governments all share responsibility

³⁷ Government of Alberta, *Water for Life — Alberta’s Strategy for Sustainability* (November 2003) at 5.

³⁸ *Ibid.* at 7.

³⁹ See Alberta Wilderness Association (AWA) *et al.*, *Recommendations for Renewal of Water for Life: Alberta’s Strategy for Sustainability* (2007) at 17 (referring to watershed plans as the “foundation” of the *Water for Life Strategy*).

⁴⁰ *Ibid.* See also *ibid.* at 19 (list of ‘medium-term’ actions including the establishment of “objectives for aquatic ecosystems” as part of “watershed management plans”).

⁴¹ *Ibid.* at 9.

for the wise use and sustainability of their watersheds”. The *Strategy* further explains that Albertans must “work together” to, among other things, set watershed objectives.⁴²

The concepts of “shared responsibility” and “work[ing] together” are arguably unassailable, but they nevertheless lack clear implications for determining the *form* of local community involvement.

The *Strategy* provides additional theoretical foundation by explaining further that, because the people who are “immediately affected by specific water issues can also more directly and effectively find solutions to address them”, the *Strategy* will adopt a “watershed approach to management”.⁴³ In a Glossary at the back, the *Strategy* explains that a “watershed approach” is one which “focuses efforts within watersheds”. It considers “both ground and surface flow” and “recognizes and plans for the interaction of land, waters, plants, animals and people”. This focus, in turn, gives the “local watershed community” a comprehensive knowledge of “local management needs” and “encourages locally led management decisions”.⁴⁴

At another point, the *Strategy* provides a diagrammatic formula indicating the “partnership approach to watershed management” as a “solution” to the “need for regionally based solutions developed in collaboration with stakeholders and the public”.⁴⁵ If “stakeholders” and “the public” are synonymous with “local watershed community”, the notion of “collaboration” seems a backtracking from the concept of “leadership” noted above, although this comparison is hardly clear.

After providing this theoretical foundation, the *Strategy* then identifies three types of “partnerships”: the Provincial Water Advisory Council (WAC); WPACs; and “watershed stewardship groups”.⁴⁶

The *Strategy* explains that the purpose of WPACs is to “involve communities and stakeholders in watershed management”.⁴⁷ This involvement would consist, more specifically, of four functions:

⁴² *Ibid.* at 15.

⁴³ *Ibid.*

⁴⁴ *Ibid.* at 31. Echoing this concept’s holistic focus on land, water, and biological interactions, the Glossary defines the term “watershed” by its common meaning as the “area of land that catches precipitation and drains into a larger body of water such as a marsh, stream, river or lake.” *Ibid.* at 30.

⁴⁵ *Ibid.* at 19.

⁴⁶ *Ibid.* at 15. See AWA *et al.*, *supra* note 39 at 7 (describing this three-pronged partnership approach as “perhaps the most innovative and impressive aspect” of the *Water for Life Strategy*) and at 17 (referring to partnerships as the *Strategy*’s “strongest element”).

⁴⁷ *Ibid.* at 15.

- Taking a “*lead* in watershed planning” (emphasis added);
- “[D]evelop[ing] best management practices”;
- “[F]oster[ing] stewardship activities within the watershed”;
- “[R]eport[ing] on the state of the watershed”; and
- “[E]ducat[ing] users of the water resources.”⁴⁸

The first of these four tasks is similar to the introductory reference to “community leadership in watershed management” and thus raises similar questions — what role is envisioned in “leadership” with respect to watershed planning? Does this term mean WPACs will have the final word or simply that they will take the first crack at drafting proposed plans? And what will the plans themselves entail?⁴⁹ Will they be binding or simply hortatory? Will they include specific targets or more general, narrative statements?

Notably, the text of the Councils’ title refers to watershed “planning and advis[e]” as if these are two separate functions, but is hardly clear in this respect. The *Strategy* provides additional clues in a circular figure depicting the roles of the three partnership levels together with the provincial government. In the circle portion relating to WPACs, the figure notes that “[m]ulti-stakeholder Councils” will “work with government” in an “adaptive management cycle” of “basin planning and evaluation”.⁵⁰ In the abstract, the cooperative concept of “work[ing]” with government in basin planning is not necessarily identical to taking a “lead” in planning, but it is unclear whether the former was intended to mean anything different than the latter.

However, the figure also lists, as an “outcome” of this WPAC/government effort, WPACs’ production of “*recommendations* in a watershed management plan”.⁵¹ On its face, the function of providing “recommendations” is a very diminished form of “leadership”.

⁴⁸ *Ibid.* at 16.

⁴⁹ As for the plans’ content, the *Strategy* states that watershed plans will include “[w]ater management objectives and priorities for sustaining aquatic ecosystems” and to support sustainable economic development. *Ibid.* at 7-8. However, the *Strategy* does not define these “objectives”. See AWA *et al.*, *supra* note 39 at 11 (noting that the term “does not have legal basis, unlike the environmentally protective ‘water conservation objectives’ under the *Water Act*. ... this term requires definition and should be broadly interpreted to include quantity and quality objectives as well as be precautionary in nature.”)

⁵⁰ *Ibid.* at 17.

⁵¹ *Ibid.* (emphasis added).

As if to recognize its lack of guidance with respect to public roles, the *Strategy* commits the province to complete, as one of several short-term actions (by 2006/2007), a “partnership framework outlining the roles, responsibilities and relationships between government and its partners.”⁵² In a list of specific actions, the *Strategy* aimed to establish WPACs for the Milk, Oldman, Bow, Red Deer, Battle, North Saskatchewan, Cold Lake-Beaver River, and Lesser Slave Lake watersheds in the short-term and two additional WPACs, for the Athabasca and Peace watersheds, in the medium term (by 2009/2010). The Appendix also included a schedule for completing “watershed plans” for nine watersheds by the medium term and for “all major watersheds” by 2013/2014.⁵³ Given the *Strategy*’s vagueness as to the scope and content of these watershed plans, it is difficult to assess how ambitious the *Strategy*’s commitment was to establish these “plans” in the first instance.

The *Water for Life Strategy* reached a significant policy milestone by inventing the institution of WPACs and by linking them to the role of watershed planning. However, in describing this role, the *Strategy* made vague and confusing references to WPAC “leadership” and essentially passed the torch to future policy statements to explain what this meant and what watershed planning entailed more generally.

5.0. Enabling Partnerships

In 2005, the province took another step in further defining WPACs’ roles through its issuance of the *Enabling Partnerships* document which focuses specifically on the “partnerships” component of the *Water for Life Strategy*.⁵⁴ However, much of the *Partnerships* document contains fairly broad, ambiguous statements about WPACs’ roles in both developing and implementing “watershed management plans”.⁵⁵

⁵² *Ibid.* at 26.

⁵³ *Ibid.* at 18 and 26.

⁵⁴ Government of Alberta, *Enabling Partnerships — A Framework in Support of Water for Life: Alberta’s Strategy for Sustainability* (2005).

⁵⁵ For example, at one point the document states that WPACs will “participate in creating, implementing, and assessing watershed management plans” while at another point it says that WPACs will “prepare” watershed plans. *Ibid.* at 4, 8, 10. The document also refers to WPACs as serving to “engage” governments, stakeholders, other partnerships, and the public in watershed planning. *Ibid.* at 10. Additional references to WPACs’ implementation roles are similarly broad. *Ibid.* at 9 (figure listing WPACs’ role in an adaptive management framework including “[w]ork[ing] with appropriate individuals, organizations and jurisdictions to implement” watershed management plans), 11 (WPACs, “with government and other stakeholders/partners”, will “implemen[t]” watershed management plans), 12 (noting WPACs’ implementation of watershed management plans as a benchmark of their success; WPACs’ success marked by their ability to “[g]ain support” from governments, and others to “implement” watershed management plans).

In fact, *Partnerships* is hardly clear as to the differences between “watershed management” and “water management” and between the plans resulting from those two efforts. The document states that both “water management” and “watershed management” aim to protect and conserve water and aquatic ecosystems including associated riparian areas.⁵⁶ The document then suggests that “watershed management” also addresses land use activities that affect “ground and surface water quality and quantity” and in this sense is a “more comprehensive” approach than “water management”.⁵⁷ This distinction makes sense at a basic conceptual level, but is problematic in the sense that the document lacks clear guidance on how watershed management plans are supposed to address land uses. For example, the document notes that WPACs should “conside[r] existing land and resource management planning processes and decision-making authorities.”⁵⁸ However, this mandate is unclear as to whether WPACs must take those other processes as givens or whether WPACs can suggest restructuring those processes to better integrate with water planning processes. At another point, *Partnerships* states that watershed management plans “*must take place within* municipal, provincial and federal water and land use planning and decision-making processes” under various provincial and federal laws “and other policies and legislation.”⁵⁹ This statement suggests that the “integration” function is less a matter of simultaneously designing or adjusting multiple plans and other instruments for various land and resource sectors, than making sure watershed plans fit within the constraints set in those other resource management contexts.

Partnerships’ distinction between water and watershed management also seems contrary to the exhortations in the *Water Act* and the *Framework for Water Management Planning* for water management planning to be integrated with land use planning and management.

⁵⁶ *Ibid.* at 9.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.* at 8. See also *ibid.* at 3 (partnerships to make recommendations to authorities with “water and land use planning and decision-making authority or responsibility”), 4 (reference to the provincial government’s role in making “water and land use management decisions” and to local, provincial, and federal “water and land use planning” as contexts or constraints for watershed management planning), 8 (WPAC planning must consider “existing land and resource management planning processes and decision-making authorities”), 9 (“Watershed management plans require water and land use managers work together to ensure healthy watersheds.”), 10 (WPACs’ roles to “make recommendations to the appropriate water and land use decision-making authorities”; WMPs may address “land use”), 15 (watershed management plans may “look at ways to better integrate land/resource management within a watershed”).

⁵⁹ *Ibid.* at 4 (emphasis added).

Not surprisingly, *Partnerships* states that WPACs can, but are not required to, develop “water management plans”, either as components of more comprehensive “watershed management plans” or as stand-alone products.⁶⁰

Partnerships is also generally ambiguous as to the scope and content of the “watershed management plans” that WPACs are responsible for developing. The document states simply that these plans are supposed to “identify issues and examine the best course of action to address them” and “may address a number of areas including water, land use, and information needs.”⁶¹ At another point, these plans are described simply as “comprehensive document[s] that may address many issues in a watershed”.⁶² As with the *Framework*’s description of the scope of “water management plans”, the “characterization” of watershed management plans as “comprehensive” is puzzling in light of a lack of mandate for the plans to simultaneously address all or many interrelated management issues.⁶³

Also of note, *Partnerships* sets out several “[o]verall [r]equirements” for all levels of partnerships to “manage watersheds successfully”. These “requirements” could be seen as water policy-type constraints on WPACs’ development of watershed management plans. Harkening back to the *Water for Life* principles, *Partnerships* includes among these “requirements” a recognition that there are “limits to the available water supply”.⁶⁴ However, it is uncertain whether *Partnerships* expects that, by “recognizing” this principle, WPACs are supposed to identify and quantify those limits and then develop tools for ensuring that the limits are not exceeded. *Partnerships* is also unclear as to the scope of these limits — *i.e.* whether they should include instream flows necessary to sustain aquatic ecosystems. *Partnerships*’ reference to limits strictly in the context of water *supply* also might suggest a lack of recognition of limits to aquatic ecosystems’ ability to assimilate pollution, habitat loss, and other perturbations besides water

⁶⁰ *Ibid.* at 8 (“Depending on the issues to be addressed, the Council may develop a water management plan as outlined under the *Framework for Water Management Planning*, or a more comprehensive watershed management plan.”), 10 (watershed management plans “may ... include a water management plan with Water Conservation Objectives as outlined under the *Framework for Water Management Planning*”), 11 (WPACs will develop watershed management plans “that include[e] where required a water management plan”), 15 (describing a watershed management plan as a “comprehensive document that may address many issues in a watershed ... [and] may or may not include a water management plan.”).

⁶¹ *Ibid.* at 10.

⁶² *Ibid.* at 15.

⁶³ For a discussion of the concept of “comprehensive” policy-making in the energy context, see Michael M. Wenig & Jennette Poschwatta, *Developing a “Comprehensive Energy Strategy” with a Capital “C”*, Occasional Paper #22 (Calgary: Canadian Institute of Resources Law, 2008).

⁶⁴ *Supra* note 54 at 4.

withdrawals and diversions which directly affect water “supply”. However, this narrow reading of *Partnerships*’ reference to “limits” is hardly clear.⁶⁵

In fact, *Partnerships* sends mixed signals as to whether WPACs even need to develop “watershed management plans”. At one point, the document states that WPACs will “follow an adaptive management cycle that includes developing, implementing, assessing, and updating a watershed management plan”.⁶⁶ Likewise, the document lists WPACs’ preparation of watershed management plans as one benchmark of their success.⁶⁷ These statements are consistent with the *Water for Life Strategy*’s call for the development of “watershed plans” for all major watersheds by 2013/2014, as noted in part 4 above. On the other hand, *Partnerships* also states that “[d]epending on the issues to be addressed”, WPACs “may develop a ... comprehensive watershed management plan” and, again, that WPACs “may” prepare these plans.⁶⁸ These latter statements suggest that watershed plans are not required outcomes of WPACs’ work.

While vague in several respects, *Partnerships* is relatively clear that WPACs’ roles are strictly advisory; they have not been delegated any official decision-making authority.⁶⁹ Hence, their ability to implement their own plans is based, in turn, on their ability to convince the “jurisdictions with appropriate legislated authority to implement [the plans’] recommendations”.⁷⁰

In sum, the province’s publication of *Enabling Partnerships* provided a logical policy document for putting needed flesh on the bones of the *Water for Life Strategy*’s partnerships component. Rather than fulfilling this task, *Partnerships* provides broad, ambiguous characterizations of WPACs’ roles (other than stressing their advisory nature)

⁶⁵ The document also refers to the “physical limitations and supply available to individual watersheds”. *Ibid.* at 4. If “physical limitations” and “supply” are different concepts, the former might have been intended to include the limits on ecosystems’ assimilative capacities as noted above.

⁶⁶ *Ibid.* at 11.

⁶⁷ *Ibid.* at 12.

⁶⁸ *Ibid.* at 8 and 10, respectively.

⁶⁹ *Ibid.* at 2 (stating that *Partnerships* “does not confer or transfer any regulatory authorities”), 3 (stating that, while “partnerships do not have regulatory authority, they can make recommendations to those bodies that do Each partnership involves interested Albertans in making recommendations on water issues to the appropriate ... governments ... with water and land use planning and decision-making authority or responsibility.”), 8 (“While the Council does not possess regulatory authority, it may work with landowners, sectors, governments, and agencies to find solutions to the challenges the watershed faces.”), 9 (figure showing partnerships’ adaptive planning approach including examination of alternatives and making “recommendations on the best course of action in a plan”), 10 (WPACs’ roles to “make recommendations to the appropriate water and land use decision-making authorities”), and 15 (partnerships will “inform decision makers of the best course of action”).

⁷⁰ *Ibid.* at 10.

and of watershed plans, including those plans' linkages with land management and planning.

6.0. Alberta Water Council's Recommendations for Renewal of the *Water for Life Strategy*

In December 2006, Premier Stelmach requested that the Environment Minister “renew and resource” the province’s *Water for Life Strategy*.⁷¹ The Minister undertook this somewhat vague mandate by, in turn, requesting that the Alberta Water Council (AWC) provide the Minister with recommendations on how to “re-energize and re-focus” the *Strategy*.⁷² The AWC responded to this request by interpreting the call for “renewal” as one for an “evaluation and adjustment”, rather than an outright “replace[ment]”, of the original *Water for Life Strategy*.⁷³ The AWC then solicited and considered public input and produced a report in January 2008.⁷⁴ The report states at the outset that it was intended to “re-focus” the *Strategy* at the “strategic level”, with the understanding that an implementation plan, including specific actions”, would then be developed, presumably by the province.⁷⁵

The renewal report organized the AWC’s recommendations around two themes: “safeguard[ing] our water resources” and “accelerat[ing] action”. Under the latter, the AWC recommended that the province “clarify roles, responsibilities and accountabilities”.⁷⁶ The report affirmed the value of “partnerships”, noting that these are one of the original *Strategy*’s “cornerstones” and are “crucial” for “engaging all interested Albertans in water issues across the province.”⁷⁷ However, the report stressed that “clarity around roles, responsibilities, and accountabilities, is vital for maintaining effective partnerships”. The report added that it was “imperative” to “understand the scope and intent of our management tools (e.g. Watershed Management Plans)” and our “roles and responsibilities in relation to those tools.” The report’s discussion of this topic

⁷¹ Government of Alberta, News Release, “Stelmach issues mandates for Cabinet team members” (19 December 2006). This was one of numerous directions given by the premier to various Cabinet members as part of the premier’s “commitment to run an open and accountable government”. *Ibid.* See also Alberta Water Council, *Water for Life — Recommendations for Renewal* (January 2008) at 4, online: <http://www.albertawatercouncil.ca/Portals/0/pdfs/Renewal_Final_Report.pdf>.

⁷² Alberta Water Council, *ibid.* at 4.

⁷³ *Ibid.*

⁷⁴ *Ibid.* at 7.

⁷⁵ *Ibid.* at 4.

⁷⁶ *Ibid.* at 2.

⁷⁷ *Ibid.* at 15.

concludes by calling for “specific clarification and enhancement” to “define leadership, assurance, compliance, and decision-making roles within government and across all *Water for Life* partnerships.”⁷⁸

Also of note, the AWC’s report urged the province to “integrate” water and land management given the integral connections between land uses and water. However, the report provided only broad guidance on the institutional mechanism for achieving this integration, by stating that the “provincial government is in the best position to provide leadership and direction for all partners to ensure the coordination and integration of water and land management strategies, policies, plans, and actions.” Notably, the report fails to indicate what role the WPACs might play under an integrated water and land management framework.⁷⁹

7.0. Alberta Water Council’s Shared Governance Project

In January 2007, the Alberta Water Council (AWC) established a project team to review and make recommendations on improving the “shared governance framework” for watershed management.⁸⁰ To accomplish this project, the team convened four workshops in November 2007, following the team’s development of a workshop “discussion guide” and “companion document”. The team subsequently produced a report summarizing comments provided during the workshop, and then produced a report *Strengthening Partnerships* which was approved by the AWC as a whole and published in September 2008.⁸¹

For the most part, the AWC report treads familiar ground and adds little if any clarification to the provincial government statements of WPACs’ roles. For example, the report states in only broad terms that WPACs “evaluate and undertake planning on a watershed scale” and produce “state-of-the-art watershed reports and watershed

⁷⁸ *Ibid.*

⁷⁹ *Ibid.* at 13.

⁸⁰ AWC, *Strengthening Partnerships: A Shared Governance Framework for Water for Life Collaborative Partnerships* (September 2008) at 2, online: <<http://www.albertawatercouncil.ca/Portals/0/pdfs/SharedGov-StrengtheningPartnershipsFINAL.pdf>>.

⁸¹ *Ibid.* In December 2008, the AWC produced a related report, *Recommendations for a Watershed Management Planning Framework in Alberta*, which is discussed in part 9 below, online: <<http://www.albertawatercouncil.ca/Portals/0/pdfs/SharedGov-WatershedManagementPlanFINAL.pdf>>. The AWC’s underlying project is discussed at: AWC, *Shared Governance and Watershed Planning Framework*, online: <<http://www.albertawatercouncil.ca/Projects/SharedGovernanceandWatershedPlanningFramework/tabid/101/Default.aspx>>.

management plans”.⁸² These statements imply that the AWC expects WPACs to develop watershed plans, but they are unclear as to whether the AWC concurs with the province’s policy that these plans are not mandatory.

Likewise, the AWC report states broadly that the province is “ultimately accountable” for water policy and planning.⁸³ But the AWC’s notion of “accountability” is unclear. Does it mean that the AWC believes the province should develop watershed plans if WPACs fail to do so, or fail to develop sufficiently comprehensive plans? Does it mean that the province should not defer to WPAC “policy” determinations? And what does it say about the province’s role in setting the scope of issues to be addressed in watershed plans and in otherwise specifying the plans’ content and guiding constraints?⁸⁴

The AWC report also states that watershed planning “must be coordinated with municipal, provincial and federal water and land-use planning and decision-making processes.”⁸⁵ While hard to refute, this policy seems too broad to provide meaningful guidance. Must WPACs take all other “decision-making processes” as givens and strive to fit their products within these constraints, or can WPACs recommend changing those constraints? What other aspects of “coordination” should WPACs attempt?

The report also includes an extended discussion of the implementation of WPACs’ watershed plans. The report explains that the *Water for Life Strategy* assigns roles to each of the three partnership components, including WPACs, but because these roles are not “captured in legislation”, the partnerships have a “challenge” in trying to implement their decisions “in areas in which they have no authority.”⁸⁶ In the AWC’s view, this challenge can be “addressed” through “shared governance”, a process in which each party to the partnerships’ decisions assumes responsibility for implementing them through its own legal authority. The report suggests that a WPAC plan can be broken down into discrete actions assigned to each WPAC member, so each member then becomes “accountable” to the WPAC for implementing the actions directed at it pursuant to the member’s own legislative authority.⁸⁷

⁸² *Supra* note 80 at 4. As such, WPACs are distinguished from the AWC which assesses “provincial-scale water policy issues” and “watershed stewardship groups” which undertake “local, on-the-ground actions to improve their local water body or watershed.” *Ibid.*

⁸³ *Ibid.* at 9.

⁸⁴ The AWC report does make it clear that the province is responsible for delineating watershed boundaries, designating WPACs, and providing administrative, technical, and financial support to “partnerships”. *Ibid.*

⁸⁵ *Ibid.* at 10.

⁸⁶ *Ibid.* at 16.

⁸⁷ *Ibid.* at 16.

There are several potential problems with this notion of “shared governance”. First, the concept of “accountability” seems to be more of a moral than legal nature, so the AWC may be overly optimistic that the “accountability” will ensure that WPAC members live up to their commitments. Second, it is unclear whether all planning commitments can be neatly carved up into discrete components to be delivered by individual members. Some commitments under plans that are truly holistic or comprehensive may require holistic or comprehensive actions that, by definition, cannot be carved up into discrete components and that may require an over-arching legal and policy framework to implement. Even commitments that are divisible may require an extreme, unachievable level of coordination among multiple parties.

The report notes that “endorsement by an appropriate Government of Alberta official” of a WPAC watershed plan “will demonstrate commitment by a provincial department to use the plan to guide decisions.”⁸⁸ Once again, however, if the commitment is not legally enforceable, it may be hard to deliver the required action. As noted in part 2, government approved “water management plans” have legal significance under the *Water Act* but water managers’ adherence to those plans is not mandatory in every respect; watershed management plans have no legal status under the *Water Act* (except to the extent they include approved water management plans). The report notes that the provincial Cabinet’s adoption of the *Water for Life Strategy* “gives considerable force when considering structures and processes to achieve” the *Strategy’s* goals.⁸⁹ However, the nature of this “force” is uncertain in the context of water managers’ adherence to or fulfillment of provincially-endorsed watershed management plans.

Not surprisingly given these uncertainties, the report recommends that the province “clarify how it intends to integrate recommendations, plans, and actions” from *Water for Life* partnerships with its “legislative and regulatory responsibilities as soon as reasonably possible.” The report also notes that not all stakeholders are satisfied that the “success of shared governance” has been “proven”.⁹⁰

In sum, the AWC’s *Strengthening Partnerships* report was a worthy attempt to flesh out the province’s bare bones *Partnerships* policy with respect to WPACs’ roles, but the AWC’s report arguably made little additional contribution. The report largely treads familiar ground, without clarifying whether watershed plans were ever really necessary, how WPACs could coordinate their work with government decision-makers, how the province would ultimately be accountable in the area of watershed planning, and how effectively watershed plans would be implemented without accompanying legislative mandates.

⁸⁸ *Ibid.* at 16-17.

⁸⁹ *Ibid.* at 17.

⁹⁰ *Ibid.*

8.0. The Province's Renewal of the *Water for Life Strategy*

In November 2008, the province responded to the AWC's recommendations on *Water for Life Renewal* by issuing a briefly worded document titled *Water for Life — A Renewal*. In discussing progress to date, the *Renewal* document notes that the province has helped established partnerships with “on-the-ground” organizations which in turn have “become an important element in how we manage water in Alberta.”⁹¹ The document similarly notes that the province's “increased emphasis” on partnerships “has proven to be a strong foundation for building local commitment to protecting watersheds and ensuring local sustainability. Continuing to build these organizations is important for long-term sustainability.”⁹²

The *Renewal* document later announced flatly that the province accepted the AWC's recommendations and hence “incorporate[d]” them into the renewed *Strategy*.⁹³ However, in the context of WPACs, the document was wholly unspecific as to the implications of this action and follow up steps. Thus, the province simply acknowledged its “leadership” role, and committed to “[m]aintaining” WPACs as “leaders” in watershed planning, to continue to “resource and support” *Water for Life* partnerships, and to “develop and improve watershed management knowledge, tools and programs.”⁹⁴

9.0. The Alberta Water Council's Recommendations for a Watershed Management Planning Framework

In December 2008, the Alberta Water Council (AWC) issued its second report under its *Shared Governance* project, titled *Recommendations for a Watershed Management Planning Framework*. The aim of this report was, in part, to explain how the “collaborative watershed approach” under the *Water for Life Strategy* fit with the 2001 *Framework for Water Management Planning*, and also to “provide a clearer picture” of watershed management “as it has evolved” under the *Water for Life Strategy*.⁹⁵

⁹¹ *Supra* note 4.

⁹² *Ibid.* at 5. See also *ibid.* at 14 (noting that the “*Water for Life* partnerships are an important vehicle through which *Water for Life* goals are achieved”).

⁹³ *Ibid.* at 6.

⁹⁴ *Ibid.* at 14.

⁹⁵ AWC (December 2008), *supra* note 81 at 6.

As for the scope of watershed management plans, the report starts by suggesting a broad or comprehensive approach. Thus, the plans' scope should be broad enough to "address the needs of aquatic ecosystems" and to "include[e] the entire watershed from the main river to tributaries, lakes, wetlands, groundwater and land use as it impacts aquatic ecosystems". The plan must also "address factors that affect water quality, quantity and the maintenance and protection of healthy aquatic ecosystems."⁹⁶

However, the report then seems to backtrack from this ambitious approach by echoing previous explanations that, "[w]ithin this broad scope, there is considerable flexibility in how planning for the watershed is approached". The report suggests that each WPAC can prioritize issues and then choose which issues it actually wants to address.⁹⁷

As for how WPACs should address their priority issues, the report urges an outcome- and action-oriented approach, along with the identification of "indicators" of success.⁹⁸ However, the report states that WPACs have broad flexibility in choosing desired outcomes and accompanying actions, including in deciding whether a "watershed management plan" is even needed.⁹⁹

The AWC report does suggest several constraints on WPACs' chosen outcomes: they must "meet or surpass existing requirements for water quality, flow or other conditions".¹⁰⁰ The report also states that watershed management plans must "respect all transboundary water agreements with neighbouring jurisdictions" and "must not adversely affect sub- or larger watersheds."¹⁰¹

As for implementation mechanisms, the report speaks at several points to WPACs' roles as simply providing "advice" to other decision makers.¹⁰² However, echoing previous recommendations, the report also states that WPACs must have a "process for sign-off" on completed plans — *i.e.* an indication that signing members agree with the plan, and "can endorse it and eventually implement the actions assigned to them in the

⁹⁶ *Ibid.* at 17; see also *ibid.* at 18 (recommending that watershed management plans "broaden the focus from the main river to the entire watershed").

⁹⁷ *Ibid.* at 18-19, 24.

⁹⁸ *Ibid.* at 16, 18, 22.

⁹⁹ *Ibid.* at 18-19, 24.

¹⁰⁰ *Ibid.* at 16. See also *ibid.* at 22 (outcomes must "[m]atch or exceed regulatory requirements").

¹⁰¹ *Ibid.* at 17.

¹⁰² The, the report states that, "regardless of what it is called, a *watershed* or *water* management plan will direct advice to the appropriate authority to inform their decision-making." *Ibid.* at 19. The report also states that "there is nothing ... that precludes" WPACs from "making recommendations on land use or other activities as they impact the water resource." *Ibid.*

plan.”¹⁰³ The AWC’s recommended buy-in process seems logical at first blush but, absent any indication the plans themselves are legally binding, the plans’ commitments are of questionable value.

In discussing the provinces’ role in implementing watershed plans, the report notes that the province is forming cross-ministry “WPAC Support Teams” so that “multiple ministries can provide input and endorse plans”.¹⁰⁴ The implied purpose of this expanded provincial involvement is to ensure that all those ministries whose actions are required to implement a plan actually buy in to the plan. This objective makes considerable sense, but it may be difficult to achieve given ministries’ differing mandates and interests. An overarching, watershed-specific cabinet level directive may be needed to ensure that multiple ministries reach consensus among themselves.

The report seems to endorse this elevation process by stating that the “Alberta Government will be a key endorsing partner, assuring that the decision-making tools of all ministries ... are supportive of the plan’s outcomes.”¹⁰⁵ However, the report is unclear as to who in the provincial government the AWC expects will play this supra-Ministry role, what authority the person/office has to do so, and whether the province itself has committed that someone will play this role.

The report also states that, if “consensus cannot ultimately be achieved on a given issue, it may be referred to the Government of Alberta or another appropriate decision-making authority, if one exists, with sufficient background so they can deliver a decision. That decision would then become part of the watershed management plan”¹⁰⁶ This statement raises a whole series of questions — does it refer to lack of consensus among government Ministries or more broadly among WPAC members? In either case, who is “another appropriate decision-making authority”? And, even if such an authority has “sufficient background” in terms of knowledge or expertise, what legal or other basis does the authority have to cast a deciding vote? And, finally, if watershed plans are simply recommendatory in nature, why is it so important to resolve a lack of consensus?

In a separate section under the heading of the “authority” of a watershed management plan, the report states that, while watershed management plans are “advisory only”, the province, “having been committed to *Water for Life* by cabinet policy, is compelled to consider this planning tool in its decision-making.”¹⁰⁷ Because *Water for Life* does not *require* the development of watershed management plans, this statement would seem to

¹⁰³ *Ibid.* at 25.

¹⁰⁴ *Ibid.* at 26.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.* at 29.

be true only if the province agreed that a watershed management plan should be developed and then endorsed the final plan. Even then, the compulsion simply to “consider” a watershed plan hardly ensures that the plan will be implemented.

Apparently recognizing the weaknesses in its implementation mechanisms, the report admits that legislative changes may be needed to “compel sectors ... to participate ... and to compel the implementation of agreed-upon actions in an endorsed plan.”¹⁰⁸

In sum, the AWC’s second report in its *Shared Governance* project is yet another noble but arguably inadequate attempt to clarify WPACs’ roles in watershed planning. The report echoes previously stated notions of the completely open-ended scope of watershed plans and provides little detail on plans’ content other than the bare bones “outcome/action/indicator” framework. The report makes a concerted effort to explain how watershed plans can be implemented but the AWC itself seems unconvinced as it ends with a comment that further legislative changes may be needed. Finally, the timing of this second AWC report itself suggests the AWC was frustrated with the province’s apparent lack of follow up to the AWC’s *Renewal* recommendation — which the province accepted in its renewal of the *Water for Life Strategy*— that the province should clarify roles, responsibilities and accountabilities of partnerships and WPACs’ development of watershed plans.

10.0. Land Use Framework

Alberta has considered its *Water for Life Strategy* a landmark policy, but its more recently developed “Land-use Framework” (LUF) may be an even more significant policy milestone in the land and resource management fields. According to the December 2008 final version, this policy recognizes the “pressure” placed on Alberta’s “landscapes” from the “unprecedented growth” in population and economic activity and observes that the existing “land management system” is incapable of adequately responding to this pressure.¹⁰⁹ The policy further recognizes that Alberta’s watersheds, airsheds, and landscapes “have a finite carrying capacity”.¹¹⁰ To address the growth pressures in light of these limits, the policy calls for the province’s adoption of a cumulative effects management approach based on regionally and locally “appropriate thresholds,

¹⁰⁸ *Ibid.* at 30.

¹⁰⁹ Government of Alberta, *Land-use Framework* (December 2008) at 6, online: <<http://www.landuse.alberta.ca/AboutLanduseFramework/Default.aspx>>.

¹¹⁰ *Ibid.* at 19, 31.

measurable management objectives, indicators and targets for the environment (air, land, water and biodiversity).”¹¹¹ According to the policy, this cumulative effects framework will then be incorporated, in turn, into a broader land-use planning framework resulting in “regional plans” for each of seven geographic regions of the province, whose geographic boundaries are based on large-scale watershed boundaries.¹¹² These regional plans will “balance” environmental, economic, and social considerations and will be binding on provincial and local decision-makers.¹¹³

On its face, the LUF document calls for an ambitious undertaking that requires considerable further effort to fully design and implement. This effort includes integrating the LUF with existing land and resource management policies, including the *Water for Life Strategy*. The LUF document itself makes only brief reference to this integration step, by stating that the LUF “complements” Alberta’s “water and air policies” including *Water for Life*, because “[w]hat uses are permitted on land — or more precisely how they are done — clearly impact adjacent watersheds and airsheds.”¹¹⁴

This rationale is somewhat problematic in at least two respects. First, if “adjacency” is meant to refer to the *proximity* of “land” and “watersheds”, this notion is misplaced because “watersheds” *include* land.¹¹⁵ Because of this overlap, the *Water for Life Strategy* has itself been encouraged to better integrate land and water management.¹¹⁶ Second, even though the LUF title specifically refers to “land use”, the LUF document elsewhere refers to managing cumulative environmental effects more generally — *i.e.* including air and water effects. Thus, these other parts of the LUF suggest that the LUF-based regional plans and possibly other cumulative effects management strategies might themselves cover management of water, air, and other resources that are covered under other resource management policies. In sum, the LUF statement’s approach toward the integration of, or division of labour between, LUF and other resource management policies is hardly clear.¹¹⁷

¹¹¹ *Ibid.* at 31.

¹¹² *Ibid.* at 24.

¹¹³ *Ibid.* at 19, 31.

¹¹⁴ *Ibid.* at 7.

¹¹⁵ *Ibid.* at 53; *Water for Life Strategy*, *supra* note 39 at 30.

¹¹⁶ *E.g.* AWC (January 2008), *supra* note 71 at 2, 13, 16, 20, 26, 29, and 31-32; AWA *et al.*, *supra* note 39 at 8, 15-19.

¹¹⁷ Following this statement, the LUF document notes the importance of recognizing how “land use is different from air and water policies.” According to the document, this difference lies in the “relative[e] eas[e]” of reaching “broad consensus” on “appropriate standards for air and water” as compared to the difficulty in defining the “scope” of a land use framework. *Land-use Framework*, *supra* note 109 at 7. This comparison is confusing to the extent it suggests that setting air and water standards is a distinct function from comprehensive regional planning.

The LUF document makes only brief mention of the *Water for Life* partnerships by stating that regional plans will be developed by a provincial “land use secretariat” based on advice from “regional advisory councils” whose provincially-appointed members will include members of “relevant planning bodies (e.g. Watershed Planning and Advisory Councils)” within each region.¹¹⁸ While expressly mentioning WPACs, this statement is hardly clear that WPACs will be guaranteed seats on regional advisory councils.¹¹⁹

In June 2009, the Alberta Legislature gave royal assent to Bill 36, the *Alberta Land Stewardship Act (ALSA)*, to legislatively implement the LUF.¹²⁰ The 250 page statute, including numerous amendments to numerous other provincial laws, will require considerable legal analysis which is beyond the scope of this paper. For purposes here, the Act lays the legal framework for the land use secretariat and for the adoption and content of regional plans and their implementation. Chief among the implementation mechanisms are provisions requiring that numerous provincial and local government decisions be consistent with regional plans developed under the Act. The Act gives the secretariat broad discretion in deciding the focus and content of regional plans, but requires only that plans include broad “visions” and at least one “objective” for achieving those visions.¹²¹

Of particular note, the Act gives the cabinet broad discretion to decide the membership and planning focus of Regional Advisory Councils and makes no mention of WPACs.¹²² The Act also makes clear that the land use secretariat can adopt a regional plan before a regional advisory council for that region has provided advice and before the council has even been created.¹²³

¹¹⁸ *Ibid.* at 25, 29.

¹¹⁹ To date, regional advisory councils have been established for two of the seven regions — the South Saskatchewan River Basin and the Lower Athabasca River Basin. Government of Alberta, *Land-use Framework*, online: <<http://www.landuse.alberta.ca/Default.aspx>>.

¹²⁰ Second Session, 27th Legislature, 58 Elizabeth II; S.A. 2009, c. A-26.8. The Act was proclaimed into force on 1 October 2009. Government of Alberta, Information Bulletin, “Alberta Land Stewardship Act Authorizes Regional Planning Under Land-Use Framework” (1 October 2009).

¹²¹ *ALSA*, s. 8.

¹²² *Ibid.*, ss. 50-55.

¹²³ *Ibid.*, s. 4.

11.0. The Government of Alberta's *Water for Life Action Plan*

In November 2009, the Government of Alberta released its twenty-five page *Water for Life Action Plan*. This brief document (only seventeen pages have text) follows up on the AWC's *Water for Life* renewal recommendations and the province's *Water for Life Renewal* document officially accepting those recommendations.¹²⁴ The *Action Plan* purports to be the tool for "achiev[ing]" the *Water for Life* "goals and key directions"¹²⁵ Commensurate with its name, the *Action Plan* provides several tables listing "key actions" under each of the *Water for Life Strategy*'s six objectives.

As relevant here, the *Action Plan* contains several references to watershed planning but arguably shows little if any additional progress in refining the concept. For example, the *Action Plan* states the province's need to "improve and maintain the health of our aquatic ecosystems by", among other things, "promoting watershed management."¹²⁶ The *Action Plan* commits, in similarly broad terms, to the province's adoption of a "broad range of water management tools" including "comprehensive watershed plans".¹²⁷ Other than describing these plans as "comprehensive" and associating them with various *Water for Life* objectives, the *Action Plan* provides almost no guidance on the actual scope and content of individual watershed management plans, except to indicate that they will be a means for "[a]ssess[ing] future water supply demands and management options" and will be "integral to regional planning under the Land-use Framework".¹²⁸

In a list of key actions to complete by 2015, the *Action Plan* refers in similarly broad terms to "watershed and regional planning".¹²⁹ However, the *Action Plan* also calls more specifically for the "[d]evelop[ment of] watershed management plans for nine river basins by 2015 and to "[c]omplete and implement" watershed management plans for "all major watersheds" in Alberta by 2019. These actions have concrete timelines but, absent additional guidance on the scope and content of individual plans, the *Action Plan* begs the question of what kinds of products will actually result in those time-frames, as well as the consequence if the *Plan*'s deadlines are not achieved.

¹²⁴ Government of Alberta, *Water for Life Action Plan* (November 2009) [*Action Plan*] at 3, 5, and 23.

¹²⁵ *Ibid.* at 3.

¹²⁶ *Ibid.* at 9.

¹²⁷ *Ibid.* at 14.

¹²⁸ *Ibid.* at 15 and 18.

¹²⁹ *Ibid.* at 13.

The *Action Plan* also calls for the province’s adoption of a “watershed management planning framework” and a “guidebook for implementation” by 2012.¹³⁰ This commitment reflects a continuing acknowledgement of the need for further guidance on the scope and content of watershed plans. However, when viewed in light of the history of these acknowledgements and previous efforts to provide the needed guidance, this commitment hardly seems like a significant new step.

Finally, the *Action Plan* reiterates prior statements and commitments under the “partnerships” banner, but in only broad terms. Thus, the *Plan* states the province’s commitment to “continue to develop well-informed partnerships” and reiterates that these partnerships are an “important vehicle” for achieving *Water for Life* goals.¹³¹ However, the *Action Plan* makes only scant reference to WPACs, by noting them as among several entities which “all have roles to play in maintaining empowered, informed and fully engaged partners.”¹³² The *Action Plan* also commits to “[c]larify roles, responsibilities, and accountabilities”.¹³³ As with its call for a future watershed management planning framework, this commitment reflects a historical recognition of the need for more guidance, but simply re-acknowledging this need does not fulfill it.

12.0. Conclusion

Among Albertans who follow provincial water management, it would likely be difficult to find a person who opposes the province’s *Water for Life* policies favouring watershed management generally and WPACs’ involvement in watershed planning in particular. While having broad-based support, WPACs seem to have little provincial direction as to what they must actually accomplish. They are supposed to be “leaders” in watershed planning but they can only provide advice. They may or may not produce watershed plans; those plans can tackle single or multiple issues and may or may not include proposed “water management plans”; WPACs have a blank slate of tools to use; and, they should somehow coordinate with governmental decision-makers across the land, water, and other resource management spectra. The plans can be implemented but only if they are endorsed by governments and others with actual authority to take planned actions and provided those actions can be discretely parsed among the endorsing agents.

The Alberta Water Council has several times called for additional provincial guidance with respect to WPACs’ roles but the province’s responses — primarily the *Enabling Partnerships* report and *Water for Life Renewal* and *Water for Life Action Plan* — have

¹³⁰ *Ibid.* at 19.

¹³¹ *Ibid.* at 5 and 18.

¹³² *Ibid.* at 18.

¹³³ *Ibid.* at 5.

arguably not satisfied these calls.¹³⁴ The Council itself has made several attempts to flesh out WPACs' roles but those efforts have likewise left considerable uncertainty.

In some sense, the new land use framework sidesteps these uncertainties by providing a legislative framework for regional planning and for integrating those plans with governmental decision-making across the land and resource management spectra. However, this newer provincial initiative raises even more uncertainty about the roles of WPACs, because the regional plans will be developed and approved by a provincial land use secretariat based on advice from regional councils with no formal connection to WPACs. The AWC has urged that regional advisory councils adopt WPACs' advice,¹³⁵ but there is no formal process or requirement for this kind of bottom-up process.

Have WPACs' roles in watershed planning been pre-empted? If the answer is yes, this chapter in the history of Alberta water management may have ended before it ever really began, given the limited watershed planning that WPACs have completed to date. If the answer is no, then the task of defining WPACs' roles in watershed planning, and the roles of watershed plans themselves, is even more difficult now than it was when *Water for Life* declared WPACs as watershed planning leaders.

¹³⁴ The AWC's calls for additional clarity and guidance were echoed recently by another group established by the Environment Minister to advise the Minister on water management issues. In a 2009 report, this advisory group urged the province to "confirm the importance of regional and local expertise and knowledge in water management planning by *clearly stating the responsibilities and authorities*" of the *Water for Life* partnerships, including WPACs. Minister's Advisory Group on Water Management and Allocation, *Recommendations for Improving Alberta's Water Management and Allocation* (August 2009) at 12 (emphasis added). This advisory group stressed that it was "essential" to "clearly stat[e]" the roles and authorities of these groups, particularly with respect to the *Water Act*'s "regulatory and planning provisions". *Ibid.* The advisory group also recommended that the province "revisit" its current "language describing" the partnership groups' roles in water management and allocation, specifically mentioning the terms 'shared governance' and 'partnerships' as among those needing further clarification. *Ibid.* See also *ibid.* (noting that the "current lack of clarity" is a partial cause of an "increasing level of frustration in the regional organizations" whose "volunteer network is at risk if these [clarification] issues are not addressed") and *ibid.* (noting that WPACs' success depends in part on further "clarification of their roles and responsibilities").

¹³⁵ AWC (December 2008), *supra* note 81 at 30-31.

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