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Public Participation under the *Water Act* (Alberta): A Very Short Window of Opportunity

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Legislation commented on: *Water Act*, [RSA 2000, c W-3](#)

The Faculty's [Public Interest Law Clinic](#) regularly gets inquiries from the public seeking guidance on how to participate in decision-making under the *Water Act*, [RSA 2000, c W-3](#). As well, the Clinic maintains an active list of projects on the subject of [public participation in environmental decision-making](#). Common matters of concern that we hear about include draining wetlands, as well as impacts to groundwater. As water scarcity in southern Alberta becomes an acute problem, I expect to see a growth in public concern with development projects that affect surface and ground water. This very short comment is simply a reminder that if someone wants to provide feedback or comments on an application made under the *Water Act*, for example an application made by a company that plans to drain a wetland so that the area can be developed, they normally have only 7 days from the date of the application to submit a 'statement of concern' to Alberta Environment and Protected Areas.

Opportunities for public participation in project-specific environmental decision-making by government officials are very limited in Alberta (I wrote about this [here](#)). The short window of time set by legislative frameworks to exercise the opportunity is just one of several barriers to participation; others include the financial cost of retaining legal advice and experts (and the absence of funding provided by government for same), the limited access to experts who are available and willing to give evidence on project impacts, the absence of a legislated process for participation in a project decision, and the difficulty in demonstrating that one is 'directly affected' by a project (the leading interpretation of what it means to be 'directly affected' was provided in *Normtek Radiation Services Ltd v Alberta Environmental Appeal Board*, [2020 ABCA 456 \(CanLII\)](#) – a case that the Public Interest Law Clinic was involved with – see [here](#)).

In relation to an application made by a company seeking an approval under the *Water Act* (for example, to fill a wetland), section 109 requires a person with a concern about the project to submit their written 'statement of concern' within just 7 days of the date notice is given of the application. Obviously, getting notice of an application for approval under the *Water Act* is a key step in this process. Section 13 of the *Water (Ministerial) Regulation*, [Alta Reg 205/1998](#) stipulates the content that must be included in the notice, and sets out how the notice can be disseminated to the public. None of the listed methods of dissemination seem likely to reach the attention of most people – particularly within the very short 7-day window of opportunity to engage in the process:

- (a) publish notice of the application, decision or order in one or more issues of a newspaper that has daily or weekly circulation in the area of the Province in which the

activity, diversion of water or operation of a works that is the subject of the application, decision or order is or will be carried out;

(b) provide notice of the application, decision or order through a registry established by the Government for that purpose;

(c) provide notice of the application, decision or order through a telecommunication system or electronic medium;

(d) publish notice of the application, decision or order in *The Alberta Gazette*;

(e) make available a copy of the application, decision or order in one or more branch offices of the Department in the area of the Province in which the activity, diversion of water or operation of a works that is the subject of the application, decision or order is or will be carried out;

(f) provide notice of the application, decision or order, in the form and manner and within the time period specified by the Director, to

(i) any persons determined by the Director, and

(ii) the local authority of the municipality in which the land on which the activity, diversion of water or operation of a works is located;

(g) provide notice in any other form and manner considered appropriate by the Director.

My understanding is that the standard practice is for Alberta Environment and Protected Areas to give public notice of an application made under the *Water Act* on the [Digital Regulatory Assurance System](#). It is safe to assume this online registry is not familiar to most, if not nearly all, of the public. Accordingly, many people miss the 7-day window, and when they eventually learn about the project and submit their concerns they are faced with opposition by the decision-maker (Alberta Environment and Protected Areas) and the project proponent, who both assert (correctly) that the legislated deadline has passed and it is too late to participate. A recent example of this, which has come to the attention of the Public Interest Law Clinic, is opposition from Alberta Environment and Protected Areas to public participation in relation to concern about the loss of a wetland in Cochrane (for a description of the concern see this [public petition](#) launched in August).

The 7-day window to participate is a departure from ‘normal’ time frames in other legislative frameworks which are commonly 30 days (or even 60 in some instances). Given the increasing importance of water resources in Alberta, this time period should be extended so that the public has a reasonable opportunity to not only learn about development projects that will impact surface and ground water, but also formulate and submit their concern to Alberta Environment and Protected Areas.

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