



# Our Water Is Not For Sale

Say NO to water markets!

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## Water Allocation Review Backgrounder for Municipalities

In the fall of 2008, Environment Minister Rob Renner announced the Alberta government was going to review the 1894 “First in Time, First in Right” water allocation process in the province and update the 1999 *Water Act*. Since then the government has consulted with their experts and released the recommendations from three government-appointed committees to change the province’s water allocation system and update the *Water Act*. The Government of Alberta did not consult with the broader public to get input and direction to guide changes to its water policy.

In November 2009, three reports were released from the Alberta Water Research Institute (AWRI), the Water Allocation Transfer System Upgrade Project (WATSUP) team of the Alberta Water Council, and a Minister’s Advisory Group of hand-picked experts. The reports recommended a series of changes to the water allocation system and the *Water Act*. In a style of top-down democracy, the Government of Alberta, without public consultations, has already selected and pursued a certain policy direction and will not consult the public until after they have almost completely developed their plans for new legislation that will change Alberta’s water laws.

Alberta already has Canada’s first water market in the South Saskatchewan River Basin. While this market is highly regulated and controlled, the reports released by the government indicate that they are pushing to expand this system to the entire province while also deregulating it.

Major concerns include:

### **1. Failure to prioritize water for municipalities, human needs and vital ecosystems**

The recommended changes do not ask that water rights be prioritized to ensure adequate water is available for our municipal and community needs, for our families, our ecosystems, and our future generations above that of industrial and commercial needs.

The government is abdicating its role of allocating water according to the priorities we choose as a society, and is instead leaving allocations to be decided by ability to pay.

The reports clearly recommend requiring “all those who seek new or increased water rights to use the transfer system, **even if they are public bodies, such as municipalities** or the Province itself.”

Already, on the South Saskatchewan River with Canada’s only water market, **the municipal district of Rocky View has had to pay \$7,500 per acre foot, for a total of \$15 million, to access water rights.**<sup>1</sup>

Okotoks is also encountering major difficulties. Alberta Environment refuses to free up extra licences for the needy municipality, despite the town being among Canada’s top water conservationists. The town has essentially had to shut down development and is now putting millions into its budget in attempts to secure water rights.

Jurisdictions beyond Alberta, such as Chile and Australia, that have used water markets have seen serious consequences for municipalities and other bodies, where rivers have run dry and towns have been left waterless because other entities with more money were able to buy up licenses.<sup>ii</sup> For example, John Caldecott, Convenor of the Water Action Coalition in Australia, in speaking of their move to water markets, stated, *“it has become **the biggest scandal and disaster of our time** ... in terms of its economic, social and environmental significance.”<sup>iii</sup>*

## **2. Failure to challenge outdated 19<sup>th</sup> Century system of allocation**

The recommended changes do not challenge the 19<sup>th</sup>-century “First in Time, First in Right” (FIT FIR) principle, but rather propose adding the use of water markets as the means for water allocation, allowing water licenses to become private property to be bought, sold and traded.

Many problems exist with the current system, including extensive over-allocation, where existing allocations already give rights to use more water than is available in the water body. As the Conference Board of Canada cautioned in its December 2008 report, “Going With the Flow?” *Evolving Water Allocations and the Potential and Limits of Water Markets in Canada,* *“Water markets are not a panacea for the shortcomings of existing systems. They cannot compensate for poor management practices, nor solve problems of over-allocation, and may create incentives for further withdrawals in already stressed ecosystems. The impact of water markets on rural agricultural communities is not well understood. In addition, impacts on third parties are hard to predict and difficult to address when transactions change long-standing allocations.”*

For Alberta, adding markets to the current system will certainly not solve the existing problems and, in fact, by allowing users to sell unused portions of their allocation, will exacerbate the problems.

Beyond failing to establish an adequate allocation system, the proposed changes amount to a substantial give-away in which people and organizations would be able to sell the licenses that the government gave them for free. Moreover, the majority of licences are controlled by a small minority; for instance, in Southern Alberta, only 20 licenses control three-quarters of allocated water in that region. As such, a small group of people would have extensive control over our water and stand to make millions by selling what they received for free.

## **3. Deregulation of protections and abdication of public oversight**

There are also a number of recommendations that the province should **deregulate or relax protections and public oversight** that currently exist in our water law. Numerous recommendations call for a tiered review process where the public could only comment on certain water transfers. Another recommendation calls for the abolishment of the requirement of a basin-specific water management plans before a water transfer could take place.

Under Alberta’s current water law, basin-specific water management plans are the only mandatory set of matters and factors that a director must review before a water transfer can take place. Presently only the South Saskatchewan River Basin has a water management plan.

#### **4. Lack of consultation, planning and consideration**

As the Conference Board of Canada report states, *"The introduction of property rights to water, and the introduction of markets in such rights, is very complex and costly. It is not something to be undertaken lightly."*

Yet the government has not acted responsibly in approaching this, failing to consult meaningfully with the public, municipalities and others impacted, adequately consider the full range of implications of water markets, assess the impact under trade agreements, consider the impact given prospects of increasing drought and diminishing water supply due to factors such as climate change, and, importantly, consider any options outside of water markets.

The Conference Board of Canada notes, *"Water rights transfers based on market principles are a specific type of possible [water] reform, but only represent one option. It is preferable to take a holistic look at water allocation problems before delving into specific potential solutions such as water markets."*

Yet, the Alberta government has decided to consider only this one narrow option, which has resulted in a host of problems in other jurisdictions where it has been tried, while ignoring all other possible options and failing to present those options to the public. It is anti-democratic and unacceptable to make such major policy changes without broad and meaningful consultations with the public, impacted groups and First Nations on the full range of options before making changes to the *Water Act*.

#### **5. Implications under international trade agreements**

Moving to a water-market system and commodifying water creates the potential for serious issues because of international trade agreements. Those trade agreements will make it virtually impossible to repeal the changes being considered. They also open the door to trade challenges in any situation where government or the public would move to protect water for public use at the expense of any profitable use.

As the Conference Board of Canada cautioned, *"Trade agreements, especially NAFTA, may pose significant risks to water management regimes that include the buying and selling of rights ... this will require careful consideration and detailed international trade legal analysis to ensure that policy changes do not introduce unintended consequences under trade rules."*

The implications under trade agreements are complicated, unclear and potentially very serious. The government has the responsibility to analyze the issue and provide clear assurance that changes would not negatively impact Alberta, and by extension the rest of Canada, before moving ahead with any policy changes.

More information and resources are available at [www.ourwaterisnotforsale.com](http://www.ourwaterisnotforsale.com)

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<sup>1</sup> In an article available at <http://www.canada.com/calgaryherald/features/water/story.html?id=cbb5dc39-6854-45bf-8961-a38c93fb8690>, the Calgary Herald Reports:

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*The Municipal District of Rocky View wasn't happy about having to buy water rights, as its deal -- at \$7,500 per acre foot -- set an Alberta water market record when approved by the province in September.*

*The rural municipality neighbouring Calgary agreed to pay \$15 million to the Western Irrigation District to convert a leaky canal into an efficient pipeline in exchange for water to save a mammoth racetrack and shopping centre development rising in Balzac -- Alberta's largest construction project outside of the oilsands.*

*Under the old licensing system, Rocky View would have paid a one-time fee of \$900.*

*"It has put a dollar figure on a necessity of life," says former Rocky View reeve Al Schule, who spearheaded the municipality's tumultuous three-year search for water.*

<sup>ii</sup> See, for example, the 2009 New York Times article, *Chilean Town Withers in Free Market for Water*, available at [http://www.nytimes.com/2009/03/15/world/americas/15chile.html?\\_r=2&pagewanted=1](http://www.nytimes.com/2009/03/15/world/americas/15chile.html?_r=2&pagewanted=1)

<sup>iii</sup> From a piece titled, "South Australia's Water and Environmental Disaster", available at: [http://www.fairwateruse.com.au/index2.php?option=com\\_content&do\\_pdf=1&id=211](http://www.fairwateruse.com.au/index2.php?option=com_content&do_pdf=1&id=211)

Caldecott is part of a coalition proposing the declaration of a State of Emergency on the Murray River in Australia, and calling for a Royal Commission of Inquiry into the management of water on that river.