

Kent County Chapter, Council of Canadians
c/o 23 Indian Island Road
Indian Island, NB E4W 1S5

April 28, 2016

Department of Environment and Local Government (DELG),
Policy and Planning Division,
P.O. Box 6000,
Fredericton, NB E3B 5H1

Re: Public Input on “Water Strategy”

Dear Honourable Minister Brian Kenny:

The Kent County Chapter of the Council of Canadians is forwarding to you this submission regarding the new “Water Strategy.”

New Brunswick Anti-Shale Gas Alliance Submission

On April 20, 2016, the New Brunswick Anti-Shale Gas Alliance (NBASGA) submitted to you a document called “Remarks to the Department of the Environment and Local Government on Creating a Water Strategy.” Our group, the Kent County Chapter of the Council of Canadians is a longstanding member of NBASGA, and we are in accord with the points raised in that submission. We will not repeat what is said in that submission.

Like all the member groups in NBASGA, we also speak with and for a specific community in this province that is concerned about major environmental issues. Since 2010, people in our area has had to fight very hard to protect our water and the rest of our environmental, and the health of people in all communities in our region, as well as all the creatures and plants that live in the water, soil and air here. This fight-for-our-lives has taught us a lot and especially shown us to what extent we can trust the government in Fredericton to care about us. On the following pages you will see why we are extremely concerned about the development of this Water Strategy. We conclude by asking you to start the consultation over again – and do it the right way.

The Government of New Brunswick does not have a good record on environmental protection.

In recent years some of the evidence of this includes:

- issuing licenses for shale gas extraction exploration and development in 2010, without doing the research to determine if this was an environmentally sound activity;
- ignoring the many recommendations about the links between environmental matters and population health contained in the Chief Medical Officer of Health's 2012 peer-acclaimed, awarded, [report on the risks, hazards, and benefits of the shale gas industry](#) for this province;

- revoking, in 2013, the very strong well water protection regulation that was passed in 2011, which required those doing seismic exploration for oil and gas to test every potable water well along the proposed route;
- in 2013, stripping most of New Brunswick's wetlands from their prior protected status, which many local Kent residents believe had to do with the damage to wetlands the government knew would happen during the seismic exploration for fracking that took place later that year;
- passage of a 25-year forestry management plan in 2014, which overwhelmingly advantages one major corporation in the province, and even more so disadvantages the common, humble people who live near the province's public forest reserves (also called “Crown,” formerly called “Indian” or “Native” land), and who rely on the forest for at least part of their local sustainable livelihood;
- promising during the 2014 election to revise the forestry agreement and then saying they would not;
- approving the permit to construct Sisson Mine in December 2015, without considering first the many environmental and other issues raised by the public, which were published in a report (dated January 2016) by the group of experts contracted by the province to collect public opinion;
- in the absence of an in-place and functioning water protection regulatory system, eagerly and energetically promoting the development of the Energy East pipeline, which will cross approximately 300 waterways in the province as it snakes along the Saint John rivershed from the northwest corner of the province to the Bay of Fundy, also seemingly to benefit a major corporation, as it will create very few jobs and much risk to the rural areas and those who need water in this province.

The above list of examples does not include a truly major issue: the shameful mess associated with the Government of New Brunswick's 2002 “Water Classification Regulation.” Incalculable millions of dollars and unquantifiable preparatory community volunteer and provincial staff hours were spent on preparation for the implementation of this regulation, which has been very successful in Maine. For more than a decade, this policy simply collected dust. It was never operationalized.

The Ombudsman's Report on the previous, unenforced Water Strategy

In 2013, the Ombudsman for the Province of New Brunswick received a complaint from one of the community organizations involved in the early preparatory work for the 2002 Water Classification Regulation. On August 15, 2014, the [Report of the Ombudsman into the Department of Environment’s Management of the Provincial Water Classification Program](#) was published.

In that report, the Ombudsman identifies four aspects that are extremely relevant to this current policy development process:

1. **An apparent government preoccupation with being challenged for authority by corporate interests:** On December 2, 2008, the Minister of the Environment said in the Legislature, “What was brought to our attention was that, in the Clean Water Act, we did not have enough authority to run the Water Classification Program... I think what is important to understand is that, right now, under the Act, neither the minister nor the government has the legal capacity to run the program. We do not have the authority. That is all. The only thing that we are asking for is to legalize it here in the House, so that the department and the government have authority to act. That is all. Right now, there are certain activities, for instance, that are not permitted. The minister cannot prohibit those activities because it would not be legal to do so. We could and would be challenged in court. The only thing that we are asking for is to make it legal. That is all... The Department of Justice told us: 'Well, if you are challenged in court, it is highly likely you will lose.' ” As the Ombudsman notes, this speech pertained to the passage of a Bill that would strengthen those regulatory powers, and this Bill was given Royal Assent later in December 2008. Still the Water Classification Regulation was not operationalized.
2. **“A Troubling Use of Ministerial Discretion,”** which the Ombudsman details on pages 6 and 7 of his report so there is no need to summarize here. Just the title of this section summons up the common experience of New Brunswickers: the lack of transparency and accountability by the Government of New Brunswick, especially regarding backroom deals made with corporations that disadvantage ordinary New Brunswickers.
3. **The “Mirage” Aspect, whereby the government claims to do, and makes it look as if they are doing, something they are not doing.** Specifically, the Ombudsman identifies “focused political will is the missing element” for successful resolution of this issue, which is another way of saying the bureaucracy has been mandated to make it look like something is happening while the real attention of the political arm of government is focused elsewhere.
4. **The use of public resources for accomplishing nothing, or even worse allowing things to happen that are not in the true public interest.** As the Ombudsman points out, this monstrous regulatory wreckage “perpetuated the illusion that the province has a water classification program” while “deflecting public pressure,” so it reduced “vigilance” simultaneous to providing “no protection.” It is from conduct such as this that the vast majority of New Brunswickers have become cynical and distrustful about our government and its (lack of) intention to protect our treasured and essential natural environment which sustains all life.

Distrust of Government, and Not Being Consulted or Heard

Within less than two weeks of the announcement that your government was working on this new “Strategy,” Town Hall meetings began around the province to discuss it. Some might think this was a good thing: to get public input early in the process. We doubt it is early in the process: you have had almost two years to figure out how to respond to the Ombudsman's report.

Those of us who have been watching what the province has been doing on natural resource and environment issues for the past two years are regrettably skeptical regarding how serious your government really is about this “Water Strategy.” Why the enormous hurry? People had no time to arrange to attend these meetings feeling prepared. Or was that on purpose?

It is instructive to look at the independent panel soliciting public opinion on the Sisson Mine proposal, [Summary of Public and First Nations Participation](#). It discusses in detail the lack of public confidence that New Brunswickers have in your government's intention to protect our priceless natural environment: the same natural environment that sustains us all.

Most significantly, the independent “Summary” report on Sisson Mine discusses, at length, aboriginal and treaty rights and the obligations of the Crown (on matters of natural resources, *this would be the Provincial Crown*) in regards to Indigenous Peoples. (See pages 12 – 92, in particular.) Your government clearly needs to pay closer attention to this text, because once again on the development of this Water Strategy, you have failed to do your due diligence in consulting with our neighbour Indigenous community, Elsipogtog First Nation (EFN).

Our Kent County Chapter of the Council of Canadians works very closely with our neighbours at EFN on environmental issues. EFN's mandated consultation delegation on natural resource issues is led by Kenneth Francis, of Kopit Lodge. (Kopit means “beaver” and the principal mission of the Lodge is to protect the water.)

It is our understanding that Mr. Francis sent you a letter in early March asking for information about this Strategy. Apparently, this sat on your desk, Minister Kenny, for more than five weeks. Your response, dated April 14th, advised the deadline for input is April 29, 2016. You must be aware that this whole process you have just used is a complete violation of the protocols for valid consultation with First Nations in Canada, according to relevant case law precedents from the Supreme Court of Canada, and other levels of the justice system across Canada.

In other parts of Canada, in regards to Aboriginal Rights and Duty to Consult, “provincial governments take Indigenous Peoples seriously,” said Bruce McIvor, a lawyer for Elsipogtog First Nation, at a community meeting on April 21 2016. “I work across the country. Here in New Brunswick I feel like we are starting back talking in the 1950s or 1960s. I talk to people here and say, 'Yeah, this is crazy!' I think New Brunswick must be the ultimate political, legal backwater for Indigenous People, and that's a sad thing. No one wants that.” As a result of oversights, or perhaps blind spots, such as this, the taxpayers of this province are in imminent danger of being forced to bear the enormous burden of lengthy Aboriginal rights litigation – *which New Brunswick will lose!*

Perhaps you will decide to extend the deadline for input for First Nations, as was done by the New Brunswick Commission on Hydraulic Fracturing (NBCHF), when their procedural errors were brought to their attention. But, to make your process valid, the “Water Strategy” process may need to be shut down and begun again, anew, bringing First Nations to the table at the very beginning. There may be other requirements as well, such as capacity building, but we will leave these to First Nations to elaborate as appropriate.

It is not only Indigenous people in New Brunswick who are ignored by the provincial government.

The [Final Report of the New Brunswick Commission on Hydraulic Fracturing](#) also speaks at length about “one of the core findings,” which is New Brunswickers' “distrust of public institutions runs deep.” Specifically, see page 6: “The government’s water monitoring record has caused rural residents to distrust government officials’ assurances that it can adequately monitor a new industry.”

The Government of New Brunswick has consistently demonstrated that it does not value having adequate review, inspection and enforcement capacity.

You do not have enough trained staff in the civil service. You always rely on industry to police itself, which is like allowing the fox to guard the henhouse. We saw this over and over again during the year (2013) when we endured the invasion of the seismic exploration for shale gas drilling locations by SWN Resources Canada. We also see this when someone cuts through the river bank to create a place to load and unload their yacht. We see this when we complain about herbicide spraying that does not conform with the regulations.

It is clear to us that the government does not even seem to value this role in its bureaucracy. This was clear when the government fired, without cause, the one person in the civil service whom ordinary New Brunswickers trusted to protect the public's health and our environment: Dr. Eilish Cleary, the former Chief Medical Officer of Health. Her departure has slowed progress on important environmental policy research for the people of this province, and many people here in Kent County believe this was the real reason she was fired. This has only heightened our distrust of how government acts – how government seems to have higher regard for corporate goals than ordinary peoples' health.

This past Fall, we understand that the Director of Fish and Wildlife was put on leave from his position in the Department of Natural Resources. In that position, he actually had the personnel, resources and authority to try to protect wildlife during industrial review processes. His closest investigatory staff may also have been put on leave or moved. When the former Director was called back to work, he was put on a completely different job. Shortly after that, the permit to proceed with Sisson Brook was approved. A cross-check with the independent “Summary” report cited above shows there are many reasons why it would have been very inconvenient to have a wildlife champion in the bureaucracy when that permission was issued.

Returning for a moment to Dr. Cleary and the NBCHF: before being removed from office, Dr. Cleary made a cogent, well-researched plea for an overhaul of the industrial proposal review process used by the Government of New Brunswick. She recommended that the more comprehensive and independent “Health Impact Assessment” (HIA) be adopted in lieu of the current Environment Impact Assessment (EIA) process. New Brunswick's EIA process relies on corporate identification of issues, and does not have adequate scope to consider impacts on the range of determinants relevant to population health.

The NBCHF, which was clearly subjected to corporate pressures, supported the HIA proposal. The NBCHF watered down Dr. Cleary's proposal in their final report, proposing that the HIA could

come under the umbrella of the EIA process. Dr. Cleary had specifically proven that the HIA approach is broader, offers superior protection for human and environmental health, and is inclusive of the EIA mandate. So the NBCHF got it the wrong way around, but did support the idea.

Consider as well that the HIA process was also favourably reviewed in the independent “Summary” report about Sisson Mine.

So, the HIA proposal was brought to government three times in one year! Each time it was brought by people hired by the Government of New Brunswick to protect the public's interest and wellbeing. Your government has not taken any position on the implementation of the HIA, relative to relying solely on the more limited and corporately-biased EIA. This is yet another way it is clear, to those of us watching, that you do not really care what happens to small people in rural areas that are viewed as sacrifice zones by industry and their allies.

Further, we are concerned that your government has historically not put enough resources into effective implementation of policies such as that being discussed in this Strategy. Without the money to inspect and enforce, the policy will be meaningless.

In summary, we simply have no basis to believe that there is any substance to the rhetoric in your “fact sheet” on [Working towards a Water Strategy for New Brunswick: Programs and Approvals](#).

Watershed Designation, Protection and Related Issues

We note that you have combined several distinct watersheds in our region into one called [Northumberland Strait Composite](#).

- At least [seventeen \(17\) rivers and tributaries](#) in Kent County are lumped together in this one watershed “Level 1” region. Most of these are not connected.
- There are at least [seven \(7\) different watersheds](#) (pg 2) that have been locally identified.
- It is difficult to tell by the information provided, but it may be the case that our Level 1 region has the largest number of rivers of any single Level 1 watershed identified on the “Water Strategy” map.
- Certainly Kent County is in the region of the province that, in this decade, has been most severely under resource extraction industrial pressure opposed by area residents.

We are concerned about the underlying reasons for lumping together all our waterways into one super-sized watershed. Elsewhere in the “Water Strategy” document it is made clear that a significant purpose of this policy development is to facilitate a balancing of “environmental conservation and economic activities” and to “manage and use water responsibly... while allowing economic opportunities.” For those of us using the land and the waters in this county, for part or all of our livelihoods, the various rivers are not interchangeable. We would be more comfortable with smaller watershed areas that reflect local use patterns.

There is no Planet B.

No one is making drinking water. The climate will not heal on its own. Our generation has to turn things around. That means you need to show leadership: real leadership, not the appearance of leadership.

Despite the urgency, we are asking you to start this consultation over again. Without a hidden agenda, without narrow and/or meaningless questions, without your own ideas of how you want to do things, please invite the Indigenous, rural and urban people of New Brunswick to tell you what we want you to do to protect our water, and how we want you to do it. Then draw up your plan, and share the ideas with us before legislating.

It is very hard for us here in Kent County to trust a slick package of materials like this, with such a rush-rush series of meetings, and so little actual content to any of it. Regarding protection of the environment, most Kent County citizens have seen too much evidence of too little concern by your government. From our perspective, it usually seems the provincial government is listening far too closely to corporate industrial demands. You do not seem to pay enough attention to the urgencies and needs of common humble people in communities like those here in our area.

In the final analysis, the effectiveness of any government policy, including the case in point – this emerging Water Strategy – will be determined by your commitment to make it strong and comprehensive, and your will to enforce it. The resources provided to this initiative, and the behind-the-scenes guidance given by management to operations personnel, will determine whether or not even the best policy will succeed at its stated goals. Above all we need transparency and accountability.

Something you may want to consider is that, in other jurisdictions, young people have begun taking their governments to court for allowing the environment to be destroyed. They know their futures are in the hands of today's governments.

Respectfully yours, on behalf of future generations,

Ann Pohl, Chairperson, Council of Canadians – Kent County Chapter
with: Debra Hopper and Denise Melanson, Council of Canadians – Kent County Chapter

cc. Premier Brian Gallant
Council of Canadians – Atlantic Region network
New Brunswick Anti-Shale Gas Alliance
Conservation Council of New Brunswick
New Brunswick Environment Network
Kenneth Francis, Kopit Lodge, EFN
Chief Arren Sock, EFN
Wolastoq Grand Council
Chief Candace Paul, St. Mary's FN
Mr. Charles Murray, Ombudsman, Province of New Brunswick
The Hon. Minister Ed Doherty, Responsible for Aboriginal Affairs