NRCB Decision to Deny
Pigeon Lake CFO Lessons

PIGEON LAKE WATERSHED ASSOCIATION

30th Annual Emerald Awards RECIPIENT

PIGEON LAKE Watershed Management Plan
Healthy Watershed Healthy Lake Healthy Communities

ALMS Annual Conference, September 12, 2023

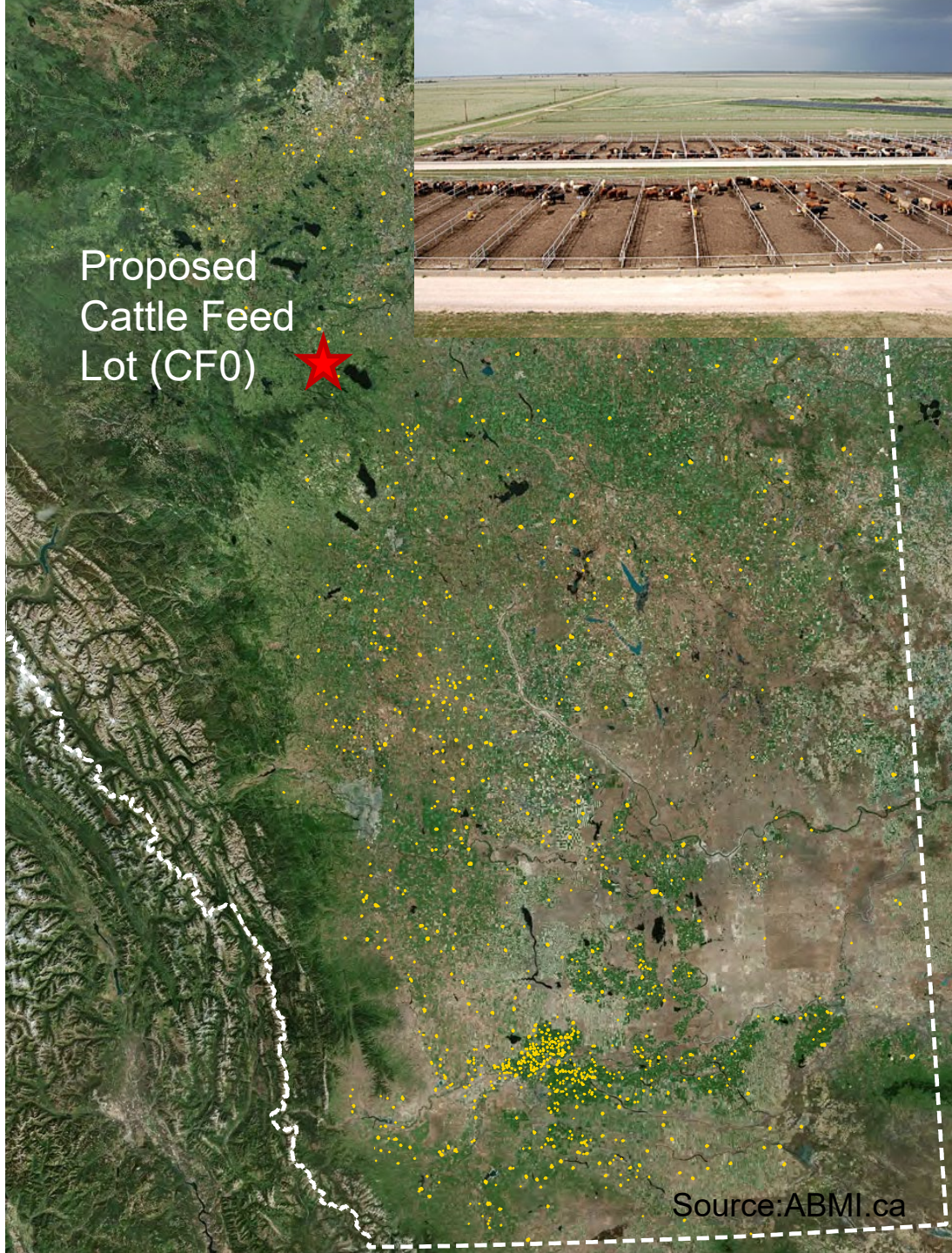
Robert Gibbs, PLWA Board Member, SV Deputy Mayor

Cattle Feedlots (CFO) in Alberta

- Major agriculture land use activity in parts of Alberta. Regulated CFO's considered safe
- AOPA set out the industry rules.
- NRCB is the approval agency.
- 2-part NRCB process is expedient and does not contemplate expert intervention.
- AOPA/NRCB approach to standards: Check box, one size fits all, simple setbacks.
- Approval officer discretion is limited.

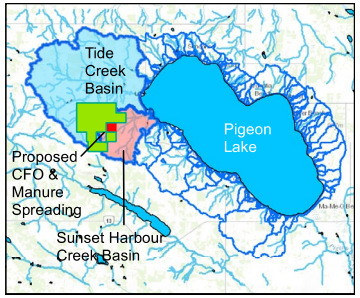
PLWA Board

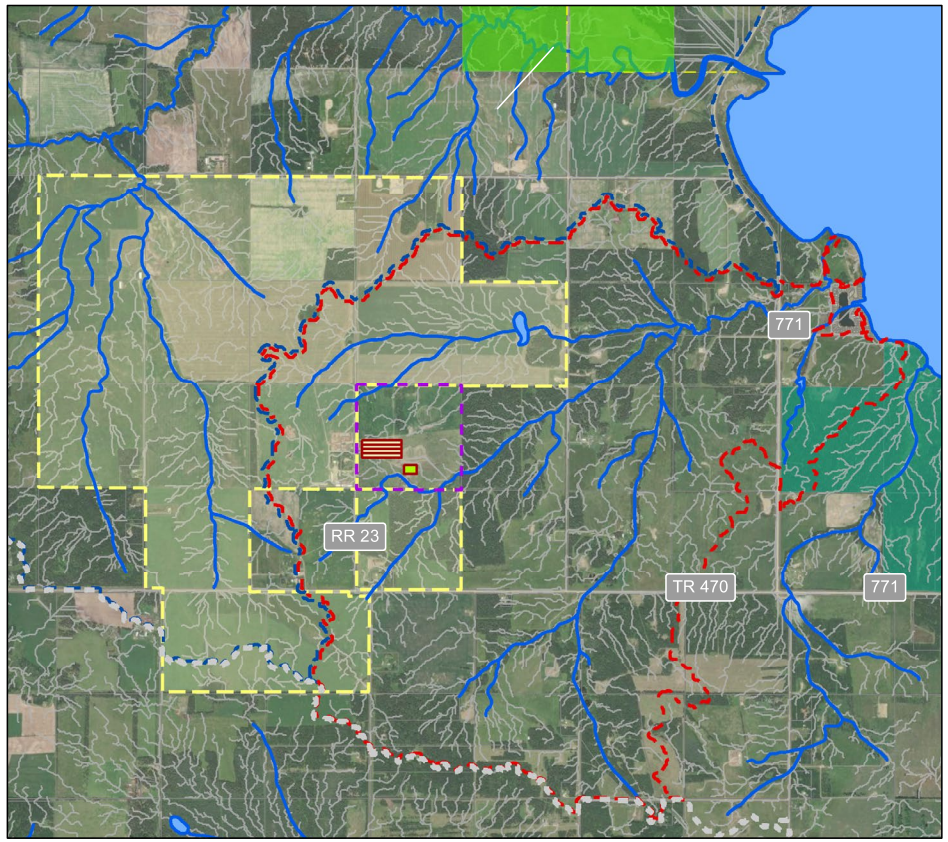
- Steep hill to climb

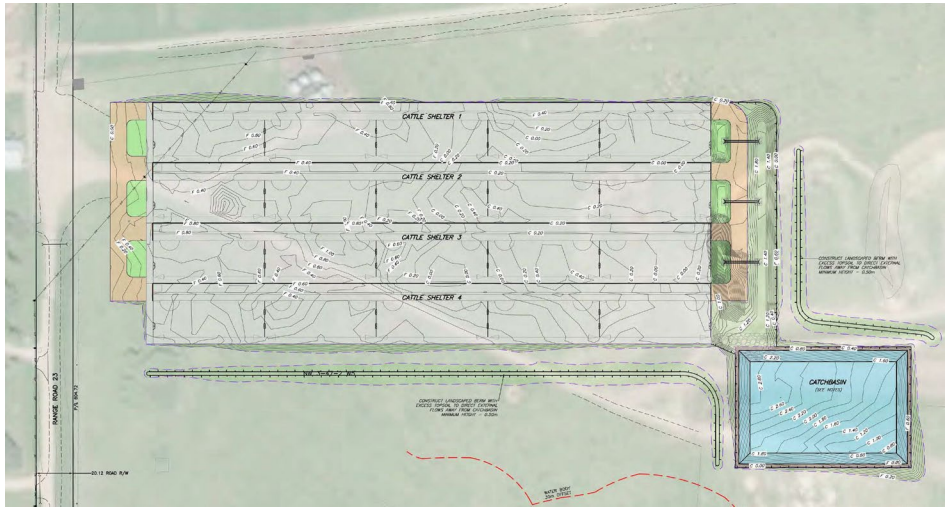


Proposed Cattle Feedlot NRCB Application

- ➢ Existing Cattle Ranch- 17 quarter sections.
- ➢ NRCB Guide: Land area supports 10,000.
- ➢ NRCB Application for 4000-head beef finishing feedlot.
- ✓ CFO Quarter : 4 pens plus catch basin.
- ✓ Catch Basin – 1:30 year one day storm.
- ✓ Manure Spreading on 16 quarter sections.

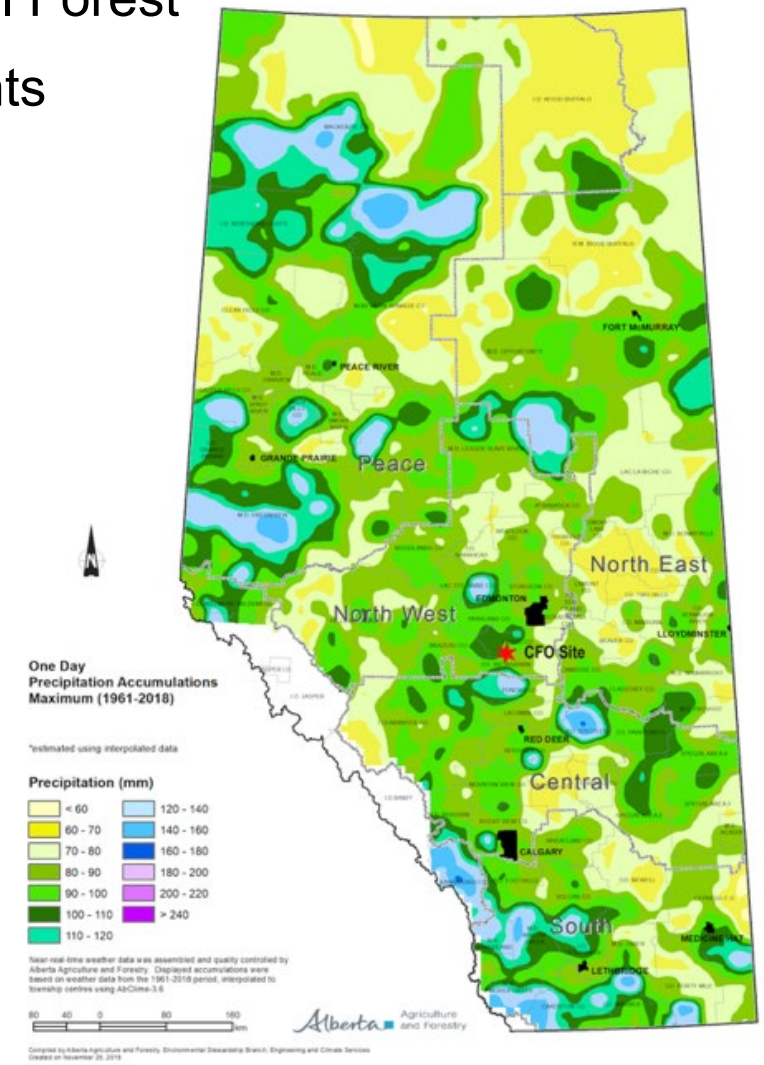




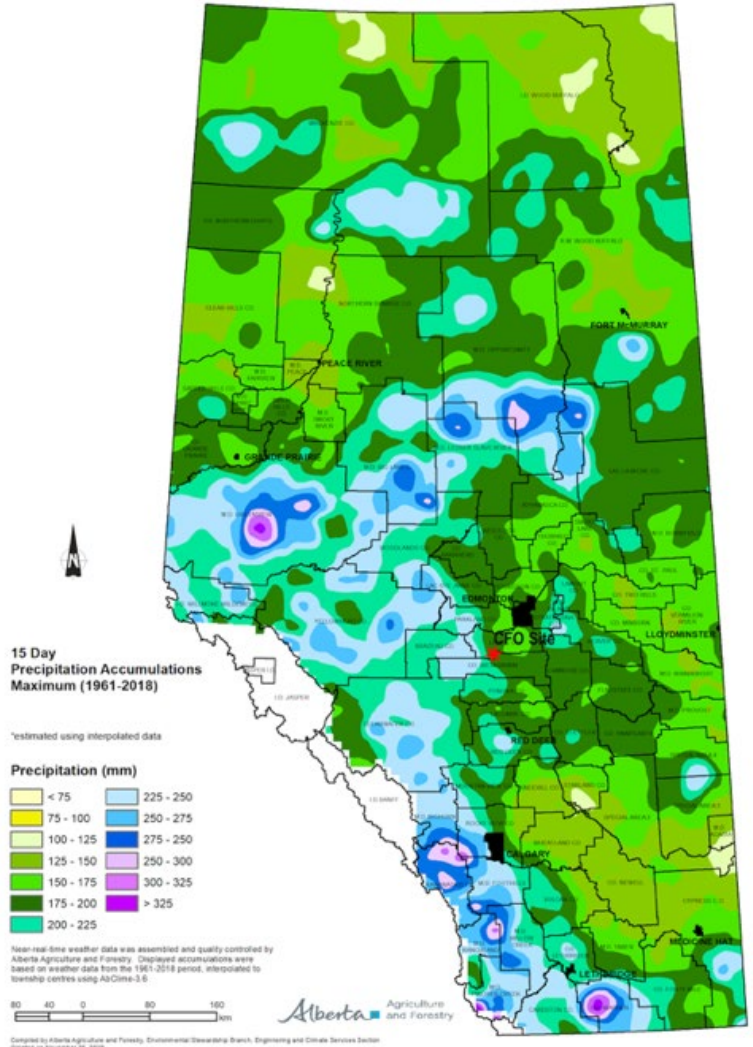


Our location is not Southern Alberta

- Extension of Northern Boreal Forest
- Longer duration rainfall events



Visit weatherdata.ca for additional maps and meteorological data



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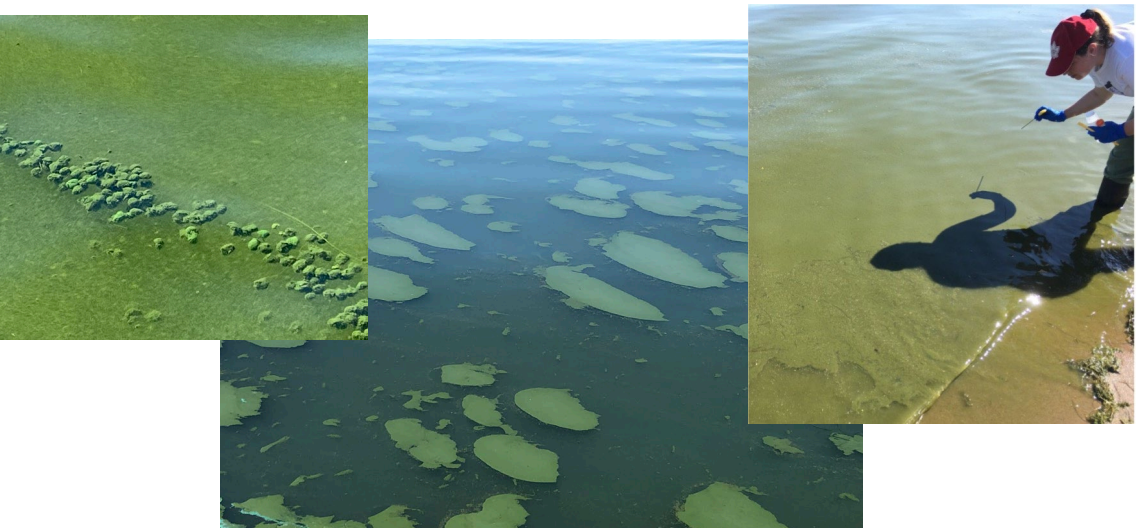
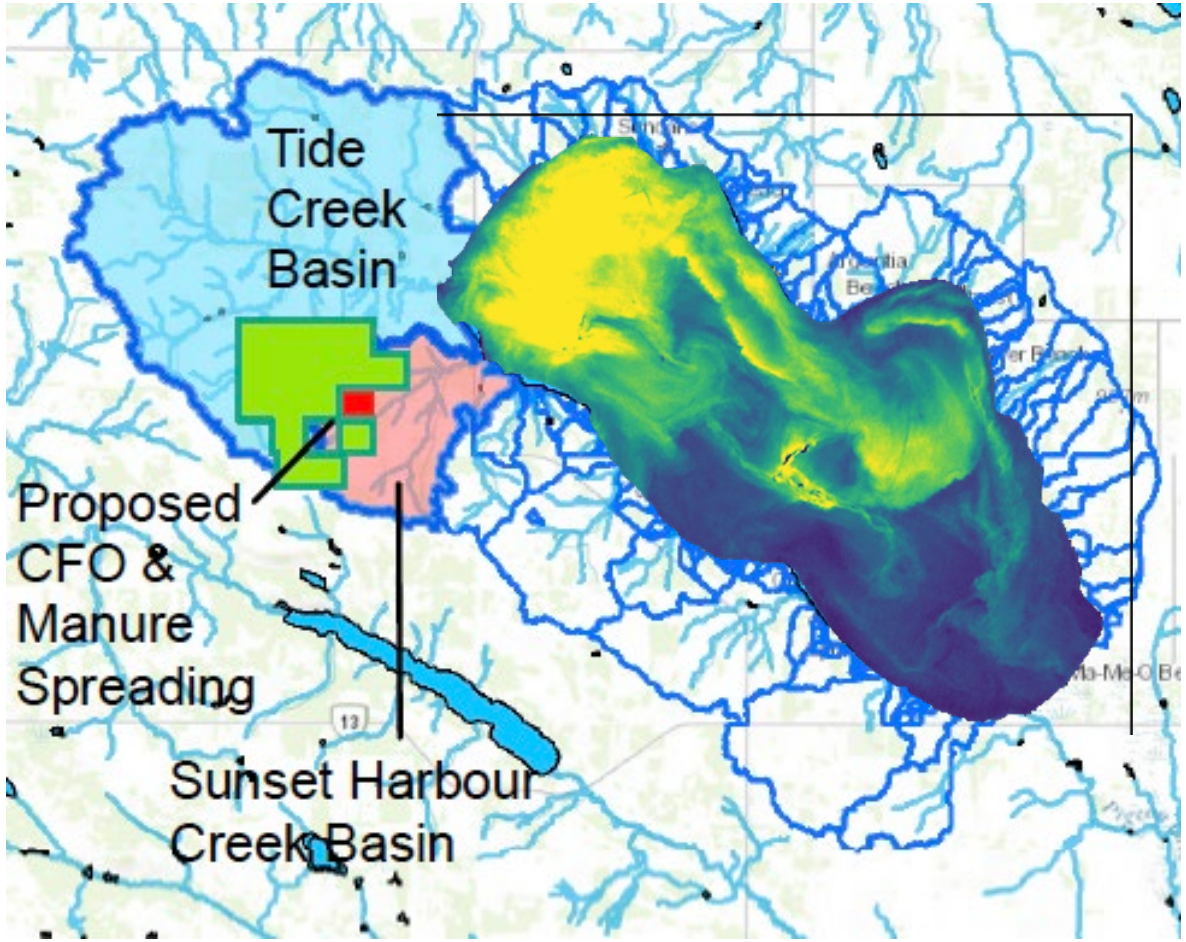
Vulnerable Pigeon Lake Health

- Pigeon Lake Vulnerable: 100 year+ lake residency.
- Near Tipping Point.
- Extensive Science.
- Freshwater guidelines for no net increase in nutrients
- Counteracts major regional efforts to restrict flow of phosphorus.

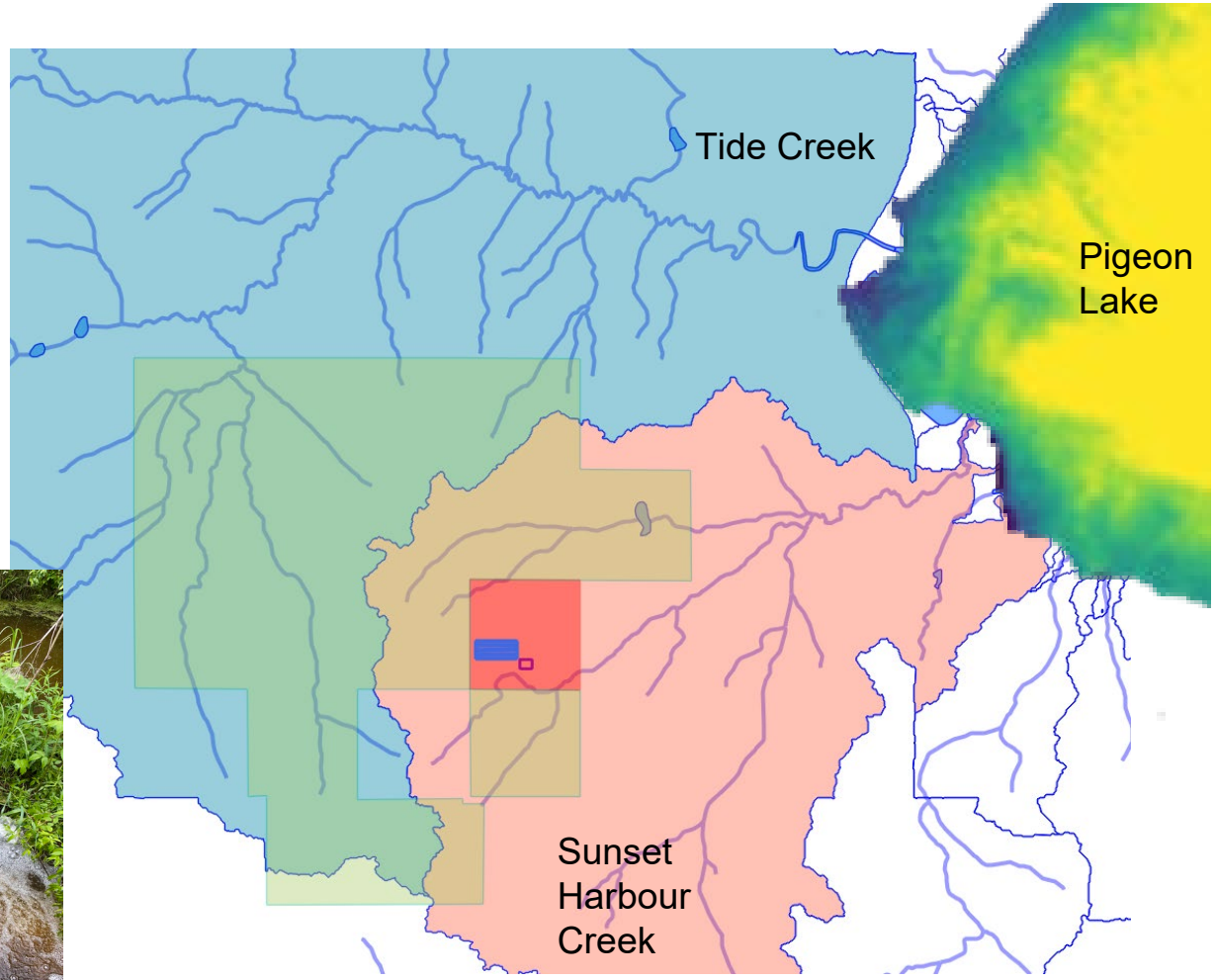




Not a consideration of the NRCB approval criteria and ignored by the Approval Officer

Basis of Watershed Concern –Pigeon Lake Health

- CFO Hydraulically linked to Pigeon Lake via 2 sub-basins.
- Concern with additional nutrient load if all goes as planned.
- Concern with the catch basin safety and potential failure.



Seasonal water courses ignored.
Catch basin became an issue.

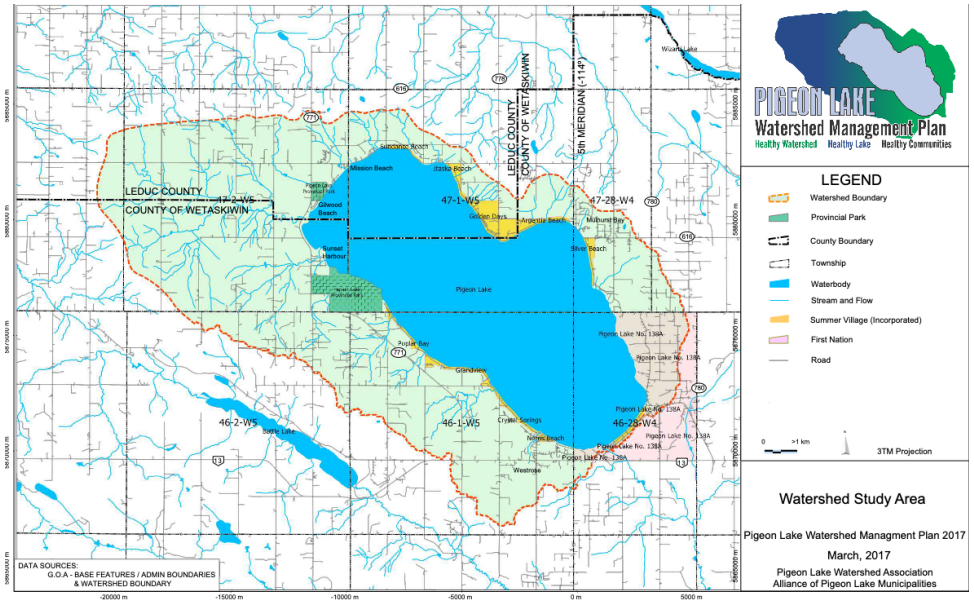
Incompatible Land Use / Watershed Management Plan

Statutory Land Use Plans

- Decision officer is required to review Statutory Plans and supporting documents.
- County Municipal Development Plan did not specifically exclude CFO from the subject land; however:
- High level goals for watershed and lake protection.
- County Lake Area Concept Plan identified CFO exclusion

Pigeon Lake Watershed Management Plan - PLWMP

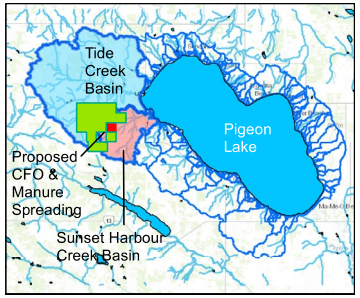
- Conforms to GoA Water for Life Strategy.
- Major goal to reduce nutrient runoff from land.
- Approved by all 12 municipalities.
- High level goals incorporated into Statutory Plans.
- CFO would negate costs and efforts to reduce nutrient loads for regional sewer system upgrades.

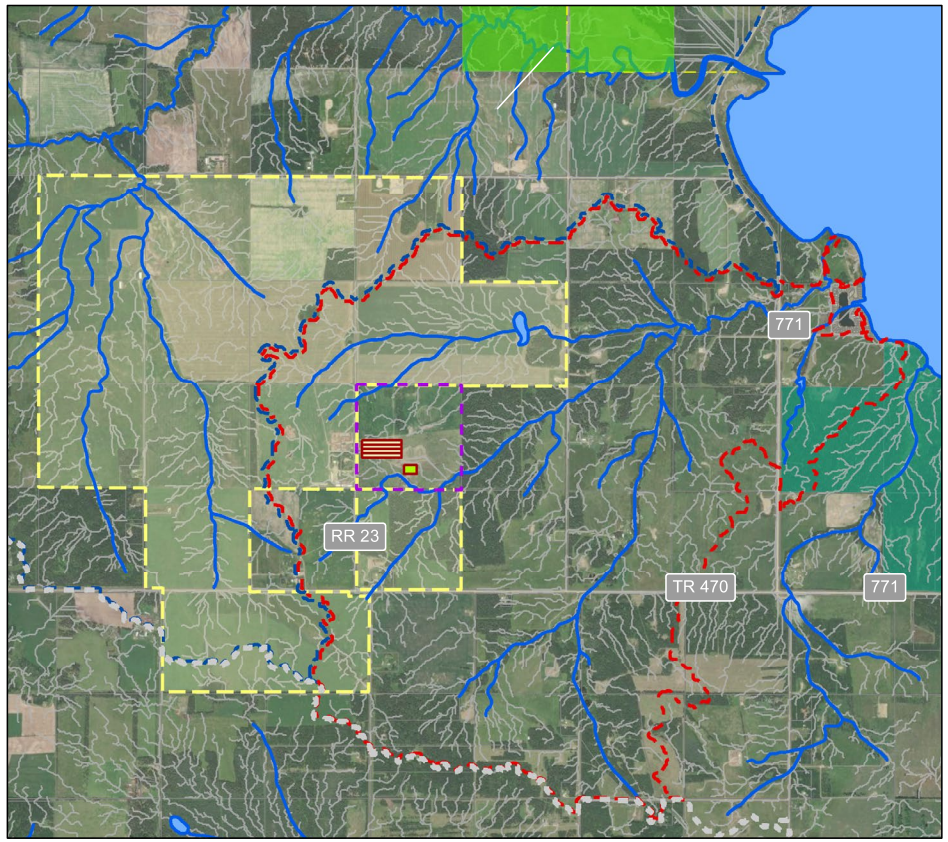


PLWMP and subsequent statutory plans were important to Decision

Application Timeline

- September 2021- Application to NRCB.
- March 10, 2022- Regulator Advertisement.
- 27 days – Submit Statements of Concern.
- 21 weeks - Approval Officer Denies CFO.
- 28 days Submit Request for Review (RFR).
- 1 day – NRCB issues Notice of Pending. RFR - requested by proponent and 6 Summer Villages.
- 6 days – Submit Rebuttal of RFR. (600 pp)
- 8 days (October 6, 2022, 7 months)- NRCB Board Decision not to hold hearing, and upholds Decision – a major precedent





PLWA Response

Initial 27 days – April 7, 2022 Deadline

- Assess Situation/Legislation and develop a course of action. Emergency Board Meetings. Very daunting
- Broadcast notification to membership and municipalities
- Establish PLWA Defend Pigeon Lake fund and web page
- Reach out to directly affected parties, municipalities and First Nations
- Prepare map of CFO Watershed context
- Prepare PLWA Statement of Concern and Background Report that could be included with other submissions
- Encourage others to submit Statements of Concern (SOC) including templates.

PLWA Response, Prepare for Board Hearing

Next 21 weeks, awaiting NRCB decision

- Fundraised
- Engaged Lawyer
- Sorted out relationships- we decided to formally work only with two directly affected families and manage our own defense and resources
- Prepared for a likely Board Hearing
- Hired three expert witnesses and prepared expert witness reports
- Information sessions led by others and ourselves
- Maintained relationships with the County
- Submitted 2 expert reports in August
- Other independent parties included other directly affected families, Maskwacis Cree Nations, Municipalities, Metis Nation of Alberta

NRCB Decision to Deny

August 29, 2022

- CFO Meets all AOPA standards, except possibly the catch basin.
- However, decision to deny based on inappropriate use of land and unacceptable impacts on community.
- Granted directly affected status to CFO proponent, 37 directly affected residents, County of Wetaskiwin, 3 First Nations and Metis Nation.
- Received 388 individual Statements of Concern, plus 8 Summer Villages, 3 First Nations and the Métis Nation of Alberta.
- Gave Notice: Directly Affected Parties may submit a Request for Review to the NRCB Board by September 22, 2022

PLWA Response, Post Decision

Proponent Request for Review

September 22, 2022

- Adverse effects not supported by information before Approval Officer
- Disregards established processes and principles.
- Misinterprets the authority of the PLWMP.
- Reliance on PLWMP unfairly focusses on concerns of unaffected parties.

- In addition, 6 Summer Villages petitioned for directly affected status

Directly Affected Rebuttal

September 29, 2022

- Approval Officer more than adequately considered all the information.
- The evidence supports the Approval Officer's conclusions.
- Grounds of the proponent RFR have little merit.
- No utility in a Board review because the Catch Basin does not comply with AOPA standards.

NRCB Board Decision

October 06, 2022

- Proponent request for Review denied:
  - ✓ Approval Officer adequately dealt with all issues raised in the proponent RFR
  - ✓ The proponent's issues are of little merit.
- Summer Village Request for Review:
  - ✓ Ignored
  - ✓ Possibility of Judicial Review but limited to matters of law and jurisdiction-- not the decision itself – 30 days to submit- If granted Judge could force the Board to redo the decision-

… the nature in which the watershed plans were developed and the commitment to those Plans as represented by the signatories represent a solid example of best practice in formalizing community interests."

Lessons Learned: Navigating Relationships

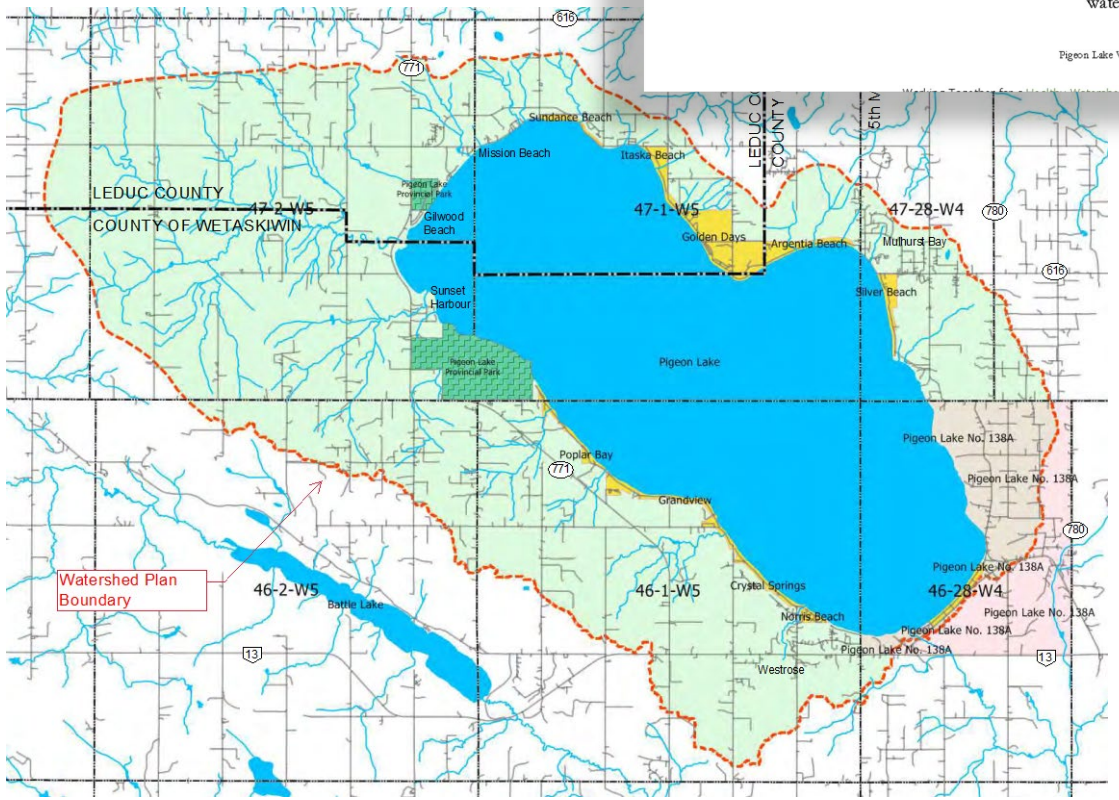
- ✓ Our network of relations play a key role.

NGO Lake Partners	PLWMP Steering Comtee	PLWA (WSG)
APLM Municipal Alliance	GoA	First Nations IR 138A
PLRCC Chamber	BRWA (WPAC)	Munici-palities

PIGEON LAKE

watershed management plan 2018

Pigeon Lake Watershed Management Plan Steering Committee
May 04, 2018



Lessons Learned: Navigating Relationships

- ✓ Our network of relations play a key role.
- ✓ Quickly figure out the new players at different stages of the NRCB process

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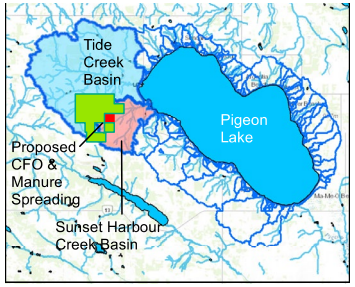

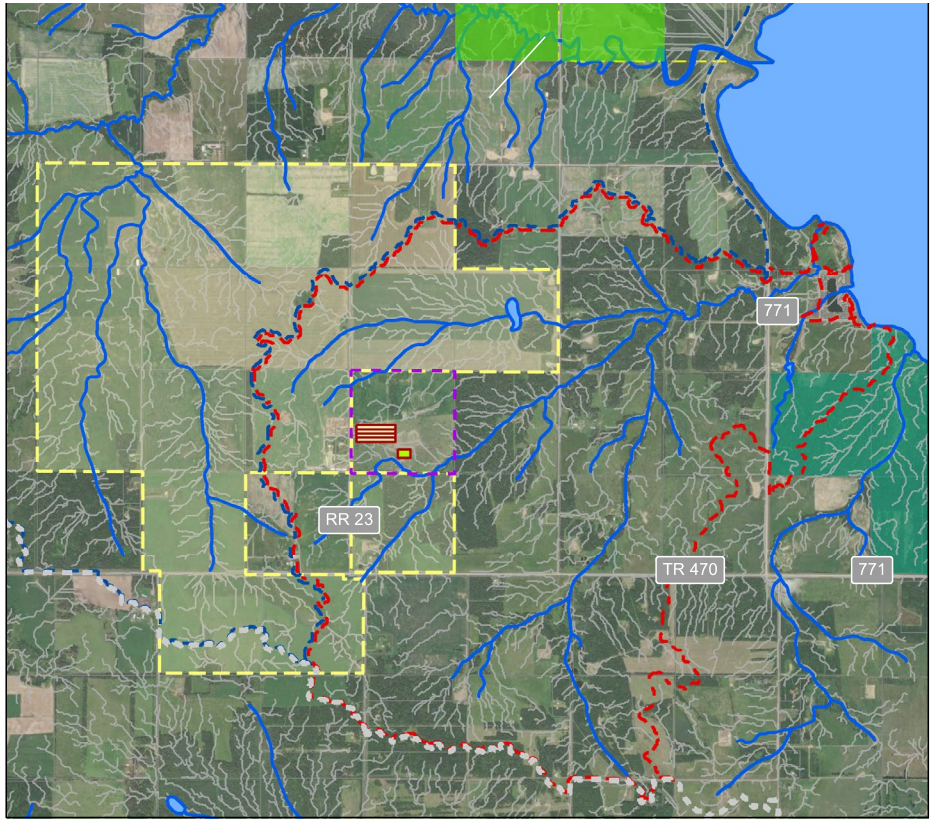

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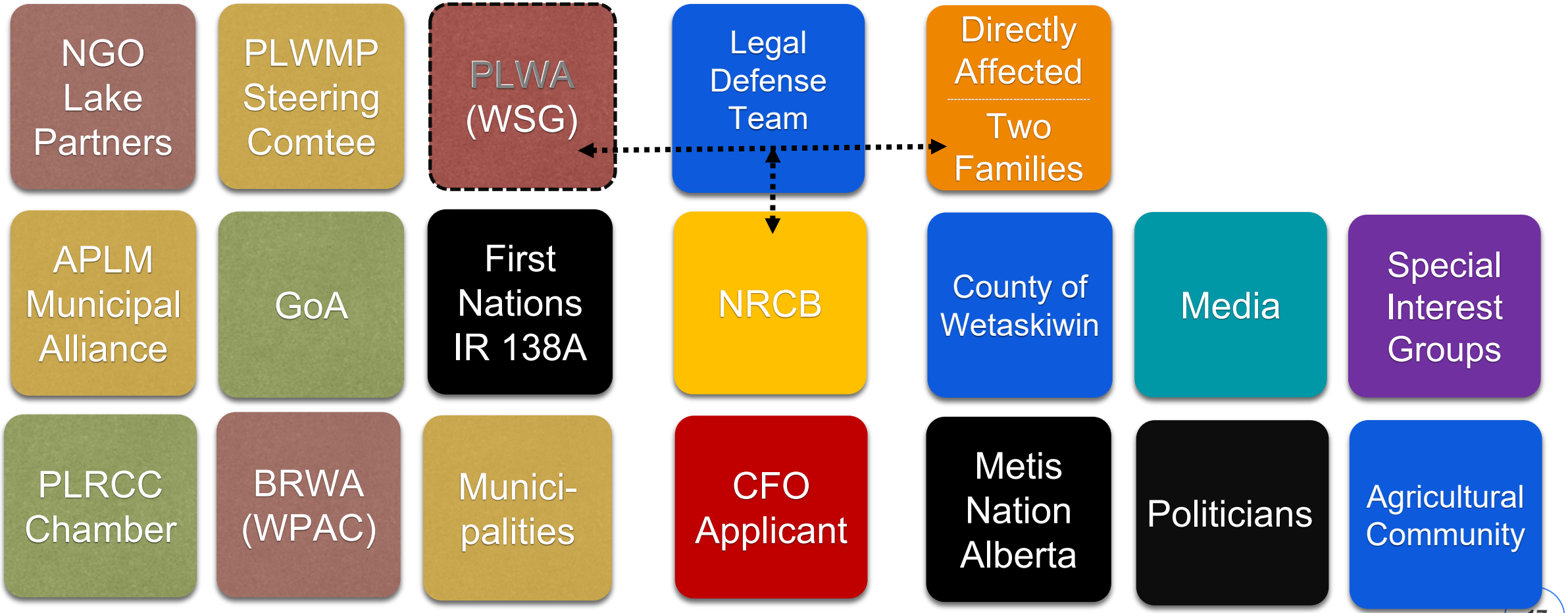
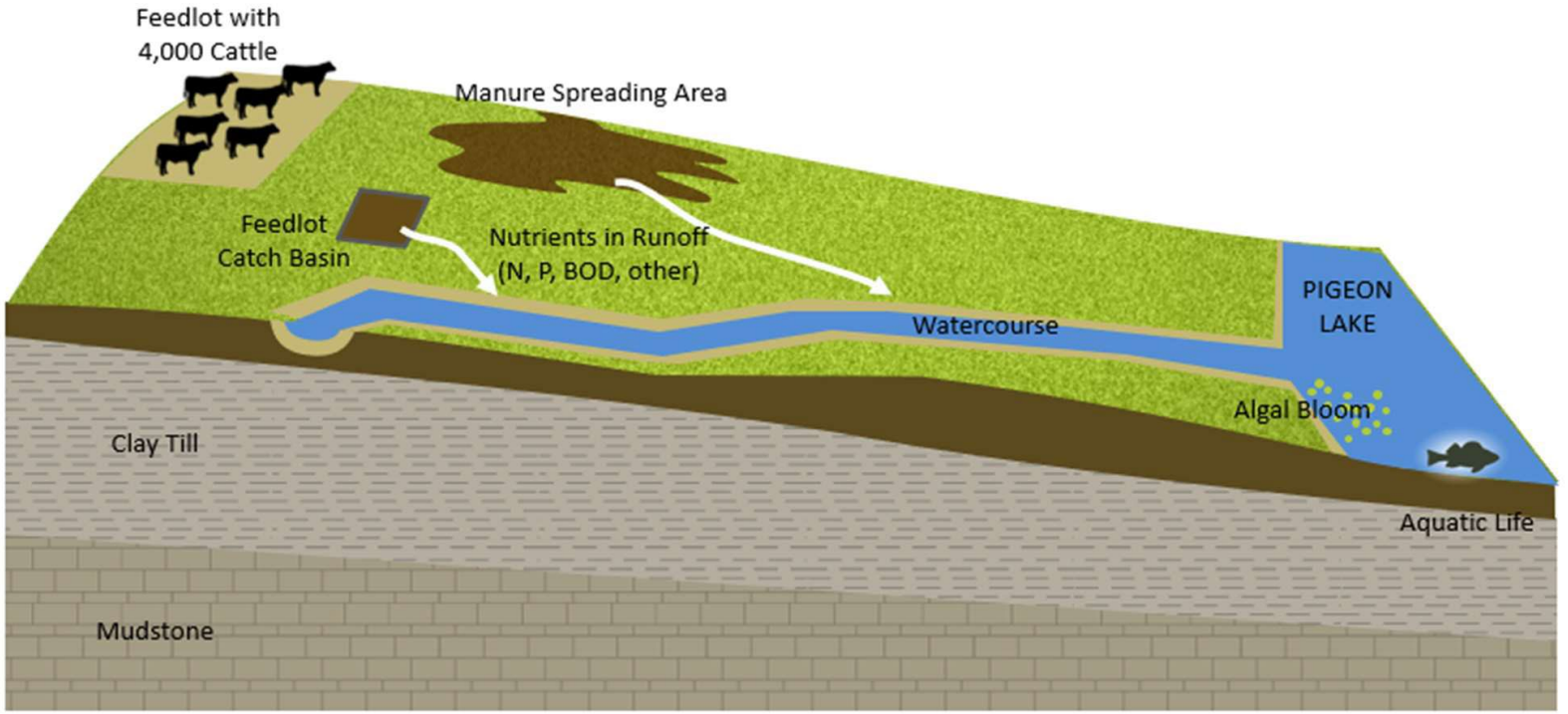


Lessons Learned: Contaminant Transport and Lakes

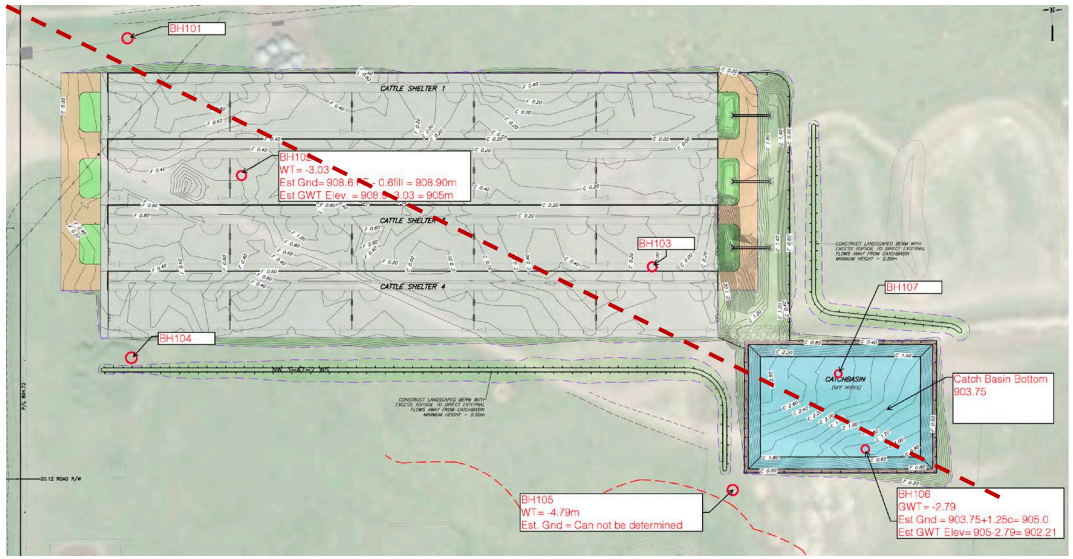
- 4000 new Cattle: 13K tonnes new manure
- 10000 could be approved: 32K tonnes of new manure
- Runoff Modeled by a contaminant specialist: new Phosphorus, Nitrogen, Organic Carbon
- Alberta water quality standard: no net increase in P, N, BOD
- Also, Pharmaceuticals & Enterococcus via Runoff



Met minimum setbacks and concerns ignored by the Approval Officer

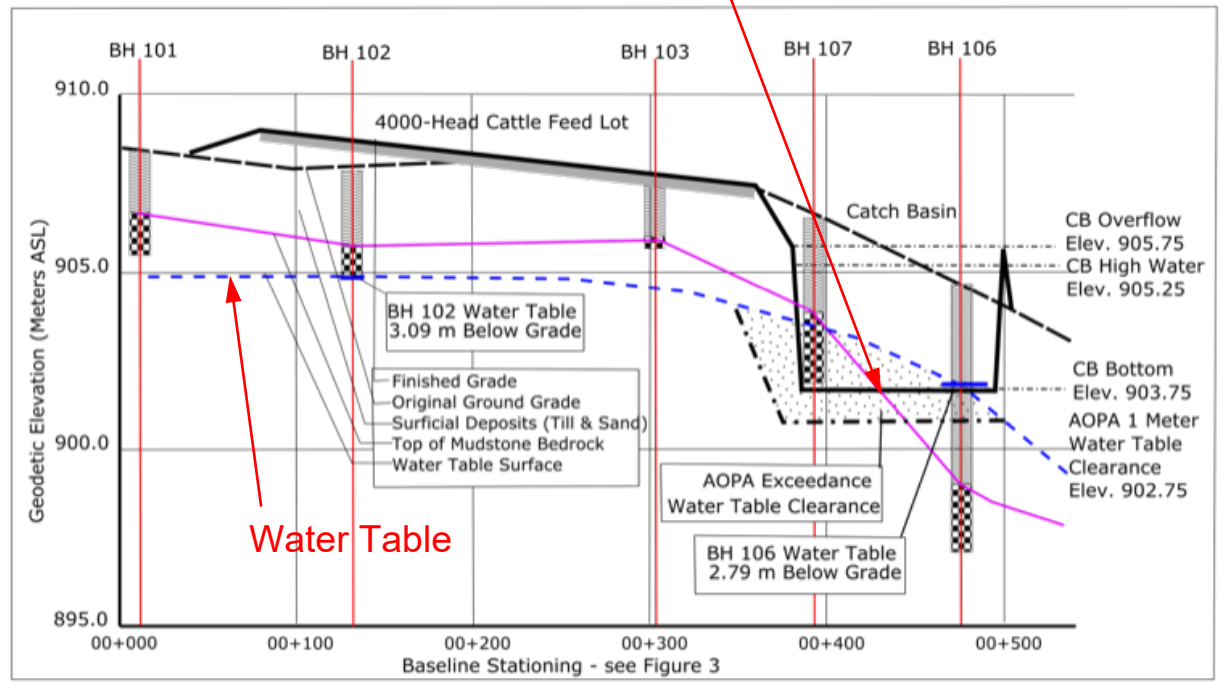
Lessons Learned: Catch Basin Safety and Compliance

Geotechnical Report



AOPA Non-Compliance: Water Table Clearance

Entire CB bottom elevation to be 1 meter above the water table (AOPA).

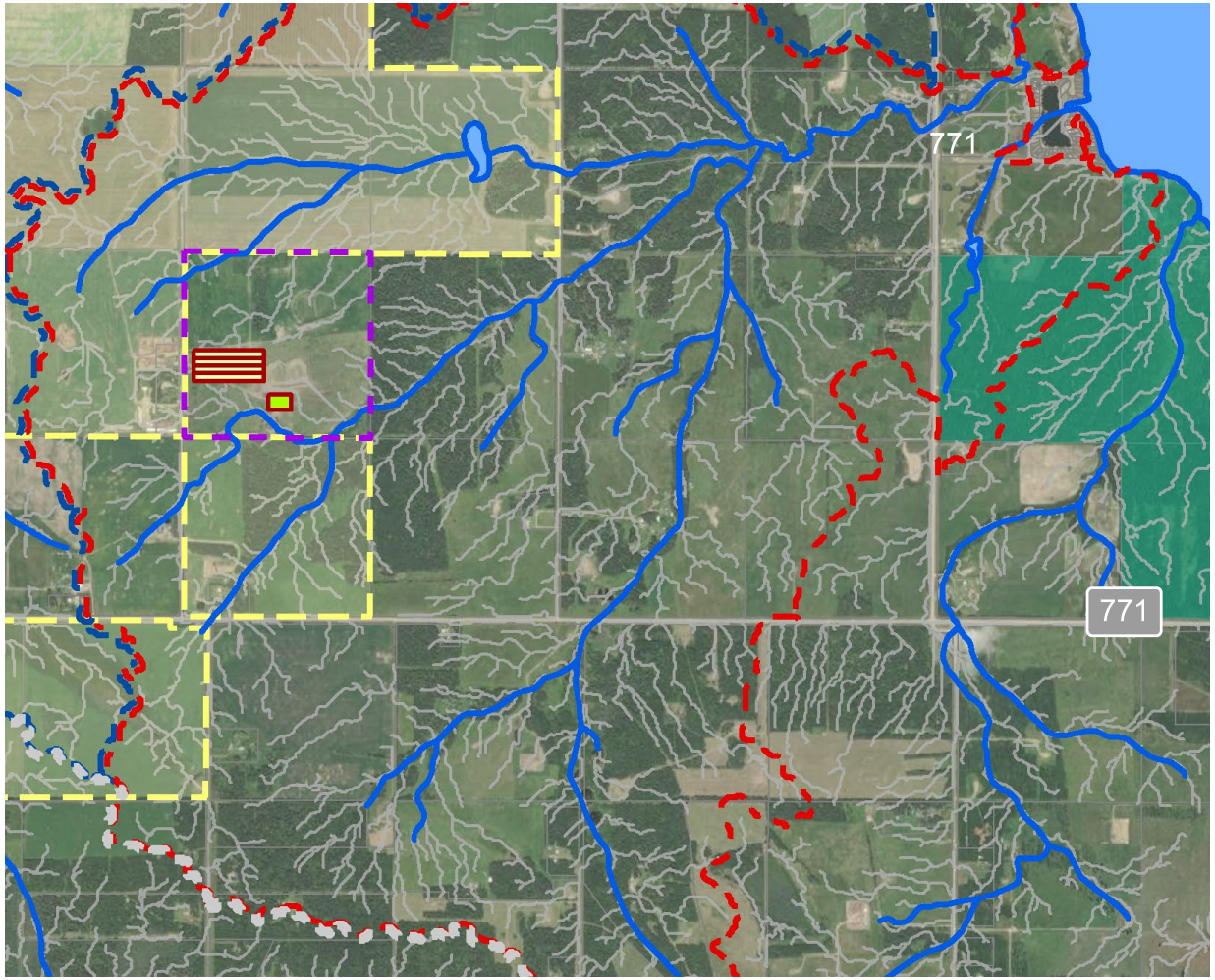


Preliminary and subject to review

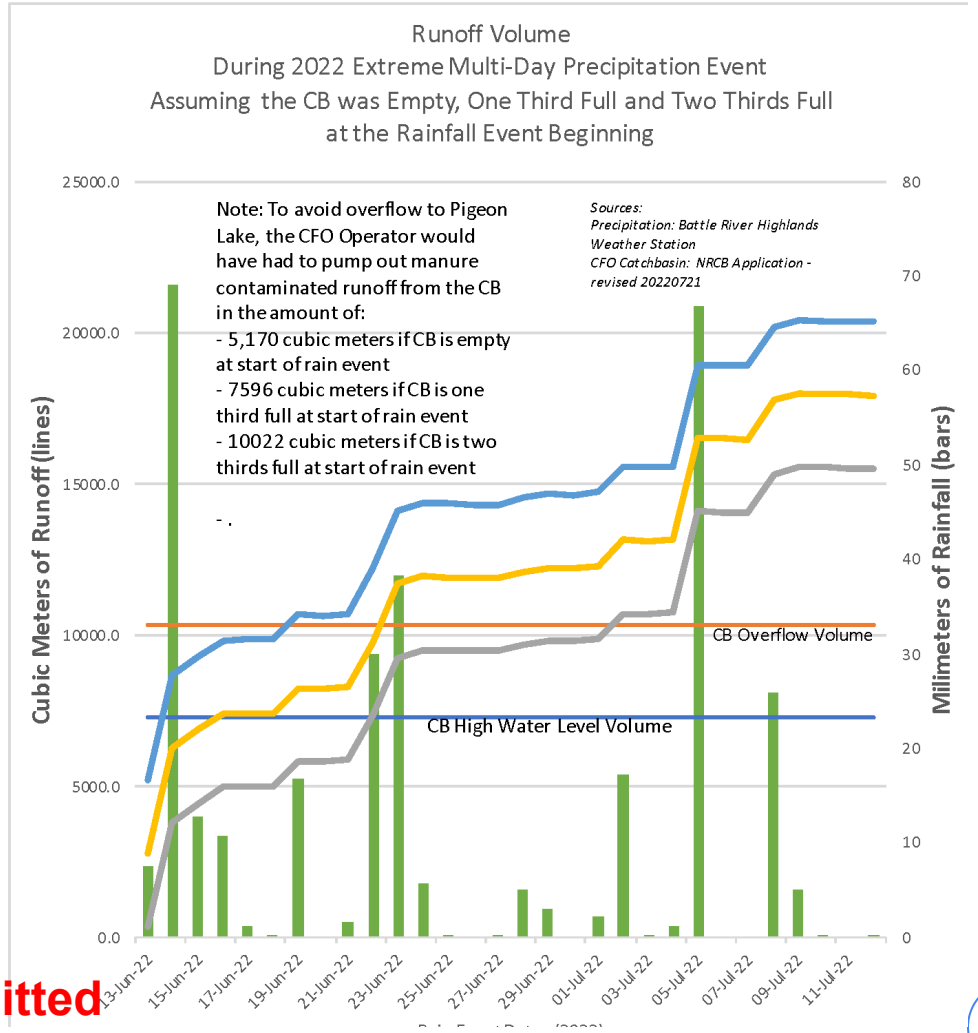
Figure 4
Site Cross Section with Boreholes
Proposed Confined Feeding Operation

Important in the Board review.

Lessons Learned: Catch Basin Safety and Compliance



Public Safety and Overflow



Engineering Report Submitted ignored in the Board review.

Lessons Learned: Watershed Management Plans Count!

Strength of the PLWMP, the Plan:

- ✓ Rebutted shortcomings of County Municipal Development Plan
- ✓ Thorough process with demonstrated support
- ✓ Clear goals for reduction of nutrient runoff
- ✓ Recognized by awards
- ✓ Basis of subsequent Statutory Plans, regional stewardship initiatives & science initiatives

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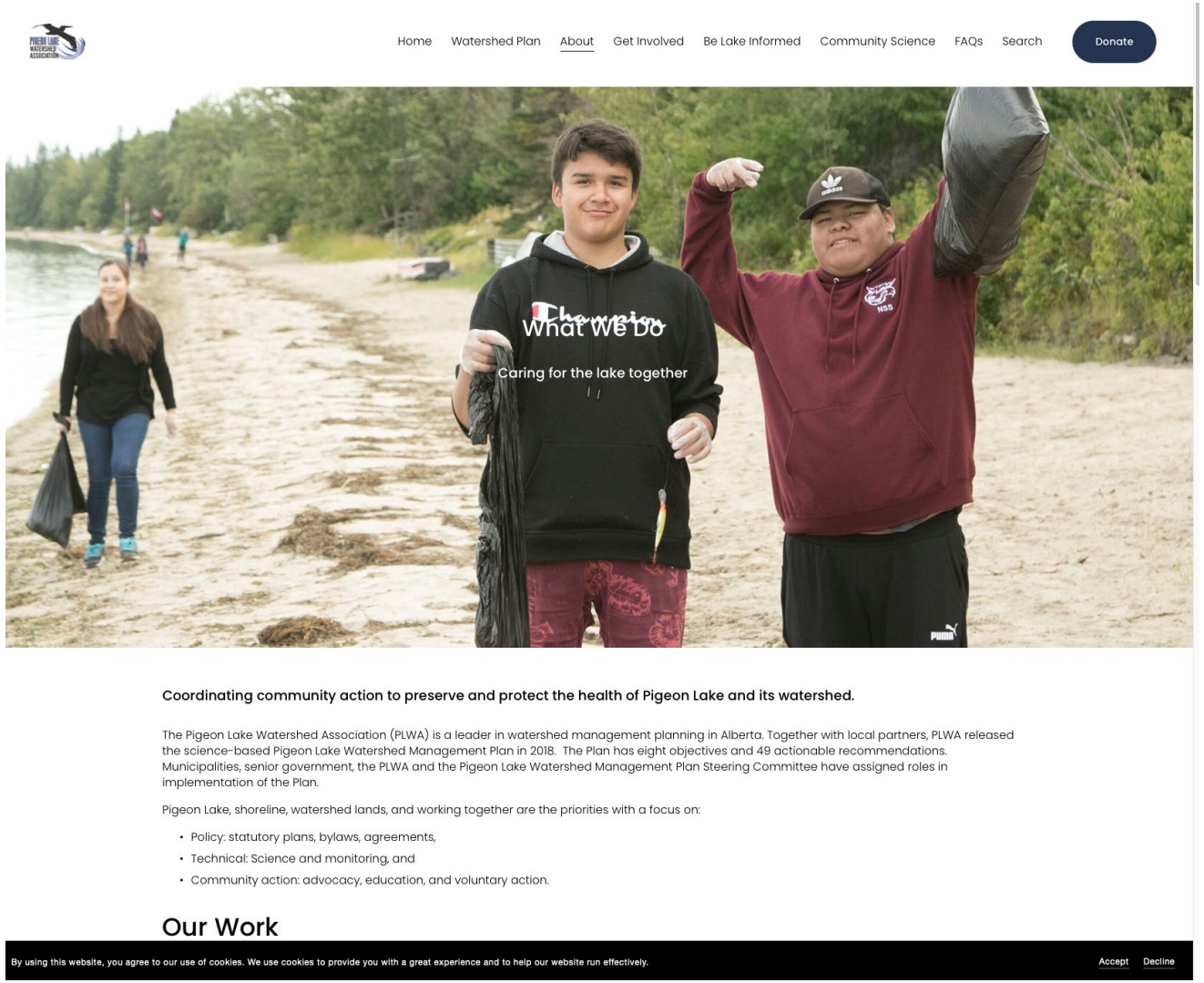
PIGEON LAKE Watershed Management Plan
Healthy Watershed Healthy Lake Healthy Communities

www.plwa.ca

Lessons Learned: Strengths of a Stewardship Group

- ✓ Seen by many as the lead voice for Pigeon Lake Watershed and best equipped for the CFO challenge.
- ✓ Strong donor pool to fund experts.
- ✓ Strong relationships, vital communication network and messaging.
- ✓ Strong leadership- full time ED
- ✓ Strong technical skills (e.g., mapping), access to expertise and analysis backed by science.
- ✓ Played by the rules; respected the process and participants
- ✓ Played a supportive and background role in the Rebuttal and Board hearing (if held).



Lessons Learned: Municipal Land Use Policy

- ✓ Municipalities can shape a decision
- ✓ AOPA – Test
  - If a CFO is not consistent with the MDP it is denied
  - If consistent with the MDP the approval officer must consider the effects on the environment, the economy and the community and the appropriate use of land, AOPA 20(1)(b)(ix)

COUNTY OF WETASKIWIN
Your County, Your Future
MUNICIPAL DEVELOPMENT PLAN

Bylaw 2023/05
April 11, 2023

NRCB | Natural Resources Conservation Board

PIGEON LAKE
watershed management plan 2018
Pigeon Lake Watershed Management Plan Steering Committee
May 04, 2018

Lessons Learned: NRCB Regulatory Process

Customize the strategy to the regulatory process:

- ✓ **Statements of Concern**
  - Volume and diversity of viewpoints and topics are VIP.
  - Promote more than one issue. Never sure what will stick.
  - Build in Legislation, Policy, and Science where possible.
  - Piggy-back approach.
  - Make it a public cause

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PIGEON LAKE Watershed Management Plan

Lessons Learned: NRCB Regulatory Process

Customize the strategy to the regulatory process:

- ✓ **NRCB and Board Hearing Process**
  - Choose a good lawyer, if financially feasible.
  - Choose your own path. Navigate relationships.
  - Do not antagonize regulators or belittle the legislation.
  - Get on the NRCB Vault of submissions.
  - Be Prepared: the 21 weeks were spent preparing our legal defense.
  - Visible Defend Pigeon Lake campaign.
  - There are NRCB precedents and then there are **NRCB PRECEDENTS**

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PIGEON LAKE Watershed Management Plan

PLWA Resources and Studies

Available from Carson Hvenegaard (pm@plwa.ca):

- ✓ Statement of Concern and Background Report, PLWA
- ✓ CFO Adverse Affects / Contaminant Transport, Margaret Newel, P.Eng.
- ✓ CFO Catch Basin Safety and Drainage Review, McElhanney.
- ✓ Limnologist Letter report, CPP Environmental, Theo Charette, P.Biol.

Available from our website (PLWA.ca):

- ✓ Pigeon Lake Watershed Management Plan.

Available from the GOA website:

- ✓ Alberta Surface Water Quality Guidelines, AEPA

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PIGEON LAKE Watershed Management Plan


Google Earth
Image © 2022 CNES / Airbus
Image Landsat / Copernicus
Image © 2022 Maxar Technologies
4 km

Thank-you

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