Water Law and Policy: Evolving Regulatory Waterscapes – Ripples or Waves?

Environmental Law Centre

Jason Unger, Calgary
Alberta Lake Management Society
October 2, 2026

About the Environmental Law Centre

- The Environmental Law Centre (ELC) is a registered charity and has been seeking strong and effective environmental laws since it was founded in 1982.
- The ELC is dedicated to providing credible, comprehensive, and objective legal information regarding natural resources, energy, and environmental law, as well as policy and regulation in the province of Alberta.

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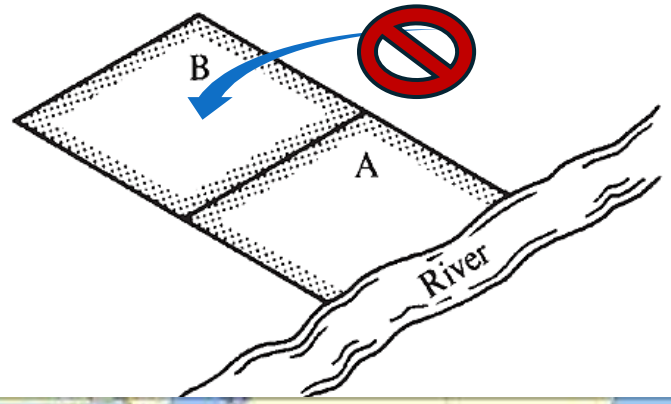
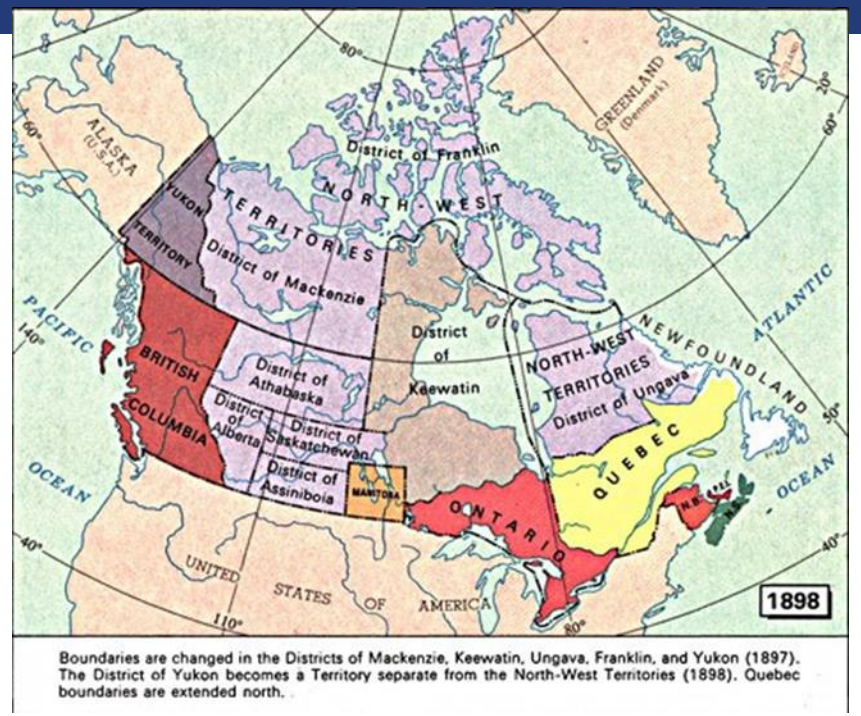
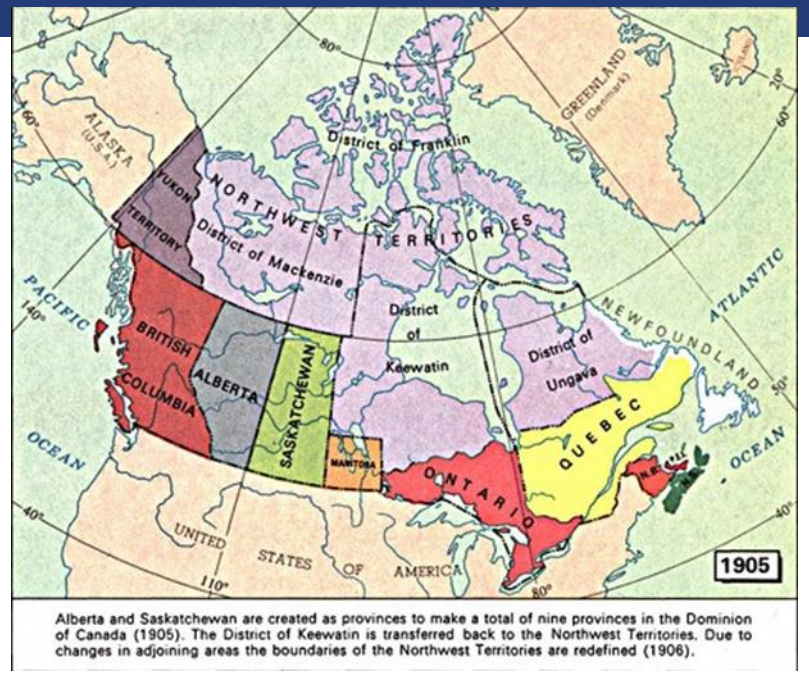
The Historical Legal Waterscape





Boundaries are changed in the Districts of Mackenzie, Keewatin, Ungava, Franklin, and Yukon (1897). The District of Yukon becomes a Territory separate from the North-West Territories (1898). Quebec boundaries are extended north.



Alberta and Saskatchewan are created as provinces to make a total of nine provinces in the Dominion of Canada (1905). The District of Keewatin is transferred back to the Northwest Territories. Due to changes in adjoining areas the boundaries of the Northwest Territories are redefined (1906).

- *Northwest Irrigation Act* 1894(Canada) (see Percy, Water Rights in Alberta, Alberta Law Review 1977)

- Alberta (1905)
- Natural Resources Transfer Agreement 1930 (and amendments)
- Water Resources Act 1931

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It is a colonial legal waterscape

Terra Nullius doesn't apply in Canada (Tsilhqot'in Nation v. British Columbia). Aqua Nullius? Colonial treatment of water

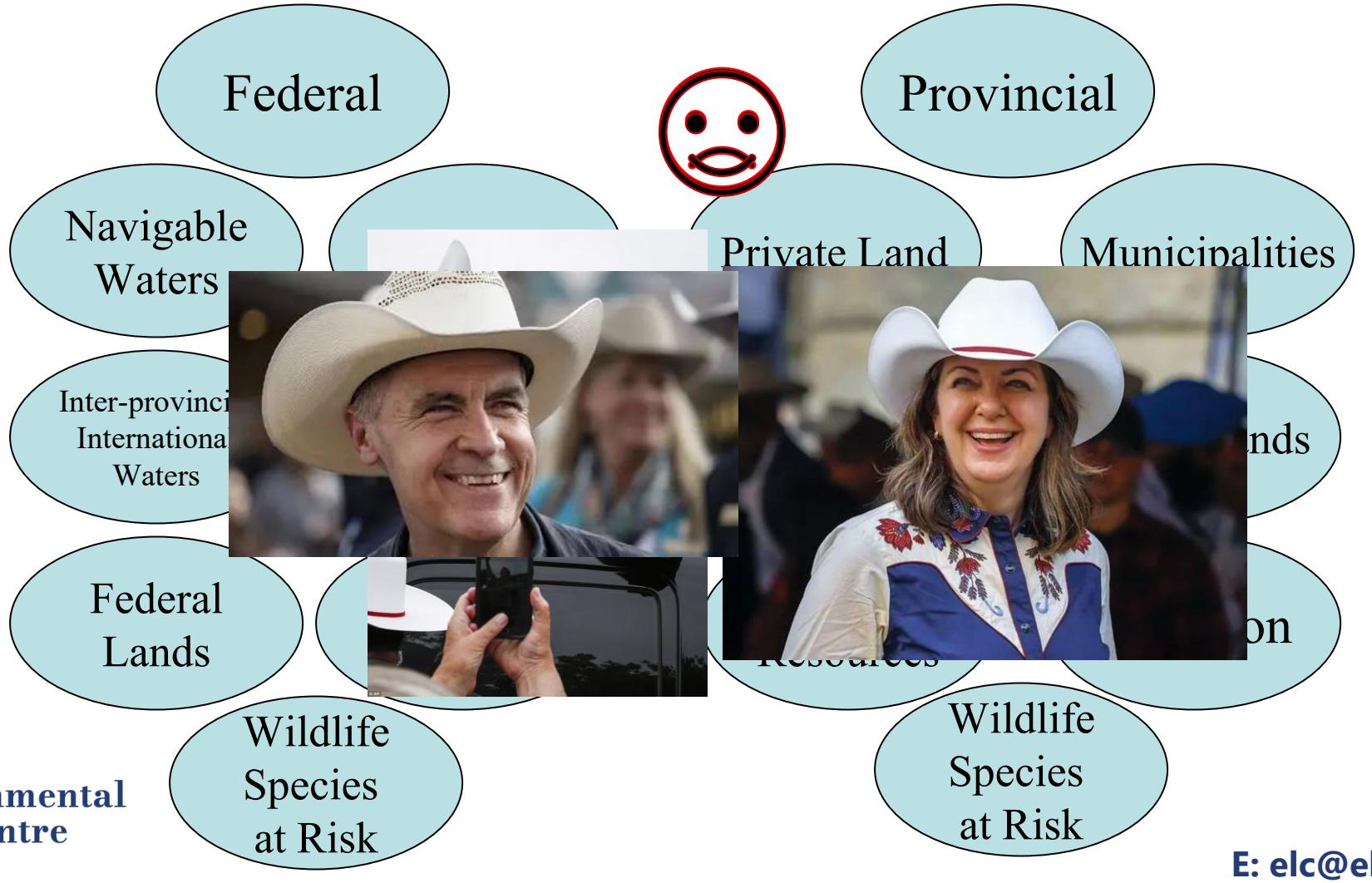
Treaty 6 1867, Treaty 7 1877, Treaty 8 1899

[Water sovereignty for Indigenous Peoples: Pathways to pluralist, legitimate and sustainable water laws in settler colonial states]

O'Donnell E (2023) Water sovereignty for Indigenous Peoples: Pathways to pluralist, legitimate and sustainable water laws in settler colonial states. PLOS Water 2(11)

Dzah GEK. The Interaction between International and Domestic Law, Aqua Nullius, and Water-mediated Claims in Canada. *Canadian Yearbook of international Law/Annuaire canadien de droit international*. 2024;61:206-236. doi:10.1017/cyl.2024.10

The Constitutional Waterscape (1867)



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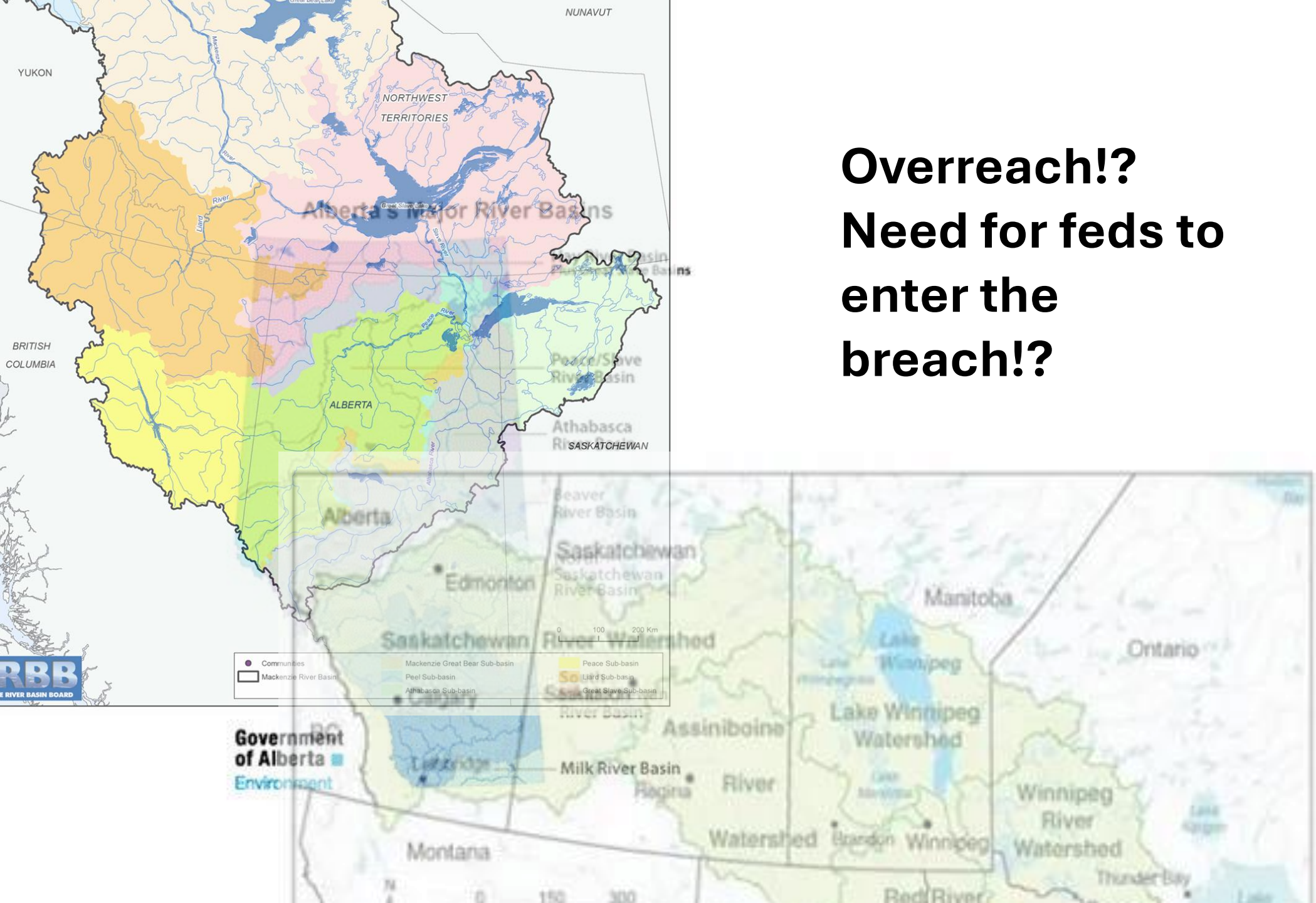
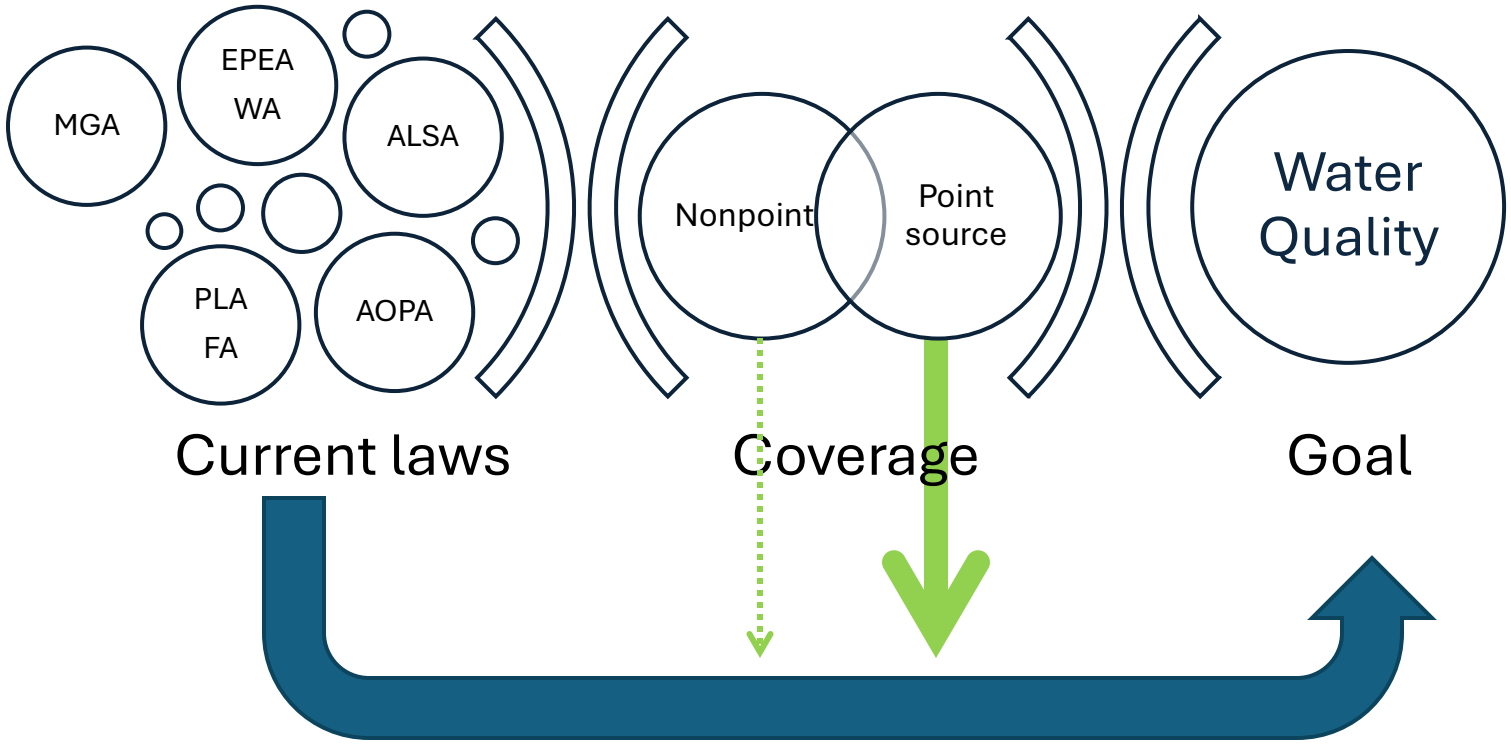


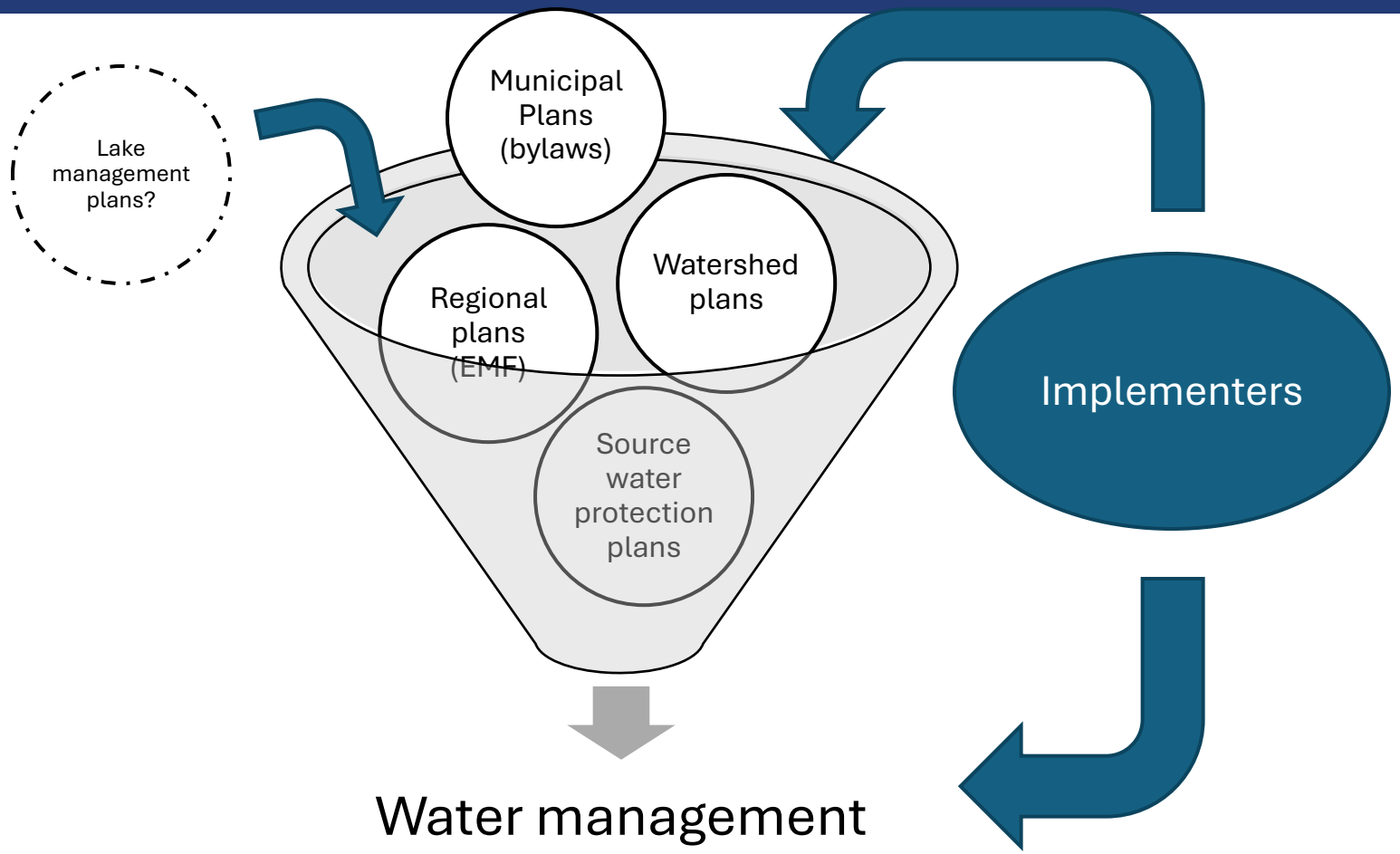
Overreach!?
Need for feds to enter the breach!?

Legal waterscapes – water quantity & quality



EIAs, BMPs, Mitigation, Policies, Programs

Planning waterscape?



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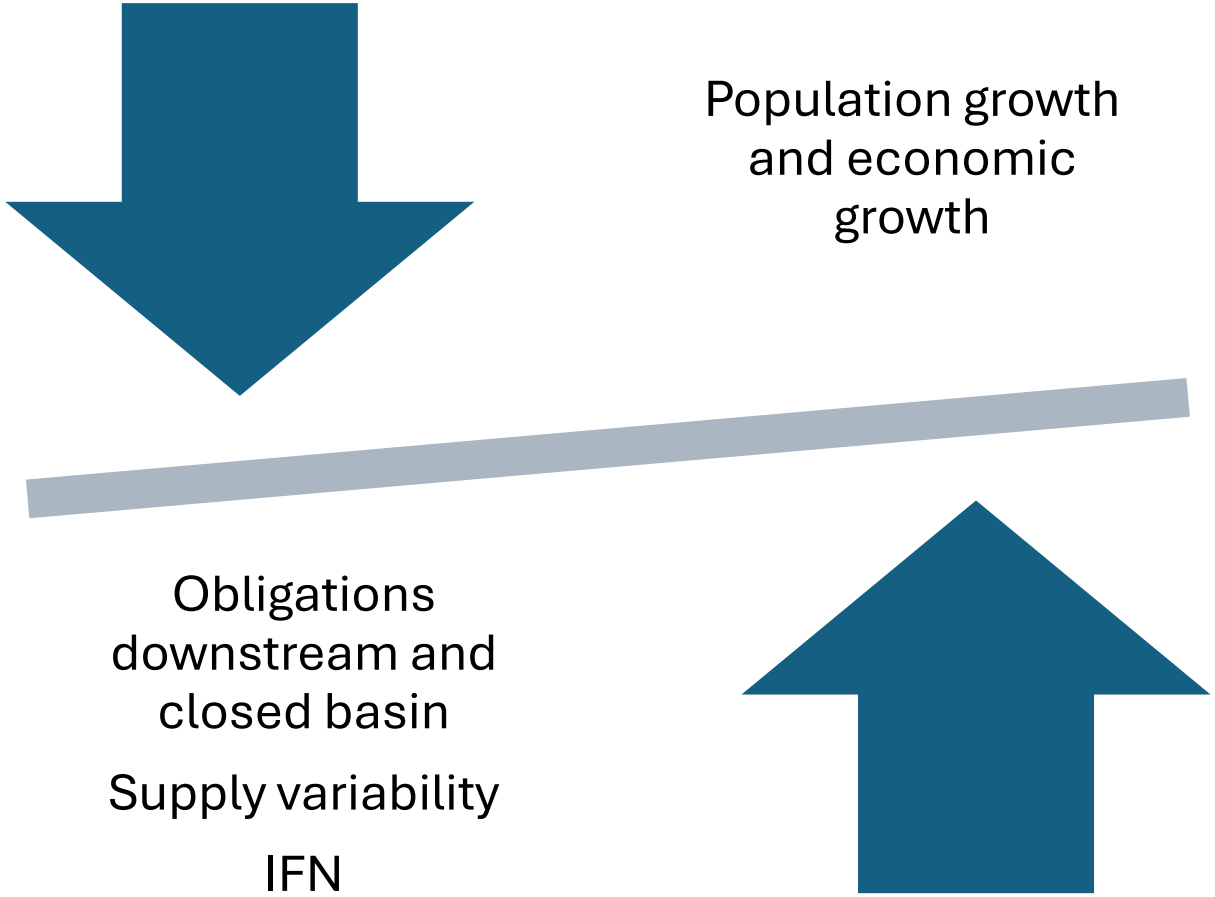
The rollercoaster of time – legal waterscapes

- Settlement oriented laws (1800-1950)
- Environmental revolution (1960s-80s)
- International movements (“Sustainability”) 1990s-2010s
- Beginning of regulatory backtracking 2010s
- Extractivist and deregulation agenda 2024-current

Provincial ambitions & the waterscape



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Data Centre -Interim load connection limit (June 2025) 1200MW -Feb 21.1GW

[AESO Data Centre Projects Map]

Calgary · Analysis

Danielle Smith wants to double Alberta oil production. Can she bring back the boom?

New pipeline stokes excitement, but companies shy to spend big to expand, analysts say

Jason Markusoff · CBC News · Posted: Jul 16, 2026 4:00 AM MDT | Last Updated: July 16

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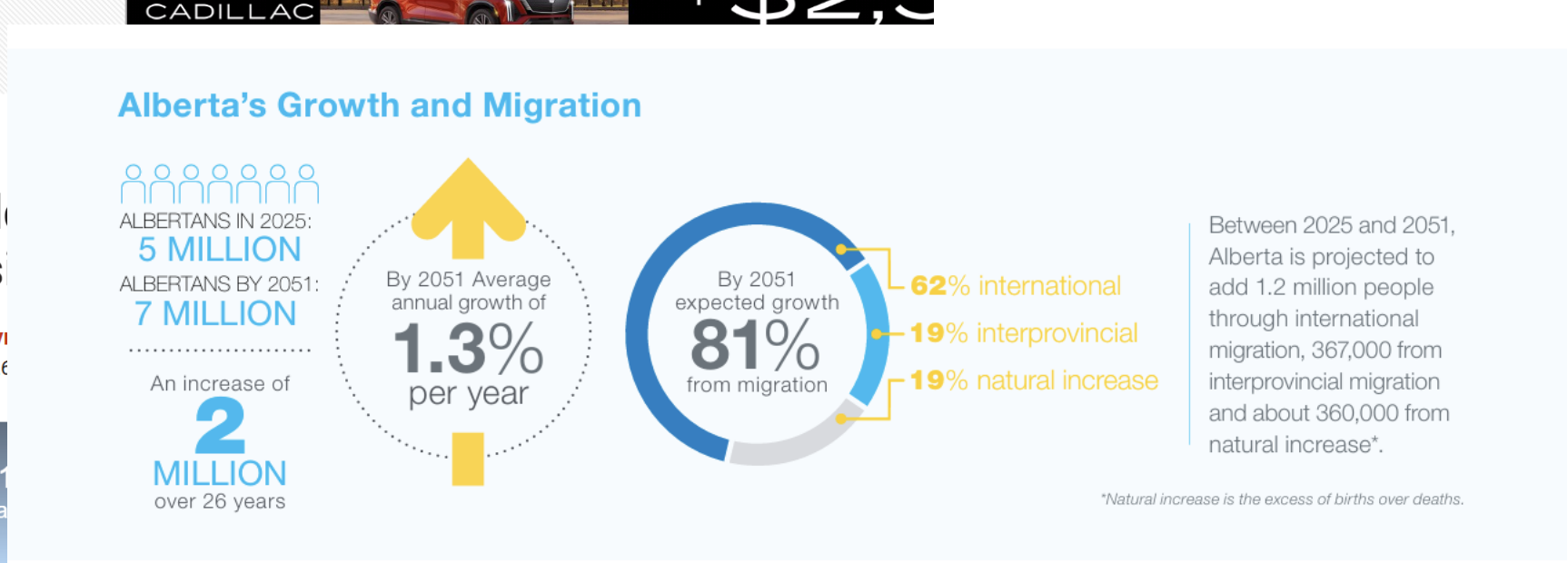
ENVIRONMENT

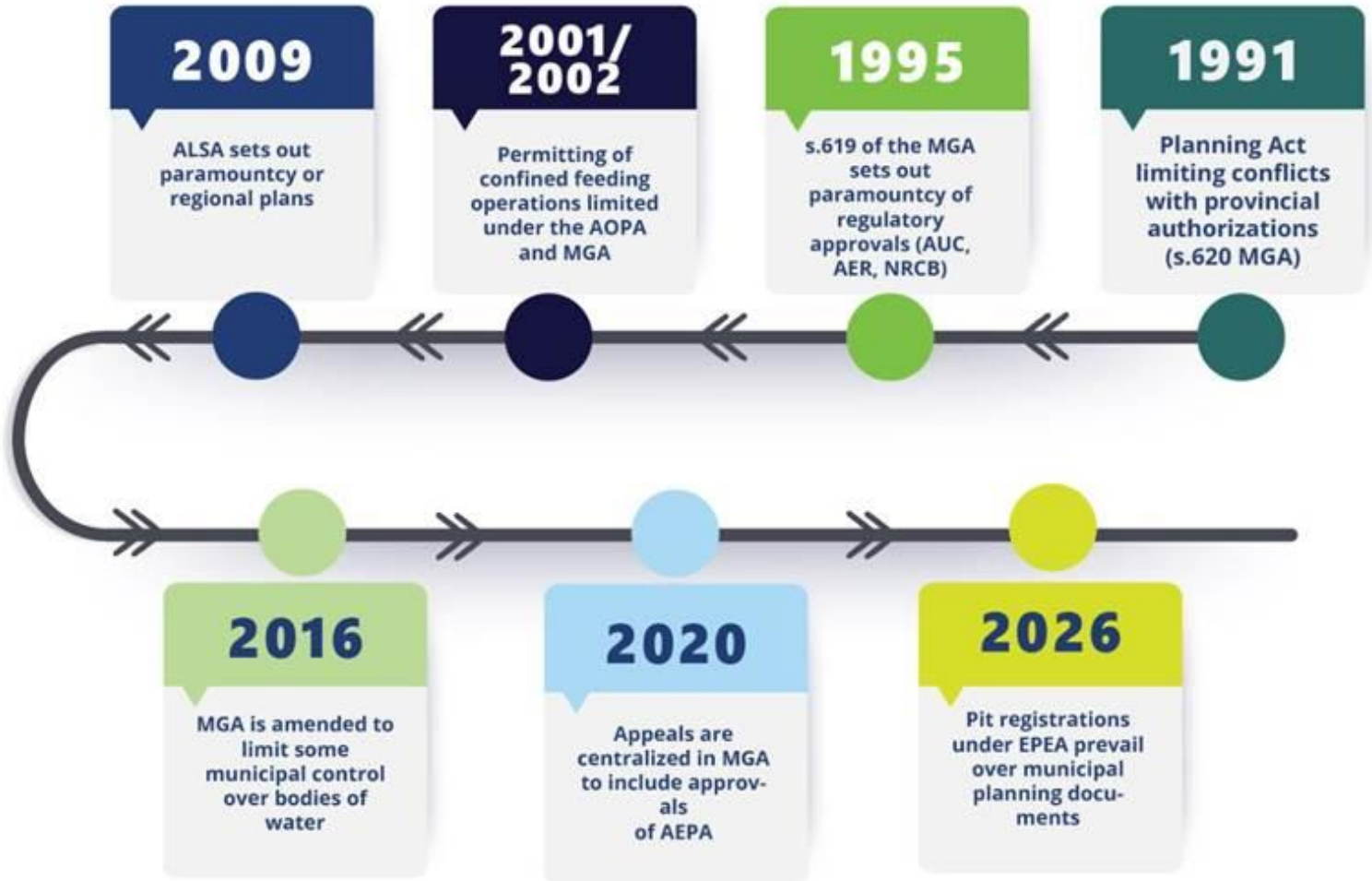
Meta to buil largest outs

By Ken MacGilliv
Posted July 8, 202



[tbf-population-projections-2026-2051-infographic.pdf (SECURED)]

Legal waterscape evolving –local decision making curtailed



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Legal waterscape evolving –provincial (Water Act amendments +)

- Exclusion of public participation and process
  - Aggregate extraction – removing municipal decision making
  - Data centre exclusion from environmental assessment
  - Lower risk interbasin transfers
  - Amalgamation of basins
  - Seasonal and temporal wetland exclusions (private cultivated land)
  - End funding of Alberta Water Council
- Intensifying use of existing licences
  - Liberalizing point of use point of diversion rules
  - Exemptions increased

Legal waterscape evolving-federal

- Building Canada Act – side stepping/short circuiting of federal regulation and decision making
- Impact Assessment Act (MOU with province) – federal stepping back- ongoing constitutional challenges
- Bill C39 –federal deregulation agenda regarding pipelines- Building Canada Strong Act
  - pre-approvals for major projects and “regions”
  - augmenting conditions deemed not
  - Fisheries Act amendments -minimizing replacement and habitat banking?

Legal waterscape evolving

Amendment ripples

- Water Act amendments likely don't mean massive changes in flows
- Majority of people value water but aren't engaged (communications)
- Reduced public participation only seen as threat to a few

Aquatic environment waves

- WCOs and IFN are excluded from the discussion/narrative
- Aquatic systems are peripheral at best
- Cumulative assessment, planning and decision making remains elusive
- No plans and no resources for assessing, monitoring and managing around HAE

Ripples or waves?

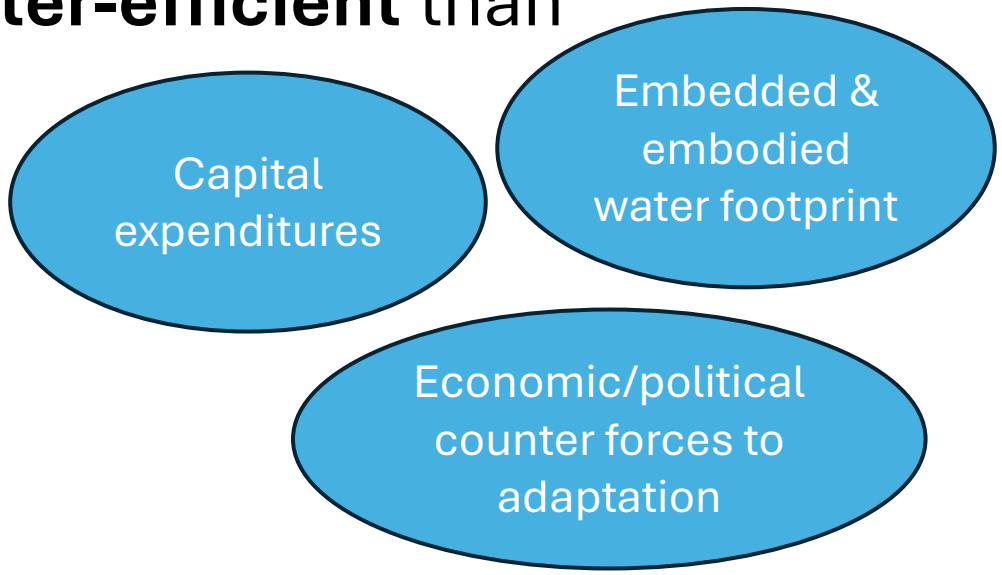
Generated by AI (MS Pilot)

Ripples or waves?

Choices matter

- Generating a single AI image in tools like Microsoft Copilot is estimated to indirectly consume roughly 15 to 100 milliliters (about a tablespoon to a small glass of water), depending on the complexity of the image and the efficiency of the data center. [1, 2]
- Using a stock photo uses a **fraction of a milliliter** of water, making it nearly **10,000 times more water-efficient** than generating a new image with AI.

Are we making regulatory changes with full understanding of the future waves we might create?



Need a new wave !

HAE wave catching

- Transparency
  - WQO/WCOs
  - IFN
- Water management planning
  - Directive (rather than current & vague)
  - Planning and management around WQO/WCO and HAE
- Law Reforms?
  - Healthy Aquatic Ecosystem office/commissioner –moving monitoring & science to planning and decision making
  - Water trusts
  - Innovative governance
  - Lake planning ?

Questions?

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Telephone: **(780) 424-5099**
Email: **Junger@elc.ab.ca**

Website: **www.elc.ab.ca**

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