

*The Water Act:  
Charting the  
Passages of  
Municipalities for  
Successful  
Navigation with the  
Municipal  
Government Act*

**ALBERTA MUNICIPALITIES RISK  
CONFERENCE**



PRESENTED BY DDC LAWYERS LLP:

MONELLE STURKO

CHRIS WRAY

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- The Starting Point:
- The provinces have constitutional authority to make laws concerning the environment and natural resources under their powers.
- This includes the right to make laws in relation to the development, conservation and management of non-renewable natural resources.
- The provincial governments have the power to regulate some environmental matters, including: provincially owned lands, all resources on those lands and activities relating to the beds and shores of all naturally occurring, permanent wetlands.
- Specifically, the province has the power to deal with, or regulate, these resources as any private owner would, subject to only valid federal law.
- Any authority a municipality has to regulate environmental matters is derived from provincial legislation.

## That authority is derived from:

For the purposes of  
today's presentation:

*The Municipal  
Government Act*

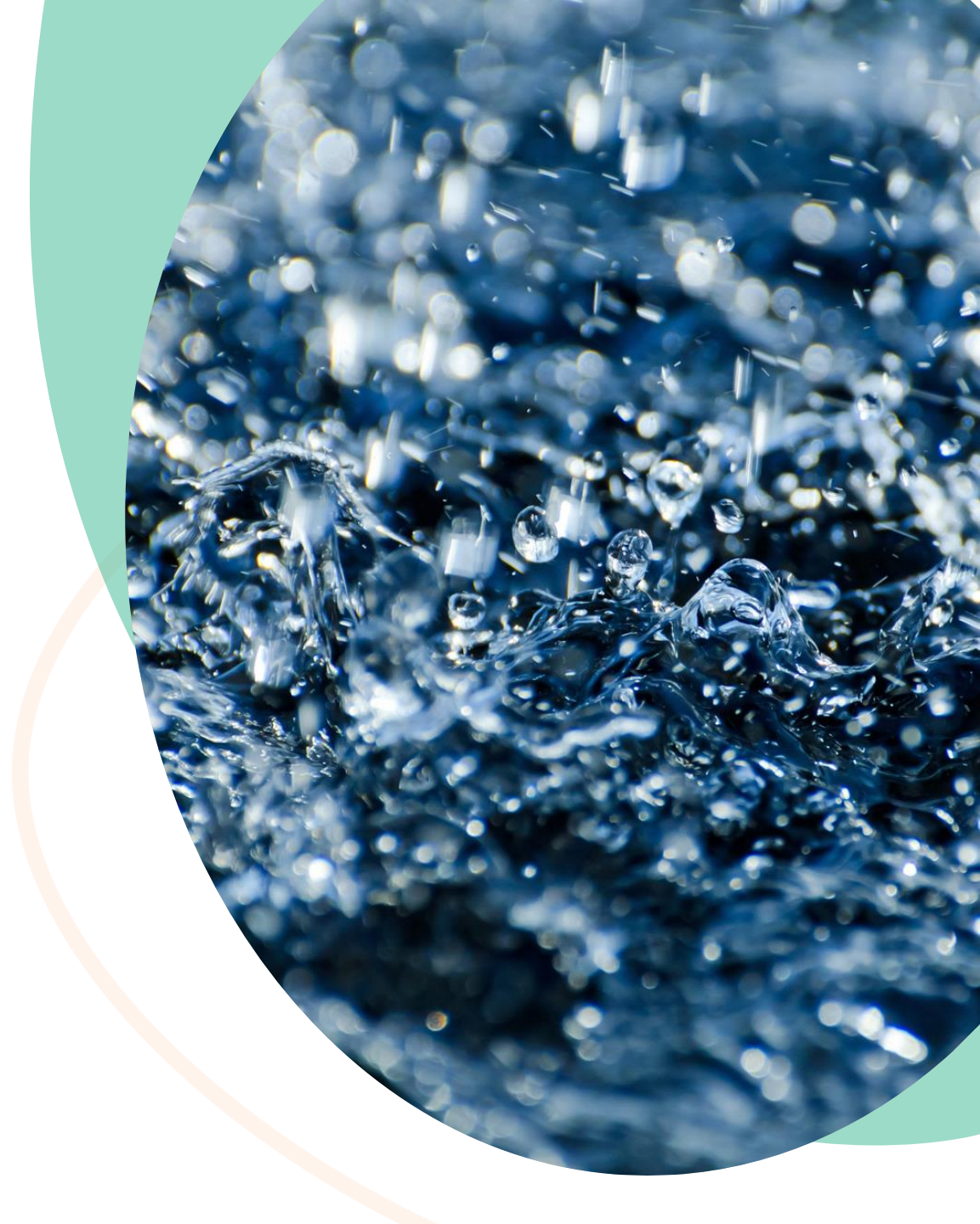
*The Water Act*

# *The Water Act, RSA 2000, c W-3*

- In order to withdraw water from a water source, disturb water in a natural state or drain it, a person must have statutory authorization under the *Water Act*.
- The *Water Act* authorizations allow the use, disturbance or drainage of water.
- In addition, the *Water Act* can exempt the holder from any further authorization requirement, or require that notice be given to the government regarding use or disturbance of water.
- The most common statutory authorization under the *Water Act* is the license, which authorizes the diversion of water.
- The Act does exempt certain household and agricultural users, and certain diversions from the license requirement.

# Per Section 2 of the *Water Act*:

The purpose of this Act is to support and promote the conservation and management of water, including the wise allocation and use of water, while recognizing the following:



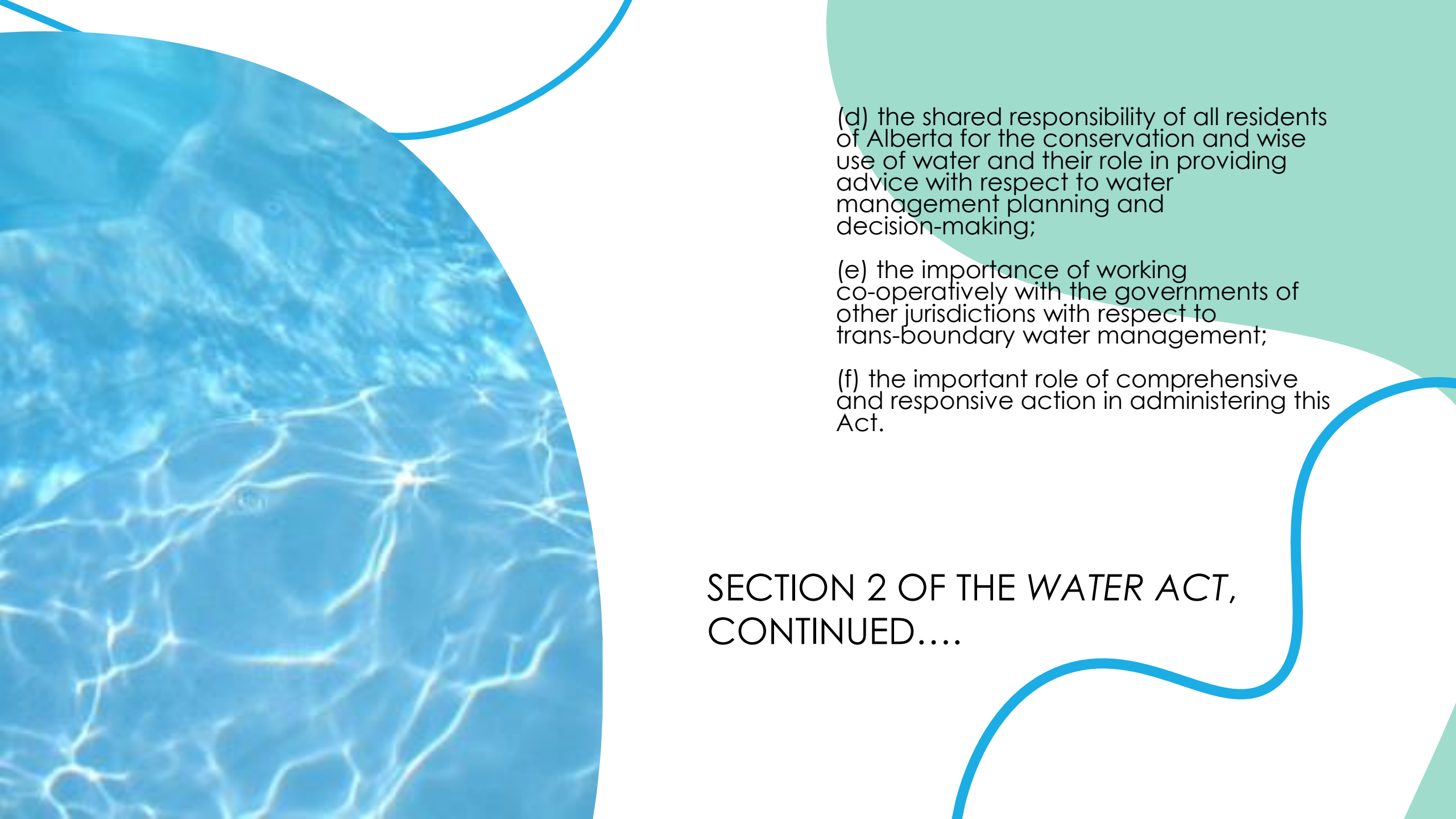


(a) the need to manage and conserve water resources to sustain our environment and to ensure a healthy environment and high quality of life in the present and the future;

(b) the need for Alberta's economic growth and prosperity;

(c) the need for an integrated approach and comprehensive, flexible administration and management systems based on sound planning, regulatory actions and market forces;

**Did you know: 18 percent of Alberta's land base is covered by wetlands**



(d) the shared responsibility of all residents of Alberta for the conservation and wise use of water and their role in providing advice with respect to water management planning and decision-making;

(e) the importance of working co-operatively with the governments of other jurisdictions with respect to trans-boundary water management;

(f) the important role of comprehensive and responsive action in administering this Act.

SECTION 2 OF THE *WATER ACT*,  
CONTINUED....

## WHY DOES THIS MATTER?

- All water in Alberta is owned by the province, regardless of whether it occurs on public or private land. Activities impacting water in wetlands are regulated under the *Water Act*. Before any activity within a wetland (or any other water body) is initiated, such as the creation of drainage ditches, infilling or alteration due to the construction of a road, Alberta Environment and Parks must be contacted for approval.






## The interplay of legislation: *The Water Act, the MGA and....*

In some cases, additional authorization may be required under other provincial and federal legislation. For projects requiring environmental impact assessments under the *Environmental Protection and Enhancement Act*, proponents will be required to describe and map any wetlands in the project area, discuss the impacts of the proposed project on any wetlands and their proposed mitigation measures.





As we know, Section 3 (a.1) of the MGA states:

**“The purposes of a municipality are....to foster the well-being of the environment.”**

We also know, per Section 60(1) of the MGA that:

Subject to any other enactment, a municipality has the direction, control and management of the bodies of water within the municipality, including the air space above and the ground below.



## Section 664 of the MGA provides guidance regarding:

1. Bed and shore;
2. Environmental reserves;
3. Land subject to flooding;
4. Shoreland strip as environmental reserve;
5. Subdivision agreements for environmental reserve.

Why does this matter?

# Practically speaking.....

What does this all of this mean in relation to municipalities?

How does the *MGA* interplay with other legislation, such as the *Water Act*, and other similar legislation, to allow the municipalities to carry out their obligations?

What happens when the *Water Act* is used against a municipality?



# Case Law Decisions:

*Stachniak v. Thorhild (County No. 7)*

[2001] A.J. No. 423

*Rashiq v. Derrick Golf and Winter Club, 2019*  
ABQB 435 (CanLII)

*Neuman v. Parkland County, 2004 ABPC 58*  
(CanLII)

DISCUSSION.....



## Final comments.....

- THIS IS A DEVELOPING AREA OF LAW;
- IT IS EXPECTED THAT THE INTERPLAY WITH THE MGA AND OTHER LEGISLATION WILL CONTINUE TO BE LITIGATED AND THUS, PROVIDE GUIDANCE TO MUNICIPALITIES;
- THE IMPORTANCE OF UNDERSTANDING THE INTERPLAY BETWEEN THE MGA AND WATER ACT CANNOT BE UNDERSTATED, PARTICULARLY AS ISSUES RELATING TO THE ENVIRONMENT ARE MORE VITAL THAN EVER BEFORE.



THANK YOU!

COMMENTS AND  
QUESTIONS.

PLEASE CONTACT US:

[MSTURKO@DDC-  
LAWYERS.COM](mailto:MSTURKO@DDC-LAWYERS.COM)

[CWRAY@DDC-LAWYERS.COM](mailto:CWRAY@DDC-LAWYERS.COM)