



Recommendations for

A Water Sustainability Act for BC: A Legislative Proposal

November 8, 2013

Our wealth is in our water. Let's protect it.

The WaterWealth Project commends the government of BC on the legislative proposal for the Water Sustainability Act. There are many aspects of the proposal that steer water stewardship in BC in good directions. We look forward to an implementation process that engages the public and First Nations in BC in the development of the regulations that will determine how the good intentions of the Act are put into practice.

What follows is not meant to be an exhaustive review of the proposal, but points out particular areas of concern identified by the WaterWealth Project.

First Nations Rights and Title must be respected

The WaterWealth Project supports the call of the First Nations leadership Council and others for meaningful government-to-government consultations between the Province of BC and title-holding First Nations as committed to in the New Relationship. We share the concern of First Nations that consultation has been inadequate in the development of the Water Sustainability Act to date. However, the Water Sustainability Act offers an opportunity to advance reconciliation of Aboriginal and Crown titles and jurisdictions, and to act on the New Relationship's call for establishment of shared decision-making processes and institutions. We call upon the government of BC to demonstrate a commitment to upholding the honour of the Crown, and the honour of British Columbians, in the fullest sense of the word 'honour' going forward.

Water use fees must make public cents

Fee schedules for groundwater and surface water must ensure that not only administrative costs are met, but that resources are made available for water management and governance-related activities. Fees should no longer go to general revenue, but should be used to create a fund to enable robust monitoring, reporting, managing and enforcement of water use in the province, and to resource local watershed processes. Pricing should reflect the need to encourage efficiency and conservation.

Water must be protected as a public resource

No matter the ideology of government, the state of the economy, or the laws of the day, we will always need water. The Water Sustainability Act must be explicit to ensure that license holders understand they are not gaining a 'property right' and that water licences cannot be traded. The definition of Beneficial Use must be broadened beyond the proposed requirement to use water efficiently, and must require licence holders to manage water for the public benefit in the interests of both current and future generations. Beneficial Use requirements, with this expanded definition, should be made a core part of Water Objectives. Local tools such as Area-based Regulations and Water Sustainability Plans must be able to over-rule the First In Time, First In Right water rights allocations where the public good would be best served by doing so.

We need an inventory on groundwater before we open up the shop

Knowledge of groundwater and the intersections between ground and surface water in BC is still incomplete and jurisdiction with regard to First Nations is not settled. The WSA proposal calls for flexibility in water licensing for the convenience and protection of certain classes of water users. For example; five year project development periods for power purpose water licences and a three to five year transition period for groundwater users to obtain licences based on their historic use. Similar flexibility should be made in the Act for the protection of the resource itself. New or transitioning licences should be given an initial term of 5 years. During that time both science and traditional knowledge should be drawn upon to provide complete knowledge of the resource and to inform groundwater decisions. Given that conditions are changing and can be expected for the foreseeable future to change at an accelerating rate with climate change, the thirty and forty year licence terms proposed for the WSA are too long. Licence periods should be no more than ten years in order to provide flexibility to respond to changing conditions.

Apply the Water Sustainability Act to all fresh water users in the province

Polling of British Columbians has consistently shown a very high expectation of protection of environmental and basic human needs in water use. In part, such protection in the WSA takes the form of Water Objectives. In keeping with the expectation of British Columbians that environmental values will be protected, Water Objectives must include Environmental Flow Needs and Critical Environmental Flows, must be legally enforceable, and must apply to all water users. There should be no exemptions for Forestry or Oil & Gas and where other acts contain provisions to protect water for particular sectors the WSA should be taken as a minimum standard which must be met or exceeded by the provisions of those other Acts.

Build in safeguards to ensure we can continue to improve.

With the Water Sustainability Act, we need to continually evolve our water use practices and management systems. The province needs to conduct the scientific investigations and study of local and traditional knowledge in regions and watersheds to ensure that we do not put in place water management systems that lock in unsustainable water use. Water licences should undergo review every 10 years so that changing conditions can be anticipated and adapted to.

Local capacity needs to be continually strengthened to make best use of area-based regulations, Water Sustainability Plans and other water management tools. Advisory committees and other local water governance bodies must be composed with recognition of aboriginal title and to be representative of the communities within the areas they oversee. They must be sufficiently resourced with both funding and access to expertise to manage the waters within their areas. Their proceedings and decisions must be public and they must be accountable to the communities whose water they oversee.