



REGIONAL DISTRICT OF NORTH OKANAGAN

CITY OF ARMSTRONG
DISTRICT OF COLDSTREAM
CITY OF ENDERBY

VILLAGE OF LUMBY
TOWNSHIP OF SPALLUMCHEEN
CITY OF VERNON

"B" – SWAN LAKE
"C" – B.X. DISTRICT
"D" – LUMBY (RURAL)

"E" – CHERRYVILLE
"F" – ENDERBY (RURAL)

OFFICE OF: ENGINEERING/PLANNING

OUR FILE No.: 5215.0

November 15, 2013

Email: livingwatersmart.gov.bc.ca

Ministry of Environment
Water Protection and Sustainability Branch
Water Act Modernization Submission
PO Box 9362, Stn Prov Govt
Victoria, B.C. V8W 9M2

Dear Sir/Madam:

Re: Recommendations re: "A Water Sustainability Act for British Columbia Legislative Proposal" from the Regional District of North Okanagan (RDNO)

Thank you for the opportunity to review the **Water Sustainability Act for British Columbia Legislative Proposal** (Proposal). The Proposal has been reviewed by the RDNO and the following comments and recommendations are being submitted for your consideration.

A Water Sustainability Act for British Columbia

The Government of British Columbia continues to modernize the *Water Act*. The *Water Sustainability Act (WSA)* will respond to today's realities by replacing the *Water Act* as B.C.'S primary water law. The proposal describes the *Water Act* policies that will remain in the WSA, the modifications and new "key" policies. The proposal focuses on key concepts and states that the concepts are not intended to support interpretation of the new legislation, once it is enacted.

The WSA has five (5) parts:

- Part 1: The Current Legislative Framework
- Part 2: The Legislative Proposal for the WSA.
- Part 3: Water Fee and Rentals
- Part 4: Implications: Cost and Benefits
- Part 5: Overview of Engagement and Response

We note that the comments/recommendations follow the order of the Proposal.

Comment 1: In general it is very difficult to provide specific feedback on the implementation of the WSA when the specific legislation is not available for review.

Part 1: The Current Legislative Framework

1.1 Jurisdiction and Legislation – no comment

1.2 The *Water Act* and its History – no comment

1.3 Other Provincial Water Legislation: *we provide the following comments:*

Box One: The Water Protection Act

Comment 2: How will this affect water licences that have major diversions (licences that been in place for over a century) from one watershed to another? The RDNO holds such a licence that diverts water for irrigation and domestic consumption from the Fraser River Basin to the Columbia River Basin. It has been in place since the early 1900's.

Comment 3: The WSA should provide the comptroller or the regional water manager the ease or flexibility to make a decision for long term benefits such as transferring licensing from a small stream to a receiving large stream or lake i.e. easing the pressure off of sensitive streams, environmental flow needs (fish or drought) and moving the licence to a large water body that is more tolerant to climate change. These transfers may have environmental and potential economic benefits.

1.4 First Nations and Water – no comment

Part 2: The Legislative Proposal for a WSA

2.1 Context for Water Act Modernization

Comment 4: The content of this section does not speak to flooding and drainage.

Box Two: The Water Sustainability Act and Climate Change

Comment 5:

Bullet 3: Increasing Flexibility in Water allocation. This is a vague comment and does not indicate the proposed changes, note Comment 3.

Comment 6:

Bullet 4: Increased Monitoring. There is no guidance on who will undertake this work and where the funding will come from. The Provincial Government must dedicate adequate resources (funding, people, and data/ information support) to support the Act and subsequent regulations.

Comment 7:

Bullet 5: Improving water governance. What changes are proposed? What is the proposed relationship with local and regional government?

2.2 The Legislative Proposal

Policies organized by seven themes with subsections:

- Overview
- Proposed policy is new or an existing *Water Act* provision that is modified
- A summary of proposed intent to WSA

2.3 Highlights of the Proposed WSA: we provide the following comments:

2.3.1 General

Water Use Purposes - no comment

Regulation of Surface Water

- Comment 8: The priority of use should be stated in the WSA. Clarification is required on the following:
- who is the decision maker
 - what are the criteria that will be used to make decisions
 - Who will make the ultimate decision

2.3.2 Protect Stream Health and Aquatic Environments

Environmental Flow Needs

- Comment 9: It is essential to maintain Environmental Flow needs. Understand the connection between groundwater and surface water.

Proposal

- Comment 10: Conflicts with other users and with FITFIR

- Comment 11: Oil and Gas Commission should be tied to the quantity of the application. The Environmental assessment should have public input and consultation and be reviewed by the appropriate authority that has local knowledge of the waterway.

Box Six: Who are Decision Makers?

- Comment 12: Engineer – How is the Province delegating a third party to provide professional reliance, this is a concern ensuring public interest is being protected. Example: Riparian Assessment Regulations reliance on Qualified Environmental Professional. RDNO has a concern with Oil and Gas Staff being designated as the Regional Water Manager which can be a conflict of interest.

- Comment 13: The sections of the Proposal that discuss the interrelated concepts of land use and water considerations, the use of Water Sustainability Plans as local or regional regulatory mechanism and the allowance for a range of, currently undefined, governance approaches is concerning. The Proposal indicates that the Act would provide for regulations that permit the “delegation of statutory authorizes to...agencies outside of the provincial government”, including local and regional government, which appear to include the development of Water Sustainability Plans and local water management governance structures.

- Comment 14: Although the Proposal does not provide specifics regarding the regulatory role, responsibilities or requirements with regard to local and regional government, this Proposal has potential consequences for shifts in decision-making, authority and local autonomy that may affect local governments within the RDNO, based upon legislative framework and water governance structure. Potential RDNO consequences include unknown ramifications for land use decision-making and water and sewer utility management.

One of the concerns that has been identified is the lack of clarity regarding who would have local land use jurisdictional authority on applications that have water management implications.

Prohibiting Dumping Debris

Comment 15: Describes sections of the *Act* that protects the contamination of water from dumping of debris.

Proposal

Comment 16: The *WSA* should also include not only “direct” but also “indirect” injecting of materials into an aquifer or a stream. Insure all Acts and regulations are aligned or linked to protect water, including the *Environmental Management Act* and the *Agricultural Waste Control Regulations*.

2.3.3 Consider Water in Land Use Decisions

Water Objectives

Comment 17: “What we heard”

Bullet 2

RDNO disagrees with this statement. There are areas for improvement in both the Forest and Range Act and the Oil and Gas Activities Act to protect Water. The *WSA* should align with the existing acts and their purpose to protect water. Example: Section 8.2 of the Forest and Range Protection Act (FRPA) discusses the objectives set by government for water being diverted for human consumption (community watersheds). The Objectives set by government is to prevent the extent of a materials adverse affect on human health that cannot be addressed by water treatment. This is of concern for water purveyors. How does water treatment fall into the water quality objectives (pre or post treatment requirements)? There is concern with the impact of industry runoff and the ability and cost to local water utilities to pay for treatment. Will water purveyors have an ability or action of recourse for compensation for changes in water quality? Will there be an ability to manage upstream impacts from industry (forestry development, range, oil and gas, mining) and how would this be enforced?

FRPA also states that objectives set by government can not unduly reduce the supply of timber from BC's Forests. This is of concern for local government since FRPA will supersede the *WSA* for forest extraction. In addition concerns with water quantity and the effects of land use on water availability (quantity). Will water purveyors have an ability or action of recourse for compensation for changes in water quantity due to forest extraction? The *WSA* needs to link to the Forest and Range Act ensuring that an cumulative effect of multi use e.g. equivalent Clear cut areas and hydrology change do not impact water quantity and quality.

Proposal

Comment 18: Does this Act supersede current land use decision making authority?

Water Sustainability Plans

Comment 19: It is acknowledged the Province is attempting to provide water management flexibility in local or regional approaches, regulation and governance to reflect the local context. What is unclear is what the Regional District's role, responsibilities and regulatory authority in water management may be, the potential impacts on service provision, resulting financial implications and relationship between regional government, as a potential "delegated agency" and the Province, as the legislated authority. The RDNO would request that the Province clarify these relationships and take into consideration the limited resources that are available to local and regional governments to regulate water resources.

Proposal

Comment 20: It appears that local and regional governments will be the primary implementing mechanism for the new WSA. (Throughout the entire document there is language regarding the delegation of responsibility for implementation). This is concerning as the RDNO will not have the legislation to enforce.

2.3.4 Regulate and Protect Groundwater Use

Regulate Groundwater Extraction and Use

Comment 21: It is proposed that the regulation of groundwater extraction and use would apply FITFIR and rights for groundwater use would be integrated with the rights for surface water use. This is of concern. Is the FITFIR applied to when the well was drilled or when the licence is received?
Will there be an increase direction to delineate areas as sensitive groundwater areas? Will there be controls on the use of water (i.e. domestic only) where supply is limited (no irrigation use) and who will regulate this?

Box 10: Saline Ground Water

Comment 22: There needs to be a mechanism that ensures the use and the disposal of highly saline groundwater does not impact or contaminate surface or groundwater. Monitor water withdrawal and quality i.e.: does not trigger sinkholes or slumping.

Regulating Groundwater Extraction and Use

Comment 23: If domestic use of groundwater is not licensed, then there should be another method for monitoring and recording consumption levels.
The regulatory framework should recognize the unique differences between ground and surface water such as their recharge times. A long recharge time for ground water makes it vulnerable to threats like climate change in different ways from surface water.

Protecting Groundwater

Comment 24: Ensure Drinking Water Protection Plans are registered with the Province, Front Counter and with other local Governments – delineated area that may have conflicting uses.

2.3.5 Regulate During Scarcity

Prevention of Critical Environmental Flows during Times of Drought and Scarcity

Proposal - *no comment*

Allowance for Essential Household Use

Proposal

Comment 25: Page 51- it is proposed that livestock on rangeland could continue to drink from streams. In times of shortage or scarcity, the Range Stewardship Plan in Community Watersheds should include a Drought Response Plan that provides strategies that ensure waterways/ water quality are not impacted by livestock.

2.3.6 Improve Security, Water Use Efficiency and Conservation

Beneficial Use

Proposal

Comment 26: The WSA should be more specific in its:

- description of a water conservation audit, and the resources available for local and regional governments to perform these audits
- definition of "efficient use" of water
- description of conservation mechanisms.

Agricultural Water Reserve

Proposal

Comment 27: The WSA would allow the establishment of Agricultural Water Reserve, not withstanding requirements for domestic users.

2.3.7 Measure and Report

Measuring and Reporting

Proposal

Comment 28: The amount of stored water should be measured and reported in addition to the amount used. RDNO suggests the 250 cubic meter/day thresholds for large water users should be lowered to 100 cubic meters/day.

2.3.8 Enable a Range of Governance Approaches

Governance

Comment 29: The level of control within in a community watershed greatly influences the level of risk to water quality and quantity. To address activities that create elevated hazards and risk, there is a sustained need for an integrated and collaborative approach toward watershed planning and governance. For water source protection, there should be strong Provincial oversight with

clear and consistent regulatory framework.

The WSA proposal document mentions that the act will “help respond to a range of regional needs in BC”; however, it falls short of identifying how this may be accomplished. Giving the range of expectations across the province, it may not be expected that a new alternative governance model be proposed, however the WSA could, and should, provide for specific standards that form a strong foundation to protect water quality and quantity.

Senior government should have a clear lead role in governance through its responsibility to ensure the broader public trust is served including setting minimum standards and ensuring compliance with, and enforcement of, rules, laws, and regulations.

Proposal -no comment

2.3.9 Implementing the Water Sustainability Act

New Enforcement Tools - no comment

Regulations - no comment

Part 3: Water Fee and Rentals

3.1 The Current Approach to Water Pricing in B.C.

Comment 30: Table 3, Page 74 - Would represent a significant increase for Water works

3.2 Water Pricing and Implementation of the Water Sustainability Act - no comment

Part 4: Implications: Cost and Benefits

4.1 Benefits of Implementing the WSA – no comments

4.2 Costs to Users – no comments

4.3 The Cost of Inaction – no comments

Part 5: Overview of Engagement and Response

5.1 Overview of Engagement Comments

5.2 Summary of Comments from the Public, Stakeholders and First Nations

Comment 31: Page 89, Bullet 2 - The WSA proposal suggests that the Forest and Range Protection Act provides sufficient protection for water. There should be a direct link from FRPA Section 150&150.1 to the WSA.

Comment 32: Page 92, Bullet 10 - The Oil and Gas industry would like to see the Oil and Gas Commission as the single regulator for water. RDNO has concerns with this comment.

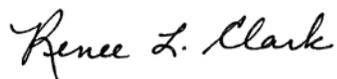
5.3 Government Response to Policy Suggestions - no comments

RDNO Recommendations

1. RDNO requests that a public meeting be held within the Regional District of North Okanagan Region to inform residents of the proposed legislation changes to the *WSA*.
2. That the BC Government:
 - a. provide additional opportunity to review the new *WSA* draft legislation prior to submission to the Legislature for first reading.
 - b. dedicate adequate resources to the new *WSA* (staff, dollars, enforcement etc) and subsequent regulations.
 - c. ensure that all *Acts* that make up the current Legislative Framework for Water Management are linked and provide the same purpose to protect water.
 - d. develops through the *Act* and regulation a unification of water and land regulations to provide clear direction to local government with regard to water and land policies and regulations.
 - e. apply groundwater regulations to the extraction of saline groundwater; and further that the disposal of highly saline groundwater into the ground be required to undertake an environmental assessment in accordance with the Canadian Environmental Assessment Act.

Thank you again, for the opportunity to review and provide our comments to the ***Water Sustainability Act for British Columbia Legislative Proposal***. If you have any questions or concerns regarding the above please contact the undersigned.

Sincerely;



Renee Clark
Water Quality Manager
RC/pj

cc: Greater Vernon Advisory Committee
T. Hall, Administrator
D. McTaggart, General Manager Engineering
R. Smiles, General Manager Planning and Building
L. Mellott, General Manager Electoral Area Administration