Watershed Watch Submission on BC's *Water Sustainability Act*

Recent polls suggest many British Columbians consider water to be our Province's most precious resource. Yet water is rarely treated as such. For the past century BC has sadly limped along under antiquated legislation that offers insufficient protection of water for both nature and humans. Indeed, British Columbia's water laws have earned the dubious distinction of being among the least progressive in North America.

In October 2013, the provincial government released "A *Water Sustainability Act* for BC: A Legislative Proposal." The *Water Sustainability Act* (*WSA*) proposal outlines broad directions that may appear in legislation expected to be introduced in the Spring 2014 session of the BC Legislature. While the *WSA* proposal touts a number of laudable goals—such as providing environmental flows, increasing public participation, addressing water scarcity, and protecting the public interest—it does not yet contain sufficient tools and requirements necessary to achieve those goals. In order to protect the public interest the *WSA* must, at a minimum, ensure that legislation, regulations and policy meet the following benchmarks.

ENVIRONMENTAL FLOWS

Substantial research[1,2] and applied learning—as gained in the robust BC Hydro-led water use planning process—clearly indicates that proper environmental flows are critical to healthy functioning watersheds. Based on this science and home-grown learning, proper environmental flows must be clearly prioritized over other non-essential human uses. The *WSA* must explicitly set aside an ecologically-based reserve of water that is not available for any use other than the conservation and maintenance of fish habitat and preservation of healthy ecosystems (e.g. wetlands).

Watershed Watch thus calls on the Provincial government:

- To make environmental flows a clear obligation for all licensees and a central part of all water allocation decisions, including licence reviews.
- To ensure the *WSA* defines the term "environmental flow". [3]

[1] Environmental Flows for British Columbia's Proposed Water Sustainability Act Workshop Report. 2011. World Wildlife Fund.
[2] Framework for Assessing the Ecological Flow Requirements to Support Fisheries in Canada. 2013. Canadian Science Advisory Secretariat Science Advisory report 2013/017.
[3] Environmental flows describe the quantity, timing, and quality of water flows required to sustain our flowing water ecosystem and the human livelihoods and well-being that depend on these ecosystems. Characteristics of a flow regime needed to secure integrity of aquatic ecosystems include magnitude, timing, frequency, duration, variability and rate of change.

- To commit to public consultation on the development of regulations and policy to create the framework for minimum flows.
- To establish province-wide standards in the *Act*, or regionally specific standards that apply to each division of rivers in a particular class.
- To abide by a scientifically defensible method (e.g. Canadian Science Advisory Secretariat 2013) for determining environmental flows.
- To grant decision makers the power to suspend a water licence for aquatic ecosystem purposes.
- To explicitly state that decision makers may refuse to issue a licence if it would negatively affect an aquatic ecosystem.

GROUNDWATER

Groundwater is another precious, though largely unprotected, resource that must receive greater consideration. Groundwater is connected to rivers and provides critical augmentation of fisheries flows (especially in drought-prone and climate-challenged locales), and also helps maintain temperatures within biologically acceptable boundaries for fish and other animals.

Since groundwater is so intimately linked to surface water, the two cannot be separated or treated separately under management and licencing regimes. More should be done to assess the amount, location, and health of current groundwater reserves in BC.

Furthermore, current well users should not receive final licences, or those licences should be fully reviewable, until:

- At least 5 years of water monitoring data for the aquifer obtained under the new monitoring requirements is available;
- The licences can be assessed to ensure that the use of the aquifer does not exceed recharge rates and does not negatively impact the health of the aquifer or the health of nearby streams;
- Any Constitutional obligations to consult First Nations regarding specific licences can be addressed.

If current levels are not sustainable, licences must be adjusted to ensure that use rates are sustainable and do not negatively impact the health of nearby streams.

Finally the rights of domestic well owners to the continued flow of water in their wells, as against licensed well owners, should be clarified.

PUBLIC PARTICIPATION:

The Government is touting one of the benefits of the *WSA* as "wider participation in decisions and water governance approaches." However, the proposal does not contain the commitments necessary to make this happen.

We are calling for government to ensure:

- That any delegation of decision-making authority to persons outside of the provincial government be limited to local government officials, First Nations representatives or properly established local watershed councils, and that any decisions may only be exercised after appropriate public notice and comment.
- That any advisory committees created under the *WSA* have public representation and that proceedings and recommendations of these committees be made public.
- That licence reviews, setting of water objectives, setting of environmental flows, creation of area based regulation, and water efficiency standards include public consultation.
- That applications for new licences be made public and that members of the public are allowed to object to water licences or appeal licences to the Environmental Appeal Board (with leave).

PUBLIC TRUST DOCTRINE

Water is British Columbia's most important natural resource. Given the pressures of a growing population, a changing climate, and expanding development, steps must be taken to ensure that BC's supply of fresh, clean water is sustainable—not just to meet our needs today, but for generations to come. Under the current *Water Act*, ownership of water is vested in the Crown, but there are scant provisions to protect public interest. A new *WSA* must ensure that private rights to use water do not impact public resources. This could be accomplished by amending section 2 of the *Water Act* to state that:

> The property in and the right to the use and flow of all the water at any time in a stream in British Columbia are for all purposes vested in the government, and any private rights established under licences issued or approvals given under this or a former *Act* are subject to be managed in the interest of present and future generations.

BENEFICIAL USE

"Beneficial use" as it has been interpreted by courts is not narrowly defined and focused on private use, but instead describes the public's interest in the proper management of water resources. Private use under a water licence, under the current *Act*, is subject to this public use, as defined by the government of the day.

The *Water Sustainability Act* must, at a minimum, define environmental flows and essential household needs as being a pre-requisite to beneficial use. This clarifies the obligations of licensees in respect of these basic public values. In addition, these values must then be applied in allocation decisions, licence reviews and other key government decisions.

WATER PRICING

Water is currently undervalued and underpriced. We are calling on government to establish proper pricing on the industrial use and extraction of water consistent with the value that British Columbians place on this resource.

Moreover, proper pricing should reflect recent science on measurable ecological,[4] health[5] and well-being[6] benefits of intact ecosystem services.

[4] Natural Capital in BC's Lower Mainland: Valuing the Benefits from Nature. 2010. David Suzuki Foundation.
[5] Nature Therapy and Preventive Medicine. 2012. J. Lee et al. www.intechopen.com
[6] Sustaining livelihoods and human well-being during social-ecological change. 2009. G.P. Kofinas and F.S. Chapin. Chapter 3 in Principles of Ecosystem Stewardship. Springer Science.