



**WILDERNESS
COMMITTEE**

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Attention: Living Water Smart Team

The Wilderness Committee is supportive of updating British Columbia's 104 year-old Water Act and we are encouraged by the BC government's commitment to introduce a new Water Sustainability Act (WSA) in the spring of 2014. We are particularly pleased that groundwater will be regulated and that water license reviews will be established.

While this proposed legislation is welcome we are concerned that the WSA proposal, as it stands today, does not contain the necessary tools to actually protect freshwater in BC. Instead of enforceable language and mandatory standards the WSA proposal promotes discretionary language and "guidelines" which will not adequately protect BC's precious freshwater resources.

Additionally, we reaffirm our support for First Nations in their efforts to have their title and rights with respect to water resources in BC fairly and honourably addressed.

Protection of environmental flows:

- Environmental flows are critical to healthy rivers and watersheds. The WSA must specifically set aside an "ecological reserve" of water that is not available for any other use than the conservation and maintenance of fish habitat and the preservation of the natural ecosystem;
- The WSA must define environmental flows and abide by a scientifically defensible method of determining these flows;
- Protection of environmental flows must be enforced by legal standards – not guidelines;
- The protection of environmental flows must be a clear requirement of all licensees and a central part of all water allocation decision, including licence reviews;
- The WSA must enable decision-makers to suspend or refuse to issue a license if it negatively the health of an aquatic ecosystem;
- Environmental flows must be included as a "purpose" in all water licences.

Public Participation:

- Any advisory committee created under the WSA should have public representation, and the proceedings and recommendations of these committees should be made public;
- Licence reviews, setting of water objectives, creation of area-based regulation and water efficiency standards must include public consultation;
- Applications for new water licences should be made public and members of the public should be allowed to object to water licences or appeal licences to the Environmental Appeal Board (with leave);
- Delegation of decision-making authority to persons outside of the provincial government should be limited to local government officials, First Nations representatives or an established local watershed council, and any decisions may only be exercised after appropriate public notice and comments.

Public Good:

- Provisions must be enshrined in the WSA to protect the “public interest;”
- The WSA must recognize the crucial public interest role for government to manage freshwater and affirm that licences are only temporary rights to use the resource and are not permanent or property rights;
- Water in all its forms is owned as a public resource and must be sustainably managed for the benefit of the public. Private rights to water must be limited, temporary and subject to conditions that protect the public interest.

Pricing:

- Fees must meet administrative costs but also provide enough resources for robust water management and governance-related activities;
- The WSA must ensure that collected fees go to a designated freshwater management fund rather than general revenues;
- The price of water should reflect the inherent value of freshwater to British Columbians.

Public Trust Doctrine:

- Water is BC’s most important natural resource. Given the pressures of a growing population, changing climate and expanding development pressures, steps must be taken to ensure that BC’s use of

freshwater is sustainable. A new WSA must ensure that private rights to water do not take precedence over this the sustainable management of this public resource;

- Any private water rights established under licences issued or approvals given should be sustainably managed in the interest of present and future generations.

Beneficial Use:

- Beneficial use is currently too narrowly focused on private use. The WSA must define beneficial use to encompass a broader set of community, social and environmental benefits so licence holders understand they are stewarding a public resource and not gaining a property right;
- The WSA must, at a minimum, define environmental flows and essential household needs as being prerequisites to beneficial use;
- In addition, the aforementioned values must be included in allocation decisions, licence reviews and other key government decisions.

First in Time, First in Rights (FITFIR):

- The WSA must create a progressive water allocation system that recognizes rivers, lakes, wetland and groundwater as “legitimate priority users,” move beyond a prior allocation (First in Time, First in Right) system and codify a system based on the principle of equitable sharing amongst all identified water users.

Water Licence Reviews:

- The WSA should ensure that water licences are reviewed in a shorter timeframe than currently proposed. A tiered process should be used: within the next five years, licences 50 years and older should be reviewed; within the next 10 years water licences 30 years and older should be reviewed, and all other existing and new licences should be reviewed 20 years from their priority or issuance date.

Exemptions:

- The WSA must apply to all commercial freshwater uses in the province including the oil and gas, and timber industries.

Governance:

- A WSA needs to require legally binding watershed plans, developed at the local level with public consultation in accordance with strong provincial standards, to address threat to water quality and quantity, and ecosystem protection;
- Licences must be subject to legally enforceable Water Objectives. Water Objectives must be set by government and be binding on all decision-makers, public bodies and sectors; if other legislation has freshwater-related objectives they must provide, at a minimum, the same level of protections as the WSA. Licenses should also take into consideration the state of water quality after industrial "use."
- The Act must require ongoing public engagement in monitoring, implementation and updating of watershed plans.

Groundwater:

- Current groundwater users should not receive final licences, or those licences should be fully reviewable, until at least five years of monitoring data for the aquifer obtained under the new monitoring requirements is available and any constitutional requirement to consult First Nations regarding specific licences be addressed;
- Licences must ensure that the use of the aquifer does not exceed recharge rates and does not negatively impact the health of the aquifer or nearby streams;
- If current water withdrawal levels are not sustainable, licences must be adjusted to ensure that the water use rates are sustainable and do not negatively impact the health of nearby streams;
- The rights of domestic well owners to the continued flow of water in their wells, as against licenced well owners, should be protected and clarified.

Yours truly,

A handwritten signature in black ink, appearing to read "Gwen Barlee". The signature is written in a cursive, flowing style with a large initial 'G'.

Gwen Barlee
Policy Director
Wilderness Committee