

From: Will Koop [wkoop@bctwa.org]
Sent: April-30-10 4:43 PM
To: Living Water Smart ENV:EX
Subject: Submission- Water Act Modernization
Attachments: BCTWA-WaterAct-Submission-Apr30-2010.pdf

Here is the attached submission by the B.C. Tap Water Alliance.

B. C. TAP WATER ALLIANCE

**Caring for, Monitoring, and Protecting
British Columbia's Community Water
Supply Sources**

P.O. Box #39154, 3695 West 10th Ave.,
Vancouver, British Columbia, Canada. V6R-1G0
Email – info@bctwa.org
Website – www.bctwa.org



***WATER FIRST*: SEEKING THE ULTIMATE GOOD OF THE
LAND, ITS CREATURES, AND THE PUBLIC**

**THE POSSIBILITY OF A 'MODERNIZED' WATER ACT
FOR BRITISH COLUMBIA**

Submission by the BC Tap Water Alliance:
B.C. Water Act Modernization

by Will Koop, Coordinator
April 30, 2010
(Forwarded to: livingwatersmart@gov.bc.ca)

Unfortunately, the B.C. Tap Water Alliance doesn't have the time and resources to conduct a thorough analysis and recommendation response to the government's process on its proposed serious revision of BC's *Water Act* at this time. In its stead, we are merely submitting a brief summary response on key visionary points.

What we remain concerned about regarding this written submission process deadline for April 30, 2010, is that this apparently is the only and last public consultation process. We encourage the Ministry of Environment to engage the public for more written comments on this issue again sometime in late 2010 when it has assembled a draft scoping document of the legislation.

1. *Water Act* Preamble: Defining the Inter-related Legislative Role of Fresh Surface and Sub-Surface Waters with All Lands in British Columbia

From what we have gleaned from both government and non-government sources, the *Water Act* Modernization initiative is the first major overhaul of the *Water Act* legislation in over one hundred years. The significance of this initiative is defined by this very fact, and a foreboding challenge at best.

Water is a key to all "life" on earth. How humanity values and treats it is, and must be, carefully embraced and defined in good, strong and inclusive governance laws.

Therefore, **the most important or critical feature of the *Water Act* rests in a/its Preamble** to comprehensively define the role of water (understood from this point forward, as both surface and sub-surface water sources) and its cohesion, or inter-relationship, with other provincial Acts that involve or include the role of water (despite the possible and present weaknesses of these other Acts). To conduct a proper wording of this *Preamble*, it behoves our legislators to not only 'firm up' or to wisely strengthen all related B.C. legislations, but to also review other provincial, national and international Water Acts and Water legislations so as to incorporate the 'best of the best', to achieve the peak of the 'best'.

However, by way of caution, we note that the current administration was off on a bad foot in 2003, by removing the *Preamble* to the *Forest Practices Code Act*. Elected legislators and their advisors from a previous administration had carefully crafted this *Preamble* for public review in the Legislature by 1994, legal definitions which also included the valuable, primary function of water.

During the debate on the Preamble in the Legislature on May 30, 1994, lawyer and Forests Minister Andrew Petter summarized his government's reasons for including the Preamble's five principles as "the desire of British Columbians to seek a more balanced use of forest resources -- one that responds to the entire spectrum of current needs without compromising the needs of future generations... and expressly links forest stewardship to an ethic of respect for the land". Petter went on to explain that the Preamble "is a framework that recognizes the importance of biological diversity, of preserving forest soils, wildlife habitat and riparian zones, and of respecting cultural heritage resources as key values. It's a framework that facilitates the protection of special and sensitive resource features and that ensures that operational planning is consistent with higher-level land use plans, thereby providing an opportunity for greater public review and accountability". Afterwards, Liberal

party Forests critic Wilf Hurd complained in the legislature that the Preamble “priorities” were too “environmental”.

“It is obvious that the government deliberately gutted the intent of the Forest Practices Code Act to weaken an already weak law and to introduce new provisions which are not compatible with the original intent. This is why Minister De Jong evaded the issue in the legislature. The death of the Preamble signals that the Liberals’ intention is to protect forest industry profits at the expense of the environment and the people of this province,” Will Koop, Coordinator of the B.C. Tap Water Alliance, said recently. “We have been stripped of our ability to measure the environmental performance of this government on public lands. The Tap Water Alliance is asking the Attorney General, Geoff Plant, to fully investigate this matter, to respond to these concerns and to explain, to British Columbians, the reasons for the Preamble’s removal”. (*B.C. Liberals Strip Key Legal Principles from Forest Laws*, B.C. Tap Water Alliance press release, November 26, 2002)

The main reason that this *Preamble* was removed, apparently, was ultimately due to its significant role in related environmental legal cases in the Courts. By removing the *Preamble*, the Courts were no longer able to comprehensively decipher or determine the visionary and inclusive perspective of the legal complaints.

How can such a daunting task be achieved under the shadow of a provincial administration which may not wish to embrace such an ethical and accountable undertaking, and one which may not wish to listen to the general claims of its public? In defence of accountability, an independent, public-legal-minded Task Force should be struck (with or without the blessings of this administration) to engage in drafting this *Preamble* (and related content) in advance of determinations to draft the *Water Act* legislation by the end of 2010. Such a Task Force should have a public consultative approach mechanism for review and feedback. Perhaps a ‘Preamble / Water Act Blog’ could also be created to assist the inspirational undertaking of such a Task Force.

2. Re-establishing the Pre-eminence of Political Water Boundaries

To re-appreciate the primary role and function of water in BC, we recommend a corresponding change to help the public, through its administrators, understand and demonstrate its strategic political importance.

In the 1950s following, provincial forest land boundaries, defined through forest districts and regions, overtook the former dominant land boundary classification of **Water Districts**. In other words, the administrative business of forestry gradually asserted itself as the primary political reference point. This assertiveness was eventually activated when the Ministry of Forests became an independent agency in 1978, as prior to that it’s legislative structure and authority was intertwined with at least one or more other agencies.

In fact, the politics governing forestry would undermine and overtake many associated domains related to the governance of water. From our files, collected through Freedom of Information requests, are examples which even indicate recommendations from senior Ministry of Forests administrators in 1983-1984 to alter, and/or, tamper existing *Water Act* legislation to benefit the forest industry over the concerns of licensed consumptive water users.

In the early 1900s, when Water Districts were established, they were the first political province-wide administrative land resource boundaries. The first comprehensive land surveys conducted in BC in the early 1900s were of streams and rivers: the hydrographic surveys by the federal government. These surveys also helped to better shape the political boundaries of all the Water Districts.

As a feature of this dominance, the first form of regional government in BC was based on the politics of water: the Greater Vancouver Water District, born in February 1926. And, with its formation, there followed strong legislation (1927, 1930) that protected the District's drinking watersheds from all commercial industry, a legacy that was surreptitiously challenged and altered some forty years later, and then returned to its original intent in late 1999.

The understanding on the critical role of water in shaping politics in British Columbia originated, in large measure, from a widespread public movement in the United States. A revolution in thinking in the U.S. about water had been underway by many concerned citizens, academics, and politicians in the latter part of the 1800s. Much of it had precipitated due to the rapid and wanton plunder of eastern U.S. forests and the resulting demise of rivers and streams. The phraseology, "protection of headwaters" that thundered through U.S. and Canadian legislations, originated out of this revolution about "conservation". So did the legislative protection of drinking water sources, and the protection of forests that lay behind the newly created, and controversial, hydro-electric dams. The conservation and sanctity of water, as an extension on national "conservation" concerns, became a constant theme for many decades.

3. The Legislative Protection of Drinking Water Sources and the Role of the *Water Act*

More and more, once again, the public in North America, and around the world, recognize and extol the wisdom of completely protecting drinking water sources. The *Water Act*, as the central mechanism for establishing Water License Reserves for and within drinking water sources, must therefore embrace the primary nature, single purpose, and priority of this use, while ensuring water flows for fish and other water-dependent species.

Most, if not all, of British Columbia's drinking water sources are bound and naturally regulated within forest ecosystems. Unfortunately, the majority of these watershed sources have been beset by various commercial land tenure licensing that controversially evolved since the 1960s which have affected water quality and quantity parameters. As documented in our 2006 book, *From Wisdom to Tyranny: A History of British Columbia's Drinking Watershed Reserves*, many of these tenures were wrongfully permitted within formally designated *Land Act* (Watershed) Reserves, a monumental, shameful scandal that persists unaddressed to this day.

Through years of research, we discovered that as BC's water and land laws emerged in the early 1900s, came a corresponding legislative philosophy that sought to protect drinking watershed sources. This philosophy was based on strongly-held views of provincial water users and its administrators, particularly those in the Health Ministry whose role it was to protect them. We must seek to understand these philosophical roots and then re-incorporate or "modernize" them into our provincial legislations, with the ultimate goal of new legislative protections and full recognition of existing legislation of Watershed Reserves under the *Land Act*.

4. Oil and Gas Industry Controversies Related to BC's Water Resources

As detailed in a soon-to-be-released report by the Tap Water Alliance, the oil and gas industry in the United States has enjoyed specific exemptions on its use of chemical toxics and waste from federal regulation under the *Safe Drinking Water Act* and under the *Resource Conservation and Recovery Act*. These exemptions are directly related to strategic lobbying and advocacy tactics by the industry complex. But what about exemptions or lack of legislation/regulation in British Columbia?

According to information posted on the Ministry of Environment's Water Stewardship website, under *Ground Water Protection Regulation - Phase 1, Protecting the Ground Water Resources of British Columbia*, the Ground Water Protection Regulation (GWPR)

does not apply to geothermal wells, oil and gas wells, or wells used for coalbed methane extraction which are already regulated under other acts, like the *Geothermal Resources Act*, *Mines Act*, and *Petroleum and Natural Gas Act*.

The fact that the exploration and production practices of the oil and gas industry are and have somehow been exempt over the past six years from the new GWPR introduced in July 2004, and throughout the following Phases of this regulation, is a matter that is deeply troubling. So are a number of other related practices by the industry, the majority of which are located in BC's northeast. All of these practices must fall under the purview of the *Water Act* and related legislations concerned about surface and ground waters.

The Tap Water Alliance recently introduced a new section on its website devoted to a specific part of this issue called ***Stop Fracking British Columbia*** (<http://www.bctwa.org/FrackingBC.html>). In the ongoing construction development of this website, are copies of many news articles, reports, and links to numerous U.S. websites concerning the issue of hydraulic fracturing (fracking), a "stimulation" process now primarily used for natural gas exploration. What we are unearthing greatly concerns us, issues which generally fall under the following categories related to the issue of water only.

1. ***The influence to and degradation of nearby or distant drinking water wells and springs.*** The impacts to the subsurface by disturbing geologic layers through drilling practices are unpredictable at best, and may and do present many threats to aquifer sources within populated areas over both the short and long terms. Outright area fracking bans over the concerns of drinking waters have already begun in the U.S. as a result. What are the risks over the long term from these deep drilled well holes to the integrity and structure of geologic formations, particularly as they relate to myriad aquifers? How has the government been dealing with or investigating public complaints in northeast BC? Has the Ministry of Health acted on this issue and developed recommendations to other government agencies?

2. ***Water withdrawals from surface and sub-surface sources.*** Other than the issuance of some temporary water withdrawal permits from surface fed sources, there is no other permitted use for water withdrawals, including groundwater, for fracking purposes, waters which will no longer be kept in the water cycle. There is little monitoring responsibility or record keeping from BC's Oil and Gas Commission or from the Ministry of Environment. According to industry professionals, the

quantity of water needed per fracking operation is enormous. Some of these estimates are provided on our website (<http://www.bctwa.org/FrkBC-Water.html>).

3. ***The use and disposal of toxic chemicals.*** Great public concerns in the United States currently address the use of toxic chemicals in the fracking process (refer, for instance, to the main Links section on our website: <http://www.bctwa.org/FrackingLinks.html>). What are the cumulative impacts of these toxics, over the long term, to surface and subsurface sources, and to human beings who handle these toxics? Should these toxics be used at all? How are these toxics being regulated in Canada, at the federal and provincial levels? What happens to the waste products? Does underground storage of these toxics in used underground well sources present concerns over time? What peer-reviewed studies and investigations are there to address this issue?

5. Groundwater Legislation

Though the provincial government has begun to regulate some of the groundwater concerns through its July 2004 regulation, more should be done to finish the job through legislation. The concerns of legislating groundwater sources were formally raised 57 years ago at the sixth BC Natural Resources Conference (February 25-27, 1953) in the Water Panel session, and sadly nothing was done to do so. The concerns were presented within a nine-page report by consulting engineer Val Gwyther, *Progress in the Utilization of Ground Water in British Columbia*. In the report is the following summary recommendations:

Recommendations. Revisions to the *Water Act* or the passing of a *Ground Water Act* to protect this resource and its users is of **utmost importance**. The ground water resource is closely related to our surface waters inasmuch as they are dependent on each other. It appears that administration of both resources should be coordinated under the one branch, the Water Rights Branch. Powers of the Comptroller under the revised or new act must be far reaching for the protection of present users and the resource.

APPENDIX: YouTube List - Water Act Modernization Workshop - Vancouver - April 21, 2010 (ten parts)

Video and Editing by Will Koop

Part One: summary of all B.C. Workshops by Workshop Facilitator

<http://www.youtube.com/watch?v=6BOCO4xaFNE>

Part Two: Public comments on Values & Principles Discussion Paper

(Linda Nowlan, Anne Marie Sam)

<http://www.youtube.com/watch?v=Cagk-M4LgWQ>

Part Three: Public comments on Values & Principles Discussion Paper (continued)

(John Wareing, Stephen Henderson)

<http://www.youtube.com/watch?v=qc7czU6xQMo>

Part Four: Public comments on Values & Principles Discussion Paper (continued)
(two unidentified speakers)

<http://www.youtube.com/watch?v=ZCrDuE9Ibxg>

Part Five: Public comments on Values & Principles Discussion Paper (continued)
(one unidentified speaker, Emanuel Machado, Andy Dolberg)

<http://www.youtube.com/watch?v=0PUHr7wYJF0>

Part Six: Workshops summary presentations - Theme One: Protect Stream Health and Aquatic Environments (Colleen Giroux-Schmidt, Pamela Zevit)

<http://www.youtube.com/watch?v=MOX717dAwtQ>

Part Seven: Workshops Summary presentations - Theme Two: Improve Water Governance Arrangements (Rob Fleming, Elaine Golds)

- Theme Three: Introduce More Flexibility and Efficiency in the Water Allocation System

<http://www.youtube.com/watch?v=DPqUexmdcpA>

Part Eight: Workshops Summary presentations - Theme Three: Introduce More Flexibility and Efficiency in the Water Allocation System. Theme Four: Regulate Groundwater Extraction and Use in Priority Areas and for Large Water Withdrawals

<http://www.youtube.com/watch?v=4EnCfNkez8>

Part Nine: Public Summary Comments (Olga Schwartzkopf, Will Koop, Craig Orr)

<http://www.youtube.com/watch?v=qrn6j37RY84>

Part Ten: Workshop summary wrap up (Brian Symonds, Ministry of Environment)

<http://www.youtube.com/watch?v=wmntHZzNMjk>