



Business Council of
British Columbia

April 30, 2010

Via Email: livingwatersmart@gov.bc.ca
(Original to Follow by Mail)

Water Act Modernization Submission
Ministry of Environment
Water Stewardship Division
PO Box 9362 Stn Prov Govt
Victoria BC
V8W 9M2

Re: British Columbia's *Water Act* Modernization Discussion Paper

The Business Council of British Columbia is pleased to comment on the Ministry of Environment's proposed *Water Act* Modernization ("WAM").

The Business Council of British Columbia, established in 1966, is an association representing approximately 260 large and medium-sized enterprises engaged in business in British Columbia. Our members are drawn from all major sectors of the provincial economy. Taken together, the corporate members and the associations affiliated with the Business Council are responsible for roughly one-quarter of all jobs in British Columbia.

The comments which follow are general in nature and reflect the diverse sectoral membership of the Business Council. A number of our member organizations (individual companies and their industry associations) may provide more detailed comments in the technical areas relevant to them.

General Comments

The Business Council believes that the sustainability of BC's water resources is important to the province's future and to the success of our membership. As a primary input for many industries, predictable access to clean water is fundamental to promoting a strong provincial economy and securing further investment – together with the jobs that go with it.

Our membership includes large industrial water users and water users that are small and mid-size enterprises (usually represented through their industry associations). We



approach WAM from the perspective of the broad interests of the main economic sectors in the province, not from the perspective of a single industry. In our view, a priority for WAM is to maximize certainty for all water users without compromising stream health. We believe that, if properly implemented, WAM can achieve these two values.

The Council welcomes the government's efforts to consult a wide range of stakeholders on WAM. At the same time, we note that many of the options referenced in the *Water Act Modernization Discussion Paper* (the "Discussion Paper") and the *Water Act Modernization Technical Backgrounder Report* (the "Backgrounder") have not been set out in sufficient detail to allow for adequate analysis and feedback. As a result, the Business Council is unable to comment on certain proposals at this early stage. We look forward to further opportunities to engage with the Ministry as these proposals become more detailed and concrete.

Principles

The Discussion Paper sets out and invites comment on eight principles to guide the WAM process.¹ Generally speaking, the Business Council of British Columbia supports all of these principles.

However, we believe the list is incomplete. We would propose the following as additional principles to guide WAM:

1. WAM must provide certainty to existing holders of water rights and protect their interests. If fundamental changes are to be introduced, appropriate transitional measures should be included; and
2. New rules and processes should be balanced and respect the needs of all water users, including the needs of industry.

Goal #1: Protect Stream Health and Aquatic Environments

Objective One: Environmental flows are considered in all water allocation decisions to protect stream health

¹ These principles are the following: (1) BC's water resources are used within sustainable limits; (2) First Nations social and cultural practices associated with water are respected and accommodated; (3) science informs water resource management and decision making; (4) water resource legislation, policy and decision making processes as well as management tools are integrated across all levels of government; (5) rules and standards for water management are clearly defined, providing a predictable investment climate across the province; (6) flexibility is provided to adapt to extreme conditions or unexpected events on a provincial, regional or issue specific level; (7) incentives are created for water conservation that consider the needs of users and investors; (8) rights to use water come with responsibilities to be efficient and help protect stream health.



The Council supports the use of science-based environmental flow recommendations to inform water license decision-making, provided the process for establishing such recommendations is fair, transparent, timely and predictable. In addition, environmental flow recommendations should be responsive to local conditions and should be adjusted or revised in light of changing economic and community needs, as well as in response to evolving scientific knowledge.

The Discussion Paper proposes two options for incorporating environmental flow recommendations into water use decision-making: as *guidelines* (from which the decision maker may deviate in certain circumstances); or as *standards* (that the decision maker must adhere to with no exceptions).

It is the Business Council's view that Regional Water Managers should have the discretion to apply such guidelines on a case by case basis to ensure that decisions are appropriate for the needs of particular applicants and local conditions, including the social and economic needs of local communities.

Objective Two: Watershed-based water allocation plans include environmental flow needs and the water available for consumptive use

The Discussion Paper indicates that water allocation plans will play a central role in WAM. A water allocation plan is described as a watershed scale supply and demand study that can determine the amount of water that is available for allocation while environmental needs are met.

The Council is not opposed to creating water allocation plans. As indicated in the Discussion Paper, investors and existing industrial water users may find this information useful in their own long-term planning and capital investment decisions. However, we are concerned that formulating water allocation plans for every watershed in the province may impose undue burdens on the private sector and on government. Not all watersheds require the same level of resources in respect of water allocation planning.

The Discussion Paper asks whether the development of allocation plans should be required: (1) at the discretion of the Regional Water Manager; or (2) in accordance with other criteria, such as geographically (either the entire province or only in priority areas) or if ordered by the Comptroller of Water Rights.

The Business Council believes Regional Water Managers should have the discretion to develop water allocation plans where the need exists. If a decision is made in the WAM process that the development of water allocation plans should be required rather than left to the discretion of Regional Water Managers, our view is that water allocation plans should be required in priority areas only, where priority areas are designated in accordance with a



clear set of rules based on widely accepted criteria.² The fundamental goal should be to ensure that water allocation plans are developed on the basis of consistent policy and processes throughout the province.

The Discussion Paper also presents two options in respect of how water allocation will impact water allocation decisions: (1) decision-makers must *consider* plans, but will also have the discretion to consider other factors; or (2) decision makers must *follow* water allocation plans, without exceptions.

The Business Council favours the first of these two options. Although giving decision-makers discretion potentially increases uncertainty, decision-makers need flexibility to consider local economic and community requirements, the unique needs of applicants and evolving scientific knowledge.

Objective Three: Habitat and riparian area protection provisions are enhanced

The Discussion Paper suggests that stream health and fish habitat would be better protected if the *Water Act* contained additional enforcement powers in respect of dumping of materials in or near streams. The Backgrounder goes into greater detail, suggesting that additional enforcement powers in the *Water Act* would “complement” and “support” similar powers that are already set out in the federal *Fisheries Act* and the provincial *Environmental Management Act*.

Our membership is satisfied with the current state of the *Water Act* as it pertains to dumping prohibitions. The current provincial and federal legislation provides adequate protection of streams from dumping, and in our view the *Water Act* is not the appropriate vehicle by which to address dumping on a large scale.

In respect of stream protection, the overlapping jurisdiction of the federal government and the provincial government is already difficult to navigate for business. Adding another regulatory mechanism in respect of dumping in streams is likely to add further complexity to industry’s compliance efforts, without materially improving stream health.

Goal #2: Improve Water Governance Arrangements

The Discussion Paper indicates that improving water governance arrangements is a key component of WAM, and invites comments on three options for water governance: (1) a centralized approach (the provincial government would continue to make most water management decisions); (2) a shared approach (specific water management functions and decisions delegated to First Nations or Regional Districts); or (3) a delegated approach

² Criteria identified elsewhere in the discussion paper include: elevated demand; low supply; conflicts among users; changes in environmental science.



(most water management functions and decisions would be delegated to a watershed or regional-scale agency which could be called a 'watershed agency').

The Business Council strongly supports retaining the current model of centralized administration of the *Water Act*. Central administration of the *Water Act* and clear policy leadership and oversight by the Ministry on water issues is preferred because it provides the certainty that water users need to invest with confidence in plant and infrastructure. In our view it is the only option that guarantees the consistent application of policy across the province.

While the Business Council is not convinced of the benefits of fundamentally altering BC's water governance arrangements, we also recognize that certain local and regional bodies have articulated a desire to play a greater role in water management issues. If a decision is made, contrary to our advice, to decentralize water use decision making under WAM, the Council would support the "shared" approach over the "delegated" approach. As we understand the distinction, the "shared" approach would delegate a more limited range of functions, and would delegate such functions only to partners with the demonstrated capacity and resources to exercise such functions efficiently.

WAM is by no means the first time that regulatory functions have been delegated to other entities or bodies. In our experience, these innovations have almost always posed significant challenges for business and industry.

First, delegation has been accompanied all too often by inconsistency of application. In the context of WAM, the potential emergence of a regulatory patchwork will add substantial costs to all water users in the province, and may operate as a disincentive to investment in industries that rely on long-term, secure access to water resources. Whichever governance model is ultimately selected, a key component must be a mechanism to ensure that provincial policy is implemented consistently across different regions.

Second, different levels of government often do not share a common understanding as to the scope of the authority that has been delegated. The economic effect of such uncertainty is especially acute where active disputes arise in respect of jurisdiction, whether motivated by innocent misunderstandings or by political calculation.

Third, the efficient operation of regulatory functions can be affected where responsibilities are shifted to under-resourced bodies. In the context of WAM, the smooth functioning of licence related matters is vitally important to business and industry. Any entity which shares in water management functions must be adequately resourced.



Goal #3: Introduce More Flexibility and Efficiency in the Water Allocation System

Objective One: The water allocation system emphasizes and encourages efficiencies in both water use and administration of water as a natural resource.

The Discussion Paper indicates that WAM will result in a water allocation system that rewards water conservation and reduces administrative burdens on the province in respect of regulating water as a natural resource. A number of possible solutions covering different areas are presented in connection with this objective.

Recognizing Water Use Efficiency in Water Licences

The Discussion Paper sets out two proposals in respect of the role of water efficiency in the granting of water licences: (1) decision-makers determine actual needs when granting water licences and will cancel water rights where such rights are not being used; or (2) codes for efficient infrastructure and practise in different sectors are developed in partnership with each sector and the *Water Act* requires compliance with such codes.

The potential for licence cancellation is a feature of the current water allocation system in this province. However, it introduces significant uncertainties for water users. A system based on codes of practice developed in partnership with industry will likely deliver a much better balance between encouraging greater water efficiencies and providing certainty to water users.

Economic Incentives

The Discussion Paper sets out two proposals for encouraging water conservation through economic incentives: (1) the use of penalties, bonuses, stepped pricing structures or rebates for water reclamation; or (2) improving the transferability of water rights from one user to another and the extension of rights to other purposes.

In general, the Business Council supports the second option, while recognizing that rate-setting mechanisms may play an important role in encouraging water conservation, especially at the individual household level. Any system of transferable water rights must be oriented toward using existing water rights more efficiently, rather than increasing the absolute quantity of water rights allocated over a particular water source.

Permitted Uses

The Discussion Paper indicates that WAM may contemplate whether some uses of water should be allowed to occur, without required licensing. The Council would support this innovation, provided that these “permitted uses” were restricted to low-risk areas, specific purposes and small quantities of water. In response to the specific questions posed in the



Discussion Paper, the Council believes that the concept of “Permitted Use” is best placed in the *Water Act* regulations rather than the *Act* itself. The Council also supports mandatory registration of permitted use withdrawals. Careful monitoring is required to ensure that the aggregate quantity of water that is exempted from the licensing requirements under the *Water Act* does not materially impair the rights of the holders of existing water licenses.

Additional Responsibilities of Water Users

The Discussion Paper identifies a number of possible additional responsibilities that could be imposed upon water users that would encourage administrative and water use efficiencies and facilitate enforcement.³ Although the Business Council supports the notion that large water users can often monitor their own water usage at lower overall cost than a centralized provincial system, we strongly disagree with some of the increased obligations proposed in the Discussion Paper. In particular, water license holders and applicants should not be required to undertake detailed studies of the watershed and potential impacts on other stakeholders. Nor should applicants be required to obtain the consent of potentially affected parties. Regulators, not individual water users, should be charged with the task of balancing competing interests to water rights.

Objective Two: Flexibility to Adapt to Changing Environmental, Economic and Social Conditions

The Discussion Paper suggests that WAM will provide greater flexibility to adapt to changing conditions by providing decision-makers and licence holders with an ability to seek amendments of water licences' terms and conditions based on a range of factors.⁴ In principle, the Council is not opposed to increased flexibility in a modernized *Water Act*. However, increased flexibility should not undermine certainty and predictability. The proposal set out in the Discussion Paper – that the province have the ability to re-write the terms and conditions of existing water licences – is overbroad. More detail and clarity is

³ The proposed responsibilities include: (1) providing more detailed information about the proposed use and efficiency measures for licence applications or changes; (2) documenting potential environmental impacts and effects on other users in licence applications or changes; (3) seeking consent from, or undertaking consultation with, affected parties for licence applications or changes; (4) measuring and reporting actual water use when demonstrating compliance with licence conditions; (5) reporting well levels for regulated groundwater users; and (6) self-registering wells, especially where groundwater is in direct hydraulic connection with surface water or in areas of known quantity concern.

⁴ New information about watershed issues, priorities or changes in supply (including addressing over-allocation and climate change impacts); the ability to use water differently (e.g. bring more land into productivity, change land appurtenance or use, or to use water for a higher economic purpose); incentives to consolidate licences within a community/watershed to inspire collaborative or shared management of the resource; adverse impacts on aquifers or groundwater recharge zones; or monitoring information that shows stream health is deteriorating because of lack of water.



required on this aspect of WAM, especially in respect of when such a power would be exercised and how it would be limited.

Objective Three: Water Allocation System Integrates Management of Groundwater and Surface Water Resources where required in problem areas

The Discussion Paper indicates that there is a desire for WAM to result in greater integration of the regulation of surface waters and the regulation of groundwater. In the Background, it is clear that this discussion relates only to large withdrawals in problem areas. This distinction is not made express in the Discussion Paper (other than in the section title). The lack of clarity is problematic, as it is not clear what question is being asked.

In general, the Business Council is not opposed to integrating the management of groundwater and surface water where scientifically defensible. One element that appears to be missing in the Discussion Paper is a consideration of the connection between water quality and water quantity. For example, one regulatory approach may be appropriate for non-saline groundwater and a different approach may be applicable for saline groundwater.

Objective 4: Water Users will be required to conserve water during drought or when stream health is threatened

The Discussion Paper proposes that the province be given the power to respond to temporary and long-term water scarcity by altering the allocation to water users or putting in place long-term water management plans.

Temporary Water Scarcity

Temporary water scarcity is an important issue. Of the four alternative options proposed in the discussion paper,⁵ the most promising appears to be a system in which restrictions are based upon a hierarchy of uses.

If this approach is adopted, the key question becomes determining which needs are met first if drought conditions arise. Few would dispute the example provided in the text – i.e. that human and animal needs should be met first – but greater clarity is required in respect of the process and the factors to be used in determining other priorities.

The Business Council believes that a classification based on the nature of the water user is not appropriate. Instead, we would support an option that is set out in the Technical Background Paper (but not discussed in the Discussion Paper), which is to prioritize

⁵ The options proposed are: (1) the decision-maker determines the approach on a case by case basis; (2) all water allocations are reduced on a pro rata basis; (3) water use restrictions are imposed in accordance with a rules-based hierarchy (i.e. human and animal needs met first); or (4) by priority date (as is currently the case).



reductions in accordance with water *uses* rather than water *users*. In drought conditions, some industrial water users may be able to curtail the amount of water that is used for some purposes but not for others, especially where minimum flows are required to maintain long-term operations.

The focus would be on identifying water uses that are essential, important and non-essential categories. The advantage of this approach is that specific water uses are the basis of classification, rather than basing decisions on classes of water users.

Long Term Water Scarcity

The Discussion Paper notes that long-term water scarcity is a growing problem in a number of regions in the province. The Business Council agrees that long-term water scarcity is best managed through mandatory Water Management Plans formulated by all affected parties within an impacted watershed.

Goal #4: Regulate Groundwater Extraction and Use

The Discussion Paper recommends regulating large withdrawals from groundwater sources. The Council agrees that tighter controls on the extraction and use of groundwater should be imposed where necessary to protect the security of entitlements under existing licences (and ensure appropriate environmental flows in priority areas). The Discussion Paper identifies a number of different factors that could be used to identify potential priority areas.⁶ In the interests of enhancing simplicity, certainty, and predictability, the Council supports regulating groundwater extraction only in areas of known quantity concerns.

The abundance of water in British Columbia is a competitive advantage for businesses here vis-à-vis other jurisdictions. We see little benefit in imposing additional permitting and administrative costs unless absolutely necessary.

The Business Council would support a mechanism that sets thresholds based on best available science, provided that such thresholds recognize local conditions. For example, saline and non-saline groundwater sources are different and should be regulated differently under WAM.

⁶ Factors identified include: (1) heavy groundwater extraction and use; (2) area of known quantity concern (e.g. declining groundwater level, conflicts with other groundwater users, aquifers or water resources impacted by salt water intrusion); (3) groundwater in direct hydraulic connection with surface water in areas of known quantity concern; (4) significant population that is reliant on groundwater for drinking water; (5) trans-boundary aquifers; (6) basin where surface water is at or near the allocation limit.



Business Council of
British Columbia

Water Act Modernization Submission
April 30, 2010
Page 10

The Business Council appreciates the opportunity to comment on the Ministry's plans with respect to *Water Act* Modernization. As the province continues to work on these issues, we would ask that the Ministry commit to ongoing consultation and engagement with business stakeholders, including our organization.

Sincerely,

Original signed by
Jock Finlayson

Jock A. Finlayson
Executive Vice President – Policy

/vjc

cc: Doug Konkin, Deputy Minister of Environment