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**Sent:** Saturday, February 26, 2011 12:03 PM  
**To:** Living Water Smart ENV:EX  
**Cc:** Dunk, Steve  
**Subject:** CAPP Comments - Policy Proposal on BC's New Water Sustainability Act

Attached is CAPP's feedback on the Policy Proposal on British Columbia's new *Water Sustainability Act* (December 2010).

A draft version of this feedback was shared with MoE on February 14.

Thank you,

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February 21, 2011

Sent via e-mail: [livingwatersmart@gov.bc.ca](mailto:livingwatersmart@gov.bc.ca)

Dear Living Water Smart Team:

**Re: Policy Proposal on British Columbia's new *Water Sustainability Act***

The Canadian Association of Petroleum Producers (CAPP) supports the need for a water management framework in British Columbia. The proposed framework is based on risk, competing demands, scarcity and enables three levels of action based on a watershed approach to manage each of the above. In general, this is a sound and proactive approach to managing water. However, CAPP submits the following specific comments for your consideration.

**Policy Direction – Protect Stream Health and Aquatic Environments**

The proposal indicates that statutory decision makers will consider “formula-based instream flow assessment for all new groundwater and surface water allocation decisions”. CAPP is concerned that one formula assessment may not be appropriate for every surface and groundwater resource in BC. A place-based approach should be developed rather than using a single model across the entire province. Therefore, CAPP recommends a suitable formula of instream flow assessment be developed for northeastern BC (NE BC). In addition, formula-based surface water instream flow assessments may not be applicable to groundwater.

It is unclear how instream flow requirements and guidelines will be applied to ephemeral or temporary streams and draws, what data will be used to put in place the guidelines, or if new data will support additional withdrawals. This section of the proposed policy lacks details and it is difficult to comment until the details are provided. CAPP requests that this information be provided for review and input prior to enacting the legislation.

**Policy Direction - Considering Water in Land-use Decisions**

Further clarification around the development of Provincial Water Objectives (PWOs) and how these will be tied to land use decision-making is required. Little information is currently available regarding what the PWOs will look like, how they will be developed, whether there is sufficient government staff to manage their implementation and what they will mean from an application perspective (i.e., additional application requirements, preparation time, etc.). This results in regulatory uncertainty, which hampers further development.

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The policy should be crafted so that it can be implemented through regulations. A well-intentioned policy that leaves the regulators uncertain how to create and apply regulations will result in confusion and delay. Regulators who have to deal with PWO policy guideline of, for example, "no net degradation in water quality" will find themselves in a much more difficult position than if they are trying to apply effluent guidelines.

It is difficult to set PWOs without a good baseline understanding of water quality on a watershed basis. This is particularly important when watersheds have already been impacted by agriculture or industry. Is the government going to make baseline data available for benchmarking? How does MoE envision defining baseline watershed quality and determining the cumulative effects of multiple activities in a watershed? An understanding of cumulative effects requires both a baseline and a watershed model.

### **Policy Direction – Regulate Groundwater Use**

Groundwater withdrawals will require a licence (and new costs) if the withdrawal is above a threshold value; potentially, 250-500 m<sup>3</sup>/day in unconsolidated aquifers and 100 m<sup>3</sup>/day in bedrock aquifers. CAPP generally agrees with this policy direction; however, the policy should allow for a water quality standard to be used when setting these thresholds.

In the feedback provided on the *BC Water Act* Modernization discussion paper, CAPP strongly recommended the Act allow for a distinction between non-saline groundwater and saline groundwater, and that saline groundwater be exempt from licencing requirements given the absence of competing water demands for this low quality water resource. However, this recommendation was not addressed in this proposal. It is critical that the difference between saline and non-saline groundwater be recognized, defined and regulated.

If the policy direction were to remain as it reads today, it would have significant implications on industry's shale gas assets in NE BC, where industry is moving towards use of more saline groundwater in some cases as an alternative to fresh water for hydraulic fracturing. The proposed regulation of groundwater, without consideration of the distinction between saline and fresh groundwater quality, will provide a disincentive to pursue saline groundwater. CAPP has been working this issue with the Province for several months.

### **Policy Direction – Regulate During Scarcity**

A staged approach will be taken to manage water in times of scarcity. The principle of first-in-time first-in-right (FITFIR) will be maintained except in exceptional circumstances like extended periods of scarcity. This policy may result in more long-term licences being requested to ensure security of

water. While CAPP agrees that the larger debate of FITFIR should not be part of the proposal, we support regulating during times of scarcity using the concept of proportional reductions, rather than cutting off more junior water rights-holders altogether. A water-sharing approach would ensure water security for all affected users - environmental, social and economic. A similar approach was implemented successfully in the South Saskatchewan River Basin in Alberta in a recent drought period.

The concepts of water “use” or “loss” versus “temporary diversion” or “consumption” should be defined and, if need be, incorporated into the Act. Other sectors have taken the position that their water use results in no loss or consumption of water in comparison to our industry’s use, for example, in downhole operations. Yet other sector uses often result in significant water quality degradation, and intensity of use coincides with low flow or high need periods.

The policy also opens the door to water storage as an option for securing water, but there is still much uncertainty of how open the BC government is to oil and gas creating storage structures to meet demands or to alternative strategies such as aquifer storage and recovery. How water storage will be regulated and developed is a key issue. In-stream or off-stream storage may be a critical tool in mitigating use and achieving efficiencies, but the regulation surrounding such storage needs to be well thought out and easily applied from industry’s perspective. Use of surface runoff storage and its tracking or licencing is also an issue.

### **Policy Direction – Improve Security, Water Use Efficiency, and Conservation**

CAPP’s position is that we support the establishment of a water pricing regime \*if\* there is equitable application of fees across all sectors. Saline groundwater and produced water should be excluded from water pricing.

We disagree with the institution of security bonds. Oil and gas is a highly regulated industry with many safeguards and best management practices already in place to address any unintended environmental impacts.

### **Policy Direction – Measure and Report**

CAPP believes that there is a strong role that government needs to play in measurement and reporting, both financially and through infrastructure. An online reporting system for all surface and groundwater use and an audit system are minimum requirements. CAPP would not support the downloading of this responsibility, or the establishment of baseline data for benchmarking, to industry.

It is also recommended that there be consistency of reporting metrics with Alberta guidelines; e.g., classification of saline groundwater as greater than 4,000 mg/L TDS.

### **Policy Direction – Enable a Range of Governance Approaches**

The oil and gas industry in BC is regulated under the *Oil and Gas Activity Act* (OGAA). As a statutory decision-maker for OGAA, the Oil and Gas Commission (OGC) has capacity, resources and expertise in regulating oil and gas activities in BC. Recently, groundwater quality has been addressed as part of the OGAA regulation development process. CAPP recommends that MoE delegate responsibility to the OGC to regulate all aspects of the industry’s groundwater and surface water use, to ensure consistency under one regulatory framework. This would provide regulatory stability, which is vital for future planning purposes.

Clarification is also needed on the role of First Nations in the water licence application process, including definition of a volume threshold at which they become involved and which watersheds require their involvement.

### **Appendix B – Area Based Approach**

The province is classified into three levels of action and requirements for water management: green (water supply & quality generally good); blue (water supply & quality issues can be mitigated); and grey (significant water supply issues & risks to quality). NE BC has been identified as a “known problem area where water supply and quality issues can be mitigated” (blue area) and subject to more requirements than other areas of the province, such as the development of water resource assessments. It is not clear what criteria were used for this classification, but it is doubtful that all sub-watersheds in NE BC are actually known problem areas. The classification appears to be based on perceived risks rather than actual risks, which is not an appropriate regulatory approach.

Please contact the undersigned at (403) 267-1104 if you would like to discuss any of the above points further.

Sincerely,



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