



March 7, 2011

Ms. Lynn Kriwoken
Director, Innovation and Planning Team, ENV
PO Box 9362 Stn Prov Govt
Victoria BC, V8W 9M1

Mr. Glen Davidson
Director & Comptroller of Water Rights, NRO
PO Box 9340 Stn Prov Govt
Victoria BC, V8W 9M1

Dear Lynn and Glen,

Thank you for the opportunity for Clean Energy BC (CEBC) members to meet with the Water Act Modernization Team on February 11, 2010.

We appreciate the progress that is being made in considering the role of non-consumptive use of water from hydro projects and look forward to continuing to engage with government as more details are developed relating to proposed changes to the land use planning, groundwater regulation, instream flow guidelines and other aspects of the *Water Sustainability Act* (WSA) proposals. We strongly feel that this ongoing engagement is critical to ensure there are not unforeseen consequences from changes made to the *Water Act*.

An immediate issue that concerns us is the harmonization of operating projects water licenses with those project's EPAs and Crown Land Tenures. We are very concerned that there is an appetite to address the issue for the proponents and related water licenses in the 2008/2010 power call and for the proponents who are outside power calls (Standing Offer Program and negotiated contracts). However it seems there is not the same appetite to solve the problem for those five proponents with water licenses who originally raised this problem in conjunction with their 2006 Power Call contracts, some of which are operating.

It appears that those particular projects would not be offered the same opportunity to obtain an operating water license that matches their EPA term, even though they were the first to identify this problem, even though CEBC and member companies have been consistently requesting that this issue be addressed by the Province as soon as it came to light, by verbal contact and then by letters and numerous company representations since early 2007. The result would be to push the problem for the earlier proponents, unfairly, into perpetuity as their license terms could never catch up with the EPA terms without significant adjustment of future EPA terms which raises costs to ratepayers.

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Furthermore, the initial review period for the water license term would pre-date all other license reviews by three to four years, doubling the agency, First Nations and public resources required to review the water license well before the other permit reviews are due to commence. This approach ensures mis-alignment of the 'one project, one process' principle that brings certainty to: BC Hydro in terms of projects being able to meet the last few years of their EPA obligations; regulators who seek to maximize efficiencies in reviewing a project from all perspectives in only one coordinated effort; and to investors and financiers. We again request that all affected proponent's licenses be aligned with 40 year terms, whether issued or not, given the 40 year term is both a recognized Crown Lands term and is consistent with other provincial and federal permit terms.

We have suggested a date of early 2005 which pre-dates the first license issued with this problem (from our research), or alternatively, a 2003 date could be used to reference the issue back to the original change in the *Water Act* which inadvertently caused this issue.

As discussed, a renewal provision was proposed that would treat a renewed license differently than a completely new license, given the significant investment in place and the need for certainty to continue with expensive maintenance of in-situ infrastructure and roads. This would give some recognition that the project continues to also have value to the Province and that the review of the facility's impacts would not include new major disturbance (ie: from the initial construction). This could be achieved simply by removing the statement "re: reviewing a renewal license as if it is a new license" and inserting a statement enabling the making of regulations governing renewal of water licenses for power purpose.

To properly and fairly address this issue we unreservedly and heartily recommend harmonizing all 40 year EPA holders, whether operating or not.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Kariya", written over a white background.

Paul Kariya
Executive Director
Clean Energy BC

Cc:

Jackie Hamilton, Cloudworks Energy (Chair, CEBC Hydro Committee)
Colleen Giroux-Schmidt, Plutonic Power Corporation (Vice-Chair, CEBC Hydro Committee)
Richard Blanchet, Innergex Renewable Energy
James Carter, Regional Power
Natalie Closs, Innergex Renewable Energy

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Pam Deveau, AltaGas
Rick Hopp, Run of River Power
Donald McInnes, Plutonic Power
Susan Wilkins, Pottinger Gaherty Consultants
Mike Wise, Syntaris Power
Ronnie Yu, TransAlta



March 16, 2011

Ms. Lynn Kriwoken
Director, Innovation and Planning Team
Ministry of Environment
PO Box 9362 Stn Prov Govt
Victoria BC, V8W 9M1

Dear Ms. Kriwoken

The Clean Energy Association of BC (CEBC) is pleased to provide our comments on the *BC Water Act Modernization Policy Proposal on British Columbia's New Water Sustainability Act*.

General Comments

Consistent with our first submission and subsequent discussions held with stakeholders, our industry's overarching concerns are as follows:

- 1) The concepts being discussed with stakeholders are not specific enough to be able to assess the impacts on our industry. While we appreciated the discussions held so far, they remain at a highly conceptual level, and as a result, we are concerned that serious unintended consequences could ensue if the WAM team must from this point onwards use a secretive approach to the actual legislation changes. Much has been made of the WAM team's review of other jurisdictions approaches to water management – thus, it would be helpful if the WAM team were also able to adopt the much more transparent legislation-making processes of selected other jurisdictions as well.
- 2) CEBC has consistently pointed out to the WAM team that the hydro power contracts the Province enters into, through BC Hydro or other recognized power purchasers, should be afforded certainty throughout any changes to the Act. The basic principle we request is that the Province should protect the security and certainty of energy (i.e. water) commitments made in formal power acquisition processes. Actions by the Province that jeopardize the ability of power contractors to meet their energy supply commitments to the Province should be avoided as a matter of energy security.
- 3) Many of the issues being discussed in the Policy Proposal relate to conflicts over consumptive water uses. With respect to the water power sector, the Water Act Modernization (WAM) process should recognize that the temporary and non-consumptive use of water for power generation – water which is recycled without alteration and placed back in full measure into the stream from which it came, should have a very high priority for protection in the hierarchy of water uses



Water Sustainability Act Framework

CEBC has the following comments on the proposed framework which includes developing Province-wide objectives, special measures for known problem areas, and additional measures for chronic problem areas:

We are uncertain about what is actually being proposed for “Provincial Water Objectives” (PWOs) – they do not appear to be provincial in nature at all, and appear instead to be aimed at an extensive regional study exercise at a time when funding resources everywhere are very constrained. How this would actually be implemented is not at all clear to CEBC, and we are concerned that our non-consumptive waterpower proposals could be adversely affected by such an exercise which appears to be aimed at consumptive use conflicts.

There appear to be at least three new layers of planning being created by this framework. Many stakeholders have asked the question of how this would be paid for. Since most of the water licence fees paid in the Province come from BC Hydro and from industries including CEBC members, an impact analysis of such extra fees should be part of the legislative review. However, the conceptual level of the proposals so far would not be suitable for such an analysis.

Without far more detail on the implementation implications, which should be worked out before the legislation is passed, CEBC can only state that we are very concerned about the introduction of new objectives and planning, without understanding how that would affect existing waterpower licences, and previous plans and commitments that are in place.

Further comments on the Water Sustainability Act policy directions are as follows:

1. Protect Stream Health and Aquatic Environments

CEBC has provided several submissions on the issue of instream flow needs, and has consistently stated that the level of regulation that our non-consumptive industry is already subject to, is beyond that of all consumptive water users. We do not support a one-size fits all approach to setting instream flows, due to the wide ecological variations across streams. Our industry is already subject to a stream-specific study and monitoring requirement.

CEBC suggests that the most sweeping and welcome change that the new Water Sustainability Act could undertake is to enable water conservation regulations for consumptive water users. This concept seems to have been developed belatedly in the WAM process.

2. Consider Water in Land Use Decisions

The WAM team has characterized this as requiring other legislation in the Province to consider water in their land use planning decisions, e.g. by considering Provincial Water Objectives. The implications of implementing this should be very carefully considered before enabling it. As stated earlier, the details of what is meant by these PWOs are not well developed, and therefore it is difficult to constructively comment.

One of the current broad objectives floated initially was 'no change to seasonal water flows', which would instantly void all water power proposals, most of which mimic seasonal flows, but have reduced flows in a short reach before returning the water back to the stream which are pre-determined by scientific studies and agency review. This is an example of the implications of adopting the proposals discussed so far, which has not yet addressed non-consumptive power use.

3. Regulate Groundwater Extraction And Use

While the concept of regulating groundwater use appears to be useful, taking too fine a point on the licensing including the study of interaction with surface water resources could unnecessarily disrupt surface water licence holders. CEBC suggests that this aspect of the Act requires much further consultation and a practical, staged, approach to implementation.

4. Regulate During Scarcity

While hydro power is not a consumptive use of water, CEBC is aware that in rare cases there may be conflicts in a region of high consumptive use or in times of scarcity where some form of allocation among users must be made. CEBC wishes to point out that our sector is in fixed price and long term contracts with the Province (BC Hydro), and infringement of consumptive uses on the ability to deliver on the non-consumptive run of river hydro contracts with the Province should generally not be considered. Doing so would adversely affect the investment climate in BC.

At this point, the measures proposed to implement proportional reductions, priority date changes, or other means to manage during scarcity are not well enough defined for CEBC to comment.

5. Measuring and Reporting

CEBC members already are subject to a clear and professionally developed requirement for monitoring, compliance, reporting and ongoing adaptive management. The costs of such programs are prohibitive, and we suggest that not all water licences should be subject to such



extensive requirements, i.e. that certain classes of licences have different degrees of measuring and reporting, depending on the potential direct or cumulative impact in an area. For example, most run of river power projects, in operation, have no impact on water quality, therefore a long term monitoring requirement should be unnecessary.

CEBC wishes to continue to participate in the Water Act Modernization dialogue with government and the public, as the review progresses. We request that further discussions continue as the details and implications of the legislative proposals emerge.

Sincerely

A handwritten signature in black ink, appearing to read "Paul Kariya", written over a light blue horizontal line.

Paul Kariya
Executive Director
Clean Energy Association of BC