

From: Les Kiss [mailto:Kiss@coastforest.org]
Sent: Wednesday, February 16, 2011 10:27 AM
To: Living Water Smart ENV:EX
Subject: CFPA Response to draft Water Sustainability Act

Please find attached Coast Forest Products Association response to the draft Water Sustainability Act.

Thanks and cheers, Les Kiss

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February 16, 2011

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

Via Email: livingwatersmart@gov.bc.ca

Re: December 2010 Policy Proposal on British Columbia's New *Water Sustainability Act* (WSA)

The Coast Forest Products Association (CFPA) appreciates the opportunity to continue to provide input on the Ministry's proposed policies for a new *Water Sustainability Act*. This response follows on CFPA's April 30, 2010 submission with respect to the Ministry of Environment's proposed *Water Act* Modernization ("WAM") Discussion Paper.

CFPA understands the proposed policies in the December 2010 Proposal update are intended to form the core basis for a new *Water Sustainability Act* which the Ministry expects will be introduced into the legislature in 2012. The policy paper, as its predecessor Discussion Paper, fails a meaningful engagement test as it offers insufficient information relative to the policies under consideration, which policies would be included in final options to be considered by government, and finally any detail on how the policies would be implemented at an operational level. CFPA contends it is very difficult to comment on the draft policy proposals and conclude if the policies are supportable or not.

CFPA has significant concern that the Ministry will close the opportunity for stakeholder input after receiving comments on the WSA policy proposal. Figure 1 in the paper identifies that draft options and cost-benefit and impact analysis would be completed prior to the WSA policy proposal stage. However, unless we missed it, the aforementioned information has not been shared with stakeholders. To compound our concern, it appears final options will now be developed by the Ministry and presented to government without further stakeholder engagement. If this in fact is the case, the engagement process to date, cannot be deemed meaningful, transparent or timely. To ensure appropriate and effective water management reform happens, it would be in the best interest of the Ministry that all stakeholders be afforded a reasonable opportunity to comment on the final options and on how the Ministry proposes to implement them, prior to the options being recommended for government consideration.

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The WSA Proposal notes that about 900 submissions were received from a broad range of interests and citizens. However, the “What we heard ...” sections of the Proposal do not reflect some of the key concerns expressed earlier by CFPA and other business and resource sectors. It is unclear how the “What we heard ...” sections were summarized, whether each submission was weighted equally (i.e. individual vs industry association) and what will actually be included in the options to be presented to government. Many of the policies being contemplated appear to go counter to CFPA’s earlier recommendations, and rather than providing answers, create additional questions, creating business uncertainty for our members.

CFPA believes that the sustainability of BC’s water resources is important to the province’s future and also to the success of our membership. As such, CFPA supports modernizing and streamlining legislation, particularly where proposed changes provide business certainty and consistency in application. In managing key resources such as water, it is imperative legislation and attendant regulations are developed with the underpinning of an appropriate balance between social, economic and environmental objectives. CFPA would like to reiterate three key recommendations:

1. In respect to **governance models** the CFPA strongly supports retaining the current model of centralized administration of the WSA. Water is a provincial resource and as such it should be overseen at the provincial level. Central administration of the proposed WSA and clear policy leadership by the Ministry on water issues is preferred to a multitude of “watershed agencies”. Provincial oversight will provide more efficiency and certainty for water users as well as those mandated to comply with water management objectives.
2. In respect to **stream protection**, the WSA must avoid duplication and not add more stream protection or water quality regulatory requirements for *Forest Act* tenure agreement holders. *Forest Act* tenure agreement holders manage their forest land base activities to be consistent with a number of statutes including the Federal *Fisheries Act* and the *Forest and Range Practices Act (FRPA)*. The overlapping jurisdiction of the federal government and the provincial government already provides duplication of protection measures for many streams. A third layer of prescriptive Provincial Water Objectives (PWOs) noted in the WSA, may conflict with existing regulatory provisions, and add unnecessary complexity for the forest sector’s compliance efforts without materially improving stream protection and health.
3. In respect to **water allocation plans**, they should only be required for priority areas, where the priority areas are designated in accordance with a clear set of rules based on widely accepted provincial criteria. While CFPA is not opposed to the underlying objectives of such a plan, we caution the responsibility for development of these plans must not be imposed on our members. *Forest Act* tenure agreement holders are obliged to prepare Forest Stewardship Plans wherein stream protection and water management strategies are included to be consistent with government objectives for these resources. Individual water users should not be burdened with the task of balancing competing interests to water rights. As such, it is likely appropriate to provide government the discretion to develop water allocation plans for “known problem areas” or in “chronic problem areas” where a priority need is identified. However, it is



imperative to have exemption or transition measures for existing licence holders where the conditions of their existing licences prove to be inconsistent or incompatible with the potential new “measures” developed for these areas.

CFPA recommends the Ministry take some time to provide definitions for terms utilized in the December 2010 Proposal, the intent of a number of policies, as well as the hierarchy contemplated with the proposed legislation where a regulatory framework is already in place. The following are examples (not all inclusive) in question form, where clarity is required in the Proposal content:

1. Policy Direction – Protect Stream Health and Aquatic Environments
 - Will the definition of “stream” be consistent with the Forest Planning and Practices Regulation?
 - Are all streams envisioned to be covered with the same policy requirements, that is, will there be a different regime for fish bearing streams versus non fish bearing streams?
2. Policy Direction – Consider Water in Land-use Decisions
 - Will the Provincial Water Objectives (PWOs) be consistent with FRPA’s Forest Planning and Practices Regulation objectives set for water, fish, wildlife and biodiversity within riparian areas, fish habitat in fisheries sensitive watersheds, and water quality in community watersheds?
3. Policy Direction – Regulate Ground Water
 - Is it efficient to have a blanket approach to ground water regulation throughout the Province, or should there be a focus where there are identified water quantity concerns?
4. Policy Direction – Regulate During Scarcity
 - How will “times of scarcity” be defined and determined?
 - Who will determine the “importance of use” and what basis will “exceptional circumstances” be determined?
 - What criteria will determine proportional reductions and trade-offs between non-consumptive and consumptive licence holders?
5. Policy Direction – Improve Security, Water Use Efficiency, and Conservation
 - If water use efficiency becomes the driver to determine “beneficial use”, how will it be defined for this purpose -will it differ from the current definition under the *Water Act*?
 - Depending on the definitions what are the potential implications for existing and new licence holders?
 - Will the designation of Agriculture Water Reserves go through a consultation process with potential affected third parties?
6. Policy Direction – Measure and Report
 - Will monitoring and reporting requirements be developed jointly?



7. Policy Direction – Enable a Range of Governance Approaches

- CFPA noted earlier that a centralized approach with strong Provincial oversight and policy direction is needed to manage BC’s water resources. It is unclear as to why the Proposal favours a decentralized model for policy and decision making.

Other Questions:

- What scale is intended for the proposed “area-based” approach? Is the intent by stream, stream systems, watersheds, regions etc?
- What defines a deteriorating eco-system?
- What will define a chronic problem area?
- What criteria will be used to identify known problem areas?
- What is meant by area and sector based conditions for new licences?

The above questions identify key areas that need significant clarification before options are developed and presented to government. They should also take into account that forest sector activity is already subject to significant forest and range practices legislation, including objectives for water resources. As such the *Water Sustainability Act* should strive to have legislation that is consistent with the professional reliance / results based foundation of the *Forest and Range Practices Act* (FRPA) and a product that respects and upholds the rights of existing tenure holders. Any changes to the Act must avoid overlap or duplication with other enactments – this includes consistency in definitions, relevant objectives, and practice requirements.

The CFPA appreciates the opportunity to comment on the Ministry’s WSA Proposal. We respectfully request our involvement in the ongoing development and review of the proposed options that will be presented to government. We look forward to your response and further dialogue on this issue.

Yours truly,



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