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To:	Fern Schultz, Acting Executive Director Ministry of Environment-Water Stewardship Div.	**Fax No.:** **Your Ref:**	1 250-953-3414
From:	F. Matthew Kirchner	**Our Ref:**	Coldwater Indian Band File #10-0007
Date:	May 4, 2010	**No. Pages:** (Inc. Cover)	3

MESSAGE:

Please see attached letter dated May 4, 2010

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May 4, 2010

File No. 10-0007

Via Fax: 250-953-3414

Water Stewardship Division
RECEIVED
MAY 04 2010
126049
Assistant Deputy Minister
Ministry of Environment

Water Act Modernization Submission
Ministry of Environment, Water Stewardship Division
P.O. Box 9362, Stn Prov Govt
Victoria, B.C. V8W 9M2

Attention: Fern Schultz, Acting Executive Director

Dear Madam:

Xref 125964

Re: Water Act Modernization

We are legal counsel for the Coldwater Indian Band and we have been retained in respect of the Water Act Modernization initiative that is currently underway. You have called for submissions in a public process that is to conclude on April 30, 2010 and I understand that our client has made a written submission on this point.

To date, there has been no specific process to address aboriginal concerns and no consultation process that would fulfill the Crown's duties of consultation and accommodation in respect of aboriginal rights and interests relating to the Water Act Modernization initiative.

First Nations, and the Coldwater Band in particular, have unique rights in respect of water. Indian Reserves in the interior of British Columbia were set apart by British Columbia and Canada in the 19th century primarily as agricultural and grazing lands. This is certainly true in the Nicola Valley, where the Coldwater Band is located. Implicit (and in some cases explicit) in these reserve allocations is the right to access water for present and future use of the First Nation for which these agricultural and grazing lands had been set apart as a reserve. This establishes a right in law for the First Nations to access water in priority to other users. This prior right is embedded in the reserve interest itself and thus pre-dates and has priority over any other interests that arise under the Water Act.

Furthermore, the Coldwater Band, as part of the Nlaka'pamux Aboriginal Nation, asserts aboriginal title to areas that include the Coldwater River and Nicola River watersheds as well as the Fraser and Thompson River Canyons. Water rights are an essential aspect of this aboriginal title.

The Water Act Modernization initiative directly engages the rights and interests of the Coldwater Band and any new legislation concerning water rights presents a serious risk of infringing Coldwater's aboriginal title and reserve-based rights. Our clients have identified some preliminary concerns in their Water Act Modernization submission and it is likely that other issues will arise as the initiative begins to take more shape and they learn more about what might ultimately be proposed.

The Crown has a constitutional duty to consult with the Coldwater and accommodate their interests and concerns in this initiative. A failure to address aboriginal interests, including aboriginal title and reserve-based rights, in the present process would be a complete failure of the Crown's duties. The broad public process that has taken place thus far is not focused on aboriginal concerns, is not an aboriginal consultation process and does not uphold the honour of the Crown in respect of its duties to consult with the Coldwater Band.

Thus, now that the public process appears to be coming to an end, we are writing to inquire as to when you will be holding an aboriginal consultation process that addresses the specific rights and interests of aboriginal people, including the Coldwater.

We look forward to hearing from you.

Yours truly,
RATCLIFF & COMPANY LLP

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FMK:gds