Coldwater Indian Band

2249 Quilchena Avenue,
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Phone (250) 378-6174 Fax (250) 378-5351

Water Stewardship Division
RECEIVED
MAY 0 3 2010
Assistant Deputy Minister
Ministry of Environment

April 29, 2010

Via Fax: 250-953-3414

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

Attention: Fern Schultz, Acting Executive Director

Dear Madam:

Re: Water Act Modernization

I am writing in respect of the Government of B.C.'s Water Act Modernization process and the present initiative of the Provincial Government to amend and modernize the *Water Act*.

We have studied the *Discussion Paper* concerning this process and we have significant concerns that the rights of the Coldwater Band, on its own and as Nlaka'pamux people, will not be properly considered or addressed in any new regime that is considered by the B.C. Legislature.

Specifically, while the *Discussion Paper* acknowledges "the unique cultural interests First Nations may have with water" and makes reference to the need for aboriginal consultation and First Nation involvement in water governance and delegated decision-making, it is silent on critical issues concerning aboriginal priority for water use.

The Coldwater Band is located in the Nicola Valley. Our main reserve, Coldwater I.R. #1 is a 4500 acre reserve located on the Coldwater River. It was set aside as a reserve by Indian Commissioner Sproat in 1878 and it primary function and purpose as a reserve has always been for grazing and agricultural purposes.

First Nations, particularly in the Nicola Valley, have unique rights and interests in respect of water that include but are much more than the cultural significance identified in the

MISSION STATEMENT

To enhance and sustain our quality of life through wellness and culture, and to utilize and preserve all our resources for now and future generations.

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Discussion Paper. The reserves that were set apart for the Nicola area tribes by British Columbia and Canada were for agricultural and grazing purposes. Access to water is a necessary element of these reserve lands in order to make them effective for their intended purpose.

In addition, the Coldwater Band, together with other Bands within the Nlaka'pamux Nation, have aboriginal title to major watershed areas, including the Coldwater River and Nicola River Watershed and the Thomson and Fraser Canyon areas. This unextinguished aboriginal title is a constitutional right that include rights to access water.

Our rights, whether based on reserves or aboriginal title, arose before any other interests held under the *Water Act* and thus have priority over other users.

Issues raised in the *Discussion Paper* will directly engage and affect our rights. These include, for example, potential legislative provisions concerning:

- priority access to water (which may not expressly recognize First Nation priority for existing and future needs);
- transfer of water licences (which may affect First Nation access);
- potential cancellation of water access based on use (which may affect First Nations who lack the capacity to upgrade water and irrigation systems);
- First Nation involvement in water allocation and management decisions;
- non-licenced permitted uses (which may impact First Nation priority and access); and
- protection of stream health and aquatic environments (an issue that is always important to Coldwater and other First Nations).

As noted in the *Discussion Paper*, the present *Water Act* reflects issues and practices of more than 100 years ago when British Columbia had a small population and water was considered plentiful for the (then) emerging industrial and agricultural uses. The old Act also reflects a time when aboriginal rights, including existing rights related to established reserves, were largely ignored or disregarded. Just as any modernization of the *Water Act* must recognize the need to cope with a larger population and increased demand on water resources, so must it recognize the rights of First Nations that can no longer be ignored under the New Relationship.

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The Crown has a duty of consultation and accommodation in respect of the present initiative which clearly engages and affects Coldwater Band's rights. It is clear that the Water Act Modernization initiative, while acknowledging some amount of aboriginal interest, fails to contemplate the substantive rights and major concerns of the Coldwater Band. A specific aboriginal consultation process with the Coldwater Band is necessary.

We have referred this matter to our legal counsel for their review. We trust that you will see the need for a proper consultation process and we look forward to the opportunity to discuss that process with you.

Yours truly,

for Bernice J. Councillor
Chief Harold Aljam
Coldwater Indian Band

cc. The Honourable Barry Penner, Minister of Environment (fax #250-387-1356)
The Honourable Steve Thomson, Minister of Agriculture and Lands (fax #250-387-1522)

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