



## Cowichan Tribes

5760 Allenby Road Duncan, BC V9L 5J1  
Telephone (250) 748-3196 Fax: (250) 748-1233

Ref # ADM-WaterActSubmission-06032010

June 3, 2010

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

Re: Cowichan Tribes Water Act Modernization Submission

To Whom It May Concern,

Please find attached Cowichan Tribes' Water Act Modernization Submission. If you have any questions please feel free to contact Cowichan Tribes at the above phone number.

Sincerely,

Chief Lydia Hwitsum

LW/glw

## **Water Act Modernization Initiative**

**Submission to:  
The Ministry of Environment, Water Stewardship Division  
Government of British Columbia**

**May 27, 2010**



**Submitted by:**

**Cowichan Tribes**

**5760 Allenby Road, Duncan, BC V9L 5J1  
Telephone (250) 748-3196 Fax: (250) 748-1233**

## CAVEAT

Cowichan Tribes would like to state that this submission does NOT constitute consultation. Consultation is based on a long period of engagement not met by the short timeframe meted out by the Province of BC in their Discussion Paper. The first stage of any meaningful consultation is to discuss and agree on what the consultation process will look like. The Province has not yet achieved this first step.

## BACKGROUND

Water is an integral part of the livelihood and existence of Cowichan *Mustimuhw* (people) – to us it is Sacred. We have relied on water since time immemorial, and we take on the responsibility to look after it with the objective of keeping it clean and pure. Our water is essential to our cultural and spiritual needs, particularly related to traditional sources of food. Cowichan people have always fished and harvested from the rivers and the sea in our Traditional Territory, continuing to do so to this day.

The current *Water Act* (circa 1909) is based on the colonialist approach of the time with First Nations' interests dismissed outright. Revamping or modernizing the *Act* is long overdue, and Cowichan Tribes wants to express our concern that this process needs to be based on Aboriginal Rights and Title to the water in our territory. Therefore we take the stand that this process needs to be based on "Duality of Ownership" and that the Province does not assume it has jurisdiction over water nor is it the sole authority to delegate management of the water in our territory.

## WATER ISSUES IN COWICHAN TRADITIONAL TERRITORY

Cowichan people and culture have always been intimately connected to the watershed. Because of the placement of reserve lands by the federal government most of us live in the floodplain of the Cowichan or Koksilah Rivers. Every year a large portion of our reserves are flooded and our members are forced to leave their homes. Much of this flooding is caused by unchecked activities in our watershed such as poor logging practices and urbanization. Not only does the flooding affect our homes, it also further increases contamination of our wells and our rivers.

Cowichan Tribes reserves have a total of 50 wells, including 10 community wells. There are boil water advisories on approximately 90% of these wells. Clearly Cowichan Tribes needs more control over activities in the watershed that affect our culture and the well-being of our communities.

Cowichan Tribes is currently in litigation with the Province over a water issue. We took this step because the Province was not listening to us (by way of many letters and phone calls) specifically with regard to issuing land tenure on Crown land for access to a well. Despite our pleas to not issue this tenure, and the fact the Crown land is on the Treaty Table, the Province denied our Aboriginal Rights and permitted tenure to the proponent. Cowichan Tribes is confronted with water issues now – the pressure on the resource is heavy – and we simply cannot wait for a stalled treaty process to accommodate our need to protect our sacred resource.

In 2004 Cowichan Tribes initiated a project to develop a strategic recovery plan for fish and aquatic resources within the Cowichan Watershed, which includes the Cowichan and Koksilah Rivers and the Cowichan River Estuary. The *Cowichan Recovery Plan* was completed in 2005 and in 2007, the *Cowichan Basin Water Management Plan* was developed by a partnership consisting of Cowichan

Tribes, the Cowichan Valley Regional District, BC Ministry of Environment, Fisheries and Oceans Canada, Catalyst Paper Corporation and the Pacific Salmon Commission. The partnership resulted in the **Cowichan Tribes' led** Cowichan Stewardship Roundtable, which includes all stakeholders from the Cowichan Valley interested in watershed management issues.

Cowichan Tribes is also a partner on the Cowichan Watershed Advisory Board along with the Cowichan Valley Regional District, the Province of BC, Living Rivers BC, and Catalyst Paper. The Advisory Board is a model for what is working with respect to water and watershed management in the Cowichan Valley. It is also a model for what will work as a future governance model under a modernized *Water Act*.

Cowichan Tribes has always had involvement in numerous restoration and stewardship activities. This year, our Aboriginal Fisheries Department is working to develop a "Vision Document" for the purpose of clarifying the role that Cowichan wishes to take in rebuilding Cowichan River Chinook encompassing the management and planning for fish and the fishery. At a recent community meeting Cowichan members were asked "what was their 'Vision' for the watershed and its fisheries". Comments included Cowichan Tribes having more control over their Traditional Territory and greater power over decisions involving development, land use, water quality and quantity. The Cowichan community strongly expressed the desire to see a clean and healthy watershed in the future to allow for the preservation of spiritual and ceremonial uses, as well as to provide access to clean and healthy food. A Cowichan Elder stressed the importance of protecting the watershed through partnerships and shared stewardship. The only way this partnership can work is to begin dialogue around duality of water ownership.

Cowichan Tribes has great concern over the degradation of the Cowichan Estuary and recently hosted a workshop on the State of the Cowichan Estuary. Experts were invited from all over the Pacific Northwest to participate and share their knowledge and past experiences. Some of these experts included fisheries biologists, kelp biologists, restoration biologists and experts from Fisheries and Oceans. Local governments and organizations also participated. After a full day session, all agreed that the **entire** watershed must be managed, that **co-management** by all levels of government is necessary for success and that **immediate action** is essential to ensure the recovery of the estuary and the watershed.

## **COMMENTS ON THE DISCUSSION PAPER**

As outlined in the opening Caveat of this submission the process by which the Water Act is being modernized is flawed. There are also underlying assumptions that must be discussed with First Nations.

The Discussion Paper describes eight principles, the second of which states "First Nations social and cultural practices associated with water are respected and accommodated". This statement does not go far enough to address Cowichan Tribes' Aboriginal Rights and Title. Rather the second principle should state "First Nations *spiritual and ceremonial* practices associated with water *and watersheds* are *recognized* and accommodated".

Of utmost importance to Cowichan Tribes in a future Water Act Modernization discussion is ownership of the water in this province. Inherent throughout the discussion paper is the assumption that the Province has jurisdiction over all the water in BC. We are asking for shared decision making and in order for this to start taking place First Nations must have "Duality of Ownership". The assumption that First Nations do not have ownership of the water denies Aboriginal Rights and Title. First Nations

must be in full partnership with other jurisdictions with an interest in water governance, therefore duality of ownership is essential.

Water issues transcend jurisdictional boundaries and are not the responsibility of just one governing body. Cowichan Tribes wants to see the watersheds in our Traditional Territory managed sustainably using effective partnerships with other jurisdictions and stakeholders.

And finally, Cowichan Tribes would strongly suggest that the Discussion Paper take a watershed or ecosystem-based approach to water management in BC. This is the approach that has worked successfully for the Cowichan Watershed Advisory Board for a number of years. Water management is a complex issue which must be reflected by managing the complexity of activities and interests within the entire watershed.