From: Minister, ENV ENV:EX
Sent: Thursday, May 06, 2010 2:34:02 PM
To: Living Water Smart ENV:EX
Subject: FW: WAM ***PERSONAL IDENTIFIERS REMOVED***

From: ***PERSONAL IDENTIFIERS REMOVED***
Sent: Tuesday, April 27, 2010 7:19 PM
To: Conroy.MLA, Katrine LASS:EX; Mungall.MLA, Michelle LASS:EX; A Atamanenko; ***PERSONAL IDENTIFIERS REMOVED***
Cc: Minister, ENV ENV:EX

Subject: My WAM Submission

Following find my comments on the Water Act Modernization (WAM) submitted today to livingwatersmart website by email and to their blog section.

The entire WAM concept is a NON-SOLUTION to a real problem.
After years and years of mismanagement of our water supplies through removal of any watershed protection, the MoE is now positing that "we" are the problem and must therefore bicker with each other over remaining supplies while they continue to refuse to protect watersheds and seek changes that will remove our already degraded water rights.

Therefore I respectfully request that MoE do NOTHING.
That is, you do NOT re-write the Water Act and do maintain the Status Quo governance model, until MoE can address public concerns as follows:

1) Watershed protection from resource extraction activities.
By devolving stream protection (stream as defined in the Water Act means all water courses including lakes, ponds, wetlands, streams, creeks, springs, and rivers) in Section 9 of the Water Act to other ministries (including Forestry and Energy and Mines), source protection of our water supplies is abrogated by the MoE. This must change! If the Water Act is meant to protect our water supplies it must override all other Acts in that respect. You talk about the fragmented legislation protecting water at great length, but make NO ATTEMPT in the WAM to address this problem.

Furthermore, the MoE Water Stewardship Branch makes no bones about IPPs in the form of large run-of-the-river projects when they state on page 32 of their Strategic Plan that they intend to "Adjudicate licence applications for Independent Power Producers in a manner that is consistent with provincial government corporate policy." Furthermore, the public has recently discovered that MoE is allowing drilling into the bottom of alpine lakes (for higher head in private run-of-the-river-projects) resulting in siltation problems as we have recently seen in Sechelt. Not to mention more watershed destruction. The destruction of pristine river systems in both coastal areas and the Kootenays, shows an outright distain for protection of watersheds anywhere an RoR project is contemplated.

As to other resource extraction activities, the MoE passed the environmental assessment on Fish Lake being turned into a tailing pond placing a huge water system running all the way to the ocean at risk of serious toxic contamination. Many other mining activities, including the Raven Coal project on Vancouver Island, evince the same unconcern with contamination of watersheds and river systems with toxic effluent. Shame on you MoE!

Then we have the oil and gas extraction activities in the Horn River Basin and further north in BC. All drilling requires the use of water for making the drilling mud. Hydrofracking needs even more water and threatens the contamination of water aquifers with toxic chemicals as has already occurred in northeastern BC to some citizens water supplies. One shale gas well requires 8 to 10 million gallons of toxic chemical contaminated water for the hydrofracking process. Hydrofracking is not a licensed use of water listed on the licenses database. When I inquired of the Water Stewardship Branch about this, I was informed that exploratory activities do not pay for water use as other licensed users of water do. Alberta farmers have seen their water supplies seriously impacted by all of the drilling activities in their province. Is that what we have to look forward to in BC?
Then there are the transmission lines and pipelines that are being plotted to crisscross our province in support of resource extraction activities. Are we to seriously believe that power lines and pipelines cutting through populated areas and wilderness areas will not seriously effect our watersheds and thus our water supplies? This is preposterous and an undefendable position for the government to be taking.
The public is demanding watershed/source protection as the first commitment from government to protect our water supplies for our public use of water.
Public use of our commonly owned water supplies should be an established right and not something we pay for. Use of water to make money (and here I mean industrial use of water) on the other hand should first of all only be allowed if it can be proven (the precautionary principle) that it does not have ANY effect on public water supplies and second of all should be charged for at a rate that supports not only the costs of public use (i.e., government bureaucracies necessary to allocate and protect our water supplies) but also at rate that includes the true cost of such use. The new sustainable economic models should be applied to all industrial use of water and a commiserate license rate applied.

By far the worst effect on our water supplies is forestry as currently practiced in this province. In the past when BC companies used local contractors to cut and mill lumber our local economies flourished and our watersheds were protected. But over the last 4 decades our forests have been privatized to large multi-national corporations and our watersheds have been trashed in the process. The current government is carrying on in this tradition with mining, oil and gas extraction and now IPPs. At this rate we will have no water left at all.

It is time to modernize the "government corporate policy" to protect all of our commonly owned resources including water from the great sucking sound of multinational corporations. MoE and all other government Ministries must change their shortsighted, sell-it-all-off policies and start thinking about true sustainability of our resources. Resources that are all only increasing in value at the same time the government continues to make it easier and cheaper for multinationals to purchase these irreplaceable resources.

One final comment here. Attempting to separate water from land is ludicrous. There is really no such thing as an aquatic ecosystem. An ecosystem by definition includes the land, water, air, all life forms and the economies based on that ecosystem. Within any ecosystem all elements interact. To attempt to talk about protecting an aquatic ecosystem without talking about the land around it and the forest, shrub or grass cover that collects and stores the precipitation that feed the aquatic systems is utterly meaningless. It is similarly meaningless to assume we can have continuous growth in either our human population or a resource-based economy within that ecosystem.

Yet this is exactly what WAM does. The workshop attempted to restrict all discussion to water and purported that the state of our forests, other resource extraction

activities or the government corporate policy was not on the table. Unacceptable.

2) Committed provincial funding to implement any changes.
All of the policy discussion papers state that funding must be committed to make any of the recommended changes come to fruition. Yet the monies for the MoE has been cut over the next 3 years in the current budget, as have the monies for Forestry, ILMB, Agriculture, Energy, Mines & petroleum Resources.

How the government can with a straight face say the WAM will protect water supplies when in fact there is no committed funding to make this happen is beyond me. It would appear through reading documents that the true intent of WAM is to limit public rights to water and charge them more for water use through increased licenses fees, water rates and so forth.

This is ridiculous when all the costs should be borne by industry which is making massive profits from our commonly held resources and returning very, very, very little to the province to pay for this pillage of our resources. Where will our children and grandchildren turn for water, lumber, energy and minerals and so forth when you have sold it all off at bargain basement rates?

This is why you should throw WAM on scrap heap and start over with a logical approach to protecting our water supplies from the greatest threats, not from the smallest.

3) Full MEANINGFUL public consultation prior to introducing legislation to change the Water Act, or barring that a referendum on proposed changes to the Water Act.

This public consultation process on such a serious subject as our water supplies is a complete failure. First of all, your WAM Workshops were held through a very limited "invitation only" process. You should have notified every licenses holder in the province of these workshops and PUBLICALLY advertised the workshops at least a month in advance in newspapers all over the province. Relying on computers also marginalizes a significant portion of the public and can only be justified as cheaper than other kinds of advertising. From the public point of view, if you can't afford to advertise the discussion of changes to the water act, then you shouldn't be doing it.

Meaningful consultation means not only that the government commit to taking into account the comments of the public in their decision making process. It also means that the public consultation continue in the process so we have an opportunity to COMMENT on EACH STAGE of DECISION MAKING BY GOVERNMENT, If the government cannot commit to making changes at each stage to it's policies based on the consultation, then the entire process is meaningless.

In fact, that is why I want the government to hold a public vote, an actual referendum, on the final changes to the water act prior to those changes being legislated. Full government disclosure is required. The government has LOST THE TRUST OF THE PEOPLE on these matters for the reasons discussed above.

4) No changes to license status for domestic use (surface water or well licenses)
The government says it wants to make domestic use licenses a "permitted" use. The justification for this is that the limited staff could then turn their attention to more critical issues. First of all, if the government can't afford to administer licenses than it should not be granted the powers to manage our water. Period. Management of any of our collectively owned natural resources is the prime charge of government. It is a charge vested in them by the Crown. The government of the

day is not the Crown. This is the truth that government needs to come to terms with. Then perhaps we will see some changes in the policies that are selling off our heritage for a mess of pottage!
MoE representatives had no comments on the legal ramifications of this action at the workshop I attended. Nor did they have any comments in their reports and papers on the ramifications of this action. Domestic wells would also fall under this change if ground water becomes legislated.

Under no circumstances do citizens of rural BC want their water license rights compromised now or in the future. It is the holders of licenses that have the ONLY STANDING in government hearings on new water licenses. I suspect this has much more to do with this change than does the "lack of staff". In fact domestic use license holders' account for half of all licensed allocations. They actually stand at the forefront of water protection in all rural areas of BC.

If MoE needs more staff to deal with problem areas of the province that have over-developed for the amount of water available after watershed destruction, then MoE should either get funds from the government for this hiring or they should implement a tax on resource extraction to cover this cost. Simple. But under no circumstances should they pit urban versus rural populations as they have in the WAM discussion paper to get urban support for removing rural water rights. Disgusting!

5) Maintain FITFIR as is.
FITFIR is a time honored, working, self-limiting system that deters over-allocation of water supplies. The government in its role as manager of our water has over-allocated water in many areas of the province according to their maps. What they need to do is attend to their mismanagement, disclose the reasons why they have over-allocated water supplies and fix that process, NOT modify FITFIR to cover the errors they have made. It is entirely unclear why we are in this position.

Furthermore, often the government will state as a fact something that is not true. For example at the workshop I attended, a participant (a lawyer actually) asked what information the MoE spokesperson was basing his statement that BC had been in a drought for a number of years and expected to be in the future. The MoE rep immediately backtracked and said that the precipitation data didn't show a drought, but some areas of BC had experienced less precipitation. This is the kind of sweeping mis-statement that the public objects to, especially when discussing a subject as vital as our water supplies.

The problem with modifying FITFIR is that government behind closed doors will develop a priority system for modifications. This is entirely unacceptable. If the government wants to change the Water Act then an open process with public decision making must do it. Of course, domestic use for health and sanitation and agriculture must have the highest priority (after instream flows).

Protecting instream flows, or as some prefer to refer to this as protecting nature, is of course the basis of any allocation system and would thus have first priority. If the water is not there in the first place, it can't be allocated. But where is the data for guaranteeing instream flows? This is the problem. First, the hydrometric stations in BC are all federal installations over which the MoE has no control. In fact, a few years ago there were 470 such stations in BC, now there are 450. How can relevant data for all allocations in BC be garnered from a shrinking database of information. The answer: it can't.

Second, there are various ways of determining instream flow requirements. The

simplest (i.e., cheapest to achieve) is a monthly low-flow scheme. Unfortunately this is not a recommended standard by scientists who work in the field or by governments like Australia who are struggling with real drought conditions due to the El Nino/La Nina flip.

Our ability to feed ourselves is moving into the public consciousness as a huge issue as we see globalization breaking down. Maintaining FITFIR is very important so established farms and livestock operations have priority water use.

Furthermore, the danger of modifying FITFIR is a very slippery slope. In the ENGO Statement of Expectations IPPs had a higher priority for water use than agriculture or domestic use. This is completely unacceptable. This is a pure and simple commodification of our water supplies to the highest bidder. This must under NO circumstances be allowed. Any resource extraction use must have the lowest priority as such uses have the concomitant problems of destroying watersheds and contaminating water.

6) Include wording in the Water Act that acknowledges water as a human right, collectively OWNED by all as a common resource.

This point can not be emphasized enough as it goes to the main problem of wrong-headed thinking regarding water and its protection evinced in the WAM documents. Below is a discussion I wrote recently regarding the issue of who owns the water.

Our current government is very fond of stating that it OWNS all of the water in BC. Until recently the MoE water website was littered with the statement. They have since toned it down somewhat, but the words are still there and in documents written by others as well.

This is not the truth however. To understand this all one must do is look at the current BC Water Act. Here is the actual wording at the beginning of the act (Part 1 is only definitions):
Part 2 — Licencing, Diversion and Use of Water and Related Matters
Section 2—Vesting water in government
(1) The property in and the right to the use and flow of all the water at any time in a stream in British Columbia are for all purposes vested in the government, except only in so far as private rights have been established under licences issued or approvals given under this or a former Act.

The important word here is vested. Vest is a verb. According to Webster's it means to give, bestow or grant a right. And who vested government? That would be the Crown.
The current Liberal government is not the Crown. Since we live in a Constitutional Monarchy, here is the order of authority:
• The Crown is the institution, which represents the power of the people above government and political parties.
• The Crown, represented by the head state, retains the powers of government, while the governing party exercises the powers of government.
• The Crown, however, only allows the government and political parties to exercise powers in trust for use on behalf of the people.

So really the government of the day only exercises powers like a trustee of an estate would. They do not "own" the estate, they simply manage it for a time.

Maud Barlow of the Council of Canadians made this point very eloquently in the October 2009 edition of the CCPA Monitor when she was describing the recent victory

in Ontario where citizens defeated a government plan to put a garbage dump directly on top of the aquifer that contained their drinking water supply. Following are her words:
"Under common law, a tradition followed in all provinces and territories except Quebec, water is recognized as a public trust. It belongs collectively to all, and governments must manage water in the public interest. Governments do not have the authority to make decisions affecting collective resources that violate the public interest."

So you see, dear MoE, you must take into account the public interest in your resource management activities. Allowing our watersheds to be destroyed is NOT in the public interest. Setting up an "environment for investors" is not in the public interest. You must somehow find the wit or the will to protect our water supplies. If you do not the public will demand in a court of law that our water supplies are protected from your mismanagement.

Furthermore, your principles as presented at the workshop failed to cover the most basic and important fact regarding water, namely that it is a human right. Instead we see MoE talking about "higher economic value" as a basis for prioritizing water allocations. This is repugnant to the public.

The Water Act in Section 9 devolves water protection to the FRPA when forestry activities are occurring. The FRPA states that protections of environmental or economic values can only be applied "…without unduly reducing the supply of timber from British Columbia's forests…" This is one of the main reasons that the Water Act must be modernized in the true meaning of the word. As I state below, the placing of commercial interests above the protection of our human right to water is simply wrong. I wrote briefly about where such activity will lead the government in the following quote:

"Historically, all peoples in all times have protected their watersheds. Access to quality water for drinking and washing is not only the basis of human health, but of all human settlement. Access to quantity of water is the basis for all agriculture and business.
To place the commercial interests of logging above the protection of citizen rights to clean and dependable water supply, as new forest regulations do, is not a particularly defensible position.
The principles of legal pluralism explain that when statute law meets traditional wisdom head-on, unrelenting agitation from the public is only to be expected and solutions must be sought to end this conflict."

One such solution would be for MoE to write into the Water Act the basic fact that access to water is a human right, that water is owned collectively by all and that water will be managed in the public interest by government.

7) Local decision making power on all water allocations

It was very apparent at the workshop I attended that the public understands all water use decisions must be affected at the local level. This means the government cannot simply impose across the board standards and expect local compliance.

Local history, common sense and traditional values must play a role in water use decisions. This will only happen if local decision making authority is incorporated in the Water Act. Something that does not exist at the present time nor is proposed in the WAM documents.

The WAM seems really to be an attempt by government to escape their responsibilities

to manage our water effectively. This includes the following responsibilities:
a) developing databases of province-wide water information (including that related to groundwater aquifers) that is necessary for proper management,
b) developing water use and water protection plans for all areas of the province based on the solid data collected above,
c) basing water allocations on the developed plans based on the real data
d) dedicating the funds necessary to carry out all three levels of action including staff, equipment and IT systems that are necessary for this work.

There is no proposal in WAM for the government to undertake any of these activities. It seems rather that government will only address critical or problem areas of the province. The rest of us will continue along without proper planning or data on which to base that planning until we too become critical areas.

Somehow, standards for maintaining in stream flow will be developed without sufficient scientific stream flow data, groundwater will be regulated without sufficient aquifer location or volume data, the plans that were mandated to government development in both the Water Act and the Drinking Water Act will instead be handled by some privatized Water Agency or by local interest groups.

And the funds will come from increased license fees (for everyone, not just for industry) and from forcing municipal, regional district, community and private water systems to increase their rates and perhaps from increased property taxes. This is not acceptable to the public.

I can only suggest that the government must look at how they are subsidizing resource extraction activities by using tax dollars that could go to water protection. This subsidization includes not only charging ridiculously low royalty rates for oil, gas and minerals extraction, subsidizing road building for all such activities, but also either not charging for water use or charging (again) ridiculously low rates for water licenses. None of this is acceptable.

As to the government always claiming it creates jobs, all anyone has to do is look at the state of our forestry industry to see what government management hidden behind their “jobs, jobs, jobs” mantra has done for that industry.

Citizens have reached the point where they no longer trust government management practices (practices that are little more than thinly veiled privatization schemes).

8) We do not need legislation to protect us from ourselves.

There will always be debates about water use, yes. But local communities can handle that. They always have and they always will. Water allocation is not really the problem that MoE makes it out to be in WAM documents. What the problem really is, is lack of protection of our entire BC water supply from resource extraction and related activities.

What citizens do need from government is legislation with teeth to protect our watersheds and pristine water systems from destruction by resource extraction activities including IPPs.

PERSONAL IDENTIFIERS REMOVED