From: ***PERSONAL IDENTIFIERS REMOVED***
Sent: April-29-10 9:16 AM
To: Living Water Smart ENV:EX
Cc: ***PERSONAL IDENTIFIERS REMOVED***
Subject: Hasty response to WAM discussion paper
Attachments: WAM comments.pdf

Greetings--
Because time has not been sufficient to develop a fully considered formal submission with respect to the Water Act Modernization discussion paper--and is unlikely to do so before the deadline for such submissions--I am attaching an informal note setting out some reactions and observations for your consideration.

I do hope, as suggested in my note, that the receipt of reactions to the discussion paper will not be the end of the public engagement process, but that rather the development and analysis of options will be a participatory process that might provide a model for other government consultation exercises. This is a crucially important initiative in which you are engaged, and it deserves as full a public participation component as is feasible.

I wish you all good luck with the further work.
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Comments on WAM discussion paper

The discussion paper is clear, helpful and generally persuasive, but it is important that underlying principles not be lost in the subsequent policy development process.

There should/must be further round of consultation/engagement on the options to government, to enable public review of and comment on the analysis underlying policy development. (Ideally this further round of engagement should explore options for greater interaction through collaborative workspaces, but that initiative is probably outside the realm of feasibility at the moment.)

It is important that some of the limits suggested in the discussion paper on integration of related concerns not be permitted to abridge the analysis too stringently. A full cross-ministry, cross-sector analysis is essential to take account of the cross-scale, cross-sector realities of interdependent ecosystems.

Further, some elements of context need to be emphasized in driving the overall approach to reform and modernization if the amended Act and related initiatives are to be appropriate to the 21st century, reflecting what has been learned over the past several decades.

It is crucial that the opportunity offered by the Water Act Modernization process be seized in a way that brings coherence and consistency across the many fundamental changes overseen by the Government of BC in recent years in resource management, land use planning, and governance. Public expectations of engagement in planning processes and participation (or at least representation) in management decisions have risen dramatically. Expectations of extensive monitoring, scrupulous reporting and transparent accountability for the exercise of discretion in decisions around access to resources in a changing and uncertain world, and for the conscientious discharge of responsibilities for stewardship of common-pool resources in the public interest are great and growing.

In this context, it is important that a new Water Act make clear its foundations in principles of adaptive management, a public trust doctrine, and participatory governance. In the face of the profound uncertainty associated with global ecological change as well as evolving social needs, there cannot be certainty about absolute allocations of any resource or entitlement. There can—and should—be certainty about the rules by which allocations will be shared and the priorities associated with various needs. In particular, the requirement to meet the 'needs of nature'—that is, the requirement to ensure that the ecological services that represent the life support systems for humanity (as well as for the biosphere more generally)—must be the first priority. The approach spelled out by the Supreme Court of Canada in the chain of decisions beginning with the Sparrow case dealing with fishing rights provides a model: allocation of rights of access to the renewable resource begin with ensuring that conservation needs are met, and sharing of rights of access to the flow of resources surplus to conservation needs can then be established in accord with other agreed principles determining the priority to be

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assigned to other recognized claims. In determining conservation needs, ecosystem integrity at various scales must be taken into account, recognizing, of course, that in an uncertain world, that principle itself provides only a changing and relative baseline, with determination of the thresholds and margins among the various priority claims being a matter of judgment and balance that can only be established in continuing social processes accepted as legitimate and just.

In such a setting, a goal of unchangeable and incontestable property rights and certainty of allocations is an illusion. What must be established is an accepted process for allocation, monitoring, and adjustment according to agreed principles. For this purpose, it is crucial that the learning from experience in Clayoquot Sound (with the development over several years of watershed plans according to the globally-celebrated principles developed by the Scientific Panel for Sustainable Forestry in Clayoquot Sound (the 'Scientific Panel') and in the Great Bear Rainforest (with the development over several years of a framework for ecosystem-based management on which that whole historic agreement rests), as well as in the earlier work of the Commission on Resources and Environment introducing consultative processes for terrestrial land-use planning.

Part I of the discussion paper provides a good statement of this context, but a few observations, as outlined above, need to be underlined and maintained in the discussion and negotiations to come.

It will be crucial to recognize the non-discretionary character of provisions for assuring water of quantity and quality adequate to ensure ecosystem integrity and sustained levels of ecosystem service flows adequate to continuing human health ande wellbeing.

It will be crucial to link associated mandates and regulatory provisions to recognize the interdependent character of government instruments; ministry silos and turf concerns are not no excuse for a failure to meet the requirement for a comprehensive analysis appropriate to ecosystem-based governance.

The statement of Principles is good, but perhaps needs a bit of elaboration:

-Principles 5 and 7 must recognize that the concerns of those investing human, social and cultural capital must be addressed along with those of individuals investing paper (financial) capital.

-Principle 6 must go beyond 'flexibility to deal with extreme events' to build in a continuing adaptive management approach built on a fundamental commitment to sustained monitoring, reappraisal and routine adjustment of allocations and guidelines or rules to adapt to changing circumstances, along with a fundamental commitment to ensuring compliance with resulting social intentions.

Both Water Management Plans and Water Allocation Plans are needed, and should be developed within the context of over-arching Watershed Management Plans

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following a process along the lines of that by which Watershed Management Plans in the Clayoquot Sound region were developed.

Some comments follow, in response to the questions posed in the text of the document.

5.1: strongly support

Objective 1: Guidelines in which rulings become binding mandatory conditions

Objective 2: Water allocation plans are required, and must be considered by decision-makers, in a participatory process, with public justification for deviation from the provisions of the required and agreed plan.

Objective 3: Amend the Water Act to provide for more comprehensive control of discharges into streams and for broad requirements for restoration.

6.1 strongly support. Good discussion of context and background. Commitment to participatory processes in both plan development and monitoring of results needed.

Should have delegated approach at basin level, with provision for subordinate plans for sub-basin scale watersheds. Agency should have authority to raise revenues through local levies, in addition to base funding from province to provide for inter-regional equity.

Accountability should rest on continuing monitoring and reporting, with provision for local-scale consultation and participation.

Dispute and conflict avoidance or resolution should be based on accepted community-based consultation and participation processes.

The benefits of the delegated approach include enhanced engagement and commitment, along with more timely implementation and enhanced compliance as a result of decisions being seen to emerge from a process regarded as legitimate and respectful of the interests and perspectives of all those directly affected by decisions (and, more fundamentally, dependent on the health of the ecosystem affected and on the maintenance of sustained ecosystem services at levels and qualities adequate to support public health and wellbeing).

7.1 strongly support, although it should be noted that conservation in water use should be a continuing commitment, not confined to times of unexpected shortage, and in such times of shortage, the sharing of the burden of reduced consumption must be equitable and proportionate to need and sacrifice, not simply to economic loss.

Objective 1

Codes for efficient infrastructure and practices could be developed in participatory processes by sector, with amendment of the Water Act to provide for economic or

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non-economic incentives, and with increased flexibility to support re-allocation of rights or licences (provided that more highly-valued uses are understood broadly in terms of social value, not as narrowly commercial measures).

Options F and G should be pursued, with the understanding that development of regulations and ongoing monitory of results would be undertaken in open and participatory processes established on a continuing basis.

Objective 2. Agree with option A

Objective 3. In circumstances of adaptive management in a changing world, allocation must reflect changing priorities in use., as determined within community-based participatory processes. FITFIR must be rejected as an allocation principle.

Objective 3. In times of shortage, reduced use should be required based on a hierarchy of needs as determined on the basis of community consensus, coupled usually with a pro-rata sharing of the burden of reductions after basic needs have been met. FITFIR should be rejected as a basis for the sharing of the burden of reductions demanded by unanticipated changes in circumstances.

Objective 4. Challenges of anticipated long-term water scarcity should be addressed on the basis of the same principles, through development of watershed management plans required by government and developed through community-based watershed management planning processes.

8.1 Strongly agree. Defining large as 500 cubic metres per day seems appropriate, with provision for moving to more stringent thresholds in priority areas.

Option H: All of the above seems plausible.

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