

From: Ben Chalmers [mailto:bchalmers@mining.bc.ca]

Sent: Monday, March 14, 2011 4:22 PM

To: Living Water Smart ENV:EX

Cc: Brino, Karina L EMPR:EX

Subject: Mining Association of BC submission on Policy Proposal for the Water Sustainability Act

Dear WAM Innovation and Planning Team,

Please find attached a submission from the Mining Association of BC on the Ministry of Environment's

Policy Proposal for the *Water Sustainability Act*.

Please let me know if you have any follow-up questions with respect to our submission.

Sincerely,

Ben Chalmers

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Via Email: livingwatersmart@gov.bc.ca
(Original to Follow by Mail)

Dear WAM Innovation and Planning Team,

The Mining Association of BC (MABC) is pleased to comment on the Ministry of Environment's Policy Proposal (the proposal) for the *Water Sustainability Act (WSA)*. Please consider these comments as supplementary to the submission made by MABC in April of last year as part of the public comment period for the *Water Act Modernization (WAM)* discussion paper.

MABC, established in 1901, represents companies involved in the exploration and development, mining and smelting of minerals, metals, coal and industrial minerals in British Columbia. It is regarded as the pre-eminent voice of mining in the province. The comments provided below reflect the combined views of members of MABC. Individual member companies may provide more detailed comments in the technical areas relevant to them.

MABC agrees that BC's supply of clean fresh water is a tremendous resource that will provide benefits to society for years to come and should be protected and maintained for the benefit of current and future generations. We also believe that reliable access to water is a benefit to all British Columbians that we can use to help build a strong BC economy and will help reinforce the renaissance that is currently underway in BC's mining industry.

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In general, MABC is concerned that the policy positions articulated by MoE do not contain sufficient detail to enable a full understanding of the potential impacts to our members or how the policies will be implemented. Without this, we are unable to comment meaningfully on whether to support these policies. We encourage the government to continue its consultation process as the next level of detail is developed in advance of drafting legislation.

Many of the policy directions in the proposal have the potential to restrict access to water and increase costs. MABC is concerned that there has been insufficient analysis of the economic impacts of the policies set out in the proposal. BC's plentiful supply of clean fresh water provides a competitive advantage to our province that should be maintained. The lack of consideration to date on the costs associated with the proposed new policy direction introduces the risk of uncertainty to ongoing access to BC's water resources.

Below are a series of specific comments on each of the proposed WSA policy directions

1. Protect Stream Health and Aquatic Environments

The Proposal suggests that instream flows will be maintained and water use may be reduced during times of scarcity, which could result in more frequent regulatory action and possibly the periodic reduction or suspension of licences held by senior licensees who have never been regulated. It is unclear by what process such reductions would be regulated. As you may or may not be aware, though the mining industry requires a supply of fresh water to process ore into a saleable product, the majority of mines consume very little water. Water used in the milling process is withdrawn at the source, used in the milling process and either reclaimed and recycled or treated and released back into the environment. Mines place a high level of importance on reclaiming and reusing water to minimize the need to withdraw fresh water from the natural environment and reduce the volume of water required for treatment. As a result, usage restrictions during times of scarcity that forced a mine to shut down would not providing any benefit to stream flows as whatever water is removed is quickly returned to the environment.

It is unclear how "scarcity" would be defined for the purposes of the WSA. Little, if any information is provided as to what considerations, factors, or conditions would trigger a determination that water is scarce or becoming scarce, or what process is contemplated to make and implement such a determination. Only a vague definition of what constitutes "scarcity" is proposed under Policy Direction #4.

In addition to the concerns above, the proposal also specifies a need to develop instream flows, although very little detail is provided. MABC believes that in order to provide certainty for project proponents there will need to be clear guidance on the information requirements and the methods to be used in calculating instream flows. Ambiguity or inconsistent application will lead to added uncertainty, increased and unnecessary costs, and delays for project approval. For existing operations it will be critical to understand who is responsible for determining instream flows, especially for watersheds that have multiple licensees.

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2. Consider Water in Land-Use Decisions

Several locations in British Columbia currently governed by water licenses (and that may be subject to future water management) contain unique characteristics and chemical compositions that may naturally put them off-side with Provincial Water Objectives (PWOs) that may be developed. We have seen this concern become a reality with BC water quality objectives; where in some cases background concentrations of some contaminants are already higher than established guidelines.

Flexibility should be built into the proposed water management regime that will allow for PWOs to be replaced or supplemented by site specific water objectives (SSWOs) in appropriate circumstances. MABC is currently working with MoE to provide clarity on the development of site performance objectives for water quality and this work may have relevance to the development of a framework for SSWOs. However, MABC believes that processes to develop SSWOs must be consistent throughout the province, administered by the provincial government and adequately resourced to ensure a timely process. MABC also believes that when sufficient data exists to support an SSWO, policy should dictate that preference be given to having an SSWO rather than relying on PWOs.

The Proposal indicates that PWOs will be used to address cumulative impacts and to align how decision makers under other statutes would consider water when making decisions regarding land use. MABC cautions that unless corresponding legislative amendments are made to other statutes empowering those decision-makers to regulate land use, other decision-makers could exceed their jurisdiction by considering PWOs in the exercise of their powers regarding land use under separate statutes. The mining sector, already subject to land use regulation under other provincial statutes, should be considered and specifically engaged as part of a process of co-ordinated land and water use management prior to the legislative drafting stage for the WSA.

3. Regulate Groundwater Extraction and Use

MABC recognizes the need to regulate the extraction and use of groundwater, as is suggested in the proposal, but warns that a blanket approach may be overly cautious, placing significant strain on regulatory resources and significant costs to current and future license holders and project proponents. MABC encourages the Province to implement a regulatory framework for groundwater that is aligned with the framework being proposed for surface water, whereby groundwater extraction is regulated in regions of 'known problems' as described in the proposal. There is little to be gained from regulating in regions that have an abundance of water, as has already been recognized in the proposal for surface water. Unnecessary regulations for regions that have an abundance of groundwater could result in significant additional costs to current license holders and project proponents without any benefits.

In addition to the above concerns, which address the regulation of groundwater broadly, MABC would like to make you aware of some specific concerns unique to the mining sector. Mines in BC rarely require the use of groundwater in their process; however, they are often required to establish dewatering wells for the purpose of maintaining geotechnical stability in open pit mines. The need to maintain geotechnical

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stability is required to maintain safe working conditions and cannot be impeded, even during times of scarcity, if safe working conditions are to be maintained. Requirements for mine dewatering are often set out in *Mines Act* permits which are the primary permits that govern mining operations and are issued by the Ministry of Natural Resource Operations under the authority of the Chief Inspector of Mines.

In addition to maintaining geotechnical stability, groundwater extraction is also often required to collect and treat seepage from tailings facilities. In order to prevent seepage entering the groundwater supply, water is pumped from wells, treated and then released back into the receiving environment as surface water. As with groundwater extraction for geotechnical purposes, the requirements for ground water treatment are generally set out in *Mines Act* permits as well as in Environmental Assessment Certificate Commitments.

In order to maintain safe mine operating conditions, as well as effective groundwater treatment programs, it is critical that new groundwater regulations align with requirements established in permits issued under the *Mines Act* and in Environmental Assessment Certificates. MABC recommends that any new groundwater regulations include provisions to delegate dewatering and groundwater treatment oversight to the Ministry of Natural Resource Operations (NRO) under the authority of the Chief Inspector of Mines. NRO staff, under the oversight of the Chief Inspector, has the expertise in geotechnical stability and geochemistry to ensure that mines are able to operate safely and groundwater quality is protected throughout the mining cycle.

4. Regulate during Scarcity

The Proposal contains policy language aimed at encouraging licensees to implement efficiency and conservation measures. MABC supports the development of incentives to encourage conservation, efficiency and the development of source protection plans and would be pleased to contribute to the development of codes of practice, best practices, as well as water storage and water treatment infrastructure rebates. However, we are concerned by the prospect of fees and economic measures, instruments, and incentives being imposed that could increase costs and risks for our industry, which uses water in primarily non-consumptive ways. The majority of water used for mining and processing is once-through and, as previously stated, very little water is taken out of circulation. There is little to gain from increasing costs for water used in a once-through manner that is returned to the stream or creek near the point of extraction. We also caution that increasing costs could erode a competitive advantage provided by having access to abundant clean water sources for our processes. BC mines are amongst the best regulated in the world and effluent discharges are already subject to very restrictive discharge limits with respect to water quality.

The Proposal also contemplates that regulation during scarcity would involve requiring proportional reductions based on water supply forecasts. If forecasting is to be used as a tool for limiting water rights, it should be based on defensible scientific processes and relevant data, and should take into account relevant and area or site specific factors to determine the likelihood and appropriate meaning of scarcity.

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We re-iterate the concerns noted above under item 1) regarding the lack of a definition for the meaning of 'scarcity'.

It is contemplated that there may be deviation from the First-In-Time-First-In-Right priority model, toward an importance-of-use priority model in "exceptional circumstances". Little information is offered as to how and on what basis "exceptional circumstances" would be determined to exist (or be forecasted if forecasting is to apply to this determination as well). Any deviation from the priority date model could have significant repercussions for existing facilities, which government would have to carefully consider.

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5. Improved Security, Water Use Efficiency and Conservation

MABC agrees that if water use efficiency becomes a regulatory reality, then consideration of water use efficiency should be incorporated into the definition of beneficial use. However, the Proposal provides little information on how efficiency would be defined for this purpose, and what the potential implications of doing so might be for existing and new license holders. If water use efficiency is to inform the meaning of beneficial use, a clear definition or guidelines should be developed against which to measure efficiency, and this should be done on an administratively fair and consistent basis that does not compromise or lessen regulatory or business certainty. The definition of what constitutes efficiency will have to strike a balance between being clear and fair and being flexible enough to incorporate benchmarks from different industries, like mining, and different types of users, such as coal mining versus metal mining or underground mine versus open pit mine.

6. Measure and Report

MABC recognizes that there is a need to increase monitoring and reporting requirements for water use. The establishment of effective and efficient monitoring and reporting requirements that are integrated into a reliable database would form the basis for scientifically sound assessments and management decisions.

MABC is concerned, however, that the proposal lacks adequate detail necessary to understand the potentially onerous costs that could be associated with new monitoring and reporting requirements. To use an example to illustrate our concern, one of BC's mines maintains approximately 300 wells for geotechnical and tailings monitoring purposes. Adding the cost of monitoring water levels at existing wells would cost approximately \$5,000 per well or \$1.5 million for the 300 wells. The proposal also lacks specific information as to whether private, commercially sensitive, confidential or proprietary information would be subject to public disclosure. In order to avoid compromising the competitive position of licensees it is critical that the new WSA contain adequate assurances that sensitive information collected for the purposes of administering the *Water Act* are protected.

In addition, in order to avoid undue strain on resources and unnecessary increases in costs, it is important that any new monitoring and reporting requirements ensure that the information generated is useful for making management decisions. The BC government must ensure that adequate resources are allocated to ensure reported information is reviewed and used to increase the efficiency and effectiveness of decision makers in making sound water management decisions.

MABC encourages the BC government to use this process to re-invest in and improve the hydrometric network throughout BC. Having reliable, high quality data on stream flows throughout BC will be a critical component to determining instream flows and for developing the forecasting tools and thresholds necessary to determining scarcity. Maintaining an efficient and robust government operated and

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maintained hydrometric monitoring network is critical to generating that data and should be a significant priority built into any effort to modernize the *Water Act*.

7. Enable a Range of Governance Approaches

The proposal indicates that the provincial government is exploring new governance approaches for decision making regarding water allocation at a watershed scale that may include the delegation of decision making authority to local levels of government. MABC fully supports a collaborative approach to decision making with processes and policies that are inclusive and transparent. However, we strongly encourage the Province to retain a centralized approach with strong Provincial oversight and policy direction with respect to making and enforcing water management decisions. MABC was encouraged by feedback from MoE during recent discussions that such delegation will only occur where there is clearly demonstrated capacity within local levels of government. Government policy must be applied consistently across the whole province and a decentralized decision making model could make such consistency difficult, if not impossible to achieve.

Regardless of what form of governance structure is implemented as a result of the WSA, appropriate resources and expertise must be allocated to ensure a successful implementation. Adequate resourcing and expertise are critical to ensure that current and future licensees, investors and stakeholders are able to have the confidence that the reforms can be put into place effectively and efficiently and that they will achieve the intended results.

MABC is keen to continue to work with the MoE in whatever way possible to ensure that the modernization of the Water Act is successful in ensuring the long term sustainability of our water resource. We are also eager to work with MoE to maintain predictable access to that resource to help build our economic future. MABC would also like to reiterate that although the policy directions in the proposal seem to be broadly in the right direction, there is insufficient detail to enable us to fully understand and anticipate the true implications of the proposal for licensees. MABC strongly encourages MoE to hold additional consultation sessions as the necessary detail becomes available and prior to the legislative drafting stage.

Thank you for the opportunity to comment on this important issue.

Sincerely,



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