

**From:** Elizabeth Salomon-de-Friedberg  
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**To:** Living Water Smart ENV:EX  
**Subject:** BC Water Act Modernization - Submission from NWUMP  
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Hello,

Attached please find our submission in response to the discussion paper, entitled British Columbia's Water Act Modernization.

The submission is from the Steering Committee for the Nicola Water Use Management Plan. If you wish to contact the sender about any of the comments, please contact the undersigned or call John Anderson at 250-378-9674.

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N I C O L A  
Water Use  
Management  
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April 29, 2010

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

Dear Sir/Madam:

**RE: Comments on Proposed Changes to the BC Water Act**

For the past five years, a community-driven process has been underway with the goal to develop a water use management plan for the Nicola watershed. The Nicola Water Use Management Plan was finalized earlier this year. We await a response from the provincial government with respect to its adoption and implementation. A copy of our plan is available from the following web site: [www.nicolawump.ca](http://www.nicolawump.ca).

The modernization of the BC Water Act is timely and we are pleased to see that an opportunity has been provided to comment on proposed changes to the Act. The comments below reflect what we have learned in developing our Plan and the experience of many people with the current water management regime.

In keeping with the layout of the discussion paper, we are providing comments on the options for each objective under each of the 4 goals.

**GOAL ONE – Protect stream health and aquatic environments**

Objective	Option Selected	Comment
1. Environmental flow needs are considered in all water allocation decisions to protect stream health	Option A – Environmental Flow guidelines: decision maker could deviate from the environmental flow recommendations with clear justification	Flexibility is important as hard and fast rules often create more problems and lead to decisions not being made, i.e., issues not being resolved in a timely fashion. This option should allow for input from an informed local body before a decision is made.
2. Watershed or aquifer-based water allocation plans include environmental flows and water available for consumptive use.		The allocation of water must consider the interaction of groundwater, including aquifers, with surface water. The term ‘aquifer-based allocation plan’ would leave out an important component in determining water supply.

3. Habitat and riparian area protection provisions are enhanced      None selected

Any water allocation decision could easily have unforeseen consequences if groundwater is excluded. Whether or not a water allocation plan should be developed should be based on criteria, not at the discretion of a Regional Manager or the Comptroller of Water Rights. Once developed, the decision makers must follow the plan. Any plans must also be regularly reviewed and updated. The last statement is one of the recommendations of the Nicola Water Use Management Plan.

Instead, we would like to see in the new Act, the requirement to consider/link with existing BC legislation (Fish Protection Act and other relevant BC acts), the Federal Fisheries Act; and also promote best practices in land management. In addition, local input should be sought and considered for area-specific protection provisions.

A major step toward achieving this goal is the Water Smart commitment "Legislation will recognize water flow requirements for ecosystems and species". Therefore the sooner this legislation is enacted, the sooner it may be possible to achieve the "stream health" goal.

However, instream flow legislation is not the whole answer. Even with that in place, achieving the protection of stream health (and supporting the intent of the instream flow legislation) will also depend on the success of meeting at least one of the other three goals: "regulate ground water use in priority areas and for large withdrawals". In fact, it could be argued that this latter "goal" is not a goal, but rather is an objective or strategy to be employed in order to meet the goal of protecting stream health and aquatic environments.

Protection of stream health and aquatic environments cannot be achieved in isolation from similar goals in respect to riparian areas. The surface waterway is completely linked to the riparian area, and underlying the health of both is the health of the ground water aquifers. Regulating ALL the withdrawals of ground water is essential to protecting the health of a stream, the aquatic environment, the riparian area, and the ability to meet the legislation on "water flow requirements for ecosystems and species". It will not be sufficient to regulate for "large" withdrawals. A multitude of "small" un-regulated withdrawals will render the "stream flow" legislation, and the "protection of stream health" goal, irrelevant.

In addition, the new Water Act should provide for more information gathering on snowpack and other water conditions as well as the monitoring of same. Also, communication within ministries and between ministries needs to be fostered and enhanced. The Water Act should include the requirement for a communication strategy for all ministries that deal with any aspect of the water resource.

**GOAL TWO – Improve water governance arrangements**

Objective	Option Selected	Comment
<ol style="list-style-type: none"> <li>1. Governance roles and accountabilities are clarified</li> <li>2. Governance arrangements are flexible and responsive to future needs and values.</li> <li>3. Management is coordinated with neighbouring jurisdictions across all levels of government and those with a major interest in the watershed.</li> </ol>	<p><b>Shared approach</b> – specific water management functions and decisions are shared with a First Nation or partner institution such as an existing Regional District, depending on their capacity or willingness to undertake responsibilities</p>	<p>The Nicola Water Use Management Plan recommends a local governance body with an advisory role to work with all levels of government and stakeholders to manage the water resource. This advisory body would be incorporated as a non-profit society with a board made up of representatives from the community, stakeholders (water purveyors and large water users), First Nations, federal, provincial, regional and municipal government.</p> <p>The boundaries of a management area would be defined by a watershed. A watershed area could potentially cross over two or more regional district areas, BUT size of watershed needs to be manageable and result in effective management. The area could also be smaller than a regional district area as in the case of the Nicola watershed. Criteria for management area would have to be developed and be sensitive to the needs of the watershed or its unique issues.</p> <p>The new Water Act should spell out the nature of the accountability that the advisory body will need to adhere to. The water act should also provide for dispute resolution process to settle disputes or lack of consensus on issues.</p> <p>An advisory body model is described in the Nicola Water Use Management Plan.</p>

**GOAL THREE – Introduce more flexibility and efficiency in the water allocation system**

Objective	Option Selected	Comment
<ol style="list-style-type: none"> <li>1. The water allocation system emphasizes and encourages efficiencies in water use and in the administration of water as a natural resource</li> </ol>	<p>Option A Government determines actual needs in relation to a proposed undertaking on the basis of efficient practices and works</p>	<p>This option to be amended so that the needs are determined in consultation with local stakeholders.</p> <p>A <b>locally</b> created water bank system to be allowed under the new Water Act. This is one of the recommendations in the Nicola Water Use Management Plan.</p> <p>The clause ("beneficial use") in water licences could become an issue as most licencees use less water than they are licenced for. The practical use for this excess</p>

water for other uses or transferred to other water users on a temporary basis would be through the creation of a water bank, one of the recommendations in the Nicola Water Use Management Plan. The original licensee would be able to retrieve this 'excess' water if they needed it, for example, if they expanded their irrigated land.

Option B is not desirable. The Water Act should state that 'best management practices will be required for all sectors'.

Option C – The modernization of Water Act enables the use of incentives and economic instruments such as penalties, pricing or incentives to encourage water efficiency

Option D is problematic. Water needs to stay within its categorized use but it may be reallocated to a local water bank system for short-term specified use without prejudice.

Option F – Permitted uses would be defined and allowed under the Act in accordance with regulations that might apply differently throughout the province.

**Permitted uses** may be allowed but only after going through a local process.

By keeping the water allocation system to a more local level (watershed), people would see the issues more rationally and deal with them in a more timely fashion. This would make it easier to harmonize use between licences. In addition, any penalties should be part of the governance model, not part of the allocation system.

In a watershed based water authority, permitted use status should have priority over non-permitted use, but water use could be co-ordinated by the water authority.

Not in support of Option G and H. See previous comment.

Option I – Providing more detailed information about the proposed use and efficiency measures for licence applications or changes.

Any combination of Option I to N could be accomplished through a local co-ordinating body such as a local water authority with responsibilities for a watershed area.

Option J – Documenting potential environmental impacts and effects on other users in licence applications or changes

- Option K – Seeking consent from, or undertaking consultation with, affected parties for licence applications or changes
- Option L – Measuring and reporting actual water use when demonstrating compliance with licence conditions
- Option M – Reporting well levels for regulated groundwater users
- Option N – Self- registering wells, especially where groundwater is in direct hydraulic connection with surface water or in areas of known quantity concerns
- Option O – ANY combination of the above
2. Water users and decision makers have flexibility to quickly adapt to changing environmental, economic and social conditions
- Option A – Provide decision makers and licence holders with the ability to seek amendment of water licences’ terms and conditions based on:
- New information about watershed issues, priorities or changes in supply;
  - The ability to use water differently;
  - Incentives to consolidate licences within a community/ watershed;
  - Adverse impacts on aquifers or groundwater recharge zones;
  - Monitoring information that shows stream health is deteriorating because of lack of water.
- Need the involvement of a local advisory body so that this objective can be met.
- This would have to be a local level consultation process, with clarity in decisions and have final say in all matters. Closely tied to governance options.

3. The water allocation system integrates the management of groundwater and surface water resources where required for problem areas
- Move towards Option B – Priority of use – new surface water in streams is allocated based on priority of use determined either in the Water Act with community involvement in the water allocation plan process.
- Modify FITFIR to move towards Option B over time. Surface water in streams and groundwater is allocated on priority of use **determined with community involvement in the water allocation plan process.**
- It would be hard for the FITFIR system to be thrown out. It is the basis for our water regulations. There would have to be a way to modify the system to allow for distribution of some of the water to spread the wealth, so to speak. Site specific studies may be required in some areas to identify how closely surface water and groundwater are tied, then have a precedence list set up to dictate what order water is delegated.
- Option A refers to ‘additional water’ now available. This could happen through storage but if it is due to increased precipitation, then it is not necessarily a permanent condition. This option could lead to big problems in the future. The Water Act should state where this ‘new’ water is coming from and maybe have different rules depending on source.
- New Water Act should have a provision for a moratorium on new well drilling if water demand is near the level of supply (water budget) in a meaningful timeframe, monthly rather than annual.
4. Water users will be required to conserve water during drought or when stream health is threatened.
- Combine Option B with Option C, and Option E
- Option B – Sharing all water – Users would reduce use on a proportional basis depending on the water supply forecast.
- Option C – Hierarchy of uses – A hierarchy of uses guides how water use is reduced.
- Option E – Through a mandatory Water Management Planning process – such as the current provisions of Part 4 of the Water Act.
- Strongly object to Option D. Not the route to go.
- Water storage needs to be added to the Water Act. A *graduated* process for engineering work depending on what kind and size of dam is being proposed. Engineering costs for building a dam often exceed the construction cost. The Water Act should provide guidelines for what kind of engineering is needed. Not all dams need to be engineered to the same degree. The concept of risk analysis should be explored.
- All flexibility options should be closely tied to governance, as all decisions to do with water, no matter how obvious they seem, will tend to bring out the ire in someone. Water is a resource that requires a flexible set of rules and regulations, and should be managed in a completely transparent manner.

**GOAL FOUR – Regulate groundwater extraction and use in priority areas and for large withdrawals**

Objective	Option Selected	Comment
1. Groundwater extraction and use is regulated in priority (critical) areas and for large withdrawal.	None as stated	<p>Because no two watersheds are alike, legislation around the 'regulation' of groundwater needs to take this into account. It is next to impossible to speak of one threshold or large user because a large user in one watershed may not have the same implications as in another watershed. Our suggested wording for this objective is <i>Groundwater extraction is regulated by the water management plans (WMP) of each watershed/region/district or basin.</i></p> <p>With reference to Options A and B, neither allows for the flexibility that may be desirable given the different regions and water resource issues in the province. Both options talk only about threshold levels. In the wording that is provided, there is no recognition of cumulative impacts over an area. In one sense impact should determine threshold level. But also impact over what area? If, for example, the Act is written in such a way that it allows up to a certain threshold for a well and the landowner needs a larger well he/she can drill two or more wells in close proximity, which could have a cumulative impact greater than the one well. Another consideration is what is the acceptable/defined area of impact – how large is it and who and how many is/are affected?</p> <p>Suggestion: Water Management Plans should develop the thresholds for wells because each area's water resource, its quantity and quality, is unique.</p> <p><b>With reference to criteria for determining priority areas – the seven listed are:</b></p> <ul style="list-style-type: none"> <li>a) Heavy ground water extraction and use</li> <li>b) Area of known quantity concern</li> <li>c) Groundwater in direct hydraulic connection</li> <li>d) Significant population that is reliant on groundwater for drinking water</li> <li>e) Trans-boundary aquifers</li> <li>f) Basins where surface water is at or near allocation limit</li> <li>g) ANY combination of the above.</li> </ul>



Fish and aquatic species have been left out and we suggest the following criterion to address this shortfall:

*Inability to satisfy all contractual and other water commitments (instream fish flows, water licenses, domestic use, environmental flows).*

Modify the wording of d) to read as follows:

*Significant water users are reliant on groundwater for drinking water.* Population is not necessarily the best measure in areas where population numbers are low but one or more sectors need a lot of water - e.g. water bottling plants.

Delete c). As groundwater is always linked to surface water, the statement is irrelevant as a criterion.

Replace criterion e) with the following criterion:

*Where an area is designated as a priority area and has a trans-boundary aquifer, the corresponding area should be considered/evaluated for consideration as a priority area.*

Delete g). It is redundant.

In basins that are water stressed - the criteria to be developed of how to define a water-stressed watershed - and that could be because of the number of wells drilled, the legislation should allow for a moratorium on well drilling and instead/also allow for and encourage storage options (dams, cisterns, etc.).

We trust these comments have been helpful. If you have any questions, please contact the undersigned.

Sincerely,

John M. Anderson Jr., Chair  
Nicola Water Use Management Plan.