

**From:** Peter Lamb \*\*\*PERSONAL IDENTIFIERS REMOVED\*\*\*  
**Sent:** Friday, February 25, 2011 6:21 AM  
**To:** Living Water Smart ENV:EX  
**Subject:** Water Act Modernization

Attached submission from the Salt Spring Island Water Council.

Peter Lamb, Coordinator



February 25, 2011

Water Act Modernization  
Ministry of Environment  
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**Re: WATER SUSTAINABILITY ACT  
Policy Proposal: December 2010**

The Salt Spring Island Water Council provides a unique forum for sharing information on the quality and quantity of Salt Spring's surface and groundwater resources among the full range of agencies, organizations and individuals responsible for providing, protecting, conserving and managing drinking water on the island. Application is being made to establish Water Council as a BC Society.

Council supports the need for updating the provincial legislative and regulatory authorities with respect to the stewardship of water in the province. We support the policy directions set out in the Policy Proposal for a new Water Sustainability Act and urge the BC Government to prepare draft legislation for further public comment as a matter of some urgency.

At this time, there are not enough details on how things will be done, what the proposed Act will look like and what the language will be. And, of course, we are not seeing the resulting regulatory framework, regulations, processes and practical methods required to operate under the Act. Until tested down the line with actual directives and cases this proposal is a very big leap of faith. The effectiveness of a Water Sustainability Act in meeting provincial government and community objectives will clearly depend on the scope and enforcement of the final legislation and regulations.

In the meantime, the SSI Water Council submits the following specific comments on the Policy Proposal:

### **1. Public Trust:**

We are disappointed that the Policy Proposal does not establish in clear terms that water is a public right and not open for commercial exploitation. The doctrine of a public trust applied to the framework for water law in BC has been well argued by Oliver Brandes and Randy Christensen for the protection of ecological values and, in particular, for ensuring public access to life-giving water supply. (*POLIS Water Sustainability Project-Legal Issues Brief 2010-1*)

### **2. Ecosystem protection:**

We strongly endorse the priority given to protection of stream health and aquatic environments since it is key to effective water stewardship and respect for nature. However, we are concerned that instream flows will only be determined by “guidelines” and would apply only to new water allocation licenses.

It is equally important that existing licensees be governed by the same priority use and legislation should provide for appropriate amendments to existing licences. We understand that the Ministry considers the Gulf Islands to be a “chronic problem area” that would involve “additional measures to respond to known water supply issues and risks to water quality.” In this context, we propose that minimum Environmental Flow Standards be set in the Gulf Islands rather than relying on the use of “guidelines” to determine instream flow. In setting Standards, the Ministry must use a precautionary approach and set conservative levels appropriate to the local area. (The “What we heard” notes on this topic states a “preference for standards. Guidelines are too flexible or not enforceable.”)

### **3. Water efficiency and conservation:**

Improvements in water use efficiency and conservation should be a prime objective for all water suppliers in BC through encouraging and stressing all measures to conserve water use and implementing a “soft path” approach to water management. We support the emphasis given in the Policy Proposal to water conservation and improved water efficiency through incentives and economic measures and in drought preparedness plans. Also, the inclusion of water use efficiency in the definition of “beneficial use”.

However, we are opposed to the proposed use of “tradable permits” to allocate water use without a more complete understanding of the necessary regulatory framework to administer the permits. The report prepared for the Conference Board of Canada in December 2008 (“Going With the Flow?”) notes that *“Water markets are not a panacea for the shortcomings of existing systems. They cannot compensate for poor management practices, nor solve problems of over-allocation, and may create incentives for further withdrawals in already stressed ecosystems.....At a minimum, communities must have a role in ensuring adequate instream flow levels within the watersheds in which they are situated if water markets are to be successful.”* It should be noted that this proposal was not included in the initial Discussion Paper and requires much more public consideration of the costs, benefits and risks of such a water market mechanism.

We would also prefer to see water efficiency standards be established rather than relying on “best management practices and codes of practice”. Best management practices offer only general guidance and often rely on voluntary compliance. Water uses are too important to be left to voluntary discretion and water efficiency measures may need to be mandated.

### **4. Groundwater:**

In our previous submission on the Discussion Paper in April, 2010, we strongly supported the objective of regulating groundwater extraction and use in priority (critical) areas and for all large withdrawals. This is especially valid in a designated “chronic problem area” like the Gulf Islands. On Salt Spring, we are experiencing quantity and quality concerns due to finite supply sources, nutrient loading of lakes, failing wells, water resources impacted by salt water intrusion and other substances and having a significant population that is reliant on groundwater for drinking water.

However, the Policy Proposal falls short of regulating the extensive (but indeterminate) network of private, individual wells on Salt Spring Island and we recommend the extension of licensing requirements to smaller, private wells. There need to be prominent, stated criteria and thresholds where any small area, community or private well can have protection. On Salt Spring Island, 50 m<sup>3</sup>/day could be considered a relatively large withdrawal for a community water system or a small subdivision relying on groundwater. More stringent demands on the proof of potable water should be required, especially where it involves subdivision developments. With groundwater capacity being invisible, one should not have to prove there is a water shortage before action is taken.

We repeat our earlier recommendation in April, 2010 that the proposed Water Sustainability Act require that extractions of groundwater on residential properties for residential use be under licence if the extraction is beyond a designated “normal” amount. The limit could be based on the area of the dwelling and be logically connected to the number of persons and a reasonable estimate of “need”. Any water demand above this maximum amount could be mandated to be supplied through rainwater capture and storage. This would make it possible for an agency to make a determination regarding how large an extraction would be appropriate and not allow excessive extractions. Currently, neighbours whose wells are affected have no recourse other than to take costly legal action

The Policy Proposal does not address the controversial issue of hydrofracturing of failing wells for enhancing flow rates. We have made a separate submission to the Ministry on this subject and recommend that actions be taken to regulate and monitor (or ban) the practice of hydrofracturing and its effect on neighbouring wells.

## **5. Agriculture:**

Increased agricultural production and improved food security are priority programs to lower greenhouse gas emissions in Salt Spring’s Climate Action Plan. Accordingly, we support the expansion of current powers to establish agricultural water reserves if linked to requirements for efficient use.

On Salt Spring, agricultural use exacerbates summer drawdown of lakes. Financial support for construction and use of winter-filled dugouts, even for existing licensed withdrawals, should be encouraged.

## **6. Reporting:**

We support strengthening the requirement for measuring and reporting of water use in problem areas, including the Gulf Islands, and recommend that corresponding funding be provided by the province for this purpose.

## **7. Water Governance:**

In our earlier submission, we “strongly supported” the proposed objectives for improving water governance – particularly with clarification and rationalization of the overlapping (or even conflicting in some cases) federal and provincial jurisdiction and integration or coordination of the BC Water Act with other water legislation.

We support the delegation of responsibility for activities and decisions to local or regional agencies and the inclusion of local interests and issues in decisions. The flexibility to address specific regional problems and local issues is the only practical way to go while still establishing certain standards at the Provincial level. There are also signs that some policy directions are being proposed based on practicalities and cost-benefit and impact analysis. Some indication of this analysis in the proposals would help public understanding and acceptance.

For Salt Spring Island, local Watershed Management Plans have been prepared for Cusheon Lake and St. Mary Lake through a collaborative process involving community water suppliers, residents and local government representatives. These Plans and similar Plans for other major watersheds should be given legal authority by the province in the new Act. Delegation of decision-making by the province must rest with a locally-elected or appointed public body with funding and other support from the province.

## **8. Provincial Water Objectives:**

We agree to the establishment of Provincial Water Objectives in BC to guide local land-use decisions and align water uses among a variety of provincial statutes provided that firm regulatory levels, i.e. water quality standards, are set. PWO’s must recognise that, in the Islands Trust area of the Gulf Islands, land-use decisions are critical to meeting the legislated objective of protection of the natural environment. Consistency in application of a variety of provincial statutes will help.

## **9. Priority of Use:**

We recommend that “priority of use” be the basis for water allocation with protection of ecological values being paramount and that a hierarchy of uses be established to guide how water use is reduced when stream health is threatened. The FITFIR (priority time) system of allocating water use is not consistent with the proposed new approach to water management. Accordingly, we do not support the proposed limitation to “exceptional circumstances” on enabling priority use over the current FITFIR system.

## **10. Other related water issues.**

- a. Given the critical need to balance increased summer demands with decreased summer supply, we urge the provincial government to take stronger measures to enable the use of rainwater harvesting systems and grey water recycling in appropriate circumstances. All new buildings (residential, commercial, institutional and industrial) should be mandated to integrate these innovative systems in building design through the BC Building Code
- b. Regular monitoring of the implementation of a new Water Sustainability Act is essential to meeting its stated provincial objectives and we support the establishment of a qualified independent public review panel to provide an annual assessment of the Act.

Peter Lamb,  
Coordinator