

**From:** Ken Cossey [mailto:kcossey@tsawout.ca]  
**Sent:** Friday, February 18, 2011 3:56 PM  
**To:** Living Water Smart ENV:EX  
**Subject:** Re: Join the Conversation on Water Act Modernization

FYI,

Regards

Ken Cossey



# TSAWOUT FIRST NATION

PO Box 121 -- 7728 Tetayut Rd.  
SAANICHTON, BC V8M 2C3

April 12, 2010

Ministry of Environment  
Water Stewardship Division  
PO Box 9340 STN Provincial Government  
Victoria, BC  
V8W 9M1

Attention: Glen Davidson, P. Eng, Director and Comptroller of Water Rights

**RE: The Water Act information sharing session – April 1, 2010**

Dear Mr. Davidson,

Thank you for allowing me the opportunity to be a part of the information sharing session on the modernization of the Water Act. At this time I would like to reiterate that the April 1, 2010 session is to be viewed as an information sharing session only. While the Tsawout Chief and Council and the First Nation have not been consulted properly at this time, I would like to offer the following preliminary comments to you, from a staff to staff perspective. While I can support the modernization of the act, I believe that the format of the First Nation sessions has started with the wrong assumption; this assumption suggests that the province has assumed it alone controls and owns the resource.

As such I am not sure how this modernization process can continue, until the province is indeed willing to acknowledge the existence of Aboriginal Rights and Title to the resource and work with the various First Nations on joint-decision making for the use of the resource. The other issue that has not been addressed through the discussion paper is how Douglas Treaty rights would be protected. For your information, the Council has recently adopted an external referral checklist, for activities that take place within the traditional territory that outlines the range of consultation required. The sliding scale is in keeping with the Interim Guidelines for Federal Officials to fulfill the Legal Duty to Consult and the Interim Guide to First Nation Engagement, published by the province. From Tsawout's perspective the range of consultation is classified as minor, moderate or deep.

With respect to the Water Act modernization process, I would be recommending to the Chief and Council that the required consultation classification range for this type of process must be considered deep. This means that the impacts will seriously affect and or interfere with Tsawout rights, title and our Douglas Treaty. This would mean that funds would have to be provide to the Tsawout First Nation, so we could analyze the proposed Act and determine the potential impacts to the following issues; Tsawout Aboriginal Rights and Title and the Douglas Treaty. We may also require funds for additional studies and or research as required.

I believe that a perfect opportunity exists here that would allow for the province and First Nations to work cooperatively on the modernization of the Water Act. Subject to the Tsawout First Nation Council's approval, perhaps we can come to some sort of arrangement on this possible cooperation. In closing if you require any additional information or you would like to discuss any of the above further feel free to contact me at your convenience.

Sincerely,



Ken Cossey, MCIP  
Lands Manager  
Tsawout First Nation

CC Chief and Council  
Gary Jung – Director of Operations  
Eric Pelkey – Tsawout Douglas Treaty Elders Working Group