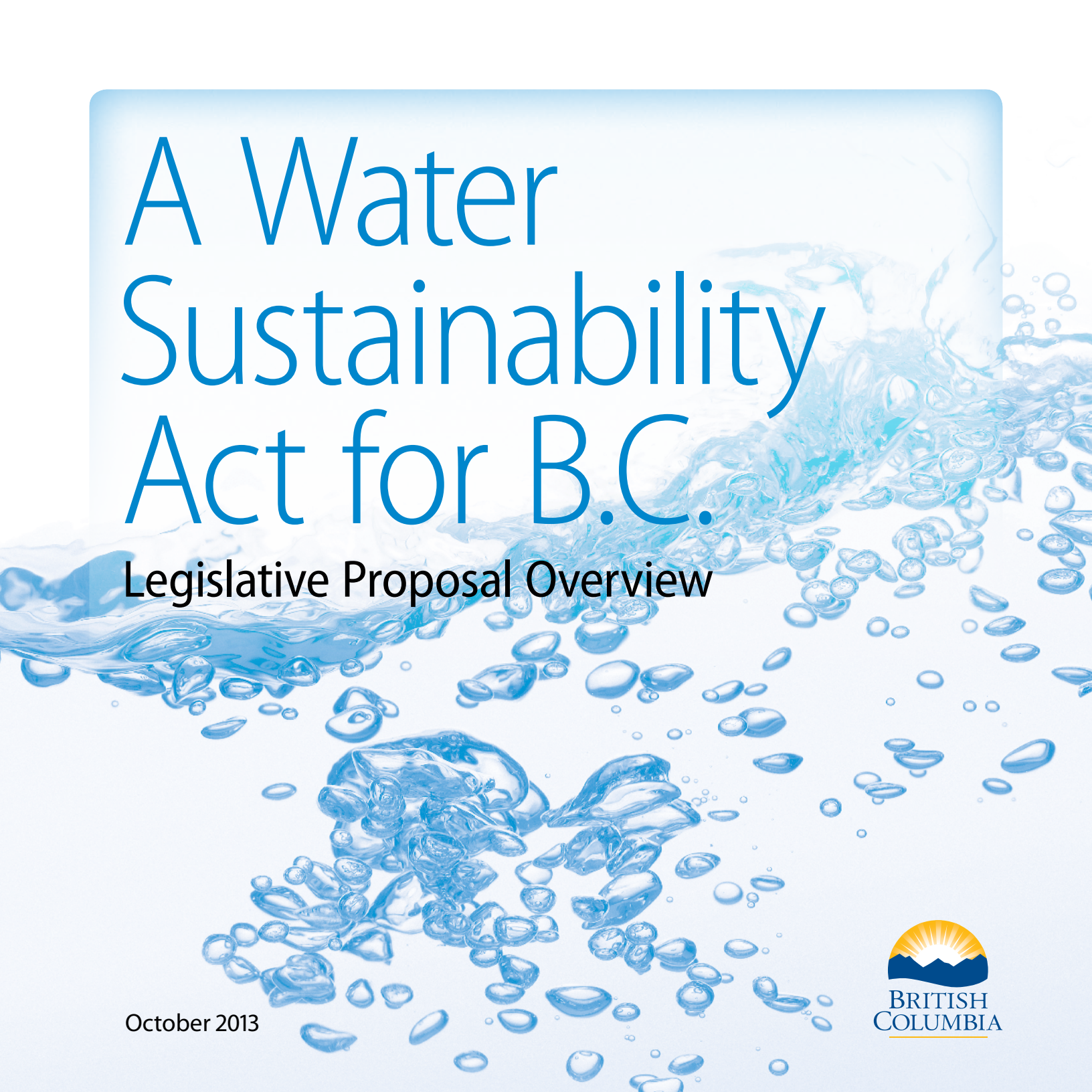
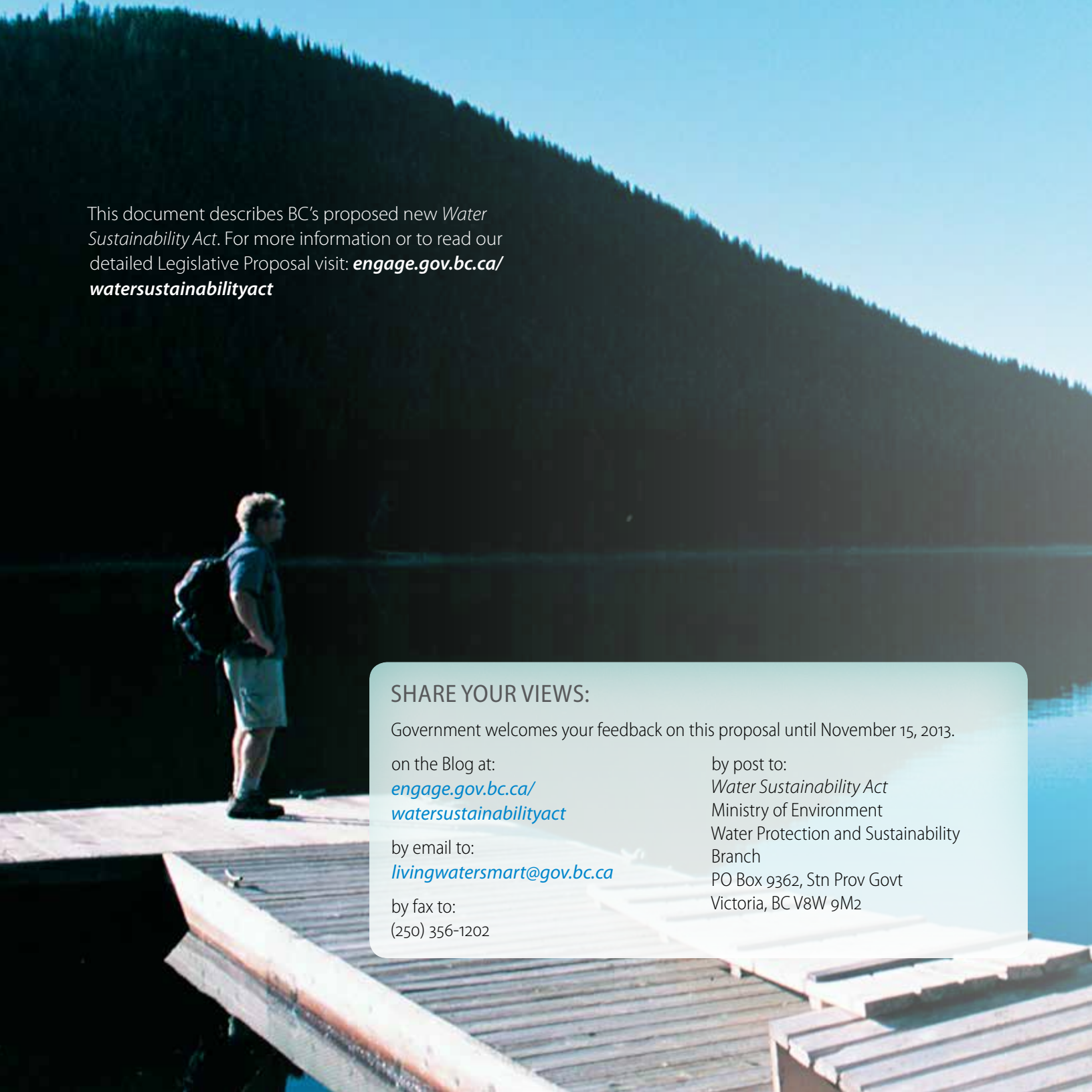
A Water Sustainability Act for B.C.

Legislative Proposal Overview



October 2013

BRITISH COLUMBIA



This document describes BC's proposed new *Water Sustainability Act*. For more information or to read our detailed Legislative Proposal visit: ***engage.gov.bc.ca/watersustainabilityact***

SHARE YOUR VIEWS:

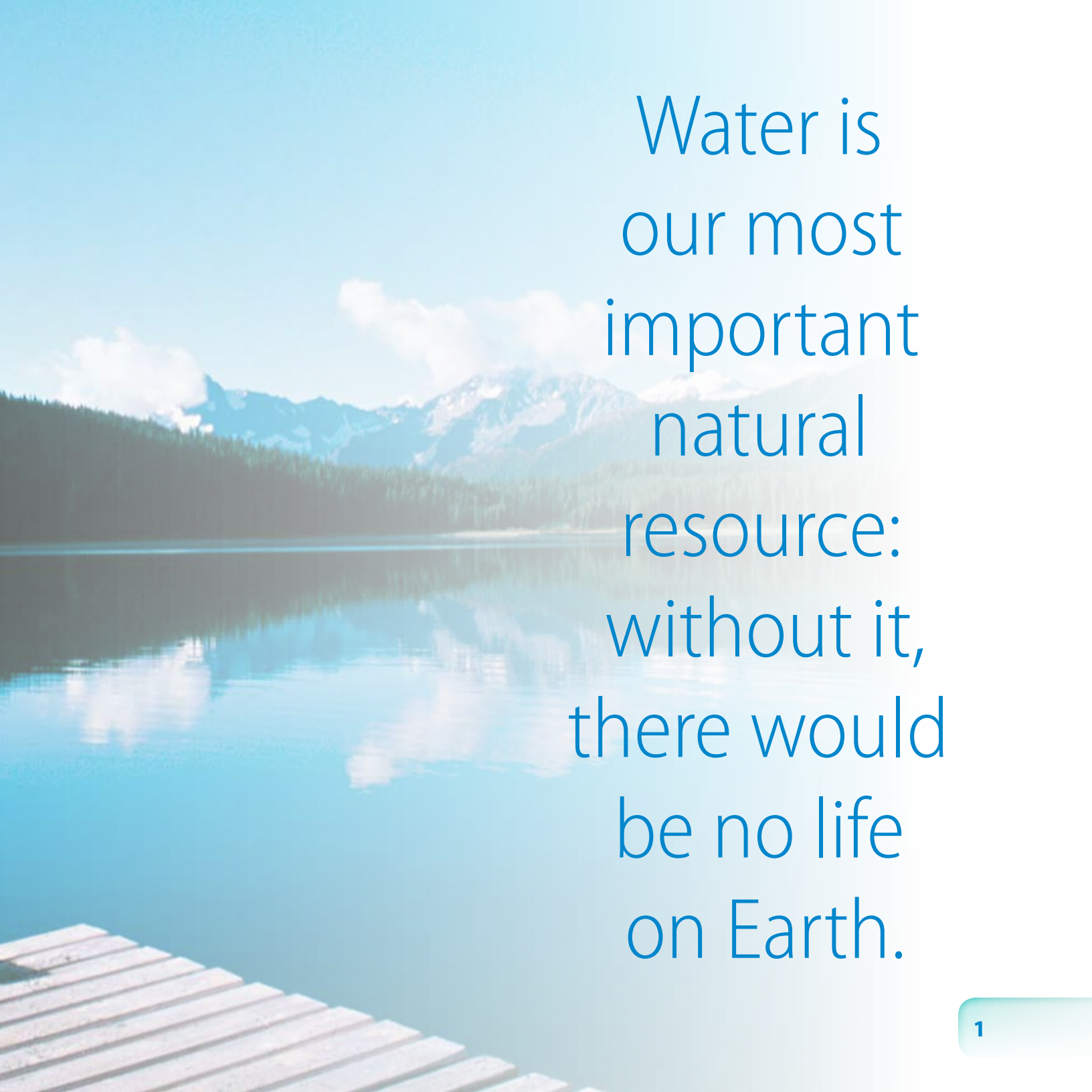
Government welcomes your feedback on this proposal until November 15, 2013.

on the Blog at:
engage.gov.bc.ca/watersustainabilityact

by email to:
livingwatersmart@gov.bc.ca

by fax to:
(250) 356-1202

by post to:
Water Sustainability Act
Ministry of Environment
Water Protection and Sustainability Branch
PO Box 9362, Stn Prov Govt
Victoria, BC V8W 9M2



Water is our most important natural resource: without it, there would be no life on Earth.

Water

We all need it – for drinking, washing, cooking, growing food, and supporting every aspect of a healthy environment, a growing economy and our prosperous communities.

In British Columbia, we're fortunate to have more than 290 unique watersheds, including fish-bearing rivers and streams, spectacular lakes and exceptional wetlands. But even with this apparent abundance, our water supply is finite.

Given the pressures of a growing population, a changing climate and expanding development, we must take steps to ensure our supply of fresh, clean water is sustainable – not just to meet our needs today, but for generations to come.

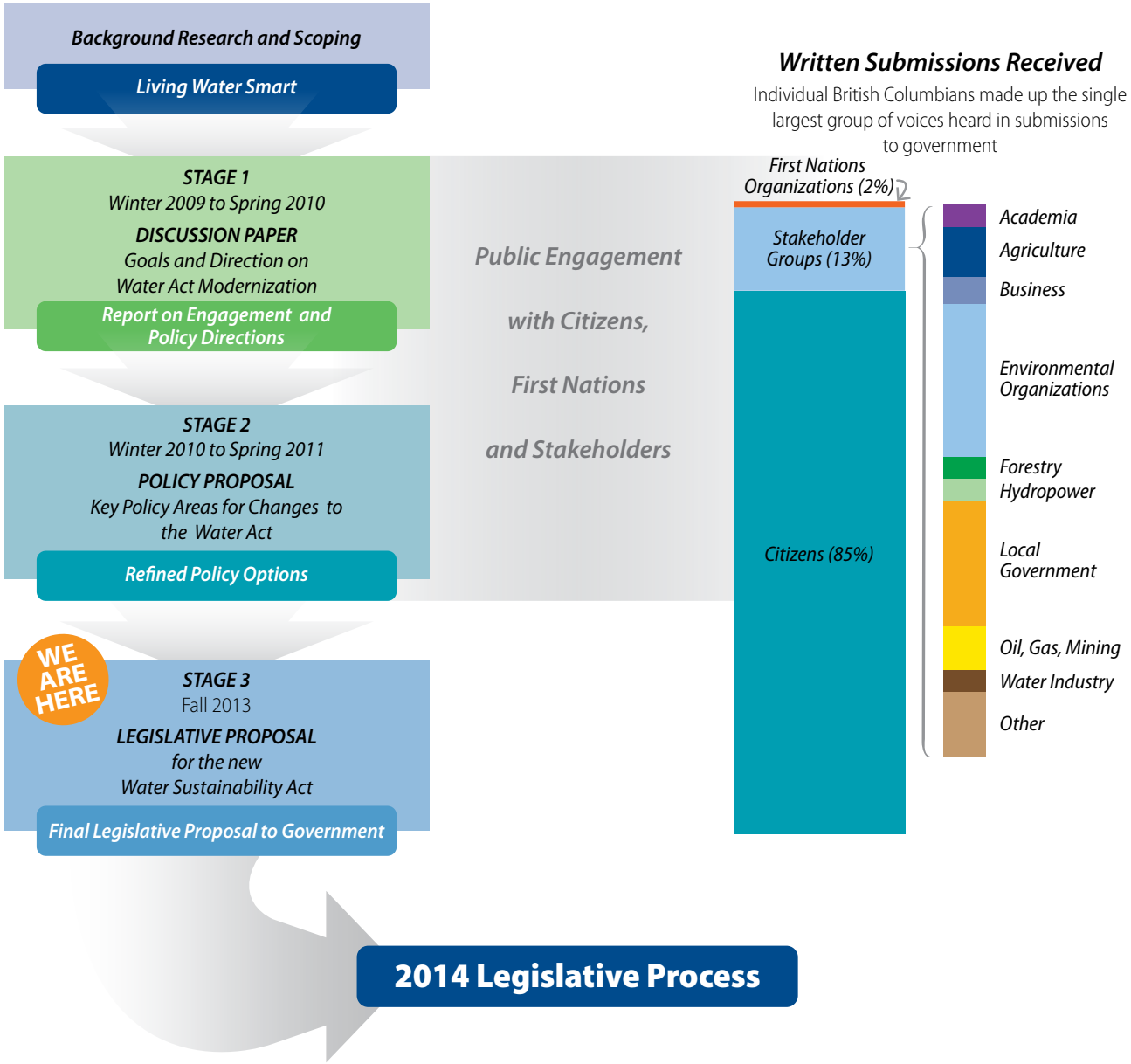
That's the central goal of the proposed new *Water Sustainability Act*, which has been the subject of extensive consultation since 2009.

More than 2,250 citizens, First Nations organizations and stakeholder groups shared their views in writing. Our Living Water Smart website and blog received more than 50,000 visits. These interactions were complemented by direct engagement with local governments, First Nations, environmental organizations and leaders from a range of economic sectors.

Based on that input, the province has developed a detailed proposal for the *Water Sustainability Act*. Now we're seeking your feedback, one last time, before introducing a final version in the legislature in 2014.

Given the pressures of a growing population, a changing climate and expanding development, we must take steps to ensure our supply of fresh, clean water is sustainable – not just to meet our needs today, but for generations to come.

Water Act Modernization Engagement Process



What would the new legislation do?

> "Water needs to be balanced in an environmental, social and economic context. The value of water may change in the future."
>
> Canadian Water Resources Association, BC Chapter

The proposed new *Water Sustainability Act* would bring B.C.'s water laws into the 21st century with a series of common-sense changes and updates that balance the needs of all water users. It would replace the existing *Water Act*, which has been in place since 1909.

Over the years, the *Water Act* has evolved through a series of amendments. For example, clauses to protect the environment were first introduced in 1960. And measures were added in 2004 to protect the quality of drinking water.

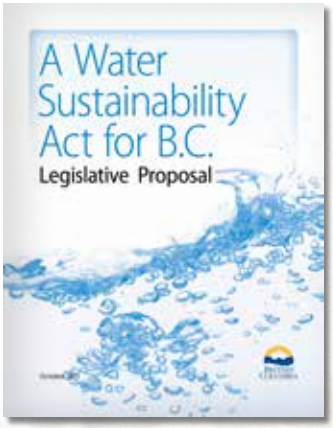
In 2009, the government launched the first-ever comprehensive process to modernize B.C.'s water laws – in partnership with thousands of individuals, groups and communities. Their contributions have been invaluable, providing the range of perspectives and insights we need to get this right.

> "I am pleased with the recommendations for the revised *Water Act*. I would encourage a strong implementation plan to be in place as soon as possible. Implementation is the most important consideration when developing policies."
>
> Citizen Submission

Note: Quotes that appear throughout this document are taken from submissions received during the *Water Act* Modernization engagement process in 2010 and 2011.

The proposed new *Water Sustainability Act* would make improvements in seven key areas:

1. *Protect stream health and aquatic environments*
2. *Consider water in land use decisions*
3. *Regulate and protect groundwater*
4. *Regulate water use during times of scarcity*
5. *Improve security, water use efficiency and conservation*
6. *Measure and report large-scale water use*
7. *Provide for a range of governance approaches*



> “Stream health is an important consideration in the water licensing process... but ...must be assessed in conjunction with social and economic factors.”
>
> Renewable Energy Company

1. Protecting stream health and aquatic environments

In consultations leading to the new legislation, British Columbians expressed strong support for measures to protect the health of streams – which include lakes, rivers, creeks and all other bodies of fresh surface water.

Stream health depends on environmental flow – with the right amounts of water moving through at the right times to maintain the health of fish, water plants and other aquatic life.

The proposed new *Water Sustainability Act* would:

- *Make sure Environmental Flow Needs are considered in new decisions on water allocation, except in very low-risk situations. This would apply to both surface water and groundwater, including amendments to existing authorizations.*
- *Expand prohibitions on dumping debris that currently exist under the Fish Protection Act – including human and animal waste, pesticides and fertilizers – into streams and aquifers.*

These changes would help to keep our fresh water clean and safe, and sustain the wide variety of life that makes up aquatic ecosystems.

STREAM FLOW VARIES THROUGHOUT THE YEAR

1 Healthy stream flows – environmental flow needs are protected.

2 Stream flow is at the critical environmental flow threshold, below which significant or irreversible harm to aquatic ecosystems may occur.

3 Long term health of the aquatic ecosystem (e.g., fish population) at risk.

2 Considering water in land use decisions

British Columbians made it clear throughout our consultations that the long-term health of water and watersheds should be a key consideration in land use and resource development decisions. As many people pointed out, whatever we do on land can affect our water and those implications must be considered up front when we make decisions.

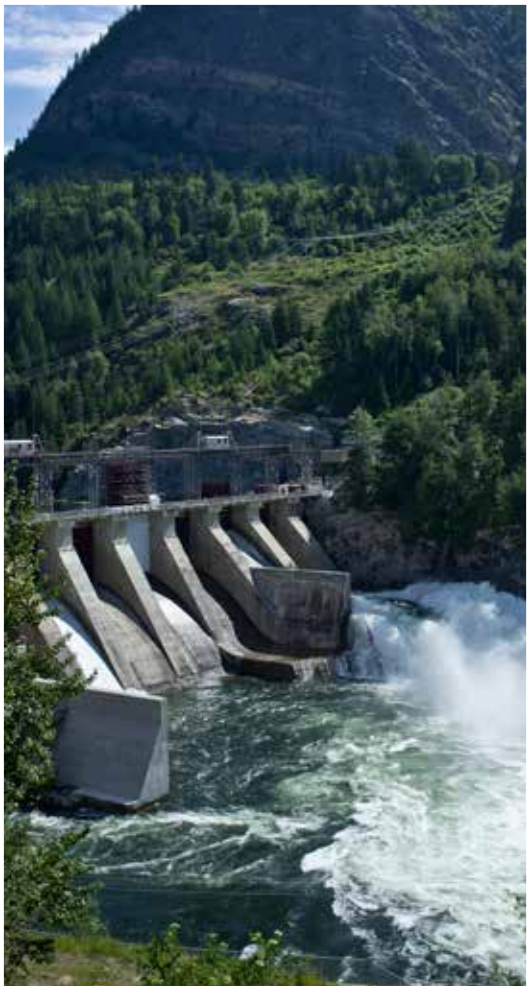
The main challenge is that, in a province as large and diverse as ours, decision-making involves a wide variety of agencies and stakeholders. Although some measures are in place for consideration of water resources, there is currently no law to ensure this is done consistently.

To address these issues, the proposed new *Water Sustainability Act* would:

- *Create a new system where Water Objectives could be defined for streams, aquifers or areas of land, setting out expectations for the protection of water quality, quantity and aquatic ecosystem health. These objectives would have to be considered in water allocation decisions, and could be extended to other land use and resource development decisions.*
- *Allow for the development of Water Sustainability Plans. These would integrate water and land use planning and could be combined with other local, regional or provincial planning processes. Each water sustainability plan – and the process used to develop it – would be unique, reflecting the needs and interests of the area affected.*

These changes would improve consistency in decision-making and help ensure the long-term health of our watersheds.

> "Watershed-based water allocation plans provide a means of protecting and restoring environmental flows by managing cumulative water allocations. This approach also provides clarity for water users and transparency in water allocation decisions."
>
> Environmental Organization



3. Regulating and protecting groundwater use

One of the strongest messages we heard in consultations with British Columbians is that we cannot take our groundwater for granted. About a quarter of our population depends on wells for drinking water and many wells provide water for commercial and industrial uses. Groundwater is also essential to the wider natural water cycle that includes evaporation, condensation and rainfall.

In spite of its importance, B.C. is the only province in Canada that does not currently regulate groundwater use. Unlike surface water, under current laws, groundwater can be used without government authorization and no annual fees apply, even to large-scale users. This is widely seen as unfair.

Without regulation, we're also unable to collect reliable information about the use and current status of B.C. aquifers, and their inter-relationships with streams, lakes and other surface water sources. Under current laws, these issues are considered only for a small number of high-volume uses that are subject to the *Environmental Assessment Act*.

> "Groundwater should not be treated any differently to surface water because the two are in fact one."
>
> Groundwater Scientist

> "The BCGWA strongly believes that detailed well construction and groundwater protection regulations are needed now. We represent an industry with little to no regulation. We are seeking to work toward a 'level playing field,' which will allow a reasonable living for our members and provide a sustainable, quality groundwater resource for all."
>
> BC Ground Water Association

The proposed new *Water Sustainability Act* would address these issues by enabling:

- *Regulation of groundwater similar to the way we regulate surface water. This reflects the strong support we heard in consultations for managing ground and surface waters as a single resource. Groundwater users would need licences and would pay annual fees. However, most "domestic" water wells – including wells for household drinking water – would be exempt from licensing, except in some areas with, for example, vulnerable aquifers under high water demand.*
- *Collection of information from all well owners to help improve our understanding of aquifers and how they interact with lakes and streams. Maintaining a database of all wells in the province would also help to inform future water allocation decisions.*

To further protect our groundwater, the proposed legislation would also update well drilling requirements to keep pace with industry standards.

These changes would improve our understanding and management of aquifers and provide clarity around legal access to groundwater for the people and businesses who rely on it.

Water Sustainability Act

Ensuring our water stays healthy and secure for future generations

APPROACH

Build on the existing *Water Act*
Fill major gaps
Enable area-based management

1 Protect stream health and aquatic environments

- *Ensure Environmental Flow Needs are considered*
- *Expand prohibitions on dumping debris into streams and aquifers*

☑ HEALTHY, SAFE AND CLEAN WATER FOR COMMUNITIES AND THE ENVIRONMENT

2 Consider water in land-use decisions

- *Consider Water Objectives in resource and land use decisions*
- *Develop Water Sustainability Plans*

☑ BETTER DECISIONS AND LONG-TERM HEALTH OF WATERSHEDS

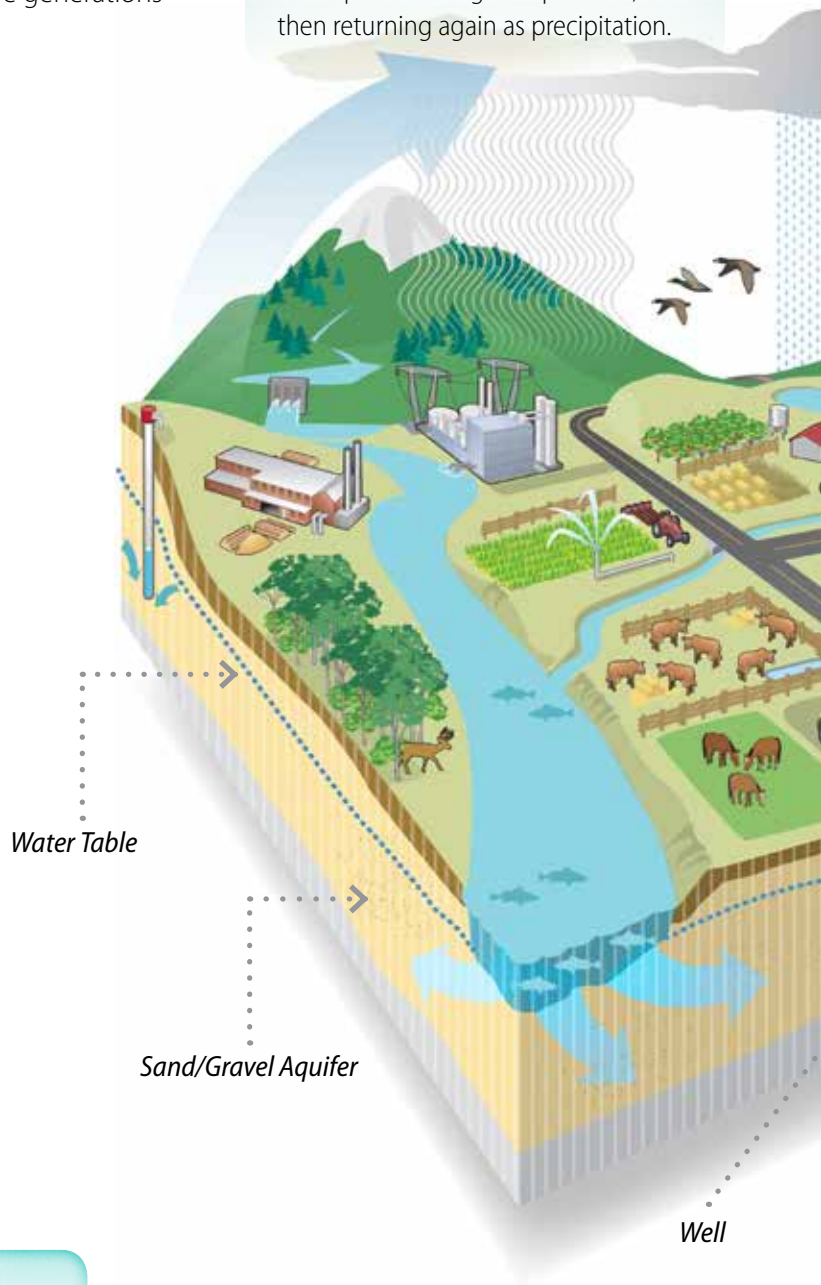
3 Regulate and protect groundwater use

- *License groundwater use, except for domestic use*
- *Improve information on wells and aquifers*
- *Update well drilling requirements*

☑ CERTAINTY OF ACCESS FOR GROUNDWATER USERS AND IMPROVED UNDERSTANDING OF AQUIFERS

HYDROLOGIC CYCLE

The continuous movement of water from the earth's surface into the atmosphere through evaporation, then returning again as precipitation.



LAND USE

Water plays a huge role in shaping our communities and the industries that support them. We need water for drinking, homes and businesses and enough to keep our environment healthy.

GROUNDWATER

Aquifers provide water for communities, industry, agriculture and rural homeowners. Groundwater is closely connected to surface water and is part of the wider hydrologic cycle.

4 Regulate water use during times of scarcity

- *Ensure adequate water for human needs*
- *Allow temporary water use restrictions to protect Critical Environmental Flows and fish habitat*

☑ PROTECTION OF BASIC WATER NEEDS FOR PEOPLE AND ECOSYSTEMS

5 Improve security, water use efficiency and conservation

- *Provide for Area-Based Regulations to address local issues and conditions*
- *Allow Agriculture Water Reserves to be created*
- *Make most water licences reviewable after 30 years*
- *Ensure water is used beneficially and encourage water conservation*

☑ DOING BUSINESS DIFFERENTLY AND ENCOURAGING CONSERVATION AND WISE USE

6 Measure and report water use

- *Require large-volume water users to report water use*

☑ IMPROVED UNDERSTANDING AND MANAGEMENT OF OUR WATER RESOURCES

7 Enabling a range of governance approaches

- *Support the creation of advisory groups for surface and groundwater*
- *Allow for delegation of some activities or decisions to agencies outside of government*

☑ OPPORTUNITIES FOR INCREASED LOCAL PARTICIPATION WITH STRONG PROVINCIAL OVERSIGHT

4 Regulating water use during times of scarcity

B.C. has experienced a number of recent droughts. And while there have always been dry spells, the impacts of climate change are expected to result in more frequent and longer droughts in the years ahead.

Taking too much water from streams and aquifers, especially during droughts, can be very damaging to the long-term health of water supplies and to species and their habitats. But government's power to manage water shortages is limited under current law: it applies to surface water only and can be restricted by the terms and conditions of existing water licences.

> "Water is a right of all living beings. Human beings need to take priority not private interests."
>
> Citizen Submission

In our consultations, British Columbians broadly agreed that during times of scarcity, water should be made available first for essential human needs, then for environmental needs, with all other uses lower in priority.

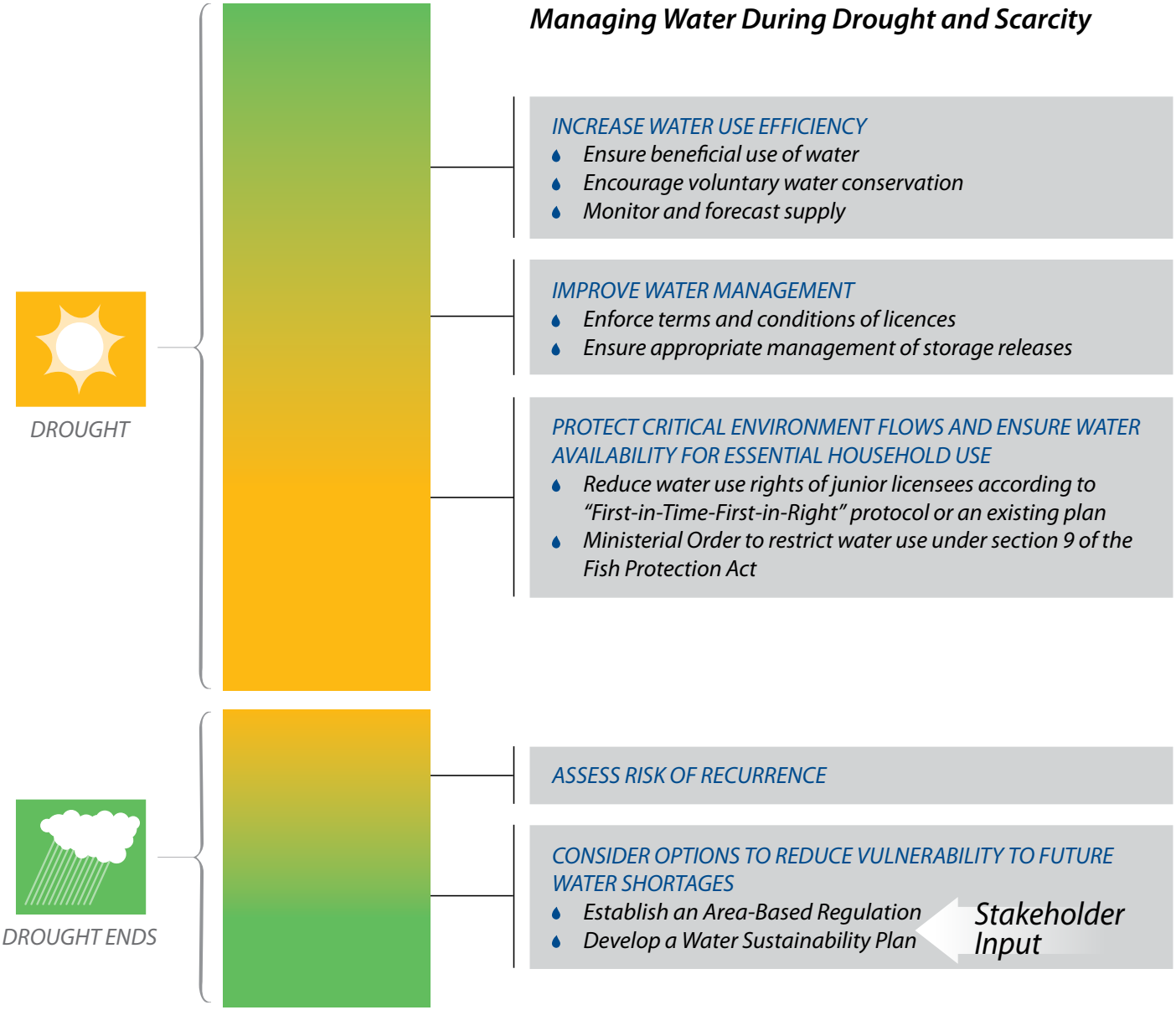
The proposed new *Water Sustainability Act* supports this approach by:

- *Including government powers to regulate groundwater during scarcity.*
- *Ensuring an adequate supply of water is available for basic human needs.*
- *Allowing temporary water use restrictions to protect Critical Environmental Flows to avoid irreversible harm to an ecosystem.*
- *Maintaining the Minister's power under the Fish Protection Act to order the temporary reduction of water use to protect fish habitat. This power was first used in 2009 when low winter snowpacks and a long dry summer threatened the health of kokanee salmon populations in the Upper Nicola River.*

These changes would help protect the basic water needs for people and ecosystems, especially in areas of intensive water use and where there are periodic water scarcity problems.

> "Decisions to restrict water use must be based on good science conducted within the specific watershed in question."
>
> Energy Company

Managing Water During Drought and Scarcity



5 Improving security, water use efficiency and conservation

Water is renewable from year to year, but there is a finite supply. And because it's so essential, we need to use it wisely. In our consultations, British Columbians were strongly in support of using water more efficiently, and making sure we have adequate supplies for agricultural food production, now and in the future.

Under existing laws, water licence holders are required to make "beneficial use" of the resource, but the power to enforce this is limited. It only applies to licence holders and does not take into account best practices in water conservation, new technologies or changes in water use over time.

The proposed new *Water Sustainability Act* would address these issues by:

- *Expanding the beneficial use requirement to all water users and expanding the definition to encourage efficiency and conservation.*
- *Allowing the government to set water conservation targets and carry out audits to determine whether targets are met.*
- *Making water licences – which are generally issued without a defined term – reviewable every 30 years. The 40-year term for hydroelectric power production would remain unchanged.*
- *Allowing Area-Based Regulations to be adopted for specific regions facing multiple pressures or unique water management challenges. These regulations would allow for additional requirements or restrictions specific to the area.*
- *Allowing Agriculture Water Reserves for specific areas or water sources, protecting existing allocations and ensuring water is available as more agricultural land is brought into production.*

> "Food security is dependent upon equal protection for land and water. This needs to be recognized by the Province with more secure access to water for agriculture lands."
>
> Agriculture Sector Representative

WHAT IS BENEFICIAL USE?

Water licence holders are required to make beneficial use of the resource. Under the *Water Act*, beneficial use refers to using the water for the purpose indicated in the licence and according to the licence terms and conditions; however the terminology is not clearly defined and engineers have broad discretion to determine what is "beneficial."

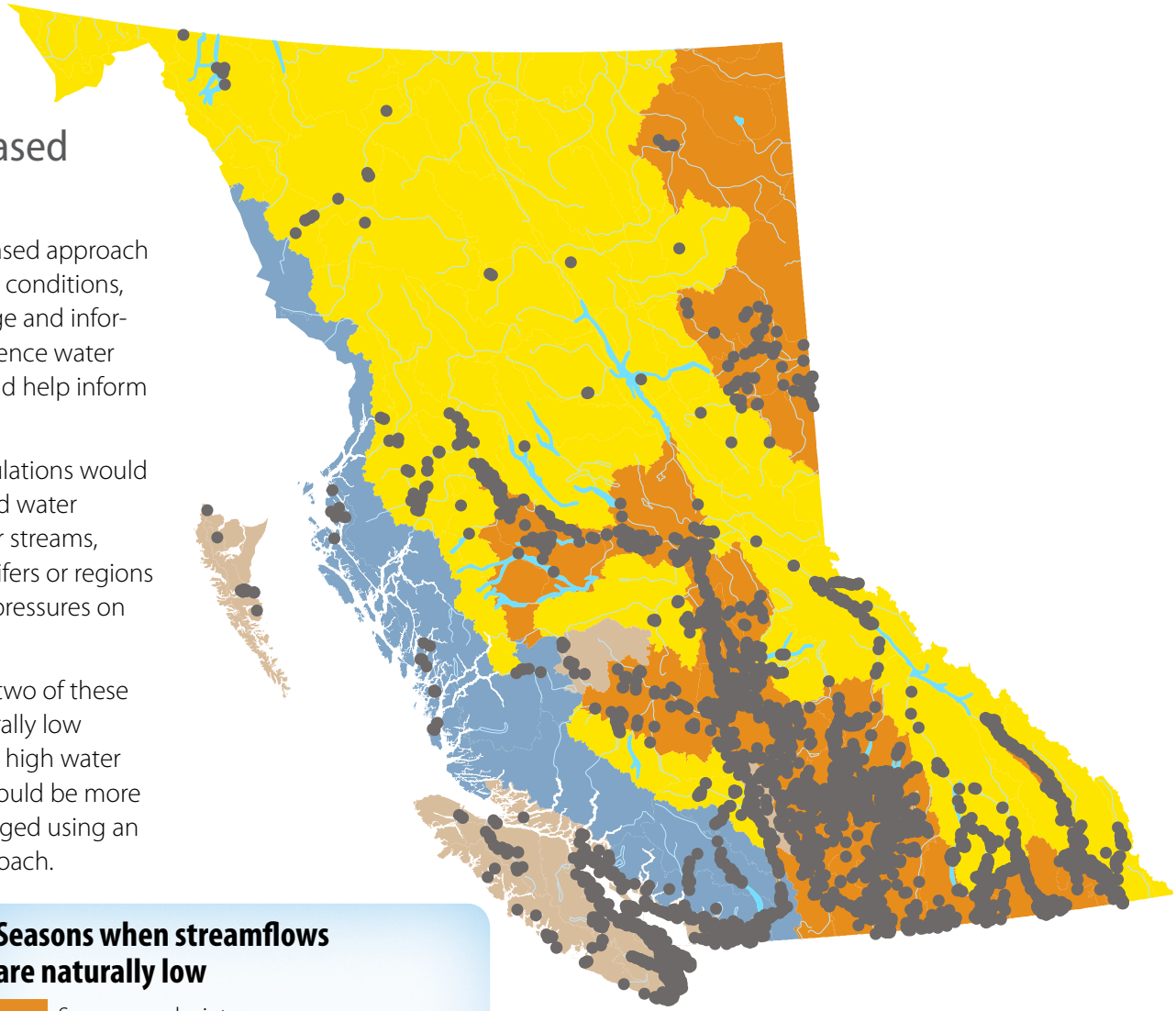
With the new *Water Sustainability Act*, beneficial use would be clearly defined to include the current meaning as well as conserving water and using it efficiently.

An Area-Based Approach

Using an area-based approach means that local conditions, issues, knowledge and information will influence water management and help inform decisions.

Area-Based Regulations would allow customized water management for streams, watersheds, aquifers or regions facing multiple pressures on water resources.

The map shows two of these pressures – naturally low streamflows and high water demand – that could be more effectively managed using an area-based approach.



Seasons when streamflows are naturally low

- Summer and winter
- Winter only
- Summer only
- Neither summer nor winter

- **Water sources that already have restrictions on further water allocation**

6 Measuring and reporting water use

We can't manage what we don't measure. Understanding how much water is available and how much we use is critical for decision-making. And while there is provision in existing laws that require licence holders to measure, record and report their water use, the requirement is discretionary. In other words, there is no legal requirement for it to be applied consistently – or to be applied at all, depending on the circumstances.

In keeping with the views we heard from British Columbians on this topic, the proposed new *Water Sustainability Act* would require large-volume users, such as industrial operations, to measure, record and report their water use and related information.

Details, including a definition of "large volume," would be set out in regulations under the new legislation.

Smaller-volume licence holders could also be required to measure, record and report water use, but only in specific circumstances, such as under "Area-Based Regulations."

Homeowners and small businesses connected to municipal water systems would not be directly affected by these requirements. The duty to measure and report rests with the local government or supplier that holds the water licence. Along with providing important information about water usage, measuring and reporting can help to alert communities to problems with their infrastructure, such as leaking water pipes.

> "In order to make informed decisions respecting water resources, it is critically important to ensure that a strong base of knowledge is available, including water quantity and quality monitoring data, trend analyses, and near-term forecasts for water supply, drought, or flood risk."
>
> Watershed Organization

7. Enabling a range of governance approaches

B.C.'s current water governance system centralizes most authority in the provincial government with limited ability to delegate authority – even as citizens across the province have been forming groups to plan for, protect and restore local watersheds.

In our consultations, British Columbians indicated that new tools are needed to better address local needs for water and watershed governance. And they indicated a need for consistent rules and strong provincial oversight.

In response, the proposed new *Water Sustainability Act* would:

- *Increase flexibility in governance arrangements to better suit local needs.*
- *Allow for delegation of some water management activities or decisions to people or agencies outside of the provincial government.*
- *Support the creation of advisory groups for both surface and groundwater.*

The *Water Sustainability Act* would provide opportunities for greater local contributions to water stewardship and input into decision processes, within a clear and consistent provincial regulatory framework.

Ultimate accountability and responsibility for water management would remain with the provincial government; it would decide the roles and responsibilities for any delegated activities or decisions.

> "A cooperative effort by government and communities is required. More support and trust needs to be given to the non-government organizations that are implementing water monitoring programs aimed at protecting watersheds and water resources in the long term."
>
> Environmental Organization

> "It makes sense to involve the public in planning for the health and safety of their water, as water is vital to everyone's life."
>
> Local Government

Next Steps

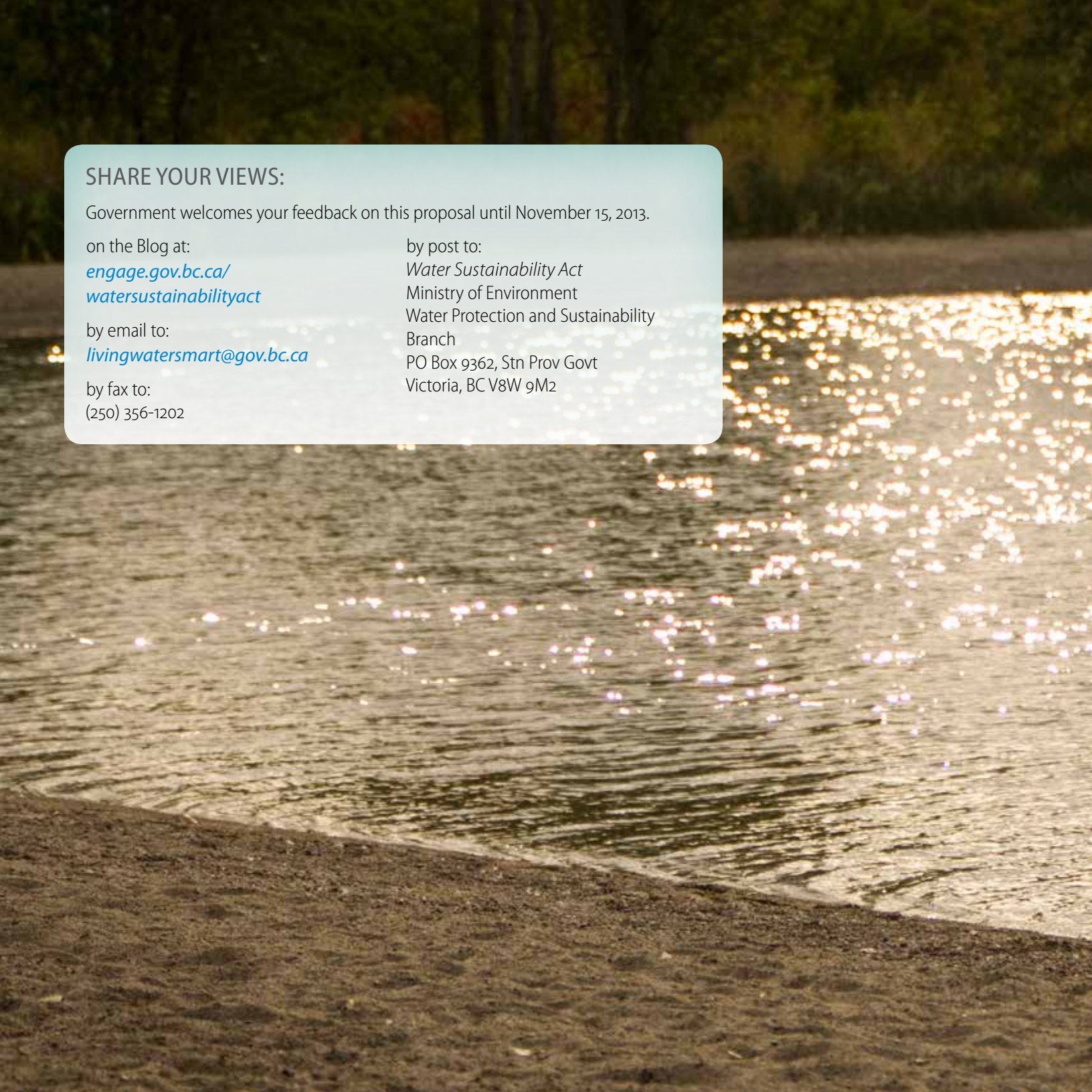
We want your feedback on the proposed new *Water Sustainability Act*. Comments received by November 15, 2013 will be reviewed and considered as the government prepares a final version of the new legislation. All submissions will be posted online at *engage.gov.bc.ca/watersustainabilityact*. The legislation will be formally introduced in the Legislature in Spring 2014.

Expected benefits of the proposed legislation include:

- *Increased protection of water resources and aquatic ecosystems.*
- *More flexibility and efficiency to meet the needs of water users.*
- *Increased certainty, especially in areas of intensive water use and where there are chronic water scarcity problems.*
- *Clarity around legal access to groundwater for people and businesses who rely on it.*
- *Wider participation in decisions and water governance approaches.*

For more information on the proposed new *Water Sustainability Act*, to download our detailed Legislative Proposal, or to read what others are saying, visit *engage.gov.bc.ca/watersustainabilityact*.

Water is owned by the Crown on behalf of all British Columbians. The proposed new Act would reaffirm water as a public resource and would not privatize B.C.'s water resources or enable water markets. The* Water Protection Act*, in place since 1995, prohibits bulk water exports from B.C. It will remain in place and work with the new* Water Sustainability Act *to protect and manage our water resources.



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