

Lynn Kriwoken
Executive Director, Water Protection & Sustainability Branch
Ministry of Environment
PO Box 9362, Stn Prov Govt
Victoria, BC V8W 9M2

November 15, 2013

Re: Water Sustainability Act Legislative Proposal

Dear Ms. Kriwoken:

BC Hydro has previously provided input to the *Water Act* Modernization and appreciates the opportunity to provide additional comments for consideration by the Ministry of Environment. BC Hydro is the largest power purpose licensee and contributor of water rental fees in the Province. Changes to the existing *Water Act* in transition to the *Water Sustainability Act* (WSA) may have the potential to directly or inadvertently alter BC Hydro's ability to provide clean and renewable power to residents, businesses, and industrial customers in a cost effective manner and could affect the Province's ability to achieve energy self-sufficiency goals.

Along with the Comptroller of Water Rights, BC Hydro as a Crown corporation has extensive experience operating province-wide with the existing *Water Act* in daily operations, water licence management, and Water Use Plans (WUP). Within this context, BC Hydro provides the following comments on the October 2013 *A Water Sustainability Act for B.C. Legislative Proposal*.

General Priorities:

- Ensure no additional electrical rate impacts associated with direct changes to the water rental fee structure for power purpose licences and those ancillary licences associated with our power purpose licences (storage for power, permit over Crown lands, and powerhouse specific industrial purposes such as cooling, fire protection, etc.).
- Ensure that changes to the WSA respects existing legislation interactions between, but not excluded to, the *Hydro and Power Authority Act*, the *Clean Energy Act* (CEA), and other Acts or obligations (e.g. Columbia River Treaty) that affect BC Hydro. In particular, BC Hydro assumes that current exemptions to the *Water Act*, under the *Hydro and Power Authority Act* will remain valid under the WSA.
- Currently, the *Water Act* requires that the term of a new licence issued for power purpose is 40 years. BC Hydro's generation and storage facilities are "heritage assets" under the *Clean Energy Act*, which must not be sold or otherwise disposed of, and BC Hydro's energy objectives include ensuring that ratepayers continue to receive benefit of these assets. BC Hydro submits that a term limit of 40 years on licences for power

purposes associated with capital intensive heritage assets is inappropriate given the economic investment, scale of provincial interest, asset life, and is inconsistent with the spirit and intent of the *Clean Energy Act*. BC Hydro recommends that the *Water Act* should be amended to allow licences associated with heritage assets to be exempt from the 40-year term limit with the approval and/or at the direction of the Lieutenant Governor in Council (LGIC).

- Ensure that water reallocation during “time of scarcity” remains restricted to “domestic purpose” only and not expanded to other purposes that could materially impact our storage reservoirs (e.g. industrial, waterworks, mining, etc.).
- Ensure that water allocation by licence precedence date remains intact and that new licences associated with ground water are considered in this precedence scheme to ensure that senior surface water licences are not impacted by junior ground water licences.
- Unlike water rental fees for capacity, water rental fees for power purpose (energy MWh) are billed in the current year based on the prior year’s generation, with no provision to reconcile for the actual year’s generation. This is out of phase by one year with operating costs and complicates financial reporting. BC Hydro submits that energy water rental fees for the current year should be based on the current year generation.
- Responsibility for water management in times of “overabundance” is not directly addressed in the *Water Act* (s21). BC Hydro requests that the WSA include broader recognition of non licensee responsibilities when assessing damages and losses.
- Water Use Planning represented a significant Provincial and BC Hydro investment in water management. Decisions associated with new licence applications, amendment of existing ones, and other decision making processes (like the proposed Water Sustainability Plans) must explicitly respect the decisions made in the WUP process and as issued in associated *Water Act* Orders.

Specific to the October 2013 - A Water Sustainability Act for B.C. Legislative Proposal:

- **Water Use Purposes:**
As defined under the current *Water Act* and proposed in the WSA, storage appears to be retained as a generic purpose. This is in contrast to the use of “divert” under the *Water Act* which is not a purpose unto itself. It is suggested that “storage” be attached to one or more specific purposes. If “*water fee and rental structure and rates (with the exception of water power)*” are to be changed, it would be pertinent to distinguish “*storage for power purpose*” from generic “*storage*” to avoid additional costs to BC Hydro rate payers.
- **First-in-Time, First-in-Right (FITFIR):**
BC Hydro supports the continuance of operations under the FITFIR regime which provides all licencees operational certainty under normal and usual hydrological

conditions. Significant deviations or exceptions to this principle could result in reallocation of water from BC Hydro's power licences resulting in impact on energy availability and cost of service. Additionally, with the inclusion of ground water in the WSA, consideration needs to be given for the potential of ground water licences to impact existing surface water rights. New ground water licences must take into consideration surface water licences and respect the precedence date of these licences

- **Regulation During Scarcity:**

The WSA proposes that water for non "domestic purposes" may be re-regulated in times when the water supply may be insufficient to meet the demand for all water licences and approvals. BC Hydro recommends that this new provision is clearly restricted to "domestic purpose" only and excludes other purposes such as "industrial", "mining", etc. to avoid expectations of water management, particularly that associated with power storage, outside of FITFIR during scarcity.

- **Beneficial Use:**

The definition of beneficial and efficient use of water will vary across sectors. In alignment with water use purposes, it is proposed that beneficial use provisions under the WSA should be specific to water use purposes to avoid a blanket definition that may fit poorly with the unique nature of different uses amongst sectors and in the case of power purpose licences, be related to their associated water rental fee structure, and their non-consumptive use of water.

- **Hydro and Power Authority Act:**

BC Hydro understands that no changes to the existing exemptions to the *Water Act* as currently listed under the *Hydro and Power Authority Act* are being contemplated. Careful consideration of consequential amendments should be made to ensure that changes under the WSA do not inadvertently jeopardize the provincial operational certainty afforded by the *Hydro and Power Authority Act*.

- **Fish Protection Act:**

The draft legislative proposal suggests that provisions under the *Fish Protection Act* may be integrated into the WSA. Duplication should be avoided and clear separation of the requirements under each of these Acts is recommended to avoid conflict under their implementation.

- **Water Sustainability Plans (WSP):**

Through WUP, BC Hydro and the Province have committed to significant provincial programs, striking a balance between water interests for fish and wildlife, recreation, heritage and electrical power needs. Where WUPs, as approved by the Comptroller, have already been implemented or a water plan under a Provincial or Federal

Environmental Assessment (EA) is approved by an EA process, broader Water Sustainability Plans must respect those decisions already made.

- **Environmental Flow Needs:**

Environmental flow needs are currently managed under the WUPs and take into account the diverse environmental considerations specific to the individual watershed that each WUP is associated with. Provisions under the WUPs already meet or exceed the preservation of critical environmental flow needs in times of drought and scarcity. Decisions made under new licence applications or other WSA processes must respect and consider the existing environmental requirements determined as part of a Water Use Plan and/or a Provincial or Federal Environmental Assessment Process.

- **Water Objectives:**

Water quality, quantity and ecosystem health considerations are managed through a variety of legislative means. Water Quality Objectives must be clearly defined and recognize that fish considerations are dealt with under the *Fish Protection Act* and provisions of the federal *Fisheries Act*. Water Quantity and Quality objectives that were determined as part of a Water Use Plan and/or a Provincial or Federal Environmental Assessment Process must be considered under the WSA when making decisions.

- **Approved Work Practices and other Best Management Plans:**

BC Hydro holds a number of administrative agreements that apply to operations and maintenance in and around water for its generation, transmission and distribution lines of business. These existing processes support stream habitat, health and aquatic environments and should still apply under a new regulatory framework. The WSA should respect these agreements and the process to create them, to avoid detrimental impacts on the operational and administrative efficiency and costs.

- **Offences:**

Specific to water conveyance management (reservoir elevations, diversion rates, instream flow needs for fish, etc.) the threshold for “general offences” and “high penalty offences” or “restorative justice”, as newly contemplated under the WSA, should have a minimum significance level that considers accuracy, precision, frequency, significance and other conflicting licence requirements before triggering enforcement. Moreover, any Administrative Penalties (APs) would need to be carefully designed and considered in the spirit of maintaining open cooperation between the licensee and regulator.

- **Water Use Reporting:**

BC Hydro effectively reports on millions of data points annually. Given the extensive amount of data already provided, a standardized reporting format for all water licencees is unlikely to capture the level of detail presently provided and could create additional administrative burden with no clear sense of additional value. Definition of sector specific reporting requirements or granting the Comptroller of Water Rights the discretion to provide approval for alternative reporting mechanisms would continue to allow for appropriate and efficient reporting of information.

- **Governance:**

The BC Hydro system is composed of a complex interconnected network of generation, transmission and distribution assets across the multiple provincial "water regions". The central governance model (Comptroller of Water Rights in Victoria) in place today should remain given its alignment with how the system is operated at a provincial scale and our role as a Provincial Crown. Delegation to a regional authority, on a project by project basis, will introduce inefficiencies and inconsistencies in water licence management and reduce regulatory certainty.

We would be pleased to meet with Ministry of Environment staff to provide further information to support our points noted above as required.

Yours Sincerely,



Chris O'Riley
Executive Vice President, Generation

C:

Glen Davidson, Comptroller of Water Rights, Ministry of Forests, Lands and Natural Resource Operations

Les MacLaren, Assistant Deputy Minister, Electricity and Alternative Energy Division, Ministry of Energy and Mines

