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Via Email: livingwatersmart@gov.bc.ca
(Original to Follow by Mail)

Water Sustainability Act
Ministry of Environment
Water Protection and Sustainability Branch
PO Box 9362, Station Provincial Government
Victoria BC V8W 9M2

RE - WATER SUSTAINABILITY ACT FOR BRITISH COLUMBIA: LEGISLATIVE PROPOSAL

Attached is the Business Council of British Columbia's submission on the Ministry of Environment's October 2013 *Water Sustainability Act* for British Columbia: Legislative Proposal.

We appreciate the opportunity to review and comment on the Proposal and we acknowledge the hard work of Ministry staff on this important policy file over the past few years.

If you have any questions please feel free to contact me or Denise Dalmer, Director, Environment and Sustainability at denise.dalmer@bccbc.com or 604-696-6583.

Yours sincerely,

Original signed by
Jock Finlayson

Jock Finlayson
Executive Vice President & Chief Policy Officer

/vjc

cc:: Wes Shoemaker, Deputy Minister
Lynn Kriwoken, Director, Water Protection & Sustainability



**Comments on the
Water Sustainability Act for British Columbia: Legislative Proposal
November 2013**

1. Introduction

The Business Council of British Columbia is pleased to provide these comments on the Ministry of Environment's *Water Sustainability Act* for British Columbia: Legislative Proposal (the "Proposal"). This submission is supplemental to the Council's previous submissions dated April 30, 2010 and March 14, 2011.

The Business Council, established in 1966, is an association representing some 250 large and medium-sized enterprises engaged in business in British Columbia. Our members are drawn from all major sectors of the provincial economy, including forestry, energy, mining, manufacturing, transportation, advanced technology, tourism, retail/wholesale trade, construction, utilities, education, and professional, scientific and technical services. Taken together, the corporate members and the associations affiliated with the Council are responsible for approximately one-quarter of all private sector payroll jobs in British Columbia.

The comments that follow reflect the diverse membership of the Council. A number of our member organizations (individual companies and industry associations) will be providing more detailed comments on specific aspects of the Proposal that are relevant to them.

As an initial point, the Business Council believes that provincial policy-makers must be mindful of the broader economic context when considering significant legislative and regulatory initiatives that will affect business and industry. British Columbia today is operating in a very competitive global economy, one where capital and high value business activities are mobile and companies in many sectors typically consider a range of jurisdictions when looking to invest. At the same time, it is important to recognize that some elements of the business environment in BC have become less competitive, owing to factors such as the recent switch back to the antiquated PST sales tax regime; the higher corporate tax rate announced in the 2013 provincial budget; the impact of the BC carbon tax in raising fossil fuel energy costs for businesses here; escalating electricity costs (at a time when such costs are declining in many American states); and continued delays and other regulatory costs associated with complex provincial approval and permitting processes affecting manufacturing, infrastructure, resource and other land-based industries. Put simply, for a number of industries that occupy a significant place in our economy, BC's relative competitive position has deteriorated on a North American basis. This is not a reason to delay modernizing outdated statutes such as the *Water Act*. But it does underscore the need for policy-makers to pay close attention to the impact of government decisions on business costs and regulatory compliance burdens – particularly when pursuing major new legislative initiatives.



2. Positive Changes

Overall, the Business Council is pleased with some aspects of the Ministry's Proposal. Among the positive features are the following:

- It reflects the effort by the Ministry to engage stakeholders over the past 3 years.
- It also reflects work by the Ministry to reconcile the many competing perspectives expressed during previous consultations, and to condense these into a few broad areas of proposed change.
- There is recognition and ongoing use of the principle of first-in-time-first-in-right (FITFIR).
- The Proposal acknowledges the need for flexibility in several key areas.
- It also incorporates sufficiently lengthy license review periods of 30 years.
- The Ministry intends to introduce a project development period for 40 year fixed term power purpose licences.

3. Thematic Areas of Continuing Concern

3.1. Governance Structure and Resources

All of the Business Council's previous submissions during the consultation process leading to the *Water Sustainability Act* ("WSA") highlighted the need for a strong provincial presence and policy leadership in the management of British Columbia's water resources and advocated for a centralized governance structure. The current Proposal contemplates introducing enabling provisions that would allow for the delegation of responsibilities under the WSA to regional bodies – and possibly to non-governmental entities. We re-iterate a key point emphasized in our previous submissions that strong provincial oversight, policy direction and a centralized governance structure for water allocation, licensing and management are essential for ensuring regulatory fairness, project and permitting efficiency and certainty, and economic stability in British Columbia.

Decision-making authority over the province's natural resources, especially water, should rest with bodies that are responsible for and responsive to the provincial interest rather than purely local preferences. In particular, delegating decision-making to regional bodies (and possibly to non-governmental entities) runs the risk of inconsistent decisions across different regions and types of governance structures, an expansion of the mandates of often poorly resourced sub-provincial bodies, additional administrative costs, and more complex compliance requirements.

The Business Council agrees that regional bodies and non-governmental organizations should have a role in water use planning and policy development. For example, we support bodies like the Okanagan Water Basin Board (OWBB) as an arrangement for assisting with the management of water in a scarcity-prone geographic region. We also see a case for delegating discrete water governance functions to regulatory agencies with demonstrated industry-specific expertise, such as the Oil and Gas Commission in respect of the allocation and



management of water in northeast BC. But we are not supportive of expanded sub-provincial decision-making authority or the delegation of provincial governance functions to regional non-regulatory bodies or non-governmental entities, in particular in respect of water allocation or the levying of administrative fees or penalties.

3.2. Costs and Pricing

Many Business Council members are worried that the WSA will dramatically increase the regulatory burden on water-reliant industries with an established history in BC, such as pulp and paper and aquaculture. The Business Council shares this general concern. The WSA will likely result in substantially increased compliance costs for industry as well as increased fees. These added costs are likely to exacerbate the competitiveness challenges facing several industries that are important to our economy and that supply a large share of BC's exports.

The current Proposal raises the issue of water pricing but does not provide any concrete details. The Business Council believes that an in-depth public dialogue and further policy work within government is needed before substantial increases are imposed on licence fees or major changes are made to the fee structure relating to water use. In particular, further discussion is required as to whether the current water rentals structure is appropriately split between non-consumptive and consumptive uses, and whether a disproportionate burden will be imposed on a relatively small number of large industrial users of water.

In principle, the Business Council supports the concept of user pay, but as in all domains involving resource management of common property public goods, it is appropriate that some portion of the costs of public administration and regulation should remain sourced from general government revenues. We are concerned that the Proposal has essentially presupposed that water administration and management will be based on a 100% user pay model, and that current fees will be raised substantially to cover the costs of yet-to-be-defined functions arising from implementation of the Proposal. We are also troubled that the focus of the user pay conversation is almost wholly targeted on industrial users rather than all users. The Business Council recommends further review of the implications of adopting a full user pay model for water that is nested within a larger examination of the role of user pay policies in natural resource management.

3.3. Small and Large Users

In BC, the natural resource sector attracts a disproportionate amount of attention in water use discussions even though the cumulative sum of many small users may have as large or a larger impact on water quantity and quality than all of the industrial users, which at the moment collectively account for 0.6% of all consumptive water use in BC (industry 0.3% + agriculture 0.2% + aquaculture 0.1%). A number of Business Council members are concerned that the proposed threshold of 250m³/d targets industrial use and users when the reality is that they represent less than one percent of consumptive water use in BC. With this as context, we recommend rethinking the threshold and, at a minimum, including some form of



registration and annual reporting for small users. This will be important to enabling proper mapping of resources as well as in making decisions under FIFTIR, especially around the interface between surface and groundwater.

3.4. Ongoing Consultations

The Proposal contains many concepts that are hard to argue with in principle. Missing, however, are the details that would enable constructive feedback from water users and other stakeholders as to their workability, consequences and costs. We understand that the WSA is a complex piece of legislation and that many specific matters are best addressed through regulations. But it is critical that a robust consultation framework is maintained to provide opportunities for ongoing input into the actual legislative language, regulatory details and the concrete linkages between legislation, regulations, policy and guidance. The Ministry's current plan will involve significant transition costs (financial and human capital), and may in some cases fundamentally change the way business is conducted. We recommend that the Ministry provide additional opportunities for comment on options before final decisions on legislation and regulations are taken.

4. Some Specific Details

4.1 General

The Business Council supports the decision to maintain (but modernize) the core provisions of the *Water Act* in the new WSA. The Proposal suggests that the WSA will contain a new definition of oil and gas use under the general industrial definition of beneficial use. The reasoning for this change is not explained in the document. We believe the existing *Water Act* language is sufficiently broad to capture current and future water-use activities in the oil and gas sector. We also submit that given the roles and responsibilities of the Oil and Gas Commission, the sector is adequately regulated today.

In addition and with respect to aquaculture, we support the recommendation made by the BC Salmon Farmers' Association that this industry be considered as part of the agricultural sector. Since its primary activity is food production, the industry should be classified and regulated as such under the WSA.

4.2 Protect Stream Health and Aquatic Environments

While the Business Council recognizes the importance of environmental flows and critical flows in the WSA, there is still insufficient detail about how these will be determined, including the definitions of small versus complex (i.e., type of activity or volume or some other measure?), and how risk is to be defined and considered. We expect that the requirement for environment flows/critical flows will be determined for forward operations of new facilities rather than applied



retroactively. The Ministry also notes that new tools will be developed to help estimate environmental flow/critical flow calculations. Some Business Council members would like an opportunity to collaborate on the development of any new assessment tools. Our understanding is that both Clean Energy BC and the Canadian Association of Petroleum Producers have conducted relevant detailed research on this topic, and that the Oil and Gas Commission's Northeast Water Tool may also be a helpful source.

In terms of stream health, the WSA must avoid duplication and overlap with stream protection requirements already covered by other statutes, including the *Forest Act*, *Forest and Range Practices Act*, *Fish Protection Act*, the federal *Fisheries Act*, *Environment Management Act* (e.g., *dumping*), *Oil and Gas Activities Act*, *Mines Act*, etc. The Proposal as written is unclear about how the interplay between different acts and regulations will be reconciled. Many water-reliant industries have some form of sector specific regulation that has been built up over decades (e.g., forestry, mining, oil and gas, aquaculture). Modernizing water management should take into consideration these practices and past successes and then fill gaps, where appropriate. It is vital that regulatory duplication be avoided. For example, in regard to debris management under the *Environment Management Act* and the *Waste Management Act*, almost all natural resource activities are captured, and typically the business operators affected must also meet federal *Fisheries Act* debris management requirements. Additional regulation of debris management through the WSA would seem to be redundant. The Ministry should consult with affected sectoral industry organizations and with other government departments with a view to ensuring that the final version of the WSA and the regulations developed under the statute do not result in unnecessary duplication and overlap of administrative and reporting requirements and an undue increase in compliance burdens.

4.3 Consider Water in Land Use Decisions

As with many of the concepts in the Proposal, it is important to have a clear set of well articulated provincial water objectives to support decision-making. Any sub-regional objectives that may be developed should reflect and be consistent with these provincial objectives. It is evident that the Ministry has learned much from the BC Hydro water use planning process and that this is the starting place for the Water Sustainability Plans (WSP) framework. However, WSPs are not necessarily needed or desirable in all regions of the province; they should be used selectively, as they are time consuming, labour intensive and expensive to develop. In addition, any provincial water objectives developed should be consistent with the Valued Components being considered within the environmental assessment process and as part of emerging new thinking on cumulative assessment.

4.4 Regulate and Protect Groundwater Use

Arguably, the main purpose of the WSA is to regulate groundwater. This alone presents a significant undertaking that will take considerable time to implement. The Business Council has



three main points to make in respect of the Proposal's suggested approach to regulating groundwater. First, it is critical that the province have available the additional capacity and expertise that will be required to extend the WSA to groundwater, especially during the transitional period when existing users are being brought into a FITFIR framework. Second, as already noted, we are puzzled as to why small users are exempt from licensing, given that the cumulative impact of many small users can be greater than that of large users combined. At a minimum, consideration could be given to a registration system for small users; as discussed below, this could include some form of annual reporting in order to facilitate management of the resource responsibly (i.e., implementation of FITFIR and mapping of aquifers). Third, small versus large users is not always the most sensible way of making the distinction between types of users. For example, we suggest that groundwater used in industrial camps for human purposes be considered a domestic use rather than a large use simply because of its association with industrial activities.

The Business Council supports the exemption of saline water but, like the Canadian Association of Petroleum Producers, we have concerns with the current definition of saline (i.e., >600M and >10,000 mg/l of total dissolved solids (tds) or >4000 mg/l of tds if there is a presence of hydrocarbons or hydrogen sulfide). The separate regulatory framework for saline aquifers is clearly intended to provide an incentive to the oil and gas industry to use non-freshwater resources in its activities. However, this definition may be so onerous that it greatly increases costs and encourages substituting more easily accessible surface water and non-saline groundwater, with possible unintended consequences. Codifying the current practice by the OGC would seem to be a reasonable place to begin.

4.5 Regulate During Scarcity

The Business Council generally supports the continued application of the FITFIR framework where water usage must be curtailed in temporary scarcity situations. We also agree with providing a limited exemption to the FITFIR principle for essential household uses. However, the "essential household use" exemption should also include essential water use by people in industrial or institutional settings, for example in a remote camp setting.

4.6 Improving Security, Water Use Efficiency and Conservation

The Business Council supports the principle of incorporating "efficiency" into the definition of "beneficial use". However, significantly more detail is required as to the criteria that will be used to determine whether water is being used efficiently. This is a critical area where continued public consultation is needed to ensure that sound criteria are selected. For example, the definition of "efficiency" should reflect the fundamental differences between consumptive and non-consumptive uses.



4.7 Measure and Report

Information is critical to any management and decision-making process. Monitoring/measuring and reporting (MMR) are therefore essential elements of knowledge accumulation and learning. However, any new requirements need to be considered in the context of the current and overall reporting burden on affected industry sectors. It goes without saying that collecting data for its own sake should be avoided; new data that is sought should be for a clear purpose and be tied to facilitating decisions in all cases. More detail on what is to be measured and for what purpose would be helpful. The Business Council would like an opportunity to provide input on these information requirements. The ultimate goal is to collect quality data that is both useful and used.

4.8 Enable a Range of Governance Approaches

See comments above at Section 3.1.

4.9 Fees

See comments above at Section 3.2.
