



November 14, 2013

Water Sustainability Act
Ministry of Environment
Water Protection and Sustainability Branch
PO Box 9362 Stn Prov Gov
Victoria, BC, V8W 9M2

Attention: Lynn Kriwoken
Director, Water Protection & Sustainability

Dear Ms. Kriwoken:

Re: Legislative Proposal for BC *Water Sustainability Act*

Coast Forest Products Association (CFPA) appreciates the opportunity to provide input on Government's *A Water Sustainability Act for B.C. Legislative Proposal*. This response follows on CFPA's April 30, 2010 submission with respect to the Ministry of Environment's proposed *Water Act* Modernization Discussion Paper and the February 16, 2011 response to the December 2010 Policy Proposal on British Columbia's New *Water Sustainability Act*.

CFPA understands this latest legislative proposal is intended to form the core basis for a new *Water Sustainability Act (WSA)* which the Ministry expects to introduce into the legislature in spring of 2014. The legislative proposal identifies that modernizing the *WSA* is intended to meet three key outcomes:

1. Water management is sustainable, efficient and adaptive;
2. Rights for water users, communities and industries are secure and transparent; and
3. B.C.'s water and aquatic ecosystems are healthy and protected.

The proposal further notes that the modernized *WSA* would make improvements in seven key areas, to:

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; and
7. Provide for a range of governance approaches.

CFPA believes that the sustainability of BC's water resources is important to the province's future and also to the success of our membership. As such, CFPA supports modernizing and streamlining legislation, particularly where proposed changes provide business certainty and consistency in application. In managing key resources such as water, it is imperative legislation and attendant regulations are developed with the underpinning of an appropriate balance between social, economic and environmental objectives. The proposal unfortunately does not provide clarity on what new objectives may be included in legislation nor how the new objectives will be weighed against competing resource

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development interests in the decision making process.

While the three key outcomes are laudable goals, and the seven key areas identified in legislative proposal are intended outcomes it is not clear how they will be enabled. It is also not clear how the policies supporting the legislative proposal will be compatible and supportive of existing government objectives for the same resource values. To ensure appropriate and effective water management reform happens, it would be in the best interest of the Ministry that all stakeholders be afforded a reasonable opportunity to comment on the final options and on how the Ministry proposes to implement them, prior to the options being recommended for government consideration.

This response is not a detailed assessment of every section of the government legislative proposal, but rather a focus on issues that are important to *Forest Act* agreement holders. In this context, the legislative proposal needs to respect the rights granted through existing tenure agreements and permits. As such, the *WSA* should have a specific fourth outcome identified wherein the goal would be to not negatively impact existing rights. Specifically, the *WSA* should be consistent with established government objectives and:

- not unduly impact timber supply and not reduce the timber harvestable land base;
- not increase the delivered log costs of a holder of an agreement under the *Forest Act*; and
- not result in undue constraints on the holder of an agreement under the *Forest Act* to exercise the holder's rights under the agreement.

CFPA offers the following comments and recommendations with respect to each of the seven key legislative proposal areas:

1. **Protect stream health and aquatic environments:**

The legislative proposal appears to focus on the management of environmental flow needs (with respect to water allocation decisions) and expanding current prohibitions regarding the introduction of debris into streams as combined measures to maintain stream ecological integrity and function. It is unclear what new measures and prohibitions are being proposed.

Forest Act tenure agreement holders operating under the *Forest and Range Practices Act (FRPA)* have an obligation to have results and strategies in place to be consistent with existing government objectives for water, fish, stream and riparian area management. These include community watershed and water quality objectives; designated fisheries sensitive watersheds and objectives; temperature sensitive stream objectives; and lakeshore management zones and objectives. *FRPA* Section 46 (1) requires that a person must not carry out a forest practice or any another activity that results in damage to the environment. Additionally the Forest Planning and Practices Regulation (FPPR):

- Sec. 57(1) requires a primary forest activity to be conducted at a time and in a manner that is unlikely to harm fish or destroy, damage or harmfully alter fish habitat;
- Sec. 59 requires a person not to cause material that is harmful to human health to be deposited in, or transported to water that is diverted for human consumption by a licenced waterworks; and
- Sec. 60 has specific requirement for activities, including road construction in a community watershed.

Forest Act tenure agreement holders must also be compliant with the Federal *Fisheries Act* which was recently amended to include a prohibition to not cause serious harm to fish which is defined as the death of fish or any permanent alteration to, or destruction fish habitat. Further, Subsection 36 (3) prohibits the deposit of deleterious substances. As federal



legislation, the *Fisheries Act* supersedes provincial legislation when the two conflict and as such, any proposed new requirements under the *WSA* should provide clear policy direction.

CFPA Recommendation 1: the *WSA* must avoid duplication and not add more stream protection or water quality regulatory requirements for *Forest Act* tenure agreement holders.

Rational: *Forest Act* tenure agreement holders manage their forest land base activities to be consistent with a number of statutes including the Federal *Fisheries Act* and the *Forest and Range Practices Act (FRPA)*. The overlapping jurisdiction of the federal government and the provincial government already provides duplication of protection measures for many streams. A third layer of potentially prescriptive *WSA* objectives (which have yet to be defined) may conflict with existing regulatory provisions, and add unnecessary complexity for the forest sector's compliance efforts without materially improving stream protection and health.

2. Consider water in land-use decisions:

The legislative proposal notes that new water objectives would provide strategic direction for decision-makers – primarily in the natural resource sector and local governments – for understanding, protecting and managing water quality, water quantity and aquatic ecosystem health when making decisions with the potential to impact the water resource. Unfortunately very limited detail is provided as to what objectives are being contemplated, what benchmark they would be measured against and how and where they would be implemented. In addition there is no indication as to what existing objectives would be enhanced and/or replaced by the objectives being proposed.

The Water Objective examples on page 27 of the proposal raise more questions than answers as it is extremely vague and provides no clarity on intent. For example, the objective that water quantity, surface and groundwater, is sustainable, does not specify where, what and for whom. The objective to have healthy aquatic ecosystems identifies in-stream and riparian habitat at the provincial scale, presence of invasive species at the regional scale and adequate stream buffers and the maintenance of existing threatened or endangered species at the area or management level scale. It is unclear how outcomes are linked let alone reflected in legislation as an objective, when as mentioned earlier, *Forest Act* tenure agreement holders are stringently regulated for these requirements at both the federal and provincial level under existing statutes.

The proposal also suggests the need and potential regulated requirement for the preparation of Water Sustainability Plans to address water quality, water supply or aquatic ecosystem health and/or concerns related to the environment (e.g. fish or fish habitat.). While the proposal does not indicate who would be responsible to develop the plan, it does note the plan size could vary in size at a watershed or lesser than the area of a watershed. These plans should only be required for priority areas, where the priority areas are designated in accordance with a clear set of rules based on widely accepted provincial criteria.

While CFPA is not opposed to the underlying objectives of such a plan, we however, caution the responsibility for development of these plans must not be imposed on our members. *Forest Act* tenure agreement holders are already obliged to prepare Forest Stewardship Plans (FSPs) wherein stream protection and water management strategies are included to be consistent with government objectives for these resources. Individual water users should not be burdened with the task of balancing competing interests to water rights. As such, it is likely appropriate to provide government the discretion to develop water allocation plans for “known problem areas” or in “chronic problem areas” where a priority need is identified. Criteria defining a problem or chronic area must be clearly identified in a transparent and consultative process at the regulation development phase.



CFPA Recommendation 2: the proposed *WSA* objectives need to be clearly articulated and tested to ensure the intent of the proposed objectives are not already captured elsewhere. Also, before the legislation proceeds it is necessary to identify what if any consequential amendments to existing statutes are being contemplated.

Rationale: *Forest Act* tenure agreement holders are stringently regulated to ensure their practices are consistent with already government established objectives and requirements at both the federal and provincial level under existing statutes.

CFPA Recommendation 3: Water Sustainability Plans if required, should be the responsibility of government focusing on existing licenced users and in the specifics to be considered where new water licences are being contemplated.

Rationale: *Forest Act* tenure agreement holders are already obliged to prepare Forest Stewardship Plans (FSPs) wherein stream protection and water management strategies are included to be consistent with government objectives for these resources.

3. Regulate and protect groundwater:

The legislative proposal suggests the *WSA* would establish a regulatory framework for existing and new groundwater extraction and use generally parallel to the framework for surface water. The proposal further notes under the *WSA*, users of groundwater for domestic purposes (i.e., domestic groundwater users) would not be required to obtain a water licence or a short-term use approval. Because these users would be excluded from licensing, they would also be exempted from a number of obligations, for example the requirement to pay application fees and annual water rentals.

CFPA Recommendation 4: *Forest Act* tenure agreement holders utilizing ground water to supply water for logging camps and related infrastructure should be considered as domestic users under the *WSA*.

Rationale: Water is not utilized for industrial purposes, but rather for human consumption and related camp life uses. Duration of water use in some cases may be limited to several months in a given year.

4. Regulate water use during times of scarcity:

This section of the proposal appears to be specific to regulating licenced water users when water availability is limited. It would appear appropriate that domestic - essential household use for drinking water, food preparation and sanitation requirements be given priority in the queue of users.

5. Improve security, water use efficiency and conservation:

The legislative proposal suggests the *WSA* would provide the authority to prescribe in regulation the criteria for water use efficiency requirements; and the criteria and form of a water conservation audit. Unfortunately the proposal provides no detail on the criteria for efficient water use and audit content would include.

This section also proposes the *WSA* would enable the establishment of Agricultural Water Reserves (AWS) to help secure water for agricultural use on agricultural lands (e.g., on land within the Agricultural Land Reserve or zoned for agricultural use outside the Reserve). The apparent intent is to preserve currently authorized agricultural water uses and protect future water supply needs for farm use. Before the establishment of AWSs is enabled there must be explicit provisions developed for the supporting policy framework identifying criteria to be



considered, public consultation process (review/comment/appeal) and clarity on how balancing competing resource interests will be weighed.

CFPA Recommendation 5: The ability to designate Agricultural Water Reserves should be limited to areas within the Agriculture reserves boundaries, and before a designation is made the proposal must include consultation with potentially impacted stakeholders and address potentially unintended impacts on adjacent resources and resource industries.

6. Measure and report large-scale water use:

It is proposed that the WSA would enable the development of a regulation requiring larger water users (e.g., 250m³ or more per day) to measure, record and report actual water use and related information on a more comprehensive and consistent basis to support compliance verification with licensed water volumes and promote water use efficiency.

CFPA Recommendation 6: Any proposed monitoring and reporting requirement should consider the costs to the larger water users and ensure there is flexibility provided along with practical operational considerations. There should also be consideration of transition measures including reasonable time frame to allow users to be compliant with any new requirements.

7. Provide for a range of governance approaches

The legislative proposal states B.C.'s current water governance model is primarily centralized within the provincial government with limited powers to distribute roles and responsibilities to others. The proposal however, suggests there may be an opportunity to enable the delegation and/or sharing of responsibility and accountability for decisions to people or agencies outside the provincial government or more than one person or agency with the authority to exercise the same powers. The opportunity to create advisory groups to advise on a range of topics related to both surface water and groundwater is also mentioned.

CFPA strongly supports retaining the current model of centralized administration of the WSA. Water is a provincial resource and as such it should be overseen at the provincial level. Central administration of the proposed WSA and clear policy leadership by the Ministry on water issues is required over a proposed model of a multitude of "watershed agencies" within or outside of government. A functional Provincial policy framework is required to provide more efficiency and certainty for water users as well as those mandated to comply with water management objectives.

CFPA Recommendation 7: The WSA must retain a centralized administration with strong Provincial oversight and policy direction in order to manage BC's water resources efficiently and effectively.

Rationale: A centralized approach will provide clarity and consistency in decision-making, and create a common rule set that will provide certainty for water users as well as those mandated to comply with water management objectives. Retaining a centralized approach is consistent with government's resource capability and provide for more meaningful financial and performance accountabilities. Shared and/or delegated approaches to parties with no accountability will result in confusion about roles and responsibilities creating a further lack of needed clarity and certainty.

CFPA Recommendation 8: The establishment of advisory groups may be beneficial particularly for user groups, but it must be remembered advisory groups only provide advice to decision makers and the groups are not decision making bodies.



Rationale: Advisory groups have been used effectively in providing perspectives to resource managers and decision makers. These groups must strive to provide the best information, be science based and have the objective of providing the best decision-making tools about water management into the hands of those who will be making the decisions.

8. New Enforcement Tools:

The legislative proposal notes that current *Water Act* enforcement tools include regulatory orders, prosecutions through the court system and ticketable offences. It is proposed that the *WSA* would enable a broader range of compliance and enforcement tools than are currently available under the *Water Act*, (e.g. Administrative Monetary Penalties and compliance agreements). It is suggested these approaches would offer alternatives to ticketing and a full prosecution.

CFPA Recommendation 9: The *WSA* must provide the opportunity for defences to a prosecution similar to that currently provided under *FRPA* Sec. 101 where-in due diligence, mistake of fact and officially induced error are defences to a prosecution under the Act. The *WSA* also needs a mechanism for a review of a determination and the right to appeal a determination similar to that provided by *FRPA* Sec. 80 (1).

Rationale: If a person is alleged to commit an offence or a contravention they must be provided an opportunity for a defence where it could be demonstrated the person had a proper system in place to prevent the contravention and/or took all precautions a reasonable person would have taken in the circumstances to prevent the contravention.

9. Policy Direction Required

The legislative proposal has not provided any detail on what specific objectives may be and definition of key terms that may be included in the *WSA*. The proposal also does not elaborate on the hierarchy contemplated with the proposed legislation where a regulatory framework (i.e. *FRPA*) is already in place. When the proposal speaks to health of streams it is not clear if there will be different regulatory regime for fish bearing versus non fish bearing streams.

CFPA Recommendation 10:

- Water Objectives be consistent with *FRPA*'s Forest Planning and Practices Regulation government objectives set for water, fish, wildlife and biodiversity within riparian areas, fish habitat in fisheries sensitive watersheds, and water quality in community watersheds.
- The definition of "stream" should be consistent with the Forest Planning and Practices Regulation.
- Consequential amendments to existing legislation needs to be well thought out and provided for review to ensure no conflicting legislation is enabled and to limit unintended consequences.

In summary, significantly more detail in what the *WSA* will include and not include is required before a wholesome assessment can be made. The Draft *WSA* should also take into account that forest sector activity is already subject to significant forest and range practices legislation, including objectives for water resources. As such the *Water Sustainability Act* should strive to have legislation that is consistent with the professional reliance / results based foundation of the *Forest and Range Practices Act (FRPA)* and a product that respects and upholds the rights of existing tenure holders. Any changes to the Act must avoid overlap or duplication with other enactments – this includes consistency in definitions, relevant objectives, and practice requirements.



The CFPA appreciates the opportunity to comment on the Ministry's WSA Legislative Proposal. We respectfully request our involvement in the ongoing development and review of the proposed options that will be presented to government as well as the draft legislation. We look forward to your response and further dialogue on this issue.

Yours truly,



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