



November 14, 2013

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

Re: Water Sustainability Act for BC: A Legislative Proposal

Fraser Riverkeeper Society (FRK) is a non-profit registered charity in Canada, and a licensed member of Robert F. Kennedy Jr's internationally-recognized Waterkeeper Alliance. Located in Vancouver, FRK was first incorporated in 2004 and officially launched in 2007 under the leadership of legendary environmental advocate and seasoned environmental prosecutor, the late Douglas Chapman.

FRK is dedicated to the protection, conservation, and improvement of the water quality and fish habitat of the Fraser River and its watershed. Our encompassing mission is to help ensure the right of all citizens to safely swim, drink, and fish in BC waters.

Our goal is to advocate for the wild species that depend on the Fraser watershed, and empower citizens to defend our natural right to swimmable, drinkable, fishable waters. Our role is to ensure that our rivers, lakes, streams and beaches exist for generations to come as thriving ecosystems for both humans and wildlife.

FRK commends BC's government commitment to modernize the Water Act and strongly supports the overall principles, goals and objectives of the The Water Sustainability Act Legislative Proposal ("Proposed WSA"). However, FRK has identified significant opportunities within the reform to effectively ensure comprehensive protection of BC's water, the species that depend on our water, and the well-being of British Columbians.

Water is the fundamental basis for life. Water has public, private, personal, health, environmental, spiritual, recreational and commercial dimensions. In order to balance all these uses, BC needs strong governance to ensure that

water sources are plentiful and protected. British Columbians need a new water law that is protective of the environment, embodies the spirit of the public trust doctrine, prevents conflict over water, prioritizes the most socially-important uses of water over industrial uses, gives the public a meaningful say in decision making and ensures that water pricing for commercial use reflects the inherent value of fresh water to British Columbians. Accordingly, Fraser Riverkeeper sets out the following recommendations to help ensure the WSA is one that is truly protective of water for today and future generations.

Recommendation #1: WSA Must Protect the Public Trust

The WSA, to be truly protective of water, must explicitly recognize the public trust doctrine with a clear declaration that water is owned by the public and must be managed on the public's behalf.

While the public owns B.C.'s water, it is not managed in the public interest under the current BC law, and under the proposed WSA, this will not change in any meaningful way. The proposed WSA reinforces the controversial "First in Time, First in Right" system of water licensing that provides priority to older licenses.

Private rights to use water must ultimately be subordinate to the overall public interest. There is a trend in Canada to recognize and affirm the importance of the public trust. Quebec and Northwest Territories have both recognized the "public trust" and the need to protect the environment (including water). The BC government has a real opportunity to explicitly recognize the public trust and require that water truly be managed in the public's interest in its final WSA.

Recommendation #2: WSA Must Protect Water for Fish, for Streams, for Nature

The WSA must protect water for the fish, for streams and for the ecosystem itself: 37 per cent of fresh water fish in B.C. have been red-listed, yet many water bodies have been licensed for water withdrawals that exceed average flows. Fish cannot survive in dried-up rivers.

A. WSA must include legally established standards (not guidelines) for environmental flow needs and protections

"Environmental flows," water for fish and wildlife and for the basic functioning of the watercourses, are critical to healthy functioning watersheds. The Proposed WSA falls short in addressing the concept that water should be kept in streams and lakes to provide for "environmental flows". Environmental flows for the environment must be clearly prioritized over other non-essential human uses.

The proposed legislation does not go far enough in guaranteeing the need for life-sustaining water that runs through streams, rivers and lakes to keep

ecosystems viable. One of the greatest concerns with the proposed WSA is the lack of real, legally-binding enforceable protections for fish and the environment.

Protection of water flows for fish and other environmental values as written is far too discretionary. The proposed WSA simply formalizes the practice of merely “considering” the needs of fish. This is a discretionary provision that has little, if any, guarantee that water flows will be protected for the environment itself. That government decision makers need only “consider” environmental flows is a weak and ambiguous legal test that implies the flexibility of guidelines. Instead, protective, legally-binding and enforceable standards should be included that protect environmental flows.

Further, “environmental flows” must be scientifically defined. WSA must reflect a commitment that the flows themselves will be determined by a scientifically defensible methodology and public input.

Environmental flow needs should be applied to BOTH new licenses and EXISTING surface water licenses where water is insufficient to meet ecological needs.

B. WSA must define “beneficial use” to include environmental flow needs

The definition of “beneficial use” and how it will be applied is not clearly defined in the proposed WSA. An improved definition that encompasses a broader set of community, social and environmental benefits (for example, water for fish, drinking water, First Nations purposes, etc.) is required, so that license holders understand they are not gaining a property right, but rather using a public resource that they must steward with care.

C. WSA must ensure licenses are reviewed within a shorter timeframe

The final WSA must ensure licenses are reviewed within a shorter timeframe than outlined in the proposed WSA. In a world facing the realities of climate change, 30 years between license reviews is not sufficiently flexible. Reviews should happen more frequently. A tiered review process should be used: within the next five years licenses 50 years older or more are reviewed; within the next 10 years licenses 30 years and older are reviewed; and all other existing (and new) licenses are reviewed 20 years from their priority.

Recommendation #3: The public must be involved in decisions that affect local watersheds.

Under the proposed WSA, water will be managed without real public input. There

must also be a commitment to include the public in key processes, such as reviewing existing licenses, setting "water objectives" and establishing environmental flows.

The WSA must ensure a greater role for the public in decision-making by explicitly including local watershed governance arrangements in the list of possible decision-makers under the Act. While the proposed WSA implies that there may be a possibility of watershed management in local watersheds, when an applicant applies for a license for water takings, there is NO requirement of public notice and no opportunity for the public to participate in that decision. The final WSA must include provisions for public notice of applications and, where appropriate, public hearings, as well as the right of any resident of BC to object prior to license issuance, and the ability of the public to appeal the granting of a license. The final WSA must contain a commitment that local residents will be able to participate in the process when decisions are delegated.

Recommendation #4. WSA must be applied to all freshwater users in the province

While the proposed WSA emphasizes the need to protect fish, under the actual proposed amendments, fish needs would still come second to industry. If enacted as proposed, industry will likely continue to have access to nearly all the water it wants, while fish will have no real legal protection for their water needs.

The Objectives in the WSA must be enforceable and apply to all sectors and industries, with no exemptions for Oil & Gas and Forestry. The final WSA must state that Water Objectives be "objectives set by government", meaning that they must be binding on all decision-makers, ministries, and sectors, including the Forestry and Oil and Gas sectors.

The final WSA, must not, as it states in its proposal, reclassify oil and gas water use from general "industry" into a separate class. This would allow the government to apply different standards and pricing for that industry. The oil and gas industry must not get special and legally-protected rights to use water, including favorable interpretation and application of the Water Act to ensure continued (and likely increased) access to B.C.'s water.

Thank you for your time and attention to FRK's above recommendations. We are confident BC's Water Sustainability Act can be a piece of legislation that is truly protective of our water for generations to come.

Sincerely,

Lauren Hornor, Esq.
Executive Director, Fraser Riverkeeper Society