



November 15th, 2013

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

**Re: Canadian Freshwater Alliance's Submission in Response to the BC Government's
"Legislative Proposal for a Water Sustainability Act"**

The Legislative Proposal represents a positive step forward for the province in terms of introducing the long-awaited regulation of groundwater, review of water license periods and conditions, opening the door to shared decision-making in local watersheds, and including "sustainability" in the title of our new Water Act. We also commend MOE staff in particular on their efforts to continue to work with the public and stakeholders during this third (albeit brief, particularly for regional and local governments) engagement period in an open and enthusiastic manner.

A number of areas require additional detail and attention to craft a strong and robust Water Sustainability Act for BC. Areas where the Proposal must be strengthened include consultation with First Nations, a legal commitment to set aside water for nature, setting appropriate water use fees, and public participation in local decision-making. We identify the following **five priorities** moving forward:

Priority #1: Government must respect First Nations rights and title in all aspects of drafting and implementation of the new Water Sustainability Act.

There is widespread agreement¹ both within and outside of First Nations communities in British Columbia that the BC government has not adequately consulted First Nations as part of the Water Act Modernization process. Consultation with First Nations is a Constitutionally-protected obligation, and is also a principle agreed to in the New Relationship. Government must show leadership and due diligence in working with First Nations on our new water legislation.

Priority #2: Protect water for communities and nature.

Our new Water Sustainability Act (WSA) must protect water for the environment. Environmental flows are critical to healthy functioning watersheds and must be clearly prioritized over other non-essential human uses. The WSA must explicitly set aside an ecological reserve that is not

¹ For example, the Union of BC Indian Chiefs WAM submission of April 2010 and September 2013 UBCIC resolution.

available for any use other than the conservation and maintenance of fish habitat and preservation of the natural ecosystem. As well, the definition of “Beneficial use” and how it will be applied is not clearly defined in the Proposal. 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.

The Water Sustainability Act must protect “water for communities and nature”, by:

- **Legally establishing standards** (not guidelines) for **environmental flow needs** and critical environmental flow protections;
- Applying **environmental flow needs to both new licenses and existing surface water licenses** where water is insufficient to meet ecological needs;
- **Defining “beneficial use” to include environmental flow needs** and requirements so that all new license applicants meet a minimum standard of conservation in order to qualify for a license, regardless of whether the environmental flow needs threshold is being approached;
- Incorporating **environmental flow needs into Water Objectives**;
- Introducing a **modern, flexible water allocation system** (i.e. do not rely exclusively on “First in time, first in right”), that embeds **water as a Public Trust**, in order to ensure that legal protections exist for fresh water across the province for future generations; and,
- **Ensuring licenses are reviewed** within a shorter timeframe than outlined in the Proposal so that they reflect improved understanding of actual stream flows, aquifer levels and/or changing hydrology. A tiered review process should be used: within next 5 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.

Priority #3: Water use fees must make public “cents”.

Current industrial/commercial water use fees and the proposed groundwater fee (rental) are set at a ridiculously low rate of 85 cents per 1,000m³. This means that while an average water bill for a family of three in the Lower Mainland, for example, might run around \$650 per year, a multi-national corporation like Nestle is able to get away with paying about one third the per unit price while consuming several thousand times more water and making millions of dollars in profit.² These low fees point to a major missed opportunity to properly resource better water management and governance in BC. A higher, more appropriate fee structure for both groundwater and surface water is needed.

The Water Sustainability Act must ensure that water use fees make public “cents” by:

- Ensuring full cost-recovery by increasing fees to **cover basic administrative costs** to government for responsibly managing groundwater and surface water;
- Undertaking a comprehensive review of the pricing structure for surface water licenses and setting groundwater fees sufficiently high to **better resource the comprehensive**

²<http://www.theprovince.com/news/Wild+West+groundwater+Billion+dollar+Nestle+C3%A9+extracting+dinking+water+free/8785227/story.html>

- approach to water management** outlined in the Proposal, including supporting monitoring and regular license review, flow assessments, and enforcement; and,
- Ensuring that **fees go specifically toward resourcing water management and governance**, rather than into the province's general revenue.

Priority #4: Involve the public in decisions that affect local watersheds.

The commitment to shared governance in local watersheds outlined in the Proposal is a positive step toward recognizing the important role that most directly affected communities can play in local decision-making. The Province must continue to play a leadership role in establishing priorities and setting minimum standards that are to be achieved under new watershed governance arrangements.

The Water Sustainability Act must ensure a greater role for public in decision-making by:

- **Explicitly including local watershed governance** arrangements in the list of possible decision-makers under the Act;
- Ensuring **designation** of local watershed governance arrangements, and that approvals of Water Sustainability Plans undertaken through local governance arrangements are done through an **independent, non-political process** based on clear accountability and representation criteria;
- Enabling local watershed governance arrangements to access **sufficient resources** to execute activities through, for example, a pool of funds from water-use royalties, or a delegated taxing authority;
- Supporting **provincial pilot projects** that can test a range of watershed management approaches and decision-making functions; and,
- Including 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**.

Priority #5: Apply the Water Sustainability Act to all fresh water users in the province.

The Objectives in the Water Sustainability Act (WSA) must be enforceable and apply to *all* sectors and industries, with no exemptions for Oil & Gas and Forestry, as is currently implied in the Proposal.

Ensure the Water Sustainability Act applies to all water users in the province by:

- Making 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;
- **Including “beneficial use” requirements** as an explicit component of the WSA Water Objectives; and,
- Requiring decision-makers to **mandate monitoring and reporting of usage**.

Thank you for the opportunity to contribute to our new Water Sustainability Act, and for your continued efforts to work together to protect BC's fresh water.

Sincerely,

A handwritten signature in black ink, appearing to read 'Susi Porter-Bopp', with a stylized, cursive script.

Susi Porter-Bopp
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cc. Premier Christy Clark
Minister of Environment Mary Polak
Honourable Member Shane Simpson