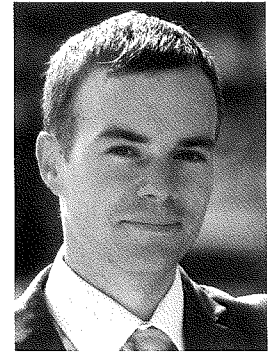


**Spencer Chandra Herbert, MLA**  
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**Province of  
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Legislative Assembly

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November 15, 2013

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

**RE: BCNDP Environment Critic Submission in Response to the BC Government's "*Legislative Proposal for British Columbia's Water Sustainability Act*"**

The BC New Democrat Caucus supports the clear need to modernize British Columbia's *Water Act*, including the introduction of groundwater regulation. We have been active in highlighting the government's failure to regulate ground water, such as Nestlé's withdrawal of hundreds of millions of litres annually with no reporting, permits or fees. We have also supported community leaders standing up for local water sources, such as the contaminated soil dumping permit issue in Cowichan this year.

The government is taking a positive step in moving forward with the long overdue modernization of the *Water Act*, initially promised in 2009 with legislation to be introduced in spring 2011. However, the new *Act's* Legislative Proposal indicates this legislation, to be tabled in spring 2014, is far too weak and will not go far enough to protect our province's water resources or to ensure water is protected as a public trust.

I wish to highlight a few of my concerns with the proposal:

1. *Pricing of industrial and commercial water use in BC is too low, and will not cover administrative costs or incentivize greater efficiency in water usage.*

British Columbia is currently the only province that does not regulate or charge for groundwater usage. The move to begin charging fees to industry for groundwater usage is a positive step. However, this does not address the extremely low cost of surface and groundwater charged to industry. These costs will not constitute a true incentive for industrial users to reduce reliance on freshwater sources as the government has claimed.

...2

Minister Polak admitted in October that the 320 million litres of groundwater Nestlé bottles annually would, under the new groundwater regime, still only cost \$265. If a litre of water was sold for two dollars, a company could gross approximately 640 million dollars, while the people of BC would only get 265 dollars. This is far from a fair value for BC's water wealth.

Minister Polak has also noted that administrative costs may outweigh additional revenue required for groundwater licensing. This shows the government has not found the right balance of licensing fees versus the cost of regulation. The government needs to be able to pay for mapping, compliance and enforcement, good science, and education about good water practices to name but a few areas that need better support. This proposal does not achieve that.

2. *Deep saline aquifers are exempted from licensing, fees and regulation of usage.*

While industry should be encouraged to use less potable water in general, with deep saline aquifers being one potential option, the status quo of a zero-regulation environment is not the correct approach to stewarding a limited public resource.

After waiting so long for regulation of groundwater, putting forward new legislation that leaves much of BC's groundwater unregulated simply does not make sense. The government does not have enough information, or scientific research to fully understand these water systems. Texas uses much of this water for drinking after treatment; there are other potential uses as well. Leaving it unregulated could lead to overuse, and pollution of a resource we may find we need in the future.

3. *Environmental flow need considerations will only apply to new licensees, leaving fish and other wildlife at risk from overuse of water.*

The Legislative Proposal's failure to apply environmental flow need considerations retroactively except for special circumstances is problematic. There is a serious cause for concern that this may put fish and other wildlife at risk from overuse of water. Relying on Ministry discretion in times of emergency, may ensure action occurs too late, once considerable damage has been done. Environmental flow regulation needs to be applied province-wide where water use is high, or water levels low. It must be done with good scientific information, and must serve to protect fish and wildlife across BC, not just where new licenses are put in place.

4. *Details on community governance lack clarity and clearly delegated powers & funding.*

The details on community governance have not been made sufficiently clear. While the government has indicated in the Legislative Proposal and in their technical briefing that they will develop “A range of governance approaches...include[ing] allowance for the delegation of some activities or decisions to agencies outside of government”, there has been no further indication as to the composition or structure of this. While government says they are currently undertaking consultations on the issue, this is something that should be part of the public conversation now – not after the legislation is developed. Community governance of water resources can lead to greater long term sustainability when done well.

5. *Blanket 30 and 40-year renewal for water licenses may be too long in light of climate change.*

Given the strains on our province’s current water resources and pressing climate change concerns, blanket 30 and 40-year renewal periods for water licenses could be too long, unless specific protections are built into licences to give the province powers to reduce, or end allocation of water resources in times of drought.

6. *Public engagement inadequate.*

While I have been critical of how long the process to get a new Water Act has taken, I remain concerned about how some aspects of the consultation have progressed. I believe that BC First Nations have not been properly engaged in this consultation, given the government’s legal obligations, and BC First Nations’ active interest in water use issues in their traditional territories. More work needs to be done to ensure that First Nations are properly consulted.

I also remain concerned that the government has not released actual draft legislation but only the Legislative Proposal for the *Water Sustainability Act*. The public, and opposition should have had the opportunity to comment on draft legislation during the legislated fall session which your government cancelled. Had the government held a legislative session this fall, the Minister could have presented draft legislation for discussion, and then used a committee to hear from the public. This would have led to better legislation, and would have been an example of good governance.

7. *Groundwater is added to "First in Time First in Right" which regulates surface water already, rather than adding a new management plan. This may not result in the best usage of water and lead to future conflict as water scarcity increases.*

By adding groundwater retroactively to First in Time First in Right, a system of water license and short-use approval priorities which is used for surface water users, there are concerns that "best use" may not be considered in usage rights and that corporate use may be prioritized ahead of other needs, including domestic water supply in times of water scarcity.

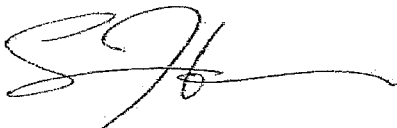
8. *Public Trust*

The government must acknowledge that we hold water as a public trust for the people and environment of B.C. Acknowledging this in the legislation would be a good step to ensuring longer term sustainability of our water resources.

I will continue to bring forward these concerns along with others that arise through my consultations across BC in the coming months. The *Water Act* is key piece of legislation in ensuring British Columbia's water resources are used sustainably and allocated fairly.

I look forward to engagement with the government on future developments in this modernization process and to the introduction of the *Water Sustainability Act* in the provincial legislature in spring 2014.

Sincerely,



Spencer Chandra Herbert, MLA  
Vancouver-West End  
Opposition critic for Environment