



P'egp'ig'ha Council

P.O. Box 615
Lillooet, B.C.
VoKíVo

phone (250) 256 4118
fax (250) 256 4544

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

Via email: livingwatersmart@gov.bc.ca

I am writing to outline T'it'q'et's concerns related to the proposed *Water Sustainability Act (WSA)*. While we appreciate the need to update the Water Act, there are still a number of concerns with the current legislative proposal.

All First Nations in BC are concerned with how the Province infringes on our constitutionally protected Title and rights. The Crown has a legal and constitutional duty to meaningfully consult with and accommodate First Nations on any decision that may impact First Nations and our rights. The Provincial WSA process to date has not met the standards for engagement and consultation.

Water, being the source for all life, is an extremely important resource that we have nurtured and cared for time immemorial. Our survival as peoples is based on this precious resource and we carry the responsibility for maintaining the health of all resources for future generations. First Nations have the right to water, not just a license to use the water. That right is second only to conservation, not provincial water use. The United Nations Declaration on the Rights of Indigenous Peoples (article 32) states:

1. Indigenous people have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources;
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources;
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Aboriginal water rights will continue to be infringed upon with the issuance of each and every water license. While the Province cannot resolve the water rights issue, its actions cannot continue to ignore and alienate our inherent rights. This will continue if the WSA is adopted. Having a "First in time, first in right" system of water allocation is

also problematic as it does not consider our inherent right to the use and management of water.

We support the Province's proposal to protect stream health and aquatic environments and assess and monitor the environmental flow needs required to sustain freshwater ecosystems. We are also supportive of the Province's commitment to incorporate cumulative impacts on the water resource in their decision making as that is key to maintaining watershed health. Cumulative effects analysis needs to include cumulative impacts on aboriginal interests. T'it'q'et will need to participate in the processes to determine the appropriate flows also protect our aboriginals water and fisheries rights. Water protection for the purposes of respecting the intrinsic value of nature needs to be appreciated and not just how water can service the human population. Water flows for the healthy functioning of the watershed is a priority for all and should be included in the definition of a "beneficial" use.

We are concerned with how the delegation of authority for Water Sustainability plans will impact on our water rights. It is not clear what role the First Nations voice would play in the development of these Water Sustainability plans. We are not simply another stakeholder sitting at the table. There would be the need to resource our participation in such planning processes. There is great concern for the delegation of some activities to agencies outside the government, as that means that the duty to consult with the St'at'imc will also be delegated. What decision making authorities may be delegated needs to be clarified as well as the scope of responsibility with this delegation.

The proposed legislation also refers to Provincial Water Objectives. T'it'q'et needs to participate in the development of those objectives within our Traditional St'at'imc Territory. The Province would have to recognize our values (cultural and spiritual uses of water) and incorporate our traditional knowledge into the water objective definition process.

It is not clear how the management of the watersheds will include water on reserves, which is outside the mandate of the Province, but within the context of the watershed. What will that relationship look like? How is the flexibility in controlling what happens off reserve going to impact what happens on reserve? Our community accesses drinking water from both on and off reserve and it is currently unclear what that relationship in water management will look like.

Section 1.4 of the WSA Legislative proposal also states that there will be consideration of traditional knowledge and greater involvement and participation of First Nations in water management and watershed planning processes. It is not clear how our traditional knowledge will be considered and valued in the decision making process. The Province's legislative proposal states that it will continue to meaningfully engage with First Nations through the development and implementation of the proposed Water Sustainability Act. It is not clear how that meaningful engagement is going to take place as we assert that there has not been meaningful engagement to date.

While T'it'q'et supports that the government is modernizing the Water Act, it is not truly modernizing the Act unless aboriginal Title and rights are included in all aspects of drafting and implementation of the WSA. The Province needs to regroup and assess how T'it'q'et, the rest of the St'at'imc and all other First Nations in British Columbia can meaningfully participate in the next steps of the WSA so that is an Act that we can all support.

If you have any questions, I can be reached at 250-256-9318.

With respect,



Tribal Chief Shelley Leech
P'egp'ig'lha Council
T'it'q'et, St'at'imc Nation

Cc: Chief Kevin Whitney, T'it'q'et