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**To:** Living Water Smart ENV:EX  
**Subject:** comments on Water Sustainability act

I am delighted that a modernized Water Sustainability Act is being proposed; it is long overdue. Considering that this government has had years to consult with the public and stakeholders, the rather vague legislative proposal is disappointing and the limited time allowed for public response is an affront to the democratic process. Other jurisdictions in Canada, North America, and the world have well developed and effective legislation and regulatory regimes to protect their water resources. It is surprising and disappointing that after years of delay this government does not seem to have learned much from those models in drafting its proposed legislation. It should now take the opportunity to improve the proposed legislation by learning from other jurisdictions and being guided by responses from the public and the scientific community (not just vested interests), which should be afforded more time and opportunities to respond.

The text of the legislative proposal has some positive features that improve on the *status quo*. It now includes ground water as well as surface water. It recognizes a range of uses and challenges that may be local in character. It recognizes that water is a valuable and valued commodity that is not always renewable or in excess supply, but sadly provides little guidance about how fees for water usage will be assessed. It recognizes the critical importance of water for fish and nature. The report states many goals that I agree with, but, with little indication about how these goals will be achieved through legislation and regulatory enforcement, the statements of good goals amount to platitudes. Where there is some specificity, the proposals are often troubling and likely to contradict the desirable goals that are presented.

Water is a public resource that must be managed in the best interest of the public, ahead of vested interests of the private sector or individuals. The role of government as a servant of the public is to insure that legislation and regulatory regimes are in place to protect the public interest and its dependence on this vital resource. Even though rainfall, surface water, and ground water are abundant in some parts of BC, it is often in short supply in many places at some times of the year. Water should not be wasted and its quality must be protected, especially in an era of climate change and population and industrial expansion. Moreover, the needs of other living organisms, all of which depend on water, must be explicitly protected in the legislation and its regulatory mechanisms.

I provide some comments for improvement of the Act:

1. The Water Sustainability Act should insure that **all** water use falls under its regulatory regime. It is unacceptable for the B.C. Oil and Gas Commission to be responsible for the licensing of water for resource extraction activities, especially when the water used becomes so polluted with toxicants that it becomes a threat to the water resource (as in currently practiced fracking operations). Mining, forestry, road and construction operations can have grave consequences for water quality and must be subject to the Act.
2. The Act must create a mechanism that insures that sufficient **flow rates** of streams are maintained to ensure protection of fish, wildlife, and ecosystem values. These rates should be established based on the best scientific evidence via a mechanism that is not subject to political interference. The Act should apply retroactively when existing licenses (e.g., for many independent power projects) have allowed damaging diversions and fluctuations of water flows and levels. There should be no exceptions to the required flow rates and water quality protection rules irrespective of the sector seeking to use the water.
3. The rights and interests of the **public** should be made explicitly paramount in the Act over private rights and interests. Priority for water use should be based on the best interests of the public, not historical rights established before the legislation came into effect. The "first in time, first in line" principle for priority of use is not acceptable.
4. **Licenses** for water use should be reviewed for renewal at least every 10 years (certainly not every 30 years in an era of rapid climate change and increasing scientific understanding of the needs of ecosystems, wildlife, and public drinking water systems), with an opportunity to adjust licensing arrangements upon renewal based on the best current evidence regarding safe and sustainable use. Failure to comply with licensing requirements should be grounds for substantial penalties including termination of licenses. Anticipated future water requirements and the interests of First Nations must be considered when granting or renewing licenses. There must be reliable regulatory mechanisms to monitor **compliance** with licenses (certainly not via "self monitoring") and significant penalties must be imposed for violations.
5. A mechanism (such a regulatory commission that includes members from the public) should be explicitly established via the Act to create sensible **fee** schedules that benefit the public and insure the sustainability and of the resource. The fee structure should inhibit waste of the resource and encourage conservation. It seems reasonable that the fee schedule would vary considerably depending on the proposed use of the water as well as the location of the water being extracted. For example, the fee for extraction of community drinking water should be less than that for agricultural use which in turn should be less than for resource extraction. Fees for extraction of water for commercial sale should be especially high and related to the cost of the

product. While I believe that water used for private enterprise should be subject to fees that generate revenue for the province, at the very least the fee schedule should ensure that the cost of monitoring and regulating water use and ensuring compliance is covered by the fees (these costs should not be a burden on taxpayers)

6. There should be (and appears to be) recognition of a role for **communities** in the management of local **watersheds** under guidelines established in the act.

7. There must be a mechanism for the **public** to be informed about and have an effective role in the licensing process as well decisions about use and fee structure.

8. The legislation should provide mechanisms to protect the **quality** of water. For example, it should require that local baseline studies are done prior to fracking operations with subsequent sampling to insure that the fracturing and subsequent disposal of wastewater are not causing harm to the ground or surface water. Penalties should be imposed for contaminating water that are of a magnitude sufficient for remediation and to compensate members of the public who suffer losses. **Setbacks** for streams required for housing and commercial developments, road building, and forestry should be established to protect water quality based on best scientific evidence and strictly enforced. Their establishment should be included in the Act, which should have priority over other provincial or local legislation.

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