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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

*Also sent by email to:
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**Re: WATER SUSTAINABILITY ACT
Legislative Proposal: October, 2013**

The Salt Spring Island Water Council Society provides a unique forum for sharing information on the quality and quantity of Salt Spring's surface and groundwater resources among the full range of agencies, organizations and individuals responsible for providing, protecting, conserving and managing drinking water on the island.

Council supports the need for updating the provincial legislative and regulatory authorities with respect to the stewardship of water in the province and welcomes this legislative proposal. It is important legislation for safeguarding our shared water resources and recognizes that the location-specific nature of water issues requires detailed local planning to support such broad-legislation.

We support the general directions set out in the proposal for a new Water Sustainability Act and urge the Ministry to prepare draft legislation for further public comment as a matter of some urgency, legislation that was promised over a year ago.

At this time, there are still not enough details on how things will be done, what the proposed Act will look like and what the language will be. And, of course, we are not seeing the resulting regulatory framework, regulations, funding or processes and practical methods required to operate under the Act. The effectiveness of a new Water Sustainability Act in meeting provincial government and community objectives will clearly depend on the scope and enforcement of the final legislation and regulations.

Council endorses the strategic analysis and recommendations prepared by the POLIS Project on Ecological Governance and submits the following comments on the Legislative Proposal under the seven key areas of improvement set out in the proposal. In some cases, we repeat what we said before since this proposal does not adequately address some of the concerns we expressed in our submission in February, 2011 on the earlier Policy Proposal.

1. Protecting stream health and aquatic environments

We strongly endorse the priority given to protection of stream health and aquatic environments since it is key to effective water stewardship and respect for nature. We agree that consideration of Environmental Flow Needs will be required for new licenses and short-term approvals and amendments to existing licenses and short-term approvals.

In previous documents, the Ministry has stated that the Gulf Islands is a “chronic problem area” that would involve “additional measures to respond to known water supply issues and risks to water quality.” In this context, we propose that minimum Environmental Flow Standards be set in the Gulf Islands rather than relying on “providing flexibility” to determine instream flow. In setting Standards, the Ministry must use a precautionary approach and set conservative levels appropriate to the local area. We remain concerned that EFNs may be discretionary in “low-risk” situations without an appropriate definition for local areas.

Water Council supports proposals to expand the current prohibitions regarding the introduction of debris into streams and aquifers.

2. Consider water in land use decisions

We agree to the establishment of Provincial Water Objectives in B.C. to guide local land-use decisions and align water uses among a variety of provincial statutes provided that firm regulatory levels, i.e. water quality and quantity standards, are set, including EFNs. We are, however, concerned about the application of Water Objectives “to the degree practical” which would allow undue discretion to decision makers.

Provincial Water Objectives must recognise that, in the Islands Trust area of the Gulf Islands, land-use decisions are critical to meeting the legislated objective of preservation and protection of the natural environment. Consistency in application of a variety of provincial statutes will help.

For Salt Spring Island, local Watershed Management Plans have been prepared for Cusheon Lake and St.Mary Lake through a collaborative process involving community water suppliers, residents and local government representatives. (See links on our website at www.ssiwatercouncil.com/documents). These Plans are Water Sustainability Plans and should be given legal authority by the province under the new Act as well as future similar Plans for other major watersheds on the island.

3. Regulate and protect groundwater

In our previous submissions on the WSA, we strongly supported the objective of regulating groundwater extraction and use in priority (critical) areas and for all large withdrawals. This is especially valid in a designated “chronic problem area” like the Gulf Islands. On Salt Spring, with up to half of all properties reliant on groundwater sources for drinking water, we are experiencing quantity and quality concerns due to finite supply sources, nutrient loading of lakes, failing wells, impacts from neighbouring wells and water resources contaminated by salt water intrusion and other substances.

The proposed WSA would “generally exempt groundwater use for domestic purposes” except where all groundwater users in a defined area are required to be licensed under a Water Sustainability Plan or an area-based regulation. We think this is a serious limitation. Although it is implied that stressed aquifers will require regulation of water use, criteria for when that might kick in are not yet available.

The Legislative Proposal still falls short of monitoring the extensive (but indeterminate) network of private, individual wells on Salt Spring Island and we recommend the extension of licensing requirements to some private wells. There need to be prominent, stated criteria and thresholds where any small area, community system or private well can have protection. On Salt Spring Island, 50 m³/day could be considered a relatively large withdrawal for a community water system or a small subdivision relying on groundwater. More stringent demands on the proof of potable water should be required, especially where it involves subdivision developments. With groundwater capacity being invisible, one should not have to prove there is a water shortage before action is taken.

At a minimum, we would like to see regulations to require metering for all new wells and much more stringent requirements for assessing whether a new well actually can provide the amount of water needed and any impact on existing neighbouring water supplies. This may be a building-permit problem but should be addressed.

Salt Spring Island is an example of a location in B.C. where regulating smaller-use wells makes sense because of the high-use of the aquifers and conflict between residents. This is not the case across most of B.C. and a province-wide requirement to license small groundwater users may be onerous on both government and residents, except in vulnerable areas. Area-based Regulations and Water Sustainability Plans must be established in locations such as SSI to respond to local needs. These need to have teeth, and be developed with significant community involvement and dedicated funding.

We repeat our earlier recommendation that the proposed WSA require that extractions of groundwater on residential properties for residential use be under licence if the extraction is beyond a designated “normal” amount. The limit could be based on the area of the dwelling and be logically connected to the number of persons and a reasonable estimate of “need”. Any water demand above this maximum amount could be mandated to be supplied through rainwater capture and storage. Alternatively, a Water Sustainability Plan or Area-based Regulation for an area could specify a maximum water allowance for unlicensed domestic wells. (This is how Washington State manages it, with a 5000 gallons per day limit.) Above this, a license should be required for each new water user, which requires specific groundwater testing to ensure it does not impact neighbouring wells.

This would make it possible for an agency to make a determination regarding how large an extraction would be appropriate and not allow excessive extractions. Currently, neighbours whose wells are affected have no recourse other than to take costly legal action.

The Legislative Proposal does not address the controversial issue of hydrofracturing of failing wells for enhancing flow rates. We have made a separate submission to the Ministry on this subject and recommend that actions be authorised under the WSA to regulate and monitor the practice of hydrofracturing and its effect on neighbouring wells. We would also support a ban on any new hydrofracturing projects on our island.

4. Regulate water use during times of scarcity

We recommend that “priority of use” be the basis for water allocation with protection of Critical Environmental Flow being paramount and that a hierarchy of uses be established to guide how water use is reduced when stream health is threatened. Certainly, in times of drought, water conservation and strict enforcement of licenses should be maintained and non-essential uses banned. The FITFIR (priority time) system of allocating water use is not consistent with the proposed new approach to water management and should be amended.

5. Improve security, water use efficiency and conservation

Improvements in water use efficiency and conservation should be a prime objective for all water suppliers in B.C. through encouraging and stressing all measures to conserve water use and implementing a “soft path” approach to water management. We support the emphasis given in the Legislative Proposal to water conservation and improved water efficiency through incentives and economic measures and in drought preparedness plans. Also, the inclusion of water use efficiency in the definition of “beneficial use”.

Water rates and rental fees should be reassessed to ensure that all costs are recovered from water users, including the proposed costs of increased regulation of water supply from all sources. Water metering must be required for all new licences and higher prices will encourage water conservation. While no specific approach is currently proposed by government for changes to water pricing, we recommend that changes need to be made to both the pricing structure and the rate levels.

We support the proposed authority in the WSA to prescribe criteria in regulations for water use efficiency, to require licencees to undertake water conservation audits, and to submit the results to the decision-maker. Water licenses should be for a maximum of 20 years so they can be reviewed in response to changing climate and changing demand for water.

Increased agricultural production and improved food security are priority programs to lower greenhouse gas emissions in Salt Spring’s Climate Action Plan. Accordingly, we support the expansion of current powers to establish Agricultural Water Reserves if linked to requirements for efficient use. On Salt Spring, agricultural use exacerbates summer drawdown of lakes. Financial support for construction and use of winter-filled dugouts, even for existing licensed withdrawals, should be encouraged.

We are pleased to see that the proposed use of “tradable permits” to allocate water use has been dropped.

6. Measure and report large-scale water use

We agree that large industrial and commercial users of groundwater must be monitored, metered, recorded and charged a hefty fee for the water they remove from the aquifer. An example would be the Nestle plant near Hope, B.C. The fees could be used to fund the required monitoring and reporting if the money can be kept clear of “general revenue”.

7. Provide for a range of governance approaches

In our earlier submission, we “strongly supported” the proposed objectives for improving water governance – particularly with clarification and rationalization of the overlapping (or even conflicting in some cases) federal and provincial jurisdiction and integration or coordination of the proposed WSA with other water legislation. This is an opportunity to establish overall coordinating powers in the WSA and reduce the bureaucracy for water management in the province.

We support the delegation of responsibility for activities and decisions to local or regional agencies and the inclusion of local interests and issues in decisions. The flexibility to address specific regional problems and local issues is the only practical way to go while still establishing certain, enforceable standards at the Provincial level.

The Islands Trust and Capital Regional District have recently established an inter-agency SSI Watershed Protection Authority to provide a coordinated approach to watershed management activities on Salt Spring Island. Delegation of decision-making by the province to this appointed public body, with funding and other support, would allow implementation of long-overdue Water Sustainability Plans for each watershed.

As noted above, Watershed Management Plans were prepared for two of the drinking watersheds on Salt Spring Island - Cusheon Lake (in 2006) and St. Mary Lake (in 2009) - but neither have been formally registered or accepted by the Ministry. There must be a guarantee in the WSA that community-created Water Sustainability Plans will be enacted and enforced by the Ministry. Planning processes take significant time and resources. Public confidence is damaged if approved Plans are not properly implemented. (Another example is Peel Watershed in the Yukon which went through a 7-year watershed planning process led by government, First Nations and community groups, and not yet adopted by the Ministry).

Clarification is needed on how local Water Sustainability Plans will be funded and how local groups most affected by water management decisions will have a voice in creating such Plans. Community groups and First Nation communities should be involved.

10. Other related water issues.

- a. We are disappointed that the Legislative Proposal still does not establish in clear terms that water is a public right and not open for commercial exploitation. The doctrine of a public trust applied to the framework for water law in BC has been well argued by Oliver Brandes and Randy Christensen for the protection of ecological values and, in particular, for ensuring public access to life-giving water supply. (*POLIS Water Sustainability Project-Legal Issues Brief 2010-1*).
- b. Given the critical need to balance increased summer demands with decreased summer supply, we urge the provincial government to take stronger measures to enable the use of rainwater harvesting systems and grey water recycling in appropriate circumstances. All new buildings (residential, commercial, institutional and industrial) should be mandated to integrate these innovative systems in building design through the B.C. Building Code
- c. Regular monitoring of the implementation of a new Water Sustainability Act is essential to meeting its stated provincial water objectives and we support the establishment of a qualified independent

public review panel (or Resources Practices Board as suggested by POLIS) to provide an annual assessment of compliance with the Act.

- d. Limited water supply may well become the most critical problem in the future between water districts, water users and between nations. Council is concerned over the enormous demands for water used to enhance extraction of oil and gas shale resources in the province and the pressure to export water. Perhaps these issues could be addressed in the proposed WSA.

Submitted by the Board of Directors.
Salt Spring Island Water Council Society