

November 14, 2013

File: 0000.1612.00

Ministry of Environment  
PO Box 9047  
Stn Prov Govt  
Victoria, BC V8W 9E2

Sent via email to: [livingwatersmart@gov.bc.ca](mailto:livingwatersmart@gov.bc.ca)

**Attention: Honourable Minister Polak**

**RE: LEGISLATIVE PROPOSAL FOR A WATER SUSTAINABILITY ACT FOR BC**

Urban Systems appreciates the opportunity to respond to the content in the legislative proposal for A Water Sustainability Act for B.C.

Water is a priority in most of the services that Urban Systems provides to its many clients across BC that include many local governments and First Nations as well as the province of BC. Our staff has been interested and involved in the process to update/replace the Water Act and devoted considerable time to reviewing and commenting on the initial Water Act Modernization process that started in 2009. We were pleased to see the legislative proposal that was released on October 25<sup>th</sup> and have taken time to review it in detail. The following comments are based on our review of the legislative proposal and comparing this content in this document as compared to the earlier releases.

Overall we are pleased to see the changes that have been incorporated in the document. There are however several areas that are fundamental to improving water management in BC that are not adequately addressed in our opinion and should be addressed in the draft legislation or allowed for in the Regulations. These are the **current state of water licences, pricing water** and the **regulations**.

1. **Final Water Licences:** There have been thousands of water licences issued in the province, most of which are “conditional” licences for which the province has no idea if the works were ever installed, if the works are installed, are they what was proposed and at the site proposed, if water is being diverted, is it being used for the beneficial purpose stated in the licence and in the amount stated? Although this may not be an issue on sources where there remains significant volume of unrecorded water, it is a serious issue on sources under stress or noted as ‘fully recorded’. There is a process that the ministry has used for decades to field verify conditional licences and if the works and water used were consistent with the licence, a “final” licence would be issued. Unfortunately this process was discontinued in the late '80's due to funding and staff constraints. The result is that the ministry has little to no proof that the water allocated under a licence is actually being used, in the amount noted in the licence, and for the stated purpose. How then can the ministry confirm that a source is actually fully recorded or that it is appropriate to issue additional licences on a source unless it knows how much water is being used? This is a fundamental water management issue that should be a priority to be addressed in those areas where water supplies are under stress.

**We strongly recommend that the ministry include a clause in the new Act that licence holders must provide verifiable proof that their works have been installed, the volume of water diverted, period of use, and purpose of use is consistent with the licence conditions as a requirement for the licence renewal. Further that it be an offence to not report or to submit a misleading or fabricated report. The penalty in these circumstances would be the immediate termination of the water licence.**

2. **Water Pricing:** The ministry states in its proposal that the current revenue from application fees and water rental (excluding revenue from BC Hydro), does not cover the costs of administering the program. It goes on to say that the estimated costs to implement the WSA will be higher than those for the Water Act. In Part 3 of the proposal, Water Fees and Rental, it provides a table of the existing fees and rental rates. It then goes on to say that the “government is contemplating changes to the structure and rates for water fees and rentals” and offers some “principles” for developing new fees and rental rates. No where does the proposal address the issue of the **value of water**. For nearly every other resource that the province regulates the province determines a value of that resource and prices its sale accordingly. We are well aware that in most other instances that the resource in question is a “commodity”, e.g. timber, coal, oil and gas whereas the province has explicitly stated that water will not be treated as a commodity. This is no reason not to develop a pricing system that recognizes the value of the water for a proposed use. Water for essential household use will have a different value from water agriculture as will water being diverted for sale as bottled water. However, the ministry should be required by statute to design a pricing system for water that will always meet or exceed the ministry’s cost to deliver the service. We suggest that the ministry must estimate the cost to deliver the services outlined in the proposed legislation as part of the draft package being provided to the legislature and propose that a pricing schedule for fees and rentals be developed, with priority, that will provide the necessary revenue to staff the program and fund the delivery of all the proposed services.

**The success of the proposed Water Sustainability Act will be based on the ministry having the necessary resources to prepare the new regulations and implement the Act and Regulations. The ministry has a unique opportunity with this proposal to develop a pricing schedule that will restore its ability to provide leadership in water management in BC. For the most part water is far undervalued and it seems that everyone but the politicians understand this. Increasing fees and rental rates for most uses would be welcomed by the public IF the increased costs results in improved water management services.**

3. **Regulations:** Currently there are three regulations under the Water Act. Based on the content in the proposal the new Act could have a dozen or more regulations that would be required to allow the Act to come into force. Typically the need for a regulation is identified during the process of drafting the Act. Some will be relatively simple to write while others will be complex. Some of the regulations will be required immediately while others can be prepared or time as the need arises. In many instances it will be a regulation that will specify how a specific provision within the Act will be implemented, how and by whom. It is the regulations that are of special interest to those affected by the Act. As indicated in the proposal there are also many other statutes and regulations in other pieces of BC law that also affect water. We urge the ministry to engage with those groups and individuals that have extensive experience using the current Act and its regulations to assist in developing practical, understandable, easily implementable, and enforceable regulations for the WSA. We also encourage the ministry to harmonize the regulations with those in other statutes to minimize conflict and confusion by those who are affected by the new regulations.

**We suggest that the WSA will only be as good as the Regulations since most if not all water management will be achieved through the Regulations. The ministry should engage others with knowledge and experience in water management to assist in preparing the new regulations.**

4. **How to implement the Regulations:** It is unlikely that the ministry has the resources to draft and implement all the regulations immediately. There are some that are a priority to implement across the province immediately and there are others that are required in specific areas immediately but not everywhere, e.g. groundwater. Prior to embarking on drafting the required regulations we recommend that the ministry engage interested parties to assist it in determining a regulation priority list that would identify the timing to draft regulations and where they should apply in order to allow for the orderly implementation of the WSA.

**We encourage the ministry to engage interested parties to assist it determining a priority list for the drafting and implementation of the regulations and where they should apply. Not all regulations are required immediately or need to apply everywhere.**

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During our internal review of the legislative proposal and through discussions with our clients, the following concerns were raised that we suggest require further consideration by the ministry prior to drafting the WSA:

1. **First in time, first in right:** We recommend that the first in time, first in right approach to water allocation be abandoned since it does not meet the current requirements for water management and be replaced with a priority system that is based on the value of water use.
2. **Environmental flow needs:** We recommend that all water licences be subject to environmental flow needs and the monitoring of environmental flows be a requirement. Environmental flows should be based on thresholds specific to the stream/aquifer therefore thresholds of 250m<sup>3</sup>/day may not be appropriate.
3. **Accountability:** We recommend that there be a requirement for accountability in the WSA. By accountability we mean oversight to ensure that water management and governance is being carried out consistent with the WSA and Regulations.
4. **30-year term:** Staff is concerned that licences of 30 years to 40 years are too long. Such terms will tend to lead to circumstances where license holders will not be attentive to technological improvements and conservation advancements that would assist in managing the water resource more effectively. The University of Victoria's POLIS Project on Ecological Governance suggests a licence review period of not more than 20 years.
5. **Introduction of debris into water:** The proposal suggests that a decision maker (e.g., Engineer, geoscientist) could order remediation or mitigation be undertaken by persons responsible, directly or indirectly, for the introduction of debris in water. The word "indirectly" needs to be more accurately defined. There is concern that a local government/water supplier could be considered a person indirectly responsible for the introduction of debris in water in a situation where a private property discharges a pollutant to a stormwater system that then drains to a local watercourse.
6. **Sharing responsibility:** The proposal contemplates the sharing of responsibilities with other levels of government, individuals and organizations. There is concern that the Province may seek to pass some decision-making, management and enforcement responsibilities to local governments, which would then draw on the resources of local government (i.e. downloading of responsibilities). If any responsibility is added to local government there should be new revenue streams provided to local government as the basis to fund the new responsibilities.
7. **Groundwater extraction:** The proposal recommends establishing fees for the extraction of groundwater. Water pricing should be established in such a manner so as to provide a financial incentive for users to conserve water. All revenue generated from this new revenue stream should be used to fund the actions that are identified in the WSA.

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8. **November 15<sup>th</sup> deadline for comments:** The timeline provided for review and comment on the legislative proposal by the ministry has not provided sufficient time for all stakeholders to properly review and provide input on the proposed WSA.

Urban Systems trusts that these comments and suggestions provide ministry staff with constructive ideas to consider when proceeding with drafting the WSA. If you have any questions or require additional clarification on any of the topics we have addressed, please contact us. We look forward to seeing the Water Sustainability Act proclaimed in 2014.

Sincerely,

**URBAN SYSTEMS LTD.**



Don Dobson, PEng  
Senior Water Engineer

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