

**From:** Doug Geller [mailto:doug@westernwater.ca]  
**Sent:** Friday, November 8, 2013 7:19 AM  
**To:** Living Water Smart ENV:EX  
**Subject:** Water Sustainability Act - comments on legislative proposal

Thank you for allowing me the opportunity to comment on the WSA legislative proposal. The following are a few comments I would like to submit for government consideration.

1. Think through all the linkages between Policy, Legislation, Regulations, Guidance, and Area-Based Plans up-front. Implementation of the new Act will require this.
2. The legislative proposal is a high-level document and lacks specifics. It is imperative that drafts of the actual legislation, and the regulations and guidelines that result from the legislation are thoroughly vetted through a stakeholder and public comment process. In addition, once the Act is implemented, new regulatory approvals such as new licences, modifications to licences, and other regulatory approvals should also be subject to public notice and public comment periods.
3. Do not rely on the area-based plans to establish the majority of the detailed regulations; there should be regulations in place that apply across the entire province; and then the area-based plans (water sustainability plans) can add to these regulations to fit the particular situation at the watershed and community scale.
4. The legislation and ensuing regulations should provide incentives for senior water licence holders to “give back” some of their allocation for environmental or conservation purposes.
5. Consider using the State of Washington as one possible model for water sustainability plans. This BC neighbour passed a watershed planning act that enabled the development of watershed-based planning groups for each “Water Resource Inventory Area” (WRIA); funded and technically supported these groups, who then completed phased watershed assessments.
6. “Exempt” wells have been used by developers in other jurisdictions as a “work around” the water licensing / water rights permitting and regulatory process. Also, there is been minimal enforcement with regard to private wells, except on a complaint driven basis. So consideration needs to be given on how such wells fit into the new legislation, which may tend to focus on the larger groundwater users. With regard to Exempt wells, the legislation must anticipate this and be specific on such issues as:
  - a. Only single, private domestic wells producing less than a certain volume of water are exempt from permitting; but they are not exempt from the Act and provisions in the Act including but not limited to the FITFR principle;
  - b. An unregistered private domestic well, after a phasing-in/grandparenting period, should not have standing in the Act, i.e. it becomes out-of-compliance and thus does not receive protection; only registered wells can be exempted and protected under the Act.
  - c. Exempt wells must also be certified to be in compliance with the groundwater protection regulation and any updates to that regulation contained within the WSA to receive protection under the new Act;
  - d. Subdivisions and other developments proposing to utilise multiple private domestic wells should be required to obtain a licence and be subject to those provisions in the Act that regulate groundwater use, monitoring, and reporting. There should be a defining regulation for this; which could be made more stringent in an area-based plan.

7. The capacity to implement and enforce the new WSA must be supported by an adequate fee structure and a substantial increase in “human capital” to implement and administer the new Act. The province must be able to add expertise to its staff to enable the new regulations that will be developed after the legislation is enacted. These staff must be knowledgeable and have specific experience in hydrology, hydrogeology, water law, enforcement, and planning.
8. With regard to guidance, the section in the legislative proposal on surface water and groundwater interaction is vague. It is recommended that the legislation explicitly consider how this issue will be addressed as it has confounded other regulatory agencies attempting to manage surface water and groundwater as “one resource.” A detailed technical guidance document should be anticipated to be necessary to deal with this issue; and it is a critical issue in the licensing of groundwater wells. In some cases a groundwater extraction becomes a surface water diversion when a shallow well with a strong hydraulic connection to surface water is developed.
9. The legislation must establish statutory timelines for government to receive, review, process and rule on water licence applications and other regulatory approval processes; similar to the environmental assessment act.
10. Consider replacing elements of the environmental assessment act having to do with water use with the WSA. Similarly, consider replacing the water use related portions of the B.C. Utilities Act with the WSA (e.g. eliminate the “Certificate of Public Convenience and Necessity” and replace with a licensing procedure under the new, unifying Act.).
11. The legislation should develop a process to allow certain developments to proceed quickly if they are “water budget neutral” for example, if an applicant wishes to develop groundwater wells and that applicant holds surface water licenses that would be placed as trust water rights (i.e. instream flows, fish flows, environmental flows, etc) within the same watershed.
12. With respect to groundwater, the existing Phase 1 groundwater protection regulation relied on voluntary compliance and enforcement largely on a complaint-driven basis. Enforcement of new and stronger groundwater regulations will require proactive enforcement, which in turn, will require the addition of considerable human capital as outlined in #6 above.

Regards,

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