

Licensing Groundwater Use Under British Columbia's *Water Sustainability Act*

Introduction

B.C.'s new *Water Sustainability Act* received Royal Assent in May 2014, after more than four years of public engagement and policy development. Government plans to bring the new act into force early in 2016, at which time the existing *Water Act* — and regulations under the *Water Act* — will be repealed.

The *Water Sustainability Act* will provide new tools to help ensure that water stays healthy and secure for future generations of British Columbians. These tools include — for the first time in British Columbia — the requirement that individuals and businesses who extract groundwater for non-domestic purposes obtain and pay for a water licence.

In the past, government charged for stream water use but not for groundwater use. During the development of the *Water Sustainability Act*, British Columbians communicated clearly that they supported groundwater licensing. Many emphasized the need to manage groundwater and stream water as one interconnected resource.

Groundwater licensing will establish equity between stream water and groundwater users, and provide additional benefits.

- » For groundwater users, licensing will clarify how much they can legally use, and increase the security of their access. It will establish rights to groundwater based on the same priority scheme that currently exists for stream water (see box on water rights), and thus help to reduce conflicts between water users in times of scarcity.
- » For government water managers, licensing will increase information about the use of water within specific aquifers, and contribute to improved groundwater protection, allocation and management.
- » Where stream water and groundwater are interconnected — for example where groundwater contributes to stream flow — licensing will allow government to manage water in an integrated way.

WHAT IS THE DIFFERENCE BETWEEN AN ACT AND A REGULATION?

An Act is a law that has been introduced in the Legislative Assembly as a Bill, has passed three readings and committee-study by the Legislative Assembly, and has received Royal Assent. Acts typically state legal requirements to advance the Acts' intent and objectives and establish the overall framework within which the government is expected to act.

A Regulation is "subordinate legislation" (made under the authority of an Act) that provides the details of how the requirements laid out in legislation are to be applied, and must remain inside the boundaries established by the Act. In B.C., the Lieutenant Governor in Council approves regulations.



In order to implement the *Water Sustainability Act* government is replacing regulations associated with the *Water Act*, updating other regulations, and developing new regulations to be phased in over the next several years. This paper describes some of the proposed new policies related to groundwater licensing that government will consider for inclusion in a new regulation under the *Water Sustainability Act*.

Why is Government Developing a New Water Sustainability Regulation?

The existing Water Regulation under the *Water Act* prescribes procedures for the acquisition of a water right and for the calculation and payment of water fees and rentals to government. Government proposes to replace this regulation with a new Water Sustainability Regulation that would incorporate most existing policies related to water rights, align with the new *Water Sustainability Act*, and include new provisions for groundwater licensing.

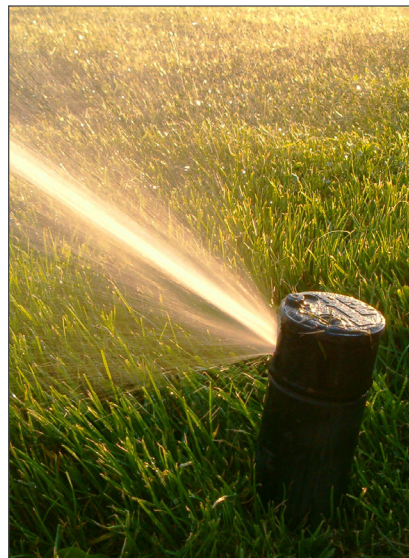
The Water Sustainability Act and Ground Water Licensing

LICENSING GROUNDWATER USES

When the *Water Sustainability Act* comes into force in 2016, irrigators, industries, waterworks and others who use groundwater for non-domestic purposes will need to obtain a water licence and to start paying water fees and rentals. They will also for the first time have defined water rights, and greater clarity regarding their priority of use. Stream water and groundwater rights will be integrated, to enable management of water as one resource. The *Water Sustainability Act* allows people and businesses to drill a new well without a groundwater licence. It requires them, however, to obtain a licence before using water from that well for a non-domestic purpose.

About 80,000 existing wells in B.C. provide water for domestic uses only. The owners of these wells cannot obtain a licence, and are not expected to pay water fees and rentals. The *Water Sustainability Act* enables the statutory decision maker to consider potential impacts on existing domestic use of an aquifer when reviewing licence applications for existing non-domestic uses of the same aquifer. When considering potential impacts on domestic use, government deems the owners of domestic wells to have a water right of up to 2,000 litres per day. The *Water Sustainability Act* also makes it possible in future to licence domestic use in areas of the province where there are water shortages or conflicts.

All well owners — whether they use water for domestic or non-domestic purposes — will have to comply with regulations regarding groundwater protection.



DOMESTIC & NON-DOMESTIC WATER USE

The *Water Sustainability Act* identifies domestic water use purposes as: the use of water in a private dwelling for drinking, food preparation, sanitation, and fire prevention; water for pets and household animals or poultry; and irrigating a garden adjoining the dwelling.

Non-domestic water use purposes include: conservation; industrial; irrigation; land improvement (e.g., drainage); mineralized water; mining; oil & gas; power production; storage; and waterworks.



APPLYING SURFACE AND GROUNDWATER RIGHTS

British Columbia applies the historic First-in-Time, First-in-Right (FITFIR) system, in which senior licensees — those with the earliest priority dates — have precedence over junior licensees, regardless of the purpose for which the water is used. During times of water scarcity, senior licensees are entitled to use their full allocation of water, even if this means that junior licensees cannot use any of their licensed allocation. The *Water Sustainability Act* recognizes three exceptions to FITFIR:

- » Even though they lack precedence, during times of water scarcity those who use stream water and groundwater for domestic purposes are allowed to divert water for 'essential household uses' — established as 250 litres per day for each private dwelling.
- » Under a temporary Critical Environmental Flow Protection Order, the Comptroller defines a minimum flow required to avoid significant or irreversible harm to a specific stream. That minimum flow has precedence over licensed water uses of the stream and any hydraulically connected aquifer. Any water in excess of this minimum flow can be used by licensed water users according to their precedence in the FITFIR scheme.
- » Under a Fish Population Protection Order, the Minister can order any licensee — no matter what their priority date — to temporarily reduce or stop water use in order to save a population of fish.

HYDRAULIC CONNECTIVITY AND LICENSING

In many regions of British Columbia, and particularly in shallow sand and gravel aquifers, surface and groundwater are connected. They interact in the following ways:

- » Groundwater discharges into a stream channel when the level of the water table close to the stream is higher than the elevation of the stream surface;
- » Stream water seeps into an aquifer when the level of the water table is lower than the elevation of the stream water surface; and/or
- » A stream can receive groundwater from an aquifer in one reach and lose water to an aquifer in another reach.

The extraction and use of groundwater can therefore affect the availability of stream water for other users and for aquatic ecosystems, particularly during natural periods of low flow.

The *Water Sustainability Act* recognizes the concept of hydraulic connectivity. It directs the statutory decision maker to consider the environmental flow needs of a stream when reviewing an application for the use of water from an aquifer that is reasonably likely to be hydraulically connected to the stream. It also stipulates that the precedence of water use is established relative to the priority dates of all other uses of the stream, a tributary of that stream, and any aquifer reasonably likely to be hydraulically connected to the stream.

WATER RIGHTS & PRECEDENCE

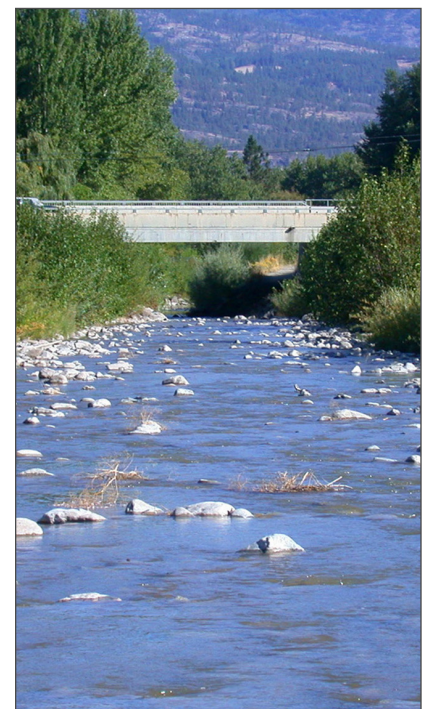
A water licence grants the licensee the right to use a specific volume of water for a specific purpose, at a specific location, or for a specific mine or undertaking.

A water licence specifies a priority date — typically the date the licensee filed the licence application — and establishes the licensee's precedence.

Water rights in B.C. are attached to a piece of land, a mine, or an undertaking and pass with the conveyance or disposition of the land, mine or undertaking.

HYDRAULIC CONNECTIVITY

is the reasonable likelihood that the pumping of groundwater from a well will eventually result in a change in the flow of a stream or spring or change in the level of a lake that overlies or borders the aquifer, over a time period of interest to the statutory decision-maker.



Proposed Policies Related to Groundwater Licensing

WAIVING OF APPLICATION FEES

Approximately 20,000 existing wells in British Columbia supply groundwater for non-domestic uses. The owners of these wells will have three years from the date the *Water Sustainability Act* comes into force in which to apply for a water licence. While their licence application is under review they will be able to continue to divert, use, and store groundwater.

Government wants to encourage owners of existing wells to apply early for a licence. The transition of thousands of existing wells into the provincial water licensing scheme and the FITFIR priority system represents a substantial workload for government, and early submission of applications will help government manage this workload. In addition, because licence applications include information about water use, early submission of applications means that government can start earlier to collect information about groundwater use and demand across B.C.

The proposed new Water Sustainability Regulation would therefore waive the application fee for owners of existing wells who apply for a licence within 12 months of the *Water Sustainability Act* coming into force. Owners of existing wells who apply after this 12-month period would pay the full application fee. Owners of new wells who apply for a groundwater licence during the first 12 months would pay the full application fee.

ESTABLISHING PRIORITY DATES

The proposed new Water Sustainability Regulation would allow existing well owners who apply for a licence within the three-year transition period to seek a priority date based on their historic date of first use and their ongoing use of groundwater for a non-domestic purpose. These well owners would be asked to provide evidence of their date of first use for the consideration of the statutory decision maker. Records related to the construction of wells and other works, Environmental Assessment certificates, well maintenance records, photographs, or other corroborating information would be recognized as evidence of historic use.

The new regulation would also recognize that the quantity of water used from a particular well may have changed over time. It would enable the statutory decision maker, in such a case, to assign more than one licence, each with a different priority date and enabling use of a different quantity of water.

Owners of existing wells who apply after the three-year transition period would not qualify for a historic priority date based on date of first use. They would be treated as new applicants and receive a new priority date, generally based on their date of application. Owners of new wells would receive a new priority date based on their date of application.



WATER FEES AND RENTALS

Government announced new water fees and rental rates in February 2015. These will take effect in 2016 when the *Water Sustainability Act* comes into force.

An application fee is a one-time payment made when one applies for a water licence, and is typically based on the purpose of water use and the quantity of water requested. Such fees apply to water use approvals, change approvals, drilling authorizations, permits over Crown land, and any amendments to these, as well as to water licences.

A water rental is a yearly payment for water use. In most cases, government bills clients for the amount of water authorized in a water licence; however some water uses (e.g., waterworks, pulp mills) are billed for the amount of water they actually use. Clients who hold a use approval – allowing them to divert or use water for up to 24 months – also pay an annual water rental.

ESTABLISHING THE START DATE FOR PAYMENT OF WATER RENTALS

When the *Water Sustainability Act* comes into force in 2016, existing non-domestic groundwater users will also be required for the first time to pay annual water rentals. The proposed new Water Sustainability Regulation would stipulate that existing non-domestic groundwater users who apply for a water licence during the three-year transition period would pay water rentals calculated from the date the *Water Sustainability Act* comes into force. Those who apply after the transition period would pay water rentals calculated from the date government issues their licences. In both cases, well owners would not receive a water rental bill until after government issues their licences.

	APPLICATION PERIOD – FOR LICENSING OF EXISTING NON-DOMESTIC GROUNDWATER USERS ONLY			
	Year 1	Year 2	Year 3	Year 4 and later
Application Fee	Exempted	Required (\$250 to \$10,000)		Required (\$250 to \$10,000)
Priority Date	Applicants would be able to obtain a priority date based on date of first use of groundwater.			Priority date is generally the date of application. All users treated as ‘new’ users (regardless of how long they have actually used groundwater).
Water Rentals	Licensees would pay water rentals from the date the <i>Water Sustainability Act</i> comes into force.			Licensees would pay water rentals from the date government issues their licence.

LICENCE APPLICATION FORMS FOR EXISTING GROUNDWATER USES

The proposed new Water Sustainability Regulation would require owners of existing non-domestic wells to provide the following information, if available, when applying for a groundwater licence:

- » Name or description of the aquifer, and of any streams known to be hydraulically connected with it;
- » Details of the reservoir, if storage is proposed;
- » Water use purpose or purposes and the quantity and period of use for each water use purpose;
- » Legal description of the land, mine or location where the water is to be used, including the applicant’s title or other interest in it;
- » Area of land irrigated;
- » Description of works, including the location of the well, the well record, construction report, well ID number or tag number;
- » Legal description of any lands affected by works;
- » An accurate labelled drawing (standards) of the proposed works; and
- » Consent for the collection, use and verification of public personal information, including permission to contact relevant third parties.

Next Steps

This paper describes some of the new groundwater licensing policies that government proposes to incorporate into a new Water Sustainability Regulation under the *Water Sustainability Act*. Government will consider these policies in the fall of 2015. The policies are therefore subject to change, depending on government direction. Pending government review and approval, the new Water Sustainability Regulation would be brought into force along with the *Water Sustainability Act* in 2016.

To support implementation of the new act, government is replacing or updating existing regulations related to essential water management activities, including authorizing stream water and groundwater use, water fees and rentals, changes in and about a stream, well construction and maintenance, dam safety, and compliance and enforcement. Once work on these initial regulations is completed, government expects to start work on other regulatory components required to fully implement the *Water Sustainability Act*.

We invite you to share your ideas about the proposed new groundwater licensing policies and the new Water Sustainability Regulation by visiting the *Water Sustainability Act* blog at:

<http://engage.gov.bc.ca/watersustainabilityact/>

You may also send related questions and comments to government by email at livingwatersmart@gov.bc.ca.

FOR MORE INFORMATION

General Information About the *Water Sustainability Act* and Engagement

<http://engage.gov.bc.ca/watersustainabilityact/>

The *Water Sustainability Act*

http://leg.bc.ca/40th2nd/3rd_read/gov18-3.htm

The *Water Act*

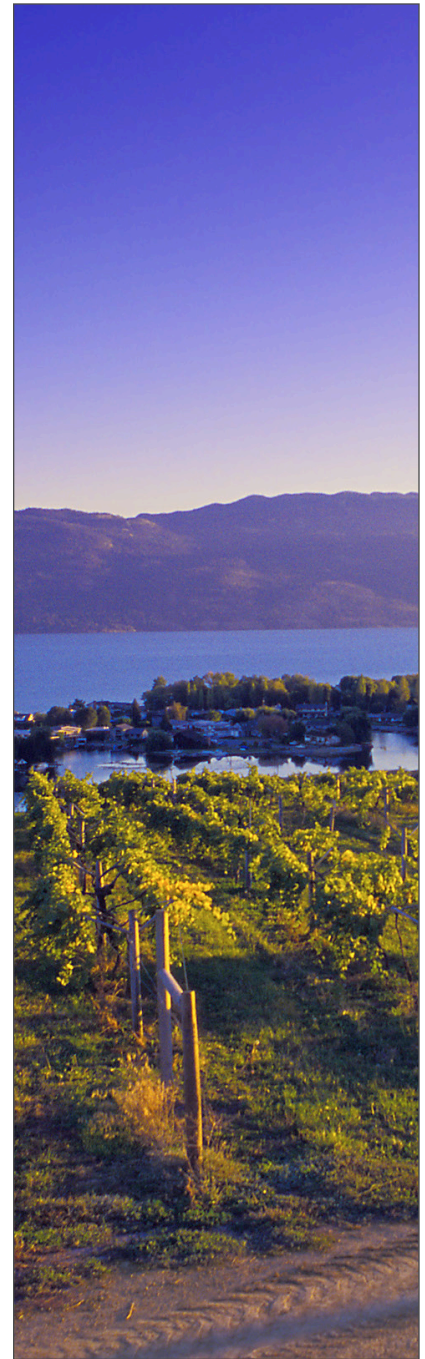
http://www.bclaws.ca/civix/document/id/complete/statreg/96483_01

Water Rights and Legislation

http://www.env.gov.bc.ca/wsd/water_rights/index.html

Water Licences and Approvals

http://www.env.gov.bc.ca/wsd/water_rights/licence_application/index.html



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This paper describes proposed policies related to compliance and enforcement and is not intended to support interpretation of the *Water Sustainability Act* or the *Violation Ticket Administration and Fines Regulation*. The policies described are subject to review and approval by government.

