



Cowichan Watershed Board

Honourable Mary Polak
Minister of Environment
PO Box 9047
STN PROV GOVT
Victoria BC
V8W 9E2

November 15, 2013

Dear Minister Polak

We are writing to you as Co-chairs of the Cowichan Watershed Board (CWB). The CWB was established in 2010. It is a partnership between Cowichan Tribes and the Cowichan Valley Regional District (CVRD) and one of its key responsibilities is to implement the Cowichan Basin Water Management Plan (Plan) that your ministry helped to develop and subsequently formally endorsed. A list of CWB members can be found at <http://cowichanwatershedboard.ca/content/board-members>. Two of our members Dr. Lorna Medd and David Slade were nominated by your ministry.

The CWB strongly supports your continuation of the Water Act Modernization initiative and we are grateful for the opportunity to comment. We would however be remiss if we didn't inform you that November 15, 2013 deadline for submitting comments is extremely difficult particularly for entities that require Board approval of a position paper. In the case of the CWB the deadline precedes our bi-lateral discussion that has been scheduled with your staff. As a result we limit our comments to factors that we believe seriously jeopardize the potential success of this extremely important legislative initiative.

Our comments are based on the collective experiences of our board members and advisors and what is now almost four years of intimate involvement overseeing the implementation of our Plan which was developed between 2004 and 2007 with assistance from your ministry.

The comments which follow address what we feel communities like ours will require in the legislation to ensure water abundance, water quality, sustainable fish populations, other ecosystem services and a sustainable economy.



Fundamental Concerns

- 1. Whole of Watershed Planning and Management** - We believe that the legislation is fundamentally flawed because it does not empower whole of watershed management. Although Water Sustainability Plans would be allowed for, at its core the primary focus of the legislation continues to be water allocation. We respectfully submit that in order to ensure adequate flows, good water quality, sustainable fish populations, other ecosystem services and a sustainable economy we must plan and set clear objectives at the watershed or for larger systems at least the sub-watershed level and manage to achieve those objectives. We believe that the legislation must acknowledge that what happens in one part of a watershed can seriously affect other parts of a watershed. Furthermore, in order to address their cumulative impacts, all activities occurring within a watershed should be conducted in a manner that supports achievement of overall watershed objectives.
- 2. Climate Change, Growth and Provincial Government Capacity and Role** -The entire Water Sustainability Act including the planning and objectives cited above must proactively consider climate change and growth issues as well the Province's appropriate roles and capacity in the longer term. Despite their importance the Proposal is at best vague about these issues. We respectfully submit that these issues need to be addressed head on for a Water Sustainability Act legislation to be effective (see additional comments below).
- 3. First in Time First in Right** -We believe that emphasis on retaining FITFIR for existing surface water users and proposing to introduce it retroactively to groundwater users is a major barrier to water sustainability. A key objective for every watershed must be ensuring environmental flow needs. This will require constraining use of 'allocated' water to accommodate for climate change. We expect that Cowichan Tribes and other First Nations will have more to say about this issue. Suffice it to say that we were extremely surprised and disappointed to see that this element of the legislation was retained.
- 4. Water Quality** –As we read it the Proposal does not adequately address water quality issues. For example, current regulations allow storm water, and process water to be directly injected into freshwater aquifers with no recourse unless “proof of harm” exists. This approach is clearly unacceptable since by the time there is proof of harm, fresh water aquifers may be permanently destroyed.



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- 5. Empowering Local Watershed Bodies** -We were disappointed that the Proposal was not clear or explicit about delegation of powers to local entities. The CWB was established with local governance in mind. Based on our experience to date we believe that some aspects of watershed management would be more successful if there was increased local control. We have derived significant benefits through partnering on watershed initiatives including planning, inventory and monitoring and applied research and believe that the Province's capacity should be bolstered in a number of areas. We hope that the Province will increase its focus on what it is best at and delegate appropriate decision making and management authority along with access to adequate resources to local bodies that have more local knowledge and much greater ability and capacity to engage communities. Other groups e.g. the Polis Project, the Real Estate Foundation of BC have concluded that this approach would yield better outcomes and believe that the Cowichan is well suited to pilot new approaches. We urge you to include clear provision in the legislation for delegation of responsibilities and authorities to local bodies such as the Cowichan Watershed Board.
- 6. Water Pricing and Local Access to Revenues** -In 2010 we recommended that a cross jurisdictional analysis of water pricing be completed. We believe that making such an analysis public would help support significant water pricing increases that would generate revenues for watershed management and reinforce water conservation objectives. We continue to advocate for this. We also believe that it is essential to allow local watershed bodies to access water related revenue sources. This is an extremely important issue for the CWB and we request that you consult with us further on both the subjects of pricing, revenues and access to revenues by local bodies.
- 7. Consultation with First Nations** -We know that Cowichan Tribes do not believe that they have been adequately consulted with regard to this legislative initiative. We urge you to work closely and meaningfully with First Nations as you continue to develop this critical piece of legislation.

Attachment 1 includes some more comments with regard to specifics of the Proposal. Because the CWB can offer a 'unique, real time' perspective regarding local governance and some specific issues affecting water management we place extra emphasis on issues related to those areas.



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Finally we would like to offer you the opportunity for a tour of the Cowichan watershed to gain firsthand perspective of the issues that we are trying to address through our collaborative approach to watershed management. The contact for a watershed tour is Rodger Hunter, Coordinator, Cowichan Watershed Board. He can be reached at 250-701-0143 or at visavis@uniserve.com.

We look forward to continued opportunities to comment on this very important initiative.

Yours sincerely,

Yours sincerely,

Calvin Swustus
Co-Chair

Rob Hutchins
Co-chair



Attachment

Comments on specific elements of Water Sustainability Act Proposal (November 2013)

Subject	Issue	Suggested Approach
<p>General</p> <p>Water Use Purposes</p>	<p>It is unclear why maintaining healthy ecosystems/ environmental flows is not identified as the primary purpose of the Act. Achieving this primary purpose (a public good) enables sustainable provision of the beneficial uses that are listed in the Act.</p> <p>The reader is left with the impression that the primary purpose of the new Act is water management/allocation. Healthy, resilient watersheds that can provide ecological services and support our communities must be the primary purpose.</p> <p>Finally we find the use of the term 'right' troubling. In the face of climate change and pressures on the resource, 'right' should be viewed as conditional access to a public resource.</p>	<p>Acknowledge maintaining healthy aquatic ecosystems and environmental flows and ecosystem services that result in allocation related benefits as the primary purposes of the legislation.</p> <p>Please note that in 2013 many readers may find 'river improvement' to be an offensive term given its actual meaning.</p>
<p>Regulation of Surface Water and Related Process</p>	<p>It is difficult to comment on process associated with 'regulation of surface water' without knowing the modifications that will be made. Specific opportunities/concerns relate to:</p> <ul style="list-style-type: none"> • the role of local governments, FNs, bodies like the CWB etc. in water allocation decisions on the spectrum from influence to veto to decision maker; • the extent to which the process can be streamlined and clarified e.g. clarifying compensation issues for property owners in relation to 	<p>Develop proactive approaches to address issues in legislation and regulations based on further consultation and bilateral discussions.</p>



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<p>FITFIR</p>	<p>storage as proposed in our 2010 brief;</p> <ul style="list-style-type: none"> • enhanced information requirements related to climate change and how they will be incorporated and funded; • making continued use conditional upon water quality outcomes etc. <p>We reiterate our concern about FITFIR and the term rights. Although FITFIR has been easy to administer in the past, it seriously impacts on flexibility in the face of climate change and shifting priorities. While grandfathering FITFIR onto groundwater affords protections to historical users it is unclear why those protections could not be achieved based on inventory and monitoring information, appropriate setbacks etc.</p> <p>Cowichan Tribes and other First Nations may raise significant issues related to the FITFIR and its retroactive application to groundwater.</p>	<p>Continue to look for alternatives that respect historical use and investments but do not overly complicate the sustaining of healthy ecosystems and adequate environmental flows e.g. adopting a 'share the pain' model.</p>
<p>Protect stream health and aquatic environments</p> <p>Environmental Flow Needs (EFNs)</p>	<p>This is a worrying section of the Proposal.</p> <p>First of all as we pointed out in our summary EFNs are a bi-product of healthy watershed management and achieving them as with other healthy outcomes depends on taking a watershed approach which is best achieved through watershed planning</p>	<p>Watershed health and related objectives should be foundation for this legislative initiative. As an outcome of watershed health EFN related objectives should be supported by the legislation. It is unclear if and how climate change projections will be used to establish EFNs. Clearly existing allocations</p>



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<p>Prohibiting Dumping Debris</p>	<p>and setting of watershed objectives. Second because approaches for establishing EFNs and the process by which Decision Makers would incorporate them into water management or allocation decisions are left to regulations. It is unclear for example how and when climate change would be factored in. It is clear however that significant Decision Maker discretion would be involved.</p> <p>This is an important measure for ensuring stream health.</p>	<p>will have to be addressed and in some cases modified as part of ensuring EFNs. EFNs should be based on watershed objectives and clear standards for achieving flows. Decision maker discretion should be limited decisions that are improvements over and above the standards.</p> <p>Water quality objectives should also be a requirement of the legislation. In addition to measures included in the Proposal for achieving them, we suggest tying the water quality outcomes of users be linked to continued opportunities to use water. i.e., suspension or forfeiture of polluters water licenses.</p>
<p>Considering water in land use decisions</p>	<p>We agree that demand is growing for a coordinated assessment of land and water activities. In addition we strongly agree with the proposal that “Water” Objectives would provide strategic direction for water and other natural resource decision makers with regard to watershed health, water quality, water quantity, fish populations etc. and establishing regulatory authority around them that embraces whole of watershed thinking and addresses cumulative impacts.</p> <p>We support replacing Water Management Plans with Water</p>	<p>The CWB has spent considerable time establishing watershed targets and would welcome the opportunity to discuss:</p> <ul style="list-style-type: none"> • decisions/decision makers that would be involved; and • the possibility of rolling this aspect of our work into a pilot project. <p>We feel that Water Objectives would be more meaningful if they were called Watershed Objectives.</p> <p>With respect we suggest that, except in situations of extremely high</p>



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	<p>Sustainability Plans (WSPs). The former appear to have been largely limited to power projects and they are:</p> <ul style="list-style-type: none"> a. quite prescriptive and b. very costly. <p>We are left with the impression that the majority of WSPs would be led by the province.</p> <p>The Cowichan Basin Water Management Plan has been a significant contributor to the CWB's success to date.</p> <p>Plans will be costly and need to be refreshed ever 7 to 10 years.</p>	<p>conflict or low capacity, WSPs must take a whole of watershed approach. They will be better if they are led locally, supported by the province and based on minimum standards established by the province and generate clear objectives for the watershed.</p> <p>We believe that we have a great deal of experience to help guide the development of regulations in this area.</p> <p>A special fund should be established to receive and invest money from water licence surcharges (similar to Habitat Conservation Trust Fund concept). Expenditures would be for plans, research, inventory and monitoring and special initiatives e.g. local governance pilots.</p>
<p>Regulate and protect ground water use</p> <p>Connection of Surface and Ground water</p>	<p>We strongly support the 'one water' concept where the connections between ground and surface water would be fully considered in making water management decisions.</p> <p>Although it will be costly we applaud the Province for pursuing this issue and assume that the requirement will be imbedded in the legislation to ensure it is implemented. Given the costs we appreciate that implementation will be dependent on completion of assessments, inventory and monitoring so it will take some time.</p>	<p>Funding for required inventory, research, monitoring could come from the Special Fund identified in previous section.</p>



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<p>Cut-off point for exempt status</p>	<p>Given developmental pressures and the expected impacts of climate change, the rationale for identifying 250 m³/day as the threshold for regulation in the Proposal is unclear. Monitoring and reporting are critical for conservation. Even enormous aquifers are vulnerable e.g. the Ogallala aquifer on the eastern slope of the Rockies has dropped over a hundred feet in the past seventy years.</p> <p>Extension of FITFIR to groundwater is worrying. Although FITFIR has been easy to administer in the past, it seriously impacts on management flexibility in the face of climate change and shifting priorities. While grandfathering it onto groundwater affords protections to historical users it is unclear why those protections could not be achieved based on inventory and monitoring information, appropriate setbacks etc.</p> <p>As noted above Cowichan Tribes and other First Nations may raise significant issues related to the meaning of FITFIR and applying it to groundwater retroactively.</p>	<p>The CWB believes that all wells should be registered and those who use 4 or more m³ of ground water per day should be regulated. The degree of regulation should progressively increase based on incremental volumes used. We appreciate that the proposal does allow for all users including those using <4 m³/day to be subject to some form of regulation in priority areas.</p> <p>Continue to look for alternatives that respect historical use and investments but to not overly complicate the achievement of adequate EFNs e.g. adopting a share the pain model.</p>
<p>Regulating water use during times of scarcity</p>	<p>We believe that the proposal depicted in the schematic is a sub-optimal. It speaks to:</p> <ul style="list-style-type: none"> • the value and need for watershed thinking, planning and objectives • the need for conservation targets and related incentives/sanctions; 	<p>The Province needs to take a leadership role and get out in front of climate change by aggressively:</p> <ul style="list-style-type: none"> • supporting watershed planning and objective setting • promoting headwater storage; • utilizing regulatory and policy



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	<ul style="list-style-type: none"> • the need for Environmental Flows that include adequate buffers for extreme events (recognizing that this is much more difficult in some instances than others); • proactive approaches (e.g., through headwater storage) to ensure the availability of those buffers; • the lack of flexibility caused by the FITFIR approach; • the need for Drought Management Plans and WSPs and the key role that they can play through objective setting and proactively establishing share the pain models including conservation of connected ground water if enabled by legislation. 	<p>tools that support establishing and achieving conservation targets;</p> <ul style="list-style-type: none"> • Implementing area based regulations and watershed planning initiatives that support healthy, resilient watersheds, adequate EFNs and address the inflexibility of FITFIR i.e. put into place shared pain models.
<p>Improving security, water use efficiency and conservation</p> <p>Beneficial Use</p> <p>Agriculture Water Reserve</p>	<p>The CWB supports measures to ensure the beneficial use of water including:</p> <ul style="list-style-type: none"> • conservation and avoidance of waste and, • powers related to water audits. <p>We support the concept of Agricultural Water Reserves within the context of WSPs.</p>	<p>As noted above we also strongly support using regulatory and policy tools that support establishing and achieving conservation targets.</p> <p>Considerable technical and feasibility work must be done to promote more innovation in the sector with regard to suitability of production and practices in the face of climate change opportunities and challenges.</p>



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<p>Review of License Terms and Conditions</p> <p>Area Based Regulations (ABRs)</p>	<p>License review periods of 30 and 40 years seem to disregard the reality of changing climate.</p> <p>We generally support the concept of ABRs that flow from WSPs but subject to the provisos in the next column. The legislation should direct that ABRs are based on whole of watershed thinking, best available science (particularly climate science) and a commitment to ensuring EFNs.</p>	<p>We support the Polis Project’s recommendations in this regard.</p> <p>The legislation should direct that ABRs are based on whole of watershed thinking, best available science (particularly climate science) and a commitment to ensuring EFNs, water quality, healthy fish populations etc.</p> <p>This may be the Ministry’s intent however it is not explicitly stated. Adherence to these principles must be clearly articulated in the legislation.</p> <p>In addition, <u>Watershed</u> Objectives that guide ABRs and associated solutions must truly consider local conditions, issues and cumulative effects.</p>
<p>Measure and report large scale water use</p>	<p>Given developmental pressures and the expected impacts of climate change, the rationale for identifying 250 m³/day as the threshold for regulation in the Proposal is unclear.</p> <p>We agree with steps that are listed in the Proposal but require further details to comment meaningfully.</p>	<p>Metering and reporting should be mandatory because it drives awareness and understanding. The thresholds triggering monitoring and reporting should be much lower. The following key issues need to be addressed/included in regulations:</p> <ul style="list-style-type: none"> • incentives and sanctions related to compliance, • who receives the information; • responsibilities/accountabilities for reviewing summarizing the information; • uses of the information, transparency etc.



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		Costs of monitoring and reporting will be quite high and secure sources of funds to complete the work will be essential.
Enable a Range of Governance Approaches	<p>We agree that ultimate accountability for environmental protection, setting a minimum framework of standards and objectives as well as responsibilities for laws, rules, financial arrangements etc. is a key role of the Province.</p> <p>However cash strapped senior governments no longer have the local presence or knowledge required for effective water/watershed planning, governance, management, or engagement at the local level. We believe that sustainable local water and watershed management can only be achieved through strong partnerships and leadership locally that joins forces with senior governments to achieve long term positive outcomes. To be successful the Act must meaningfully enable and provide support for local empowerment.</p>	<p>We found this section disappointing: Provisions should be made for local governance bodies such as the CWB to:</p> <ul style="list-style-type: none"> • Lead and be among required endorsers of WSPs; • Participate in water and watershed management decisions along the spectrum from formal advisor/influencer of decisions to full decision maker; • Access a variety of sources of revenue to support governance and management responsibilities.
Revenues/Pricing	Neither the \$345 million in annual provincial water revenues or the Ministry's \$15 million water management budget (2010 figures) are adequate.	As recommended in our 2010 submission, a cross jurisdictional survey of water license fees should be: completed, analyzed and made available to the public. Based on that analysis, fee and royalty increases should be implemented to provide an enhanced source of revenue for provincial and local water management. Fee structures



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		<p>should also serve as incentives for conservation. Water related revenues should support water/watershed monitoring, inventory, research, planning, governance, compliance and enforcement and other activities associated with implementing the legislation and the required cultural shift.</p> <p>We recommend that the ministry consult closely with Ministry of Finance staff regarding the legal nuances of fees, royalties etc.</p>
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