

**STATEMENT OF EXPECTATIONS
on Reform of the BC Water Act
from BC Nongovernmental Organizations**

December, 2009

As recognized by government in *Living Water Smart*, the failure to fundamentally reform BC water laws jeopardizes the environment and the well being of British Columbians. This document answers the call of the Premier of British Columbia for citizens to become part of the solution for securing our water future. It outlines key minimum steps critical to protecting this precious resource. This statement of expectations was developed through study and consultation, and the undersigned groups urge the BC government to take swift and decisive action on the issues described below.

BC's Water At Risk

The following issues are self-evident:

- Without an adequate supply of clean, safe water, human health, the BC economy, and the environment are threatened.
- Water in all its forms is owned as a public resource. Private rights to use water are limited, temporary, and must therefore be subject to conditions that protect the public interest.
- Many of BC's water bodies experience water shortages during certain seasons/years.
- Addressing the unprecedented challenges brought about by changing climate necessitates a fundamental re-thinking of how we store and deliver water, generate power, protect ecosystems and ecosystem resilience, ensure food security, and provide people with access to adequate, clean water.
- In BC, many land use practices such as forestry, mining, agriculture, oil and gas extraction and increasing urbanization can affect water quality and quantity, both inside the province and outside our borders. The scale and intensity of many practices and industries continues to grow, as does the demand for water. For example, the recent development of river-based independent power projects (which require water licenses issued under the BC Water Act) currently proceeds in an inadequate regulatory environment to protect watershed health and function.
- BC's water governance regime evolved at a time when there was little recognition of the need to legally allocate water for environmental needs, guarantee an equitable distribution of water, provide credible public oversight and accountability, or to resolve issues of water scarcity and conflict.
- BC is one of only a few jurisdictions in North America that fails to issue groundwater extraction licenses.
- BC provides limited independent oversight, accountability and opportunity for public input on water licencing decisions, even though it is well recognized that public input increases the quality

of environmental decision-making, and water is a resource that supports public and environmental values, in addition to private needs.

- Jurisdictions worldwide are reforming governance and developing allocation systems that recognize rivers, lakes, wetlands and groundwater as priority water users based on the principle of seasonal sharing of an available consumptive pool among all identified water users, and based on the value of ecosystem services.
- The BC Government has commendably and wisely recognized the need to take action and has made the bold commitment to modernize the law as a core part of the BC Living Water Smart (LWS) strategy, released June 2008.

Transparency and Participation in the Legislative Reform Process

The undersigned urge the government to use a transparent and participatory process to develop the law, including:

- opportunities for public input at all stages of the legislative reform process;
- creation of an advisory committee, composed of people outside government from a variety of interests, to provide strategic advice to the Government of British Columbia;
- a registry for public input regarding any policy option being considered (e.g., “white papers”);
- regional public engagement processes to allow public input;
- a plan to ensure the key aspects of any water policy reform are enshrined in a legally binding manner.

Securing our Water Future with a Modern Water Act

A modern BC Water Act must provide comprehensive protection for BC’s water resources, maintain or restore natural ecological function, build public confidence in government’s role in managing water, and secure safe drinking water for communities.

A modern BC Water Act will set standards for all BC waters, whether surface, ground or diffuse, in all areas of the province, rural and urban. BC’s water laws will protect transborder rivers, lakes and aquifers. The legislation must create a structure that allows for the engagement and participation of all levels of government (including First Nations), and members of the public.

A modern BC Water Act will set strong standards for protecting water, and will require collaborative governance to implement the standards at the watershed or basin scale.

The legislation should prioritize all uses of water and provide protection for all users of water. The new law will guard against overuse of water, address threats to water quality, prevent changes to riparian features, and enable adaptation to climate change. A modern Water Act will recognize the crucial “public interest” role for government in managing the resource and affirm that licenses are only temporary rights to use the resource and not permanent or property rights. A new Water Act will codify an allocation principle based on recognizing the environment as a priority and equitable sharing of a consumptive pool among all users. Ultimately, the provincial government must be responsible and accountable for protecting water resources in accordance with the precautionary approach.

In particular, a modern BC Water Act will:

1. Protect stream health and aquatic environments.
2. Improve water governance arrangements.
3. Improve the water allocation system.
4. Regulate groundwater use.

1. Protect stream and aquifer health and aquatic environments.

A new BC Water Act will:

- Protect water for the environment by legislating instream or environmental flows with priority over other licensed uses; and require a “cap” on water withdrawals to protect key physical, biological and chemical processes in the aquatic system (ecosystem services).
- Ensure that projects with the potential for harmful impacts on water are permitted only in areas identified as appropriate through watershed and aquifer planning.
- Require due consideration of the public interest, protection of the environment, conservation, efficiency, and use of best available technology in the issuance of water licences.
- Ensure adaptive capacity and maintain and enhance resilience both in natural and social systems to deal with a changing climate and unexpected events.
- Facilitate reuse and recycling of water to reduce demands on watersheds and aquifers, anticipate the effects of climate change, and provide flexibility to accommodate increased hydrologic variability and other future threats to watershed function or aquatic health.

2. Improve water governance arrangements.

A new BC Water Act will:

- Provide water for the future by requiring legally binding watershed plans, developed at the local level with public consultation in accordance with strong provincial standards, to address threats to water quality and quantity, and ecosystem protection. The Act must require ongoing public engagement in monitoring, implementation and updating of watershed plans.
- Provide for effective public engagement through transparency, oversight and opportunities for participation.
- Give effect to Aboriginal title and rights: In recognition and respect of First Nation traditional environmental knowledge, as well as their aboriginal and treaty rights, the province must pursue a strategy with the federal government and First Nations that will support the ability of First Nations to be full participants in watershed protection planning and implementation.
- Enable new municipal powers for the purposes of water and watershed protection, including: the ability to manage threats to drinking water sources; the requirement to update bylaws to be consistent with watershed plans; enabling water reuse and recycling; requiring metering, reporting of use and full cost accounting; and, as part of watershed plans, municipalities should

be required to develop, implement and publicly report on water conservation plans according to provincial standards, which must include the ability to impose water conservation and efficiency requirements on all users, and to collect and report data on water use by sector.

- Ensure adequate resources are available for all authorities responsible for the development and implementation of watershed planning including funding or funding tools, technical expertise and training.

3. Improve the water allocation system.

A new BC Water Act will:

- Embed requirements for conservation, efficiency, and quantity monitoring.
- Continue to affirm crown ownership, subject to constitutionally protected aboriginal title and rights, of both ground and surface water and explicitly recognize water licenses as temporary "use" rights and not permanent or property rights.
- Create systems to prevent water scarcity where possible and equitably resolving water conflicts where it is not. Establish a "public interest" test to assist in resolving conflict and guide future allocations in areas of scarcity or drought and prioritize existing water use.
- Develop a progressive allocation systems that recognize rivers, lakes, wetlands and groundwater as "legitimate priority users" and moves beyond a prior allocation ("first in time, first in right" - FITFIR) system and codifies a system based on the principle of equitable sharing of an available consumptive pool among all identified water users.
- Require ongoing monitoring to facilitate increased reporting of water quality and quantity monitoring and trend analysis.
- Promote cost recovery so that all those who impact water quality or quantity, as well as those who benefit from the provision of clean water, contribute to the costs of source protection, to a degree appropriate to their impact or benefit.
- Require metering of all large groundwater and surface water users, both existing and new.

4. Regulate ground water use.

A new BC Water Act will:

- Treat water as one interconnected resource by requiring water management plans to evaluate both groundwater and surface water systems and the linkages between them.
- Require groundwater licensing in all areas of the province. The province should revisit its plan to regulate only in 'priority areas', as referred to in LWS. If any geographical areas are proposed to be exempted from groundwater licensing requirements, the province must justify the exemption through scientifically derived criteria.

- Provide a remedy for those negatively affected by existing groundwater extractions. Due to the existing lack of regulatory controls on groundwater use, there are many areas of the province where residents are negatively affected by groundwater extraction, yet lack a remedy.

Supporting Organizations

1. Alouette River Management Society
2. B.C. Federation of Drift Fishers
3. BC Nature (Federation of BC Naturalists)
4. Burns Bog Conservation Society
5. Canadian Parks and Wilderness Society
6. David Suzuki Foundation
7. Ecojustice
8. Environmental Law Centre, University of Victoria
9. Fraser River Coalition
10. Georgia Strait Alliance
11. Pacific Streamkeepers Federation
12. POLIS Water Sustainability Project
13. Raincoast Conservation Foundation
14. Salmon River Enhancement Society
15. Shuswap Environmental Action Society
16. Sierra Club BC
17. Smart Growth BC
18. Squamish River Watershed Society
19. Steelhead Society of British Columbia
20. T. Buck Suzuki Environmental Foundation
21. The Pembina Institute
22. Watershed Watch Salmon Society
23. West Coast Environmental Law Association
24. Wilderness Committee
25. WWF-Canada