NEW WATER ACT for BC ?

Boundary Environmental Alliance has put together some local commentary and links to other comments submitted to Government regarding their policy proposals for a new "Water Sustainability Act": http://livingwatersmart.ca/water-act/docs/wam_wsa-policy-proposal.pdf

As of Jan 2012 there are rumblings that the policy review and proposals are being slowed by political concerns and considerations.

This writer has been extensively involved in stream protection and water quality issues for more than 30 years and has participated in numerous processes and initiatives, most Government sponsored, that were intended to lead to improved Water Stewardship and Water Governance change. No real beneficial change has occurred, in fact in that 30 year period responsibility for governance of activities that can and often do damage water quantity and quality have been handed off from Ministry of Environment oversight to Ministries who encourage exploitive consumption of the public resource.

Will any worthwhile changes occur this time around? This writer is skeptical but ever optimistic, so the work goes on. Al Grant for BEA.

- **BEA**'s own submission of March 2011: scroll down to page 2

- **Fred Marshall**. RPF submission of Jan 2011: scroll down to page 5

- **West Coast Environmental Law**, lawyer Andrew Gage comment:
  "if you introduce a water market, then that unused water goes from being locked up in licences (which could be reclaimed due to non-use) to being a valuable commodity to be traded and used." See full article at: http://wcel.org/resources/environmental-law-alert/water-market-privatization-or-not

- **Ecojustice**, lawyer Randy Christianson comment:
  "*the real questions are whether or not the proposed Water Sustainability Act lives up to its name and protects the environment and the public interest, and whether BC should introduce water markets now.* ***The answer to both questions is a resounding no***." see full article at: http://www.ecojustice.ca/blog/what-does-privatization-of-water-look-like

Comment by Boundary Environmental Alliance on B.C Government's Policy Proposal's on a proposed new Water Sustainability Act. Mar 2011

We provide separate comment on each of the seven Policy Directions listed in the Governments Proposal however most of the Policy Directions are interrelated to the point that we do not view any of the Proposals as stand alone.
Our view comes primarily from one of the "arid" regions of the Province, the Kettle River Basin. The Kettle was joint as # 1 Endangered River in ORCA's 2010 listing. The Kettle has seen record low flows in 6 of the last 7 years and flows have been on a generally downward trend for the past 70 years or so of record keeping. Despite these low flows, the known consequences to fish and aquatic organisms from high temperatures and low oxygen, Government has continued to approve new withdrawals from the Kettle by ignoring or diminishing environmental effects. Big White's application to take Kettle water primarily for snow-making and golf course irrigation is a reflection of Governments inadequate management of a Public Resource, as Government invited Big White to apply for the water. See details in our letter to Ministry of Environment, including petition submission:
http://www.boundaryalliance.org/pressrelease_openletter_jan2010.pdf

Re Proposal # 1 Protect stream health and aquatic environments.

Despite strong public support for definitive in-stream flow needs, (IFN) Government has apparently decided to use "guidelines" which will be difficult to monitor and enforce and which will be a delayed reactive response to problems already underway.

Any new act should declare absolute IFN's as the first priority use. B.C's proposed Water Sustainability will not be sustainable if fish, wildlife and ecosystem needs are not the first priority.
Any new Act that purports to be sustainable must address the problem of range cow use on public lands, which problems and the effect on water and riparian zones is documented in our letter to Ministry of Forests & Range & other Ministries:
http://www.boundaryalliance.org/the_problem_with_range_cattle.pdf

Re Proposal # 2 Consider water in land use decisions

Provincial Water Objectives that provide direction to Municipalities, Regional Districts and other users could provide useful direction to decision makers re land and resource issues. A Kettle River example which demonstrates the absurdity of the present situation is an Official Community Plan for the Big White area that strongly encourages Big White to develop golf-course(s) without any meaningful consideration of the ecological and other effects on the Kettle watershed. Such objectives should include metering requirements.

Re Proposal # 3 Regulate groundwater

For 30 years or more a variety of water planning initiatives have strongly recommended ground water licensing. Then as now, B.C. remains the only Province without legislation to protect groundwater. In arid areas, e.g. Okanagan and Kettle basins, all groundwater should be licenced

including provision for metering. Approval for any extraction in these areas should be limited to basic household needs until existing and potential demand from groundwater and surface water is determined. Government still lacks such data, despite the fact that various planning initiatives have identified such information as essential in any meaningful planning.

The Day Afflum Report on Water Planning in Nov 1990, prepared for the Provincial Government Round Table on the Environment & the Economy, stated; "there are not enough personnel in the Ministry of Environment & other resource agencies to collect and analyze the data necessary to understand the dynamics of river basins and aquifers in the Province, as well as the cumulative effects of development on these systems." Twenty plus years on, little or no progress and essential data is still missing.

Re Proposal # 4 Regulate during scarcity.

Regulation firstly should address absolute IFN's for ecological and future ecological needs, (see response to Prop #1).

Despite early indications that the existing allocation principle of first in time, first in rights (FIT) would be reconsidered, Government is now indicating that this principle will remain in place. FIT is a principle that fails to protect environmental/ecosystem needs, societal need or distinguish between beneficial and other water usage. The Government definition of "beneficial" use should establish priority based on:

a. Ecosystem needs
b. Domestic and servicing needs
c. Agricultural needs based on criteria that reflect irrigation type, soil type, crop value & local food needs. Broadcast irrigation for example vs. less wasteful irrigation. Excessive water requirements for low value crops, e.g. hay destined for cattle use. The relative land uses, crop uses and economic contribution (or otherwise) of various usage is investigated in a recent UBC Report, *Blue Green & Virtual Water*. The implications of such research should be included in priority of use planning.
d. Industrial uses, with criteria that evaluate whether water is returned locally to surface or groundwater in an uncontaminated state. Processes that do not, including water bottling, should not be permitted.
e. Recreational purposes such as snow making and golf course irrigation.

The second imperative is that of fairness. Given existing warming trends the Ministry Of Agriculture has estimated that within 30 years, existing crops will require 30% more irrigation water. Possible global warming scenarios would increase "needs" beyond those estimates. In even the best case scenario, water shortages are bound to increase. FIT (appropriately) never guaranteed permanence or absolute access to water. If FIT remains a first principle, many existing users will be cut off from any access to existing water supplies. Because FIT licences generally reflected the reality of early settlement, priority of licences generally followed settlement patterns from low river valleys and gradual later settlement up river/tributary valleys. FIT never anticipated future shortages when replacing Common Law and FIT is not suited to making equitable judgements in the face of competing needs.

Government should in this process look to phasing out FIT.

Re Proposal #5 Improve security, water use efficiency & conservation.

Three fine buzzwords, substance for which is missing in the Proposal.

Economic instruments and their use needs greater clarification, however **the issue of tradable permits is one that should be taken off the table** until the issues of supply and existing and potential demand and global warming effects are fully addressed. It is apparent that "tradable licences" which Government misleadingly suggests will help "restore flows", and provide "flexibility" will mostly do the opposite. Tradable licences will firstly ensure that existing underutilized or unused licences are acquired by those who will use them. Numerous river extraction licences in the Kettle are in that situation in the Kettle including many instances where licence holders have moved extraction points to nearby wells off-stream to acquire "so called groundwater" which does not require a licence. (many reasons for these relocations, but principal reasons, can avoid turbidity, silting and freshet damage from in-river extraction points.)

Tradable licences could therefore enable sale of river extraction licences and ensure that "sleeper" rights become active and further increase shortages.

Re Proposal # 6 Measure and report

New and existing licences of groundwater and surface water should be required to measure and report. Metering should be mandatory where other means of measuring are unavailable.

Re Proposal # 7 enable a range of Government approaches.

Any "range of approaches" needs to be spelled out in detail for further discussion. The value (and costs) of any approaches can only be seen in the details. Government has had significant authority in existing legislation but in many cases has failed to exercise it, e.g. no claim-back of unused licences as was entitled under the requirements of "beneficial" use.

Some commentators have suggested that some of these approaches might include Watershed Management Plans or Water Management Plans. While we were amongst the first to propose a Watershed Management Plan for the Kettle River, we cautioned that any such plan should firstly prioritize ecological effects and consequences and future water demand. It remains to be seen whether the Kettle WMP process includes the broad public participation that might focus on those priorities, or whether the WMP ends up primarily as an exercise in which consumptive (exploitive) "shareholders" end up divying up a public asset for their own benefit.

Changes are required in any new Act that would prevent water licence applications from being approved that effectively "reserve" future water except where such use is for ecological purposes. In the local example Big White has effectively "reserved" a future supply in advance of development plans that may not be submitted for years to come. As well as making nonsense of the "beneficial" use principle the shortcomings of the existing Act have allowed a "reservation" system that was never intended.

Al Grant for Boundary Environmental Alliance

http://www.boundaryalliance.org/

Comments on BC's Proposed Water Sustainability Act

By: Fred Marshall RPF P.Ag. Cert. Arb. January 25, 2011

Generally, the direction proposed in BC's Water Act Modernization Policy Proposal for a new Water Sustainability Act of Dec. 2010 is an excellent one. Some aspects however, require changes as per the comments below:

- ✓ **All ground-water withdrawals should be licensed;** or, failing that, the threshold levels should be reduced to a very low level (i.e. 50M3/day in unconsolidated aquifers and 25M3/day in bedrock) before any are exempted. Any aquifer can be drained by a few big holes or via many small holes; the result is ultimately the same. Also, if the decision is to license only those groundwater withdrawals above a certain threshold, then some regulations need to be made that restrict the number of "small, below-the-threshold" withdrawals any one person or entity can make. This type of legislation would be very complex and compliance extremely difficult to achieve; hence the option of licensing all ground-water withdrawals is strongly recommended.

- ✓ **The quality, location and volume of water present in any aquifer should be determined before any rights are granted to it; and a maximum draw-down level must be established and enforced that accompany and are a condition of any ground-water license issued.**

- ✓ **Groundwater extraction should not be allowed that diminishes existing surface rights nor that diminish or threaten the health of those ecosystems present on the surface areas located above the aquifer.**

- ✓ **Groundwater extraction wells should be restricted from encroaching onto any lands situated directly below but within another's private property boundaries.** With new drilling capabilities directional drilling is capable of tapping water resources located well away from the location of the surface extraction point and hence, from under (and therefore within) the bounds of a neighbor's property. This should not be allowed.

- ✓ **All existing water licenses, especially older ones, that are not being beneficially utilized should be cancelled with the "new" water being allocated to the highest and best use as determined by the applicable water authority guided by the Ranking listed below.** High priority for doing this should be in those areas where water supply and quality issues are critical. For example, the Village of Midway has an old water license on the Kettle River (Currently ranked as # 1 on BC's Endangered River's List which has significant quantity and quality issues) that has not been used for many years as the Village has long obtained their water from wells that tap the local aquifer. Compensation should be made to the licensees for such take-back but often a trade for

the old surface license can be made for a new ground-water license and this resolves a lot of problems including political, social, economic and ethical ones.

- ✓ **All Municipalities should be required to provide water to its constituents via metered water with rates escalating beyond a reasonable threshold.** A timeline (5 years is suggested) should be allowed over which all municipalities would develop and implement a metering installment program throughout their jurisdictions.

- ✓ **No new water licenses of any form should be granted within any watershed deemed to be fully allocated under present conditions including estimated or determined minimum low-flow levels or minimum water table levels**

- ✓ **All new water licenses should have a 'notwithstanding clause' included in them that allows the Provincial Water Authority to restrict or completely stop current or future water withdrawals and/or revoke the water license permanently with due cause without compensation to or recourse by the licensee.**

- ✓ **The allocation of rights of use for all licenses should be based on determined criteria as initially proposed in the Water Act Discussion Paper.** The recommended hierarchy of priority uses should be as per the following:

    1. **Ecosystem requirements essential for long-term sustainability with two flow levels being determined—Minimum and Optimum.** The objective should always be to achieve and maintain the optimum flow levels. Minimum flow levels should only be accepted and/or allowed in extreme situations such as for human health and survival. This is the wise and most appropriate use of the precautionary principle. If the minimum flows are always used and accepted there is absolutely no margin for dealing with unusual events or crisis situations.

    2. **Water for domestic uses and/or essential services:** i.e. personal drinking water and growing local food and maintaining health facilities and services, safety as for fire protection, etc.

    3. **Agricultural uses:**
        A. For human food crops and secondarily for livestock production.
        B. For indirect food crops; e.g. hay for winter feed for meat production.

    4. **Power production behind established reservoirs** which should be strictly monitored with graduated consumption rates with higher rates of consumption paying a geometrically higher rate than the lower consumption rates.

5. **Industrial uses**

6. **Landscape maintenance** around houses, in city parks etc.

7. **Withdrawals for IPPs that produce power for export**

The following uses should not be termed "Beneficial" and should not therefore be eligible to acquire or hold a water license. Or, if licenses are granted, their tenure should be for a very limited term and the license fees very high.

8. **Miscellaneous and wasteful uses:** e.g. washing cars, houses, driveways, producing bottled water etc.

9. **Recreational uses**: such as snow making or watering golf courses.

- ✓ **The ultimate authority over BC's water resources which includes jurisdiction over any and all water licenses should remain in the hands of the Provincial Government.** Some authority may, and likely should, be delegated to more local levels (See below). Ultimately, all water and the rights thereto must remain in the hands of British Columbia residents and citizens or—at least Canadians and/or Canadian-owned companies. The proposal to develop and allow "Tradable Permits" should be cautiously developed. Water rights must never be allowed to be wholly owned and/or controlled by private interests and the private trading of water licenses supports such paradigm.

- ✓ **A new independent Water Authority should be established within the Ministry of Natural Resource Operations to administer all fresh water in BC.** Water is BC's # 1 natural resource and the new Water Sustainability Act will require a well-organized and well- funded body to ensure its successful enactment, ongoing administration and enforcement. Provision should be made to facilitate delegation of significant aspects of water management and allocation authority to local, well recognized and respected bodies such as the Okanagan Basin Water Board and other Boards or entities established similar to them.

- ✓ **Legislation and operational procedures for all resource-related activities must complement and support all aspects of the Water Sustainability Act and the Living Water Smart program.** For example, there are over 500,000 Km of "bush" roads in BC with more being built each day. Roads are the cause and/or source of 95% of stream degradation. Improved regulations relative to all aspects of resource roads must be developed that reduce this percentage. The BC Government has indicated their intentions to do this and this endeavor must be completed.

Most all resource-related legislation, policies and procedures need revision to ensure all areas are complementary and supportive of both the Living Water Smart program and the Water Sustainability Act. All such legislation should be structured so that it guarantees that the objectives of achieving a continuous, sustainable flow of clean, cold, abundant water from BC's forests are attained.

Summary Statements: BC has long misused, abused and, for all practically purposes, freely allocated as much water as anyone wanted for nearly any use. Unfortunately this practice continues, largely unabated to this day. This must stop--now. BC's Living Water Smart program is an excellent undertaking to change our modus operandi relative to water. It warrants strong support to ensure the proposals contained therein are implemented and realized. This program provides a strong and complementary basis upon and with which a new Water Sustainability Act can be developed and implemented.

BC's proposed new Water Sustainability Act---is perhaps the most important piece of legislation that BC has ever proposed and undertaken to implement. However, we are already past "peak" water and yet BC's water continues to be given away at an unprecedented rate via IPPs and other water licenses as if nothing has or will change relative to water availability in the future. And another huge dam (Site C) is on the horizon. We must change and stop doing what we have done in the past and, unfortunately, continue to do today as per the following:

- **D**rain---the wetlands
- **D**ivert---water courses (often from one watershed into another)
- **D**ike---other water courses
- **D**am---them all----the Peace River with Site C Dam is next; several others are on the list!
- **D**ivest---water rights to private entities (mainly foreign-owned companies) for long periods of time via IPPs.
- **D**ig or **D**rill more wells (ground water is free and first-come, first-served!)
- **D**evelop whatever water one can find as long as it's profitable.
- **D**amage, **D**egrade, **D**evalue and misuse most of what's left via pollution and/or wasteful practices including the application of fertilizers, pesticides, sewage, storm drains, snow making, car washing or watering the never-ending plethora of new golf courses etc.

Virtually all of these processes continue, nearly unabated, many with government support with more planned for the future! Last year Alberta placed a moratorium on new water licenses because they realized they were out of water. BC should do the same, at least in the interior dry belt, until the Living Water Smart strategy and the new Water Sustainability Act are completed and well in place.
Fred Marshall. RPF

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