NEWS

First Nations' rights supersede water licences

Sylix knowledge holder Leon Louis addressed the Okanagan Basin Water Board's annual general meeting Friday, telling stories of where the salmon spawn and offering insight into the First Nations perspective on land, water and environmental resources.

— *Image Credit: Jennifer Smith*

by Jennifer Smith - Kelowna Capital News
posted Sep 9, 2014 *at* 9:00 AM— *updated* Sep 9, 2014 *at* 11:05 AM

Aboriginal rights to water likely supersede those of water licence holders and municipalities need to negotiate what this means before the issue ends up in court.

This was the big take away from Friday's Okanagan Basin Water Board annual general meeting where municipal lawyer and Hakai professor in environmental law and sustainability, Deborah Curran, addressed the implications of the new Water Sustainability Act.

"It is very clear that First Nations have an aboriginal right to water. For example, (they have a right to enough) water so that salmon can return to spawn. That is quite clear, whether it has been said by a court or not," said Curran. "So, what does the modern day water allocation look like? Well, obviously, First Nations have aboriginal rights for domestic use. The question of further than that depends on the history of that nation and, if questioned, those rights would take precedence over all other water licences that have been issued in British Columbia."

The act does not address aboriginal title specifically. However, given the Tsilhqot'in decision, which awarded 1,700-square-kilometres of traditional lands outside the Tsilhqot'in reserve in Central B.C. to the First Nation, she believes court precedent on land claims with sufficient evidence is now set.

 Her talk stressed the need to jump into negotiations with First Nations locally and generally adopt a seize-the-day approach to planning for water rather than waiting for conflict with the province and court down the line.

Under the new water legislation, water is a "use right" not a "property right," she added. As such, a water licence gives the holder the right to draw a given amount until the province determines supply is not sufficient. There is no compensation for the licence holder if the supply dries up.

This had the president of the BC Fruit Growers' Association, Fred Steele, very concerned.

"If we had a severe drought situation where the ministry told agriculture it had to drop its crop to the ground, you are saying there would be no avenue for compensation?" he asked.

Yes, she told him, quickly adding she doubts officials would target farmers when household water consumption is so high. Urban water use is really the "low-lying fruit" for conservation efforts in her view.

OBWB executive director Anna Warwick Sears made curbing neighbourhood watering a key point in her address as well.

"I know that Black Mountain Irrigation District was in the paper a few weeks ago talking about building this new reservoir. It's going to take millions and millions of dollars, meanwhile we have this (habit) of over consumption," she said.

Some 25 per cent of the water used in the valley goes to watering lawns and gardens whereas the whole agricultural industry—fruit growers, vegetable farmers and cattle ranchers—only eat up 55 per cent.

Warwick Sears reviewed a long list of problems and projects the OBWB is tackling.

From the variability of the Okanagan water supply to climate change to population growth, demand for water is only expected to increase, making conservation critical.

She believes climate change is already evident in the region.

Eurasian watermilfoil growth is out of control, drastically increasing the need to weed beaches valleywide, and flooding on Mission Creek is also raising eyebrows as flows consistently prove higher than the normal range.

She touched on a few upcoming projects the board is involved with, including:

- Expansion and restoration of the Mission Creek wetlands
- Endocrine disruptor research to deal with pharmaceutical hormones in lakes and rivers

(Inset picture: Deborah Curran)