

## Water licenses uncertain

By Vernon Morning Star

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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 the 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.

Curran's 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 B.C. 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.

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