

15 November 2013

Hon. Mary Polak  
Room 112, Parliament Buildings  
Victoria, B.C. V8W 9E9

Dear Minister Polak,

***Re: Modernizing the B.C. Water Act – An Okanagan perspective***

Thank you for the opportunity to provide input to the B.C. Government's Water Act modernization. Like elsewhere in B.C., water is vital to the Okanagan's economy, ecosystem and quality of life. However, there is less available in our semi-arid region than many other parts of the province. As a result, an update to the century-old Water Act holds immense significance to us.

The B.C. government continues to demonstrate leadership, building on the release of Living Water Smart – B.C.'s Water Plan (2008). That plan initiated a process to modernize B.C.'s water laws to ensure adequate stream flows, ecosystem health, more community involvement, and protection of groundwater. The Okanagan Basin Water Board (OBWB) submitted a number of recommendations to your Ministry in April 2010, and these continue to be relevant (a summary of our earlier recommendations is attached as Appendix A).

The OBWB was established in 1970 to provide leadership on water issues that span the entire valley: sustainable water supplies, clean water for drinking, and healthy lakes and streams. We are very encouraged with the direction that the Province has taken to improve and modernize the B.C. Water Act and wish to assure you of our strong support and encouragement as you complete this important exercise.

The OBWB strongly supports the general direction of the proposal, "*A Water Sustainability Act for B.C. Legislative Proposal*", a well thought out response to a range of important issues including licensing of high volume groundwater and the implementation of an agriculture water reserve. The following comments are submitted for due consideration by the B.C. Government.

Sincerely,



Stu Wells, Chair

CC: Okanagan MLAs: Premier Christy Clark, Hon. Steve Thomson, Eric Foster, Norm Letnick, Dan Ashton, and Linda Larson; Regional District Chairs for North Okanagan, Central Okanagan, and Okanagan-Similkameen

## Priority Okanagan Recommendations

- ✓ **Recommendation 1. Review of draft legislation (and regulations).** That the Province circulate the draft Water Sustainability Act legislation to key actors and professional water groups *before* the proposed legislation goes to first reading. This process may model itself on the drafting of the *Drinking Water Protection Act* that followed a similar level of consultation and resulted in a more robust legislative and regulatory process.

**The B.C. government provides the opportunity to review the new Water Sustainability Act draft legislation before it is submitted to the legislature for first reading.**

- ✓ **Recommendation 2. Adequately resource the new Act.** A new Water Act that is under-resourced or enforced will not achieve the goals described in the legislative proposal. Developing a new framework to collect water resource rents and water use data (possibly a new independent government entity that incorporates the B.C. Water Use Reporting Centre) will help ensure that costs are met, while allowing an efficient way to share crucial water management information on water extractions – needed by a range of agencies and local water management entities. The Province should ensure that adequate financial, human, administration and enforcement resources are dedicated to support the new Water Sustainability Act; and work towards a coordinated approach to enforcement and regulation of water-related issues under the various other Acts affecting water. There will likely also be substantial costs associated with implementation at the local level, and the Province should ensure that funds are made available to support local communities as they adapt to the new regulations.

**The B.C. government dedicates adequate resources (funding, extension, people, and data/information support) to the new Water Sustainability Act and subsequent regulations.**

- ✓ **Recommendation 3. Reduce the barriers to implementation of Water Sustainability Plans.** The current process for developing Water Management Plans as a means for flexible or area-specific governance arrangements has never resulted in the approval of a plan (by the Lieutenant Governor in Council), in spite of the efforts that have been made. The new Act should ensure that the process for developing a Water Sustainability Plan is fully enabled and can be initiated and led by local communities, where appropriate, with funding and technical support from the Province. The process must not be so bureaucratically complicated that implementation is too burdensome to complete.

**The B.C. government develops a process for implementing Water Sustainable Plans in a manner that results in the completion of Plans throughout the Province, and in particular the Okanagan.**

- ✓ **Recommendation 4. That land-use and water decisions be made in a comprehensive and coherent manner.** The inclusion of a new section to specifically address the need to consider water in land use decisions is essential; however there are gaps between Provincial and Local government’s regulations and bylaws that the new Act should address to ensure decisions are not at cross-purposes which may result in land-use decisions that negatively impact ecosystems, as well as social and economic health.

**That the B.C. government develops through the Act and Regulation a unification of water and land regulations and provide clear direction to local government with regards to a range of water related policy and legislation including the Right to Farm, Riparian Area Regulation, the Drinking Water Protection Act, and others.**

- ✓ **Recommendation 5. Environmental water needs.** The act encompasses both groundwater and surface water within one cohesive framework, but the term “environmental flow needs” suggests that the quantity of water flowing as surface water is the only parameter of importance for environmental sustainability. Other surface water and groundwater parameters may be equally important for environmental health, such as stream temperature for salmonids, groundwater discharge through riverbeds for salmonid spawning site selection, or water table elevation for wetlands or riparian zones. Broadening the term to “*Environmental Water Needs*” will include groundwater and give regulatory flexibility to encompass other critical water parameters as our knowledge of environmental water needs develops in the future.

**That the B.C. Government replaces the term “Environmental Flow Needs” with the term “Environmental Water Needs” throughout the legislation.**

- ✓ **Recommendation 6. The requirement to licence/regulate all significant groundwater extractions, irrespective of the groundwater chemistry, is fundamental to the consistent and comprehensive management of our groundwater resources in B.C.** The theme of water interconnectedness or interdependence is clearly conveyed in the WSA proposal. While saline groundwater has different chemical characteristics than fresh groundwater, they coexist within groundwater systems, they can mix within groundwater systems, and they are “connected”. Science has demonstrated that saline water plays an important role in the balance of fresh groundwater systems and vice versa. Removing the exclusion for saline groundwater would re-enforce the theme of water interconnectedness expressed throughout the WSA proposal, provide a vehicle for documenting and regulating all water use, and for regulating licence conditions when and where unintended consequences to fresh water resources are realized. The

proposal justifies the exemption of saline groundwater based on the speculation that it is hydraulically separated from overlying fresh groundwater. This assumption, however, has not been proved in northeast B.C., and therefore, does not provide a sound basis for the proposed exemption. Setting the exemption based on this unproven assumption could also set a precedent for fresh groundwater use in confined aquifers which are also "likely" hydraulically disconnected from overlying aquifers.

**That the B.C. government apply groundwater regulations to the extraction of saline groundwater so that it's licensing and regulation is consistent with that of other groundwater.**

### **Other notes and observations**

We have noted the new emphasis on the oil and gas industry within the proposed Sustainable Water Act. We recommend that the water act be developed with a long view to ensure the protection of current and future residents of this Province. Water legislation and regulations should be developed and implemented with considered sober second thought and not be overly influenced by any one economic sector.

## **Appendix A. Summary of 2010 OBWB Recommendations**

### **1. *Protection of Stream Health and Aquatic Environments***

- 1.1. Accommodate, clarify, and harmonize the ambiguities in jurisdictional authorities as they pertain to stream health and aquatic environments.
- 1.2. Develop explicit language in the *Water Act* to support responsible, multi-use of watersheds where source waters for common purposes (e.g., drinking water supplies) are at risk.
- 1.3. Establish limited-use 'permits' for purposes such as off-stream livestock watering on fully recorded streams.
- 1.4. Allow farmers to construct multi-season storage options. Conservation flows should be based on natural flows not storage volumes.

### **2. *Improving Water Governance***

- 2.1. Include First Nations as full partners.
- 2.2. Make effective use of existing Water Act management tools, including Water Users' Communities, Water Use Plans, and Water Management Plans.
- 2.3. Create enabling legislation for watershed-based management to enable the identification and implementation of solutions to shared, multi-jurisdictional water challenges.
- 2.4. Add definitions to the Water Act including: Large Water Users, Drought, Watershed-based Management, and Priority Watersheds (Areas).

### **3. *Flexible and Efficient Water Allocation***

- 3.1. Make the language within the Water Act more transparent and intelligible, while also emphasizing the public ownership of water. Simplify the language used and clearly communicate the rights and responsibilities for (a) specific users, and (b) under specific conditions.
- 3.2. Review the 'Beneficial use declaration' (Part 3) sub-section of the Water Act to accommodate voluntary storage and conservation flow contributions.
- 3.3. Water licenses should state: (1) an annual use, and (2) a peak withdrawal demand.
- 3.4. Allow flexibility in the duration of the allowable irrigation period and provide partial-season licences.

- 3.5. Review the licence fee structure to enable cost recovery for monitoring and enforcement of licence terms and conditions, and for other expenses related to water supply monitoring and prediction.
- 3.6. Review the 'First-In-Time, First-In-Right' allocation system to assess strengths and weaknesses relative to alternative systems.
- 3.7. Examine the implementation of a transparent system of water allocations (i.e., reserves or trusts) that acknowledges and legislates the fundamental importance of water for such purposes as agriculture (Agriculture Water Reserve), conservation flows (Ecological Water Trust), and basic domestic needs.

#### **4. *Groundwater Regulation***

- 4.1. Add definitions that include: Groundwater in Direct Hydraulic Connection, and Groundwater Sensitive Areas.
- 4.2. Institute a system of licensing for groundwater extraction. Recognize that water (surface and ground) must be accounted for within a connected administrative system to support comprehensive watershed management.
- 4.3. Develop a 'grandfathering' process for existing wells to bring them into conformity with the new licensing system.
- 4.4. Require that all Water Use Plans and Water Management Plans include a groundwater management component for the watershed.