



Sept 9th, 2015

Re: Proposed *Water Sustainability Act* Groundwater Regulations

The POLIS Water Sustainability Project, located at the University of Victoria's Centre for Global Studies, commends the B.C. Government on its commitment to public engagement throughout the *Water Sustainability Act* regulation development phases. We are providing this submission as part of our ongoing input into *Water Sustainability Act* development.¹ The recommendations detailed below draw primarily from a forthcoming POLIS report on *WSA* regulations.

B.C.'s groundwater is vitally important. Introducing groundwater regulation represents a significant step forward for B.C. water law. The proposed *Groundwater Licensing* and *Groundwater Protection* policies indicate that the Province is making clear progress towards improving groundwater protection and integrating surface and groundwater management, including:

- Licensing *all* non-domestic groundwater users;
- Extending the water fee and rental system to non-domestic groundwater users;
- Creating an incentive for domestic groundwater users to register their wells so that government can consider potential impacts on domestic wells when granting new groundwater licences;
- Introducing new requirements for well owners to ensure proper well maintenance; and
- Introducing new requirements for controlling artesian flows.

Key Concerns

Although these commitments are laudable, we identify two outstanding concerns with the proposed groundwater regulatory regime:

1. Despite the fact that there is a lack of information and understanding about the interactions between groundwater and surface water in B.C., and about the total amount of groundwater available to be diverted, the proposed groundwater licensing regulation will give priority to existing groundwater users with no provision for assessing the cumulative impacts of existing groundwater extractions on aquifer sustainability.
2. There is no overarching legislative requirement for the Province to consider Aboriginal water rights when issuing groundwater licences, nor a clear commitment to engaging with First Nations communities where the proposed licensing regime will impact traditional territories or constitutionally protected Aboriginal rights and title.

Priorities moving forward

As the Province continues to refine the *WSA* groundwater regulations, it has a key opportunity to address the gaps in the proposed approach. The following seven recommendations provide specific direction to Government on how to make B.C.'s groundwater regulations robust and effective:

1. Address Aboriginal water rights and consultation obligations

Acknowledge Aboriginal rights to groundwater when determining groundwater licences, and collaborate

¹ POLIS' four previous submissions are:

- 1) Water Act Modernization Submission: Towards a Modern Water Act – A University of Victoria's POLIS Project on Ecological Governance Position Paper (April 2010);
- 2) University of Victoria's POLIS WSP Submission in Response to the Government's "Policy Proposal on British Columbia's new Water Sustainability Act" (December 2010)
- 3) University of Victoria's POLIS Water Sustainability Project Submission in Response to the B.C. Government's "Legislative Proposal for British Columbia's Water Sustainability Act" (October 2013); and
- 4) *Water Sustainability Act*—Response by the University of Victoria's POLIS Water Sustainability Project to the March 2-14 Discussion Paper *Pricing B.C.'s Water* (April 2014).



with individual First Nations to determine protections for Aboriginal water rights and uses. Work with First Nations to determine an agreed-upon consultation and accommodation process for groundwater licensing.

2. Make groundwater licences conditional and subject to review, with fixed end-dates

Issue short-term licences with specified end-dates until it is established that current extractions are sustainable and the cumulative impact of existing extractions do not pose a threat to environmental flow needs or aquifer health.

3. Follow through on the Living Water Smart commitment to publish "state of our water" reports every five years from 2012 onwards

This information coupled with additional data on groundwater will provide a viable baseline for B.C. as the new WSA is implemented and future decisions are made.

4. Identify priority aquifers

Designate at-risk priority aquifers in which domestic users must also obtain licences, to which detailed and stringent licence conditions on withdrawals apply, and to which Water Sustainability Plans or area-based regulations are developed.

5. Obtain more information about B.C.'s groundwater resources

Complete the classification of B.C.'s aquifers, starting with priority aquifers. Conduct and support detailed studies to better understand the various aquifers and surrounding watershed and recharge areas. This information must be made publically available.

6. Ensure sustainable groundwater use

Define sustainable groundwater use; determine a water budget for each hydrological system starting with priority areas, set numerical limits for withdrawals, and define full basin allocation, at which point no new licences may be granted; and set quantitative water objectives for groundwater quality and quantity.

7. Assign licensees' monitoring and reporting responsibilities and require well registration

Require licence applicants to submit baseline data on aquifer conditions; require licensees to monitor and report actual water use; and require all well owners to register their wells in the provincial wells database.

The POLIS Water Sustainability Project team looks forward to supporting the WSA regulation development process as it continues, and seeing further progress and ongoing engagement on these crucial issues. If you have any questions or concerns, please contact Rosie Simms at water@polisproject.org.

Sincerely,

Oliver M. Brandes, BA(H), Dip.RNS, M.Econ., JD
Co-Director & Water Sustainability Project Lead,
POLIS Project on Ecological Governance,
University of Victoria

Deborah Curran, B.A., LL.B., LL.M
Hakai Professor in Environmental Law and Sustainability
& Program Director, Environmental Law Centre
University of Victoria Faculty of Law

Rosie Simms, B.A. & Sc.(H), M.A.
Water Law & Policy Researcher
POLIS Water Sustainability
Project, University of Victoria