

# BC Floats New Water Law

On the path toward sustainability — this extended online version looks at how to make the Water Sustainability Act work.

BY [Laura Brandes](#), [Oliver M. Brandes](#)

Dec 2014 | [Water 40.5](#)

Categories: [First Nations](#) - [Environmental Law](#) - [Water](#) - [Regulation](#)

 +1  0

 Like  13  Tweet  0

 Email  Print

The post has been submitted for moderation and won't be listed publicly until it has been approved.



Photo ©

James Wheeler \ Fotolia.com

After an extensive development period, the British Columbia provincial government introduced Bill 18 —*Water Sustainability Act* (WSA) into legislature this spring and it received Royal Assent in May. While it is now officially law, the WSA will not come into force until next year, after certain details have been finalized and particular regulations developed. The new WSA represents the culmination of six years of consultation to modernize the previous *Water Act*, which was over 100 years old and sorely out of date. The WSA is ushering in a potentially new and exciting era of water stewardship in BC based more on the concept of protection than rules for resource extraction.

The former *Water Act* was a relic from a bygone era when the Province was largely focused on the needs of settlers, miners, and loggers. Creating certainty for investment to kick-start a resource-based economy was top priority. Fast forward 105 years and BC is a different place. Now, water is acknowledged as critical to our future by almost all sectors, and across the full political spectrum. Intensifying water issues – like droughts and flooding; mounting concerns around urbanization; water needs for fish and fish habitat; water needs for energy, such as shale gas fracking in the northeast of the province and hydro damming projects – all conspire to challenge BC's current management and governance regime. Critical legal developments around Aboriginal rights and title have further unsettled the status quo of the Province's largely unsustainable approach to freshwater management to date.

The WSA is the critical first step to ensuring better, and regionally appropriate, protection for environmental flows, water planning, groundwater licensing, and incentives for improving efficiency and promoting conservation.

The full implementation of the new act will hinge on passing a suite of foundational regulations to bring the act into effect. The first batch of regulations is expected by April 2015. These will focus on administrative aspects, as well as the Province's new groundwater licensing regime, which will bring the legislation into force.

## **Moving Toward Watershed Governance**

The WSA also includes a clear provision for watershed governance, which will allow the provincial government to share or delegate certain decision-making responsibilities to local authorities at the regional or watershed scale who might better understand specific local needs and priorities, particularly in areas with water conflicts or ecosystem risks.

At this stage, the legislation only provides an enabling framework for the sharing and delegation of decision-making powers. However, this provision (s.126) lays the foundation for a broader move toward watershed governance in the province.

Much work remains to fully embed watershed governance—which is neither a quick nor an easy process. A new policy report from the University of Victoria's POLIS Project on Ecological Governance, [\*A Blueprint for Watershed Governance in British Columbia\*](#), addresses the complex details of who makes decisions about water, and how decision-makers can be held to account for the overall benefit of BC's fresh water. It offers a strategic 10-year plan to address this challenge and ultimately make the *Water Sustainability Act* really work.

The *Blueprint* proposes that aligning water-management decision-making with the ecological boundaries of watersheds—instead of political lines on a map—is an important aspect and the best way to achieve positive, long-term ecological, social, and economic outcomes. For watershed governance to effectively function, nine winning conditions are outlined in the *Blueprint*. When implemented together, these fundamentally improve governance and increase the likelihood of achieving the goal of protecting, and in some cases restoring, watersheds:

Enabling powers in legislation

Co-governance with first nations

Support from and partnership with local government

Sustainable long-term funding

A functioning legal framework for sustainable water and watershed management

Availability of data, information, and monitoring

Independent oversight and public reporting

Assessing cumulative impacts

Continuous peer-to-peer learning and capacity building

BC's new legislation combined with these identified priorities could create a real opportunity for positive change, particularly when it comes to engaging local communities in important watershed decisions. The critical conclusion from this work is that the starting point will require collaboration between key stakeholders, rights holders and governments at all levels, including First Nations in their traditional territories. Whatever form these new governing bodies might take, they must be designed to be accountable and financially sustainable, and also "nimble" in their ability to respond to the emerging challenges and shifting priorities that they will inevitably face.

## **The Price of Water**

In addition to the ongoing development of regulations to support the WSA, the provincial government has begun a water licence pricing review. This review, aptly called [Pricing BC's Water](#), is aimed at ensuring the new groundwater licensing regime is in line with surface water licence pricing. And, even more importantly, it seeks to address the increasingly apparent government revenue shortfalls and ensure sufficient funds for full implementation of the WSA.

As laid out in the POLIS Project's [March 2014 submission](#) to government regarding water pricing options for BC, an appropriate full-cost pricing of water allocations through licensing must be set to ensure:

an effective provincial enforcement regime can be maintained (polluter pays); comprehensive monitoring and reporting of water use and impacts on watersheds and aquifers (transparency); detailed understanding of local environmental flow needs and aquifer health and dynamics to inform all allocation and water planning decisions (water for nature);

financial resources and expertise for development of enforceable plans and application of area-based regulations in priority areas, including capacity to implement and ensure compliance (financial sustainability);

a conflict-resolution processes that assures citizens the right and ability to participate in key aspects of the allocation decision process, including citizen access to appeal decisions (public participation); independent oversight (accountability);

basic administrative support for designated authorities (watershed governance); and increased efficiency and conservation (volume-based pricing).

Before Bill 18 was passed, BC was the only jurisdiction in Canada that didn't regulate groundwater use. This outdated oversight led to significant controversy last summer when Nestlé became the

“poster corporation” for industry’s ability to legally pump tons of water at no cost and sell it back to British Columbians in bottles. These events not only helped push the passing of the legislation, but initiated a deeper discussion and review of how to resource a more sophisticated program for water management and governance in BC.

## Missed Opportunities

The WSA is a big and complicated piece of legislation and many of the details have yet to be worked out. However, while it is certainly on the right track, there are some clear missed opportunities. One significant example was not using the WSA as a chance to update BC’s archaic “first-in-time, first-in-right” (FITFIR) system of water allocation. The Province could have entrenched the public trust doctrine as a guiding principle and, in so doing, ensured that water remains available for the environment and communities now and into the future. This should remain a priority in future updates of the act or in efforts to define the scope of “beneficial use” in the supporting regulations.

Addressing Aboriginal water rights is another area of grave concern. The new legislation continues to vest water in the Crown and remains silent on acknowledging the fundamental rights and title of First Nations. Many First Nations are not satisfied with the level of engagement and consultation to date and require a more committed approach to genuine government-to-government engagement and co-governance going forward, especially regarding the groundwater licencing process and the regulation development phase.

## Looking Ahead

Despite its shortcomings, the WSA does offer a real opportunity to begin moving toward a more sustainable and resilient freshwater future. Without abundant clean and flowing water—and functioning watersheds—there is no life, no economy, and no future. British Columbians really do care about water: according to [recent public opinion data](#), 93 per cent agree that fresh water is our most precious resource. The challenge lies in not being afraid to embark on reforms of policies and decision-making structures that ensure critical attention to ecological health and function. It is becoming increasingly clear that fresh water will be what defines prosperity for the coming generation and BC’s new *Water Sustainability Act* offers opportunities to address some urgent priorities.

---

If you liked this article, please [subscribe](#) or [donate](#) today to support our work.

## Related



• [Canada's Climate Negotiations Song and Dance](#)