

New law gives B.C. more authority involving water use

Legislation comes into effect Jan. 1

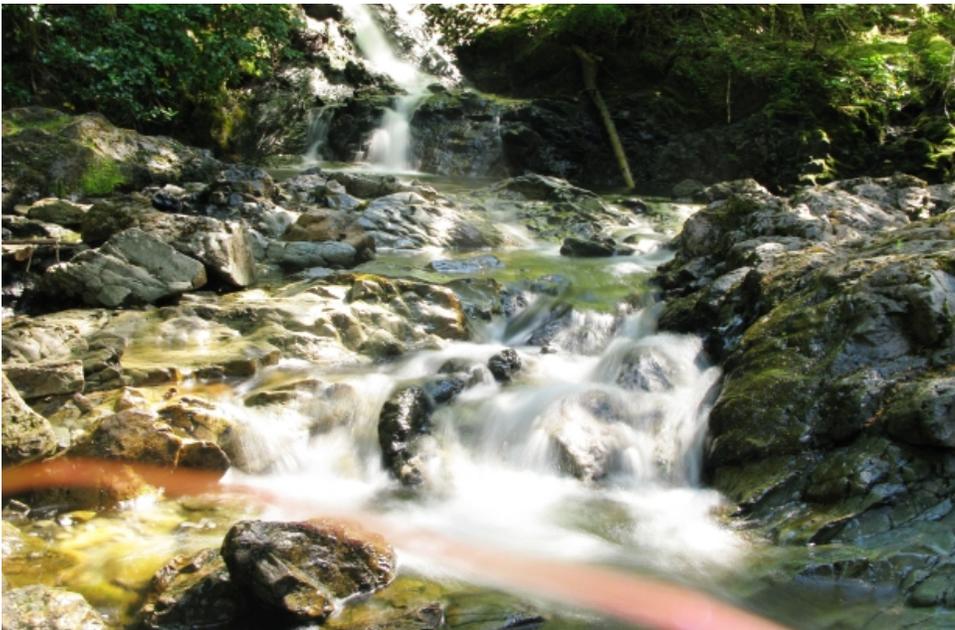
By Rob Shaw, Vancouver Sun September 14, 2015

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B.C. is in the process of modernizing its regulation of water, with new rules taking effect next year.

Photograph by: Dean Broughton

VICTORIA — Hans Schreier has spent a career studying B.C.'s water supply, charting a resource that most of the province seemed to ignore until this summer's drought.

"I worked for 30 years in water and nobody cared," said Schreier, a University of B.C. emeritus professor of watershed management. "Now everybody wants information."

A scorching hot summer, abnormally low rainfall and dwindling reservoirs meant there wasn't enough water to sprinkle lawns, fill pools or wash cars in Metro Vancouver and many other cities across B.C.

Suddenly, interest spiked in understanding how the province protects and allocates its newest precious resource.

There was far less public attention last spring when the provincial government refreshed the 100-year-old laws governing water by passing a new Water Sustainability Act.

The centrepiece of the legislation was an extension of British Columbia's existing licensing and regulation regime for surface water, meaning streams and lakes, onto groundwater, which is pumped from wells.

The change closes a loophole where someone denied a licence to get surface water — due to limited supply or for environmental protection — could simply walk a dozen metres onto the nearest shore, drill a well and pump out an unlimited amount of groundwater without penalty.

“We were the only jurisdiction in North America that had no regulation on groundwater, other than California,” Schreier said. California has also recently closed that loophole.

As Environment Minister Mary Polak puts it: “Anybody could drill down into groundwater and take what they wanted, and as much as they wanted.”

For a few more months, they still can. B.C.'s new rules come into effect on Jan. 1.

Despite the new law, the Liberal government chose to leave in place the core principle that has governed water rights in B.C. for a century: first in time, first in right.

The public might believe it has a priority claim on water to keep its taps and toilets running, but the province's system actually awards water rights on a seniority system.

The oldest water licences in B.C. get precedence in a drought. When water is scarce, the government cuts off the most recent licence users to protect the rights of the oldest — even if that means cutting off a municipality that serves drinking water to local residents in favour of a local golf course, farm or mill.

The system can lead to clashes between the public, business, agriculture, environmental and First Nations groups, as they wrestle with who has priority in times of scarcity (it's less of an issue for Metro Vancouver where the region's water district has water licences for its main reservoirs dating to the early 1900s).

This first-in-time-first-in-right system dates back to the gold rush days, and as a result, some of B.C.'s oldest licenses can be traced to the 1850s and 60s. The system is still used mostly in western Canadian provinces, while others, such as Quebec and Ontario, give priority of water ownership rights to those who physically own land near the water.

B.C. is left with an “archaic” way of thinking, set up at a time when nobody worried about whether streams had enough water or whether the system was fair in times of scarcity, Schreier said.

“You can imagine if you now go and try to change the legal requirements, it is going to be a heyday for lawyers and (government) will be in court forever,” he said. “They are stuck.”

The first-in-time system will also apply to groundwater licenses starting next year, meaning well owners will have to prove to government how long they've been pumping groundwater, potentially going back decades.

B.C. thought about a change, but ultimately decided to keep the principle in place, Polak said.

“We did consider it, and through the consultations it became clear that that's extremely important to water users in British Columbia,” she said.

“Where we've sought to modernize it was putting in place a system of priority in times of scarcity. So it means we can now modify (first in time, first in right) so we can make allowances for essential household needs, for all kinds of things that should take priority. Critical environmental flows, sanitation, all the things that you would ordinarily expect would take precedence ... we have not had the power to do that in the past.”

The new law creates “off-ramps” for the province, allowing it in certain circumstances to elevate the basic water uses for human and aquatic life above the dates of licences, said Oliver Brandes, co-director of the University of Victoria's Polis Project on Ecological Governance.

But the effectiveness will depend on how government defines critical flows, and other priority rules in regulations that cabinet must develop before the law comes into effect next year, Brandes said.

There are more than 50,000 surface water licences in B.C., but around 98 per cent of the water goes to power plants through just 600 licences. That includes major BC Hydro hydroelectric dams on the Peace and Columbia rivers, as well as independent power projects. Rio Tinto B.C.'s aluminum smelter near Kitimat is also a major user of water for storage and power.

To manage all the different users, part of B.C.'s new legislation opens the door to the province delegating some of its powers to local water bodies, such as local governments and watershed groups. Potentially, they would put together enforceable water-use plans for rivers and aquifers that are more formal and better balance the needs of people, business, agriculture, environment, fisheries and First Nations.

It won't happen during the first year of the law, but Polak said it's coming.

“That, to me, is one of the more exciting parts about what is a pretty long and, ironically, dry piece of legislation,” Polak said. “It really is a

highlight, that ability for us to empower local organizations.”

Much of the attention on the government’s new water law has centred on how low the rates were set — so low that the largest bottled water company operating in B.C., Nestle, would have had to pay only \$562 a year starting next year to extract 265 million litres of water.

Premier Christy Clark announced a review of the rates in July after a public backlash. The rates were expected to bring in \$11 million annually to government, intended to cover costs for administering the new groundwater licensing regime and leave some funds available to map out B.C.’s aquifer system — the province admits it has only mapped 1,100 aquifers out of several thousand in the province.

Nestle has said it wouldn’t mind paying higher fees, but argues it’s a small player when you consider 70 per cent of B.C.’s groundwater is drawn for agricultural use.

“The public wants a proper amount charged so we can put the money back into water conservation, mapping our aquifers, enforcing the rules so people can’t get away with polluting the water,” NDP critic Spencer Chandra-Herbert said.

Polak said B.C. can’t charge too much for water because then it becomes a commodity that people own in a province where, technically, all water is owned by the Crown and allocated through rental licenses. The rental designation means the government also wouldn’t have to compensate licence holders when it curtails use, as it would for someone who owns a resource.

Despite all the rules and regulations, B.C. essentially relies on the honour system to track water use.

The new groundwater rules will require users to measure and report the amount of water they pump from the ground. The government monitors some aquifer levels through a small network of observation test wells, but lacks the staff to check the accuracy of what’s being pumped by licence holders.

Some countries, such as Australia, have adopted comprehensive monitoring of water, with large networks of test wells and surface monitoring stations to provide real-time data on how much water is being extracted.

But provincial officials say the comparison is unfair, because Australia’s degree of drought has effectively created a water market where rights are sold and traded, and so water must be strictly monitored. In B.C., surface water licences can’t be so easily transferred without purchasing the land to which a licence is attached.

The province can fine water abusers, though even proposed higher rates tend to top out at the \$500 range. If it’s a repeated deliberate offence, the government can charge someone with breaking the act and seek penalties in rare situations of up to \$1 million and jail time. The new law also adds in administrative penalties against violators.

Some water analysts argue that in the future, B.C. should move to a system where everything is metered, regulated and charged based on use. Many homes in Metro Vancouver still pay for water at a flat rate because they don’t have a meter to track use.

“Every community should be metered, otherwise we can’t account for it,” Schreier said.

“Typical small communities in the Interior, they lose 40 to 50 per cent of their water through leaky pipes and they don’t have the resources to fix it. That’s crazy.”

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