



Creating a Blue Dialogue Webinar: Q&A Summary

Awash with Opportunity: Ensuring the Sustainability of British Columbia's New Water Law January 28th, 2016

Attendance Approximately 110—local, First Nations, provincial, and federal government staff; students and researchers; private sector professionals; environmental NGOs

Introduction

In May 2014, the Province of British Columbia enacted the *Water Sustainability Act*, (the *WSA*) which replaces the 106-year-old *Water Act*. This new Act came into force through an initial set of regulations in February 2016, and provides an unprecedented opportunity to fully modernize British Columbia's water law regime. In response to this opportunity, POLIS released its research report [*Awash with Opportunity: Ensuring the Sustainability of B.C.'s New Water Law*](#) in November 2015. The report provides an analysis of the *Water Sustainability Act* and the core regulations required to bring its sustainable aspects into full effect.

This webinar summary compiles key questions and concepts discussed during the January 28th, 2016 webinar *Awash with Opportunity: Ensuring the Sustainability of B.C.'s New Water Law*, which shared insights from the report. In the webinar, speakers highlighted recommendations for effective regulation development under the *WSA* based on best practices from around the world. They also offered insights on the need for a fundamental shift to a partnership-based approach to water governance and management in British Columbia.

While POLIS participated in the *Water Act* modernization process leading up to the passing of the *Water Sustainability Act*, it is important to note that the provincial government, not POLIS, developed the *WSA*. Further, while the Act has several promising features, many of the critical details of the legislation are yet to be developed. Thus, several responses compiled in this summary remain speculative and should be appreciated with a degree of uncertainty.

Guest Speakers

Oliver M. Brandes, Co-Director, POLIS Project on Ecological Governance & Lead, POLIS Water Sustainability Project, University of Victoria

Rosie Simms, Water Law and Policy Researcher/Coordinator, POLIS Water Sustainability Project, University of Victoria

About the Series

Hosted by the POLIS Water Sustainability Project at the Centre for Global Studies, University of Victoria, *Creating a Blue Dialogue* brings together expert water practitioners and thinkers, as well as emerging water leaders, to engage with innovative ideas on water policy and governance in Canada. By creating an online community of interest, the webinar series serves to strengthen the national capacity to engage with and solve problems, and raises awareness about emerging Canadian water issues, best practices, and policies.

Key Questions & Concepts from Discussion Period

How are water objectives set?

Section 43 of the *WSA* creates new authority to set water objectives in regulation for the purposes of sustaining water quality, quantity, and aquatic ecosystems. Water objectives will set out criteria for water quality and quantity that different land and resource use decision-makers can be required consider when making their individual decisions. Water objectives are a powerful tool to connect water and land—they can affect statutory decision-makers in sectors beyond and outside of the water realm, such as forestry and mining. In addition, objectives will have application for local governments, as local governments can be required to consider objectives in various planning processes.

What are similarities and dissimilarities between the B.C. *Water Sustainability Act* and the Federal *Water Act*?

The *Water Sustainability Act* and the *Canada Water Act* are fundamentally different, and proper comparing and contrasting would involve a lengthy constitutional discussion. Briefly, the *Canada Water Act* is the legal mechanism for collaboration between the federal government and other jurisdictions. The *Water Sustainability Act* is a provincial law, and provides rules primarily related to water licensing and allocation. Federal roles in water allocation are limited, with the exception of on federal lands, such as parks, treaty lands, and reserves.

Are city water systems addressed by the *WSA* like any other user? Are there different standards expected for municipal versus non-municipal users?

Local governments are required to hold a license in order to provide water for their various users, so in this sense they are treated the same as other water users and licensees. For instance, as with other licence holders, local governments will have to pay the new fees and rentals rates that came into effect in February 2016. There may be some specific provisions in local governments' licenses—for instance, around drinking water—but in principle they will be treated the same as other water users.

How can the *WSA* be applied in transboundary situations?

The new Act works the same as in the past—provincial rules apply to the B.C. portion of those shared waters, whether it is an inter-provincial border or an international border. For a discussion of transboundary watershed negotiations, including key challenges and opportunities, refer to POLIS' September 2015 webinar [*Evolution in Transboundary Watershed Governance: Lessons from the Mackenzie Basin*](#).

How might public trust principles be incorporated into the Act? How does the Act ensure that water is upheld as a human right?

Public trust principles are not currently included in the *Water Sustainability Act*. However, some principles and facets of the public trust doctrine could be included in the definition of “beneficial use,” which will manifest through future regulations. As common law evolves, we will likely see more examples of public trust related to water. This is a relatively new and emerging concept,

with very few current examples; other provinces and territories going through water law reform will grapple with these concepts and make changes accordingly. POLIS has contributed research around the public trust doctrine, with a number of publications and webinars on the subject.^{1,2}

There are many existing tools to initiate various kinds of planning within watersheds. How might the WSA water sustainability plans incorporate, work with, or speak to these other tools under different Acts?

The section of the Act that sets out the process for developing a water sustainability plan notes that these plans may consider other existing planning processes within or adjacent to the plan area, including other provincial plans, local government plans, or First Nations plans (section 69). In some cases, a water sustainability plan could override existing plans; however, existing plans will be considered, and regulations will set out how this will happen. For instance, drinking water protection plans, which exist under the *Drinking Water Protection Act*, will likely have strong linkages to and could be co-developed with water sustainability plans.

Interested in More Webinars?

To view past *Creating a Blue Dialogue* webinars visit www.youtube.com/POLISWaterProject. Previous topics include “Environmental Flows and Healthy Watersheds: Towards Protection in Canada and B.C.,” “Groundwater Reform: Lessons from California,” and “Aboriginal Co-Governance of Water and Watersheds.”

Support for the POLIS Water Sustainability Project’s 2015/2016 *Creating a Blue Dialogue* webinar series was provided by:



¹ Brandes, O.M., Christensen, R., & Jackson, S. (2010, December). Protecting the Public Interest in Water: The Public Trust Doctrine. POLIS *Creating A Blue Dialogue Series* Webinar. Available online: <http://poliswaterproject.org/webinar/401>

² Brandes, O.M., & Christensen, R. (2010, June). The Public Trust and a Modern BC Water Act. POLIS *Future of Water Law and Governance* series Legal Issues Brief. Available online: <http://poliswaterproject.org/publication/352>