

SUMMARY

Awash with Opportunity

Ensuring the sustainability of British Columbia's new water law

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British Columbia has a once-in-a-lifetime opportunity to significantly improve its water law regime. In May 2014, the Province enacted the *Water Sustainability Act*, which replaced the 106-year-old Water Act. This new Act provides an unprecedented opportunity to fully modernize British Columbia's water laws. While the *Water Sustainability Act* has several promising features, many of the critical details of the legislation have yet to be developed. Effective supporting regulations and sufficient resources are essential for the Act to reach its full potential as a comprehensive and modern law.

The right regulations and following through with implementation are what is needed to put the “sustainable” in the *Water Sustainability Act*. Escalating water-related concerns in the province, such as droughts, floods, and river, stream, and aquifer degradation as well as conflicts over water use, underscore the urgent need for a comprehensive change to water management and the supporting legal structure.

Overview

This report provides an analysis of the *Water Sustainability Act* and the core regulations required to bring its sustainable aspects into full effect. It outlines leading best practices from around the globe and offers clear recommendations for WSA regulation development in five key areas:

- 1) Groundwater licensing;
- 2) Environmental flows;
- 3) Monitoring and reporting;
- 4) Water objectives; and
- 5) Planning and governance.

Prerequisites to Successful *Water Sustainability Act* Implementation

Full implementation of the *Water Sustainability Act* certainly depends on developing the core regulations – but also requires shifting towards new partnerships for water management and governance and committing sustainable resourcing as two necessary prerequisites to ultimate success.

A New Partnership for Management and Governance

British Columbia's existing water governance regime does not align with the complexity of today's water issues and current political and legal realities. Twenty-first century water governance requires a more collaborative approach where all governments, rights holders, communities and stakeholders in a watershed have roles and responsibilities for water management, with creative integration of top-down and bottom-up planning and decision-making. Successful implementation of a strong *Water Sustainability Act* will ultimately depend on such a partnership between the Province, First Nations, federal and local governments, water licence holders, and community and watershed organizations—all coming together to take leadership in and responsibility for water stewardship. In particular, British Columbia cannot have a functional water law regime until First Nations are involved in a substantial and meaningful way.





Sustainable Resourcing

Going hand in hand with implementing effective regulations is ensuring sufficient funding for the people and programs that will bring them to life. Professional staff, water managers, scientists, data experts, on-the-ground capacity, and compliance and enforcement officers, supported with sophisticated and modern programs, will make it possible to realize the many promising new features in the Act. Sustainable funding is a necessary precondition for effective implementation. Water rentals will provide an important part of the required resources, and therefore the Province must implement a regular, periodic review of the water licence pricing and rentals regime to ensure the revenue obtained from water use is sufficient to fully fund implementation of the Act.

Keys To Success: Core Regulation Areas in the *Water Sustainability Act*

The POLIS team has identified five regulatory areas as the necessary elements to make the *Water Sustainability Act* truly sustainable rather than just an updated version of the previous *Water Act*.

1. Groundwater: Protecting British Columbia's Buried Treasure

When the Province brings the *Water Sustainability Act* into force it will license and apply pricing to

non-domestic groundwater use for the first time.

Two outstanding concerns with the proposed groundwater licensing regulation that must be addressed are:

1. No legislative requirement exists for the Province to overtly consider Aboriginal water rights and title when issuing groundwater licences.

CHECKLIST FOR SUCCESSFUL GROUNDWATER REGULATIONS

- Address Aboriginal water rights and consultation obligations.
- Obtain more information about British Columbia's groundwater resources and make it publicly available.
- Make groundwater licences conditional and subject to review, with fixed end-dates.

2. It will give priority to existing groundwater users with no provision for assessing the cumulative impacts of existing groundwater extraction on aquifer and connected surface water flow sustainability.

2. Environmental Flows: Ensuring Aquatic Ecosystems Survive and Thrive

Environmental flow regimes provide the foundation for healthy and functioning rivers, streams, lakes, and aquifers and the human communities that depend on these ecosystems. Leading jurisdictions protect environmental flow regimes through specific standards and regulations. This approach ensures that the process for considering flows is transparent with ecological baselines readily available to the public, and thresholds that are ultimately enforceable.

CHECKLIST FOR SUCCESSFUL ENVIRONMENTAL FLOWS REGULATION

- Protect environmental flows through regulation and policy.
- Establish regional environmental flow regime standards and critical flow thresholds.
- Evaluate the cumulative impact of new (and existing) licences.

3. Monitoring and Reporting: Building a Foundation for Better Decision-making

Systematic water monitoring and regular water use reporting are essential to assess aquatic ecosystem status, measure changes in quality and quantity, and build an accurate picture of existing water diversions in relation to water availability. Ultimately, for monitoring and reporting regulations to be robust and effective, they must require licence holders to play a more substantial role

CHECKLIST FOR SUCCESSFUL MONITORING AND REPORTING REGULATIONS

- Require all licence applicants to submit baseline flow and quality data and all water users to monitor water withdrawals and flow, and report that data to government.
- Require additional detailed monitoring and reporting information in water scarce areas through water sustainability plans or area-based regulations.
- Establish a publicly accessible water-use database and follow-through on the commitment to produce annual "state of our water" reports.

in data collection, including providing baseline data on water quality and quantity, and monitoring withdrawals and regularly reporting that information to the Province.

4. Water Objectives: Integrating Water Issues into Land and Resource Use Decisions

CHECKLIST FOR SUCCESSFUL REGULATIONS ON WATER OBJECTIVES

- Develop strong and meaningful water objectives that are specific and measurable, required for consideration by all relevant decision-makers, and ecologically significant.
- Conduct regular reviews of water objectives.
- Designate an independent third-party entity to periodically conduct audits and evaluate whether objectives are being met.

Land use activities in British Columbia, including mining, forestry, hydraulic fracturing, and agriculture, have an array of impacts on water quality and quantity. The *Water Sustainability Act* has the potential to better integrate water issues into land-use decisions through the new authority it creates to set water objectives through regulations.

5. Planning and Governance: Preparing British Columbia For a Sustainable Future

Although many types of water and watershed plans exist in British Columbia, most are not legislated and difficult to enforce. Water and watershed

CHECKLIST FOR SUCCESSFUL PLANNING AND GOVERNANCE REGULATIONS

- Develop and implement three binding water sustainability plans in the first five years of the Act coming into force, in partnership with First Nations as leaders and in co-governance roles.
- Commit adequate resources to develop and implement water sustainability plans.
- Pilot shared decision-making governance models.

planning is critically important for long-term water stewardship and to articulate a sustainable vision for the watershed and its future uses. Enforceable watershed-based plans in British Columbia can provide an opportunity for preventing and mediating conflicts, protecting ecosystems, and responding to future

water uncertainties. The *Water Sustainability Act* includes a comprehensive planning regime with

water sustainability plans – and their ability to provide tailor-made solutions to specific regional issues – at its core.

Critical to success is not only to develop such plans but also to implement them on the ground. Governance – the processes of decision-making and provisions for holding those making decisions accountable – provides this important link to translate plans from paper into action. The *Water Sustainability Act* contemplates the possibility of shared and delegated decision-making that offers significant potential for improved partnerships, co-governance with First Nations, and innovative decision-making going forward.

Water Law Reform as Part of a Bigger Picture

Fully implementing the *Water Sustainability Act*, including ensuring sufficient funding and making a fundamental shift towards a new partnership of risk and responsibility, is an important step towards improving water stewardship and water governance in British Columbia. The Province must continue to engage key stakeholders, rights holders and the public in a transparent ongoing process while regulations are developed. In the broader context, implementing the *Water Sustainability Act* is only the first step on a much longer path. British Columbia will ultimately need to continue to evolve its water law regime and approach to governance to ensure water resources are sustainably managed and that water is shared equitably now and into the future.



POLIS Project on Ecological Governance

Created in 2000, the POLIS Project on Ecological Governance is a research-based organization that is part of the Centre for Global Studies at the University of Victoria. Researchers who are also community activists work to make ecological thinking and practice a core value in all aspects of society and dismantle the notion that the environment is merely another sector. Among the many research centres investigating and promoting sustainability worldwide, POLIS represents a unique blend of multidisciplinary academic research and community action.

polisproject.org

POLIS Water Sustainability Project

The POLIS Water Sustainability Project (WSP) is an action-based research group that recognizes water scarcity is a social dilemma that cannot be addressed by technical solutions alone. The project focuses on four themes crucial to a sustainable water future:

- Water Conservation and the Water Soft Path;
- The Water-Energy Nexus;
- Watershed Governance; and
- Water Law and Policy.

The WSP works with industry, government, civil society, environmental not-for-profits, and individuals to develop and embed water conservation strategies that benefit the economy, communities, and the environment. The WSP is an initiative of the POLIS Project on Ecological Governance at the Centre for Global Studies, University of Victoria. poliswaterproject.org



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