



April 30th, 2013

TO THE NDP AND THOSE WHO CAN AFFECT CHANGE

I am writing on behalf of the Vancouver Island Water Watch Coalition (VIWWC), a group comprised of Community Coalitions from Victoria to Courtney and including Port Alberni. Please refer to our website at www.vancouverislandwaterwatchcoalition.ca to view the groups involved.

The goal of VIWWC is to inform citizens of the dangers of privatizing water and the watersheds that sustain our Island communities and to monitor development within our communities, plus challenge the misconceptions around the quantity and quality of water on our Island. VIWWC believes that a well-informed public has the capacity to make the right choices for themselves, the communities they live in and the generations who will follow. Fresh water is a finite and declining resource, water equates to life, and without it our planet will perish.

VIWWC has been working with the Environmental Law Clinic out of the University of Victoria and have asked them how, on Vancouver Island, can local government gain control of their watersheds. Local control is absolutely key to water supply preservation, water quantity and most importantly, the quality of available water.

As you are aware the E and N Land Grant presents unique encumbrances upon our Vancouver Island communities preventing them from gaining control of their own watersheds. VIWWC seeks assistance through law to regain control.

The Water Act has not been amended to take into consideration all of the criticisms and suggestions arising from the BC Liberal government's first attempts at a redraft of this piece of legislation. There are also innumerable pieces of legislation that apply to watersheds, and this lends to confusion rather than clarity. There should be a Ministry of Water enacted wherein all legislation affecting water and control of water is clearly contained within that legislation.

The latest work completed for VIWWC from by the Environmental Law Clinic indicates there are amendments to various Acts required to allow local government to gain or regain control of our water and our watersheds. They are as follows:

" a. Community Watersheds

Watersheds that supply drinking water may be designated as “community watersheds” through the Government Actions Regulation under the Forest and Range Practices Act. The stated purpose of this legal designation is to maintain water quality and quantity and to prevent adverse impacts on water. Once designated, these watersheds may be assigned water quality objectives – that is, the maximum allowable chemical content within the water – that are used to guide the management of forestry activities.

Currently, there are 467 Community Watersheds in British Columbia, many of which have accompanying water quality objectives.

The Forest Planning and Practices Regulation, however, places restraints on water quality objectives that diminish the ability of community watersheds to protect water at the source. These regulations stipulate that the objectives only prohibit forestry activities that would have an adverse impact on water that cannot be addressed through water treatment. As a result, undue reliance is placed on water treatment facilities, relieving the forest industry of much of its burden to avoid source water contamination.

Further, these regulations state that the objectives cannot unduly reduce the supply of timber. In essence; these regulations prioritize forestry activities over the protection of drinking water.

b. Drinking Water Protection Plans

The Drinking Water Protection Act was enacted shortly after the Walkerton tragedy with the sole objective of protecting drinking water. This legislation allows for the development of drinking water protection plans, which act as a broad level land use planning process to address threats to the water supply. Through this process, the competing interests within a watershed may be balanced to proactively protect water at the source. Once approved, local governments may be empowered with the legal authority to implement and enforce the plan. Placing the responsibilities of source water protection within the hands of local governments can better enable them to fulfill their mandate of providing clean drinking water.

The Drinking Water Protection Act, however, places a major limitation on these plans by requiring that no other practicable measures within the Act are sufficient to address the drinking water threat. This constraint has effectively stripped the ability of drinking water protection plans to act proactively in preventing source water contamination — all other measures must fail before a Plan can be undertaken. Further, this onerous threshold makes these plans inaccessible to most, if not all, of the parties seeking to protect their drinking water source. To date, there has been no drinking water protection plans developed in British Columbia.

c. Water Management Plans

Water management plans, created under Part 4 of the Water Act, are another land use planning process that is able to address risks to water quality. The comprehensive and integrated planning process for watersheds would allow the interests of stakeholders to be balanced to reach a comprehensive and integrated land governance arrangement. As such, local governments have the opportunity to become integrally involved in the planning process. Once a plan has been approved, regulations may be created to provide the legal backing required for implementation.

These plans, however, are largely limited from applying to activities and approvals under the Forest and Range Practices Act. Immunizing forestry activities effectively prohibits these plans from addressing one of the largest concerns surrounding safe drinking water.

Conclusion

The Forest and Range Practices Act, Drinking Water Protection Act, and Water Act have the potential to act as source water protection. Various limitations, however, reduce the utility of these tools – they are either inaccessible or place priority on forestry activities. Local governments and water providers need legislation that not only facilitates source water protection, but also allows them to participate, in order to fulfill their mandate of providing safe drinking water. Simple amendments to the legislative tools outlined above will strengthen the ability to protect our water at the source.

Recommendations

- 1. Amend subsection 8.2(2)(b) of the Forest Planning and Practices Regulation to remove or reduce the emphasis on water treatment. Making this amendment will reduce the reliance on water treatment, allowing community watersheds to protect water at the source. Local government participation within the development and monitoring of water quality objectives will allow for the needs and interests of water suppliers to be accounted for, resulting in a more comprehensive approach to drinking water protection.***
- 2. Amend subsection 8.2(3) of the Forest Planning and Practices Regulation to remove or reduce the limitation placed on water quality objectives regarding the timber supply. Similar to the recommended amendment above, the removal of this limitation will permit community watersheds to protect water at the source.***
- 3. Amend section 31(2)(b) of the Drinking Water Protection Act to create a lower threshold for undertaking a drinking water protection plan. These plans hold great potential within areas that require long-term planning to resolve conflicts between water users and should be appropriately accessible. The potential for local government involvement within this planning process allows for the needs and interests of water suppliers to be accounted for.***
- 4. Remove section 65(2) of the Water Act to allow water management plans to apply to the Forest and Range Practices Act. This planning process already permits local government involvement – implementing this amendment will allow the needs of local water suppliers and the greater community to be weighed with the interests of the forest industry."***

Vancouver Island Water Watch Coalition would add the following to the four recommendations above:

In 1974, the word "RESERVE" was removed from all of BC Watershed maps. That word meant there was to be no logging or building of any kind allowed within the reserves. Our communities, particularly on Vancouver Island, must be given a way to regain ownership or control of our drinking water watersheds from private owners who were provided with ownership rights through the E and N Land grant, an action taken without consideration given to First Nations ownership. Legislation is required for communities to gain control and influence .

We include immediately below an article written by Deborah Curran of the Environmental Law Clinic on what a new, revised Water Act needs to encompass:

The blueprint for reforming the Water Act has five elements:

1. Protect stream health and aquatic environments by establishing legally enforceable minimum environmental flows in each watershed system.

Low flows can threaten the water cycle in a region. They can lead to impacts on fish and wetland wildlife, pollution build-up, diminished recreational opportunities, and water bans for consumptive uses such as agriculture and lawn watering. Under current law, decision makers are not required to take specific ecosystem or water quality criteria into account when making water-licensing decisions. Establishing and enforcing minimum flows will ensure that licensees are not taking too much water from any watershed and will make decision making about ecological health more transparent.

2. Improve water governance arrangements by creating regional Watershed Agencies that have a clear mandate, financial capacity and decision-making power.

Water governance in B.C. has developed in an ad hoc fashion, and there is now a wide range of local government and administrative bodies involved in water management. However, they are not operating under one land use and water management regime, even in the same watershed. The result is these bodies share a water supply, but fail to plan or operate together for sustainable water management. Given that all water systems (both surface and groundwater) are connected, it is essential that planning and management occur comprehensively across an entire watershed. Implementing watershed planning and management regionally allows the governance system to be more responsive to changing local conditions.

3. Improve the water allocation system.

The Water Act is based on the historical principle of "first in time, first in right" meaning that older licenses automatically take priority over newer licences. The purpose was to ensure certainty of water supply for licence holders as they developed their farms, industries, and mines. However, applying this priority doctrine today often makes no sense. Many streams are over-allocated, actual water use is not monitored, and the most senior license holder may not use the water for the highest and best use as determined by provincial and community priorities.

| *Water allocation must be based on maintaining minimum in-stream flows to ensure ecosystem function first. The regime for allocating water must also have some flexibility to respond to annual or seasonal environmental change. This requires monitoring, enforcement and drought planning. Review and amendment of existing licenses as part of regional water planning, as well as cost recovery from water use, are other key needs.*

4. Regulate ground water use by requiring licensing in all areas of the province.

B.C. is one of the only jurisdictions in North America and one of the last in the world that does not regulate groundwater use. This ignores the basic functioning of the water cycle: ground water and surface water are one interconnected resource. To stop the practice of landowners drilling a well five metres away from a stream that is over-allocated, comprehensive groundwater licensing is imperative.

5. Enshrine the Public Trust Doctrine in the Water Act by acknowledging water as a public resource that the provincial government holds in trust for the public that must be preserved and maintained for future generations.

Water is widely viewed as a public resource. However, the Water Act's main focus is to allocate water to private users. Thus, there is no way to hold the provincial government accountable when water shortages affect ecosystems and the public interest. The solution is to make public use and conservation a priority and enable the public to legally enforce these goals.

The current Water Act is overdue for fundamental changes. It simply does not reflect ecosystem needs, modern values or socio-economic challenges. The BC government has already recognized the need for change and initiated the Water Act Modernization project. Now a new government will have the opportunity to create a modern water governance regime. Any new regime must ensure that environmental flows take priority through local water management. And it must ensure that water management supports ecosystems, the people that live in them and economic activities for generations to come."

In closing, VIWWC requests that you give all of the foregoing clear and focused attention during your first sessions in government. To assist you in your endeavours, we suggest you watch the film "*Troubled Waters*", which was partially funded by VIWWC.

As pictures speak volumes more than words, the film clearly shows the devastation in and around Vancouver Island watersheds. The film may be viewed on www.manlymedia.com and at <http://www.youtube.com/watch?v=onJNkelKXoE> or through <http://www.midislandcanadians.org/index.php?cID=1#troubled>

VIWWC, along with the people of British Columbia as a whole, require these changes to legislation, plus the creation of legislation that will protect all citizens and their community watersheds from the negative consequences of logging and development, industrial mining and contamination from any and all sources. The protection we seek clearly affects all life that is dependent on life-giving, life-sustaining WATER.

Should you require further information on VIWWC's submission, please contact:

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Sincerely,
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