

REGIONAL DISTRICT OF NANAIMO

**REGULAR BOARD MEETING
TUESDAY, APRIL 27, 2010**

**CIRCULATED REPORT
FOR AGENDA**

PAGES

ADMINISTRATOR'S REPORTS

2 - 7 Water Act Modernization - Discussion Paper Submission. (All Directors – One Vote)



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MEMORANDUM

TO: John Finnie, General Manager
Regional and Community Utilities

DATE: April 22, 2010

FROM: Mike Donnelly
Manager of Water Services

FILE: 0135-20-MOE

SUBJECT: Water Act Modernization – Discussion Paper Submission

PURPOSE

To provide the Board with an overview of the Water Act Modernization process and staff comments on the Water Act Modernization Discussion Paper released by the Ministry of Environment in February 2010.

BACKGROUND

The Ministry of Environment is undertaking a review and update of the Provincial *Water Act*. This is the first review of its kind since the inception of the Act in 1909. Referred to as the “Water Act Modernization” (WAM) process, the Province has embarked on a program to change the Act in order to address current and future challenges for provincial freshwater resources.

Since 1909, pressure to make changes to the Act has increased with population growth, industrial and agricultural expansion, conflicting demands for the water resource and an antiquated surface water allocation licensing structure.

The Discussion Paper notes the population of BC will increase by an estimated 1.4 million people in the next 25 years. The needs of an increased population will necessitate changes in how water is allocated/licensed, how land and water are utilized with regard to stream and aquifer health and sustainability, how water resources and supplies may be affected by climate change and a new direction with respect to the licensing of groundwater.

The four key goals outlined in the Discussion Paper include;

1. Protecting stream health and aquatic environments
2. Improve water governance arrangements
3. Introduce more flexibility and efficiency in the water allocation system
4. Regulate groundwater extraction and use

To achieve these goals the Ministry of Environment has developed an ambitious stakeholder consultation program, which is currently underway. The Ministry’s intent is to present changes to the legislation in late 2010. The review process phases include:

Phase 1 – Scoping, jurisdictional review and background research (complete)

Phase 2 – Engagement and policy development (Fall 2009 – Spring 2010) (underway)

Phase 3 – Request for legislation and legislative drafting (Summer – Fall 2010)

Phase 4 – Bill introduction and approval.

As part of the Phase 2 – Engagement and policy development, the Ministry is hosting a number of meetings to discuss the possible changes and to solicit feedback. RDN staff attended the session held in Nanaimo on March 5th, 2010. The Ministry has established an April 30, 2010 deadline for providing feedback on the WAM.

Development Services and Regional and Community Utilities staff have reviewed the Discussion Paper. Staff comments are outlined in the attached *RDN Submission to the WAM Review*. Staff also met with Oliver Brandes of the POLIS Project on Ecological Governance at the University of Victoria, who is a member of the RDN Drinking Water Watershed Protection Advisory Committee, to discuss the broader implications and challenges associated with the modernization of the *Water Act*.

The resulting comments are primarily concerned with the suggested governance options, updating water allocation rights and the need to be responsive to changing demands and environmental conditions. Key concerns/comments include:

Stream Health

Currently water allocation plans that identify environmental flow requirements for streams exist for Vancouver Island. It is important that these plans be updated to reflect changing conditions and that they include the groundwater resource as part of the water budget considerations. Adherence to environmental flow standards would be an effective and efficient approach to protecting stream health and to limit impacts on groundwater resources.

Water Governance Framework

While the Province states they will continue to be accountable for the protection of water resources in the public interest there are options outlined in the Discussion Paper that include a greater level of participation by local government in planning and decision making. A shared approach with stronger local involvement would enhance the decision making process but would bring financial and capacity challenges to local government that would have to be resolved equitably.

Improved water governance should also include the streamlining of water laws with other natural resource statutes, making them easier to understand, use and enforce.

Water Allocation

The existing approach simply apportions rights based on the application date for the water License (First in Time - First in Right). This approach does not provide the flexibility to manage that resource effectively or equitably. An alternate approach should take into account environmental protection, equitable sharing of the common resource and be based on an adaptive approach that recognizes changing conditions.

Regulate Groundwater Extraction and Use

Currently the Province does not regulate groundwater extractions. The Discussion Paper suggests that the Water Act include regulations that would govern the larger groundwater extractions while exempting small scale extraction and use of groundwater for domestic purposes except in critical areas or where aquifers are under stress.

The regulation of groundwater is an important step in providing a sustainable ground and surface water resource. As such, all large extractions should be regulated with smaller, residential extractions being registered as outlined in the proposed Phase 2 of the Ground Water Protection Regulation. Large scale extractions are defined in the Discussion paper as a range between 100 m³/day to 500 m³/day. These are very high thresholds and lower limits would be more beneficial in the management of the water resource.

ALTERNATIVES

- 1) That the Board receive this report for information and submit the attached *RDN Submission to the Water Act Modernization Review* to the Ministry of Environment.
- 2) That the Board provide alternate direction to staff.

FINANCIAL IMPLICATIONS

There are no financial implications associated with submitting comments to the WAM review.

SUSTAINABILITY IMPLICATIONS

The Provincial Water Act is not well positioned to address water allocation issues at this time and will certainly not meet the increased pressures of an increasing population and climate change. There is a need to make changes to the Act to address these pressures as soon as possible.

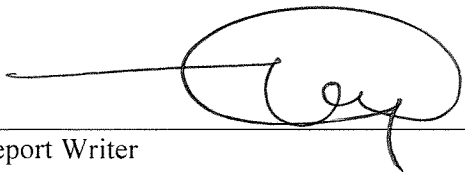
CONCLUSIONS

The Ministry of Environment has embarked on a comprehensive review of the *Water Act* and has focused the review on four goals: protecting stream health and aquatic environments, improving water governance, making the allocation system flexible and efficient, and regulating groundwater extractions.


The Ministry is currently consulting with stakeholders across the province. April 30, 2010 is the deadline for providing feedback on the Water Act Modernization Discussion Paper. Staff have attended one of the Ministry's workshops on this matter and have reviewed the Discussion Paper. Comments from RDN Development Services and Regional and Community Services staff are attached as the *RDN Submission to the Water Act Modernization Review*.

RECOMMENDATION


That the Board receive the Water Act Modernization staff report for information and submit the *RDN Submission to the Water Act Modernization Review* to the Ministry of Environment.



Report Writer



General Manager Concurrence



C.A.O. Concurrence

Regional District of Nanaimo Submission to the Water Act Modernization Review

This submission is in response to the call for feedback on proposed changes to the existing Water Act.

The Regional District of Nanaimo (RDN) supports the direction of the provincial Living Water Smart initiative and the reform of BC water laws in order to protect BC's natural environment, the health of its citizens, and economic stability. The RDN recognizes that in order to protect this precious resource the province of BC needs to take substantial action to change the way water is governed and managed. It is important that any changes made to the Water Act support the goals of Living Water Smart and provide for the conservation, protection, and management of BC's water resources.

The RDN supports the goals outlined in the Water Act Modernization Discussion Paper and encourages the Provincial government to take the necessary action to support these goals by providing the appropriate resources and enabling legislation. The RDN appreciates that the Water Act is focused primarily on water allocation. To address most of the issues related to water protection and water use will require that a broader approach be taken that integrates water allocation with watershed management. An adaptive, integrated watershed-based approach to water management that recognizes groundwater and surface water as the same resource requiring protection, regardless of use, is required. The RDN supports the movement to legislation and a system that embraces a watershed focus with all other acts being consequentially amended to be consistent with a new Water Act.

The Regional District of Nanaimo respectfully provides the following comments in support of the goals in the WAM Discussion Paper:

1. Protecting stream health and aquatic environments

- Legally binding Water Management Plans must be developed, particularly in priority areas. Although local governments and other stakeholders will be involved and perhaps even take the lead in some areas, water is a provincial resource and the province needs to provide a framework, resources, and capacity for managing it.
- Groundwater is connected to surface water and stream health is impacted by groundwater extractions. Regulating groundwater extraction is an important component of protecting stream health.
- The development of mandatory environmental flow standards is the only effective way to protect stream health. The responsibility for identifying environmental flow needs should not be left to the discretion of designated individuals or the license applicant. Adherence to environmental flow standards should be required with no exceptions for all water users, regardless of water use. The development of water allocation plans will save resources in the long term, improve consistency, and increase administrative efficiency.
- A significant issue impacting stream health is the regulatory inconsistencies for protection of surface water and associated habitat. The rules for how water and habitat are protected are different depending on the water use. In order to protect habitat, all water users need to adhere to the same requirements.
- In order to protect stream health, the Water Act needs to take precedence over other acts and should consequentially amend other acts that implicate stream health.

2. Improve water governance arrangements

- There is general support for a different form of governance which gives more authority to partner or watershed agencies. However, this new form of governance must be enabled to make decisions and be given the resources to operate.
- Enabling some of the activities and responsibilities as a governance option requires further consideration. Some local governments may want involvement or to take on some of the responsibilities but very few have the capacity, resources, or capability to acquire the resources to do so. Many also do not have the jurisdiction to take on all aspects of watershed management. Currently, for example, under the Local Government Act Regional Districts require electorate approval to create a function to undertake a service.
- For the purposes of drinking water and watershed protection, Regional Growth Strategies, Official Community Plans, and land use legislation regulated by the Province must be updated or amended to be consistent with watershed plans, and then applied and enforced.
- Municipalities and Regional Districts should be empowered and resourced to manage threats to drinking water sources.
- The responsibilities and authorities for water need to be streamlined and integrated.

3. Introduce more flexibility and efficiency in the water allocation system

- Water allocation decisions must be based on priority uses and environmental protection.
- Water licenses should be treated as temporary rights to access a resource and access to the resource should be adaptive and based on an updated prioritization of uses and equitable sharing among a consumptive pool of users.
- All existing licenses should be reviewed. Licenses that are not being used should be cancelled.
- The challenges of temporary water scarcity should be shared by all users based on priority uses.
- The current *priority of use* hierarchy set out in the *Water Act* for surface water allocation is archaic and no longer relevant to modern requirements. Precedence must consider watershed protection, environmental needs and water sustainability as priorities if we expect to retain water resources for other uses. Ecological needs, rivers, lakes, streams, and wetlands need to be identified as priority uses.
- The water allocation system needs to be adaptive to consider the long term implications of climate change and other changing conditions, such as population growth, that will affect the sustainability of the resource.
- A license application and approval system that identifies water needs based on efficient infrastructure and practices must be in place in order to encourage water-use efficiency.
- All water users (groundwater and surface water users) above a small threshold (Ontario uses 50 m³/day) should report water consumption and quality information in order to support water management activities, including the development of water budgets, watershed planning, and conservation activities.
- The water allocation system needs to be tied to land use.
- The cost of a water license should be directly correlated with the volume of allocation in order to support the administration of the system and promote conservation.

4. Regulate groundwater extraction and use

- Groundwater needs to be regulated. Currently, even when an aquifer is under stress, there is no ability to stop more water from being extracted. Groundwater must be adaptively managed, in conjunction with surface water, to respond to changing conditions.
- In order to promote conservation, groundwater extraction needs to be licensed and reported similarly to surface water.
- The Groundwater Protection Regulation needs to be completed and support the goals of the Living Water Smart vision and a modernized Water Act.
- The "abundance of groundwater in some parts of BC" (p31) should not be a justification for BC to propose the highest thresholds in Canada. This thinking may lead us closer to a water crisis in parts of BC.
- The proposed thresholds for regulating groundwater extraction are too high. A lower threshold for regulation (ie., 50 m³/day) is recommended.
- Small water extractions need to be acknowledged in order to budget for the cumulative impacts of groundwater extraction. The regulation of large groundwater extractions is sufficient if the whole area is on a common system, but in areas where there are a significant number of individual domestic users, domestic use needs to be accounted for as it is a critical component of the water balance, and essential for proper water management. Reporting of individual domestic use is not recommended. However, domestic consumption could be accounted for through mandatory submission of well drilling records. This would protect the domestic users by ensuring that their access to the resources is incorporated into water management plans.
- As noted above, the FITFIR system is archaic and should not be considered as an allocation option for groundwater.
- Groundwater extraction regulation should apply regardless of industrial use (ie., oil and gas should not be excluded).