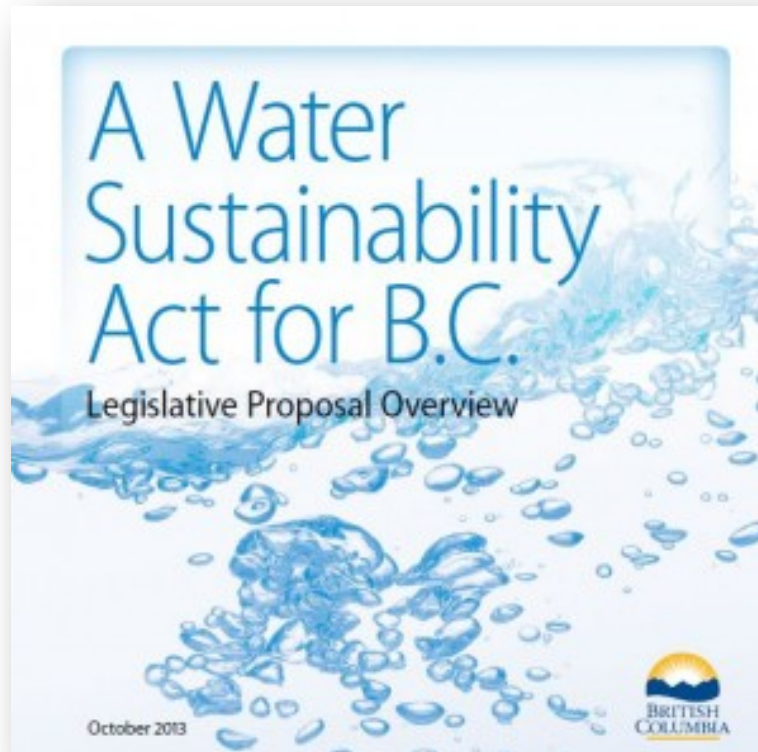


B.C. WATER FUNDERS MEETING

- Lunch 'n Learn Webinar Series -

#3: POLICY



The Water Sustainability Act and Beyond

November 19, 2013

12:00 – 1:00pm PST

Weblink: <http://polis.adobeconnect.com/p3t85euixez/>

Password: H2OFunders1

Introduction

It's been over 100 years in coming but it finally appears that British Columbia will be getting a new Water Act. The proposed Water Sustainability Act is scheduled to be tabled in the provincial assembly in the spring and the government recently released its legislative proposal for one final round of public comment. This webinar will present the highlights of what is contained in that proposal, commentary from leading water experts on how this Act will reform BC's water rules, as well as perspective on the medium and long-term opportunities for real change to BC's water management approach.

Presentations



TED WHITE

Manager, Water Strategies and Conservation, B.C. Ministry of Environment

Many of the slides for this presentation are available online at:

A Water Sustainability Act for B.C.: Technical Briefing

http://engage.gov.bc.ca/watersustainabilityact/files/2013/10/WSA_technical_briefing_final.pdf

The Province is working from the baseline that clean water is essential. The long term goal is sustainable water for multiple generations. Some of the issues that new Act is intended to address include natural flow sensitive areas, population growth and urbanization, climate change, existing water allocation restrictions and competing demands. The desire is to create a scheme that is administratively efficient and can be tuned to local areas that incrementally increases the level of intervention that is required but is still guided by those provincial objectives.

Timeline:

- Background Research & Scoping (2008) – Launched Living Water Smart
- Stage 1 (Late 2009) – Discussion Paper: Goals and Directions on Water Modernization
- Stage 2 (Late 2010) – Policy Proposal: Key Policy Areas for Changes in the Water Act
- Stage 3 (Fall 2013) – Legislative Proposal for the new Water Sustainability Act

- Spring 2014 – Introduce Water Sustainability Act into Legislature
- Develop regulations and prepare for implementation

Seven Key Policy Directions

1. Protect Stream Health and Aquatic Environments

- Consider environmental flow needs in new water allocation decisions. Intention is to take what has been done in practice and put it into the legislation so that there is a requirement to consider the environmental function of the decision and that there is policy developed to support that.
- For existing licenses, allow temporary restrictions to protect critical environmental flow needs.
- Expand prohibitions on dumping debris into streams and aquifers. There was a gap perceived between the Fisheries Act and Water Act in terms of protection and dumping and this will close that gap and streamline the process.

2. Consider Water in Land Use Decisions

- Consider water objectives in resource and land use decisions. This is a response to the clear message during engagement that people are concerned with watershed health and not just water health.
- Develop water sustainability plans. Under the current act we have water management plans but they have never been utilized to their full potential. A water sustainability plan can be initiated on a Minister's Order to address specific issues, water conflict between users, protect stream health). Does not have to be reactive – can be proactive.

3. Regulate Groundwater Use

- Manage surface and groundwater as single resource. This is the one of the biggest pieces of the Water Sustainability Act. Under today's Act, licensing currently only applies to surface water. This new Act will introduce groundwater licenses, applications fees and annual rates, water rights, improved security for water right and regulation of right during scarcity.
- Most uses will be licensed with fees and annual rentals. Domestic uses excluded. Small volume users are not our target. Want to get larger volume users into the system.
- Date of first use would guide priority date.
- Improving understanding of aquifers.

4. Regulate During Scarcity – how do we respond to drought?

- All users could be regulated during scarcity – including groundwater
- FITFIR would be retained with exceptions
- Ensure water supply for essential human and livestock needs
- Allow temporary restrictions to protect critical environmental flows
- Retain Section 9 of *Fish Protection Act* – if there is a drought that threatens fish population, Minister's Order can ensure protection

5. Improve Security, Water Use Efficiency, Conservation

- Expand beneficial use requirement
- Set water conservation targets and carry out audits (During audits, allows us to ask whether they are using appropriate work uses and provides the power to order appropriate work uses to achieve efficiency and conservation.)

- Make water licenses reviewable every 30 years; 40 years hydro-electric power
- Allow area-based regulation for specific regions. Could allow us to do things like put in a requirement for a drilling authorization in some areas before any groundwater wells are developed, restrict certain volumes of use or require licensing of domestic use.
- Create agricultural water reserves. We can currently reserve unrecorded water for different purposes today. The intent of the agricultural reserves is to take water that is already allocated for agricultural purposes, create a pool and protect it. Because that could affect the rights of others that would have to come through a water sustainability plan.

6. Measure and Report

- Require large volume users to measure, record and report water use in order to understand better how the resource is being used.
- Smaller volume users to measure in specific circumstances under “area-based” regulations
- It only applies to licensing. It does not apply to municipal systems or other local authorities or require metering.

7. Enable a Range of Governance Approaches

- Increase flexibility in governance arrangements to better suit local needs. Want to create a clear and consistent provincial framework from objective through to the process of how do we allocate and then look at some opportunities for delegation at the local level. This is an area where we need more work.
- Support the creation of advisory groups

What can users do to support the goals of the WSA?

- The Water Sustainability Act is only one tool in achieving our long term goals. We see a role for the water user in understanding water supply. The water user needs to assess and understand the risks of variability and examine the availability of storage or alternate sources to mitigate variability in supply. Regardless of our approach to regulation, the users need to be efficient and adaptable to supply variability.

Question & Answer Period

Question 1: Ted mentioned water quality and quantity as considerations in water sustainability planning and land use decisions. Will the rate of flow and timing of flows also be considered? Both are likely to be affected by climate change.

TW: Yes - I can see water flows as being a trigger for initiating a water sustainability plan. I perceive that as being either a potential issue between users and the environment or between user to user that would put us into a place of requiring a plan. Regarding the water sustainability plans – I expect them to start slow. We have learned from water management plans that we would like to start out and gain some experience and build that into our practice as we move forward. Anyone who has been involved in water planning, there is a lot of learning that occurs each time and we want to move forward in a stepwise approach.

Questions 2: Can water licenses be bought and sold once they are granted during the 30 year period or is the license attached only to the licensee?

TW: A water license is a permit that is attached to a piece of property. You can transfer it but there is a process in place and we are not going down the water market route. We heard very clearly from the last round of engagement that there is no appetite for that in British Columbia and this is supported by work done by Oliver Brandes who is on the phone. He did an examination of water markets in other areas and it is not a path for British Columbia.

Question 3: Does the priority of livestock extend to large scale corporate operations, megadairies and so on?

TW: Livestock is meant in the context of essential household livestock needs – it is meant to cover domestic animals. This is not about allowing a feedlot to water all their cattle during a drought period.

Question 4: What is the maximum per day use allowed before a permit license is required?

TW: Domestically, we use 500 gallons a day as the measurement right now – supplying your house for sanitary household needs, domestic animals and a garden up to 1012 sq metres. It is not about irrigating a 5 acre farm and saying that is domestic – that would definitely be into an irrigation component.

Question 5: Do you have any thoughts regarding opportunities for the philanthropic community to align objectives with the Water Sustainability Act? Are there any opportunities for the philanthropic community to work with government?

TW: The funding that has gone towards supporting the steps in planning has been very valuable as we have seen groups come together with better information and working together in a really coordinated manner. That has been a really effective tool and with Jon and Oliver on the line they could probably speak to that in great detail. The other area was in that slide mentioned earlier about helping users understand their role as a water user. What is the variability in supply? What is the risk to me if there is a shortage? What can I do? We would really like to get the word out and help people be informed and we want to do that in a meaningful way. What will be the implications of climate change, increasing population and as we learn more about water uses and needs? There needs to be an understanding of the implications of our impact on water and on the environment. Supporting that process would be very helpful. The work being done on different sectors such as World Wildlife Fund has been very helpful.

Panel Participants



JON O'RIORDAN

Former Deputy Minister, Ministry of Sustainable Resource Management



LISA MATTHAUS

Provincial Lead, Organizing for Change



OLIVER BRANDES

POLIS Project on Ecological Governance, University of Victoria

Panel Question & Answer Period

Question 1: Jon – could you just boil things down a bit for the funders and list three things that you see as positive about the proposal and three things that you think could be improved or that you were disappointed with in this proposal.

JO: Three good points about the proposal: (i) provision for protecting environmental flows which builds resilience given changing climate and changing hydrology; (ii) delegation of governance functions to

local watershed entities; and (iii) development of the area based regulation regime – offers a water sustainability lite planning.

The three things I found disappointing: (i) continuation of the FITFIR (first in time and first in right) provisions and the limitations on protecting environmental flows through existing water licenses; (ii) lack of independent oversight and accountability mechanism; and (iii) I don't think Government will have additional resources or any substantive people and finances to implement the full aspect of this legislation.

Question 2: Jon, can you go over the process of what happens between now and the Act being introduced and also what you see needs to be done after the Act is introduced to have it effectively implemented?

JO: The process between now and the Act being introduced is that it will go back to cabinet after the report is written up by the civil servants. Cabinet will then put it on the timetable for the spring. There is always the possibility that it will not have the priority to make the cut for the spring session. It is possible that it might be in the fall legislative session.

This really is an enabling legislation so I make the analogy of building a house. By 2014 – you will have only the frame of the house. All of the rooms and the contents of the rooms and the detail of house are coming in regulations. There are at least 24 regulations identified in the discussion paper. Some of these are highly complex. For example, the one regarding water sustainability planning has about 15 sections to it. The complete suite of regulations will take anywhere from 2-3 years to complete and will require consultations, inside government, outside government, and most importantly with First Nations and require some fairly complex discussions with First Nations, especially with respect to groundwater allocation and treaty rights and interests in unrecorded, unlicensed groundwater. There is a long tail to this legislation that should keep the funders engaged for some time. This is the beginning of the beginning – not the beginning of the end.

Question 3: Lisa – can you provide some political context around the Act. How we got here and how it is viewed in government and politically?

LM: This process started at least 4 years ago. Within the bureaucracy – it started some time before that. It really did get going under Gordon Campbell and was very much seen as one of his initiatives. The bureaucracy did some really great work internally on the policy side and on the consultation side which helped build some momentum so that as we transitioned over to Christy Clark as the new Premier – it still had its own internal momentum even though she wasn't really focused on it. It has hit some roadblocks. It was supposed to come in 2012 which was the target date. They missed that for a number of reasons in particular around some of the First Nations complications and so were not able to get in before the election. Interestingly – it did show up in the Liberal platform before the election. There were not a lot of environmental promises in there and they were probably scrambling for something. This was on the shelf; a lot of the work had already been done and it was ready to go. So they put it in the platform with a commitment to pass legislation by 2014. It then showed up in the mandate letter that went to the Minister of the Environment, Mary Pollack, in the summer. Each Minister gets a

mandate letter with their portfolio and it includes all the general things that all Ministers are supposed to do (ie balance budget) but each also has a few specific objectives for their ministry. She had a number of specific initiatives – one of which is passing this legislation by Spring 2014. Her performance as a Minister and her political staff will be measured against this mandate letter. There is a motivated Minister and a motivated office. My concern at one point is whether the legislation was fragile. If we pushed back too hard would they simply not introduce it in the spring? I am now less concerned about that. I think there is some robust commitment behind it because it is in a certain structure. Christy Clark has also gone down this messaging path of “Promise made. Promise kept” and she has used that for a number of speeches. The water legislation falls into that promise made.

Question 4: Lisa – adopting a political lens, what do you see as the short term opportunities or challenges in terms of getting the Act passed for Spring 2014? What are the long term strategies to actually get it implemented?

LM: In the short term, I see this on two levels. One is as Jon mentioned – will it get through in the Spring session? Since we didn’t have a Fall session, the Spring is going to be packed and whether this rises to the priority level is one question. The second question involves the content. Yes – they just went through this big public process and they are getting the results of that. How do we make sure that what the people of BC said they wanted is actually included in the legislation that is introduced.

Minister of Environment, Mary Pollack will be motivated. She will have the support of Minister Lake who was the Environment Minister and is from Kamloops and who sees this as a priority. He is now the Health Minister. He will be a big supporter. Minister Thompson, Forests, Lands and Natural Resource Operations, has also been following from the beginning and comes from the Okanagan. I think she has some broad support but I don’t know if support is there throughout caucus.

I think there are some opportunities in the work that a variety of environmental organizations are doing to mobilize and engage citizens to make comments directly on the Water Sustainability Act. How can we now get citizens mobilized to communicate directly with their MLA – particularly in areas where water issues are crucial (ie Fraser Valley, Okanagan)? We want Ministers to hear directly from their constituents that this is important legislations, that this is the expectation we have from you and we are assuming we are going to see it in Spring 2014. Need to get some buzz around it to push it up the priority ladder. I am hoping to get a better sense of the internal process such as when it is going to cabinet etc so that we can time our actions to create that buzz.

Regarding the content, they are going to have some contentious questions that are still arising. We proposed X. Industry proposed Y. There will be differing opinions and various options as to how to proceed. These choices will be going to political folks in some manner and how do we make sure that they make the right choices. Is there something we can be doing to make sure that they hear directly from people about what they think the right answer should be. We are focusing on government process – especially going into Dec and Jan – to influence this legislative process.

Longer term –going into writing of regulations – that is really hard to mobilize the public broadly on that stuff. There are going to be far more technical conversations but there have been a lot of people

identified over the last few years who are very keen to dig into the technical details (identified by Freshwater Alliance; WCEL, EcoJustice etc.), and need to capitalize when there are issues that can be pushed up to a level of broader public mobilization. For the most part it is going to be about mobilizing a smaller group of highly engaged folks on the technical issues.

The broader campaign might be available around certain issues such as fracking. Certain issues might have broader public appeal. But for the most part the activity after the legislation comes through is going to be technical.

On the First Nations side - one of the First Nations who responded to the proposal and copied me on their response said “we demand a forum to be properly apprised of proposed changes. This legislation is crucial to our future. We are looking for face to face discussions with meaningful opportunities to question, adjust and engage on it.” So they really are looking to be brought into the process in a far more substantive way than they have to date. I don’t know if government can do that before the Spring of 2014. What happens if BC introduces legislation and starts handing out new licenses without consultation? They could find themselves in court.

Question 5: Stepping back from the Act itself, where do you see water policy needing to go in BC and is the Water Sustainability Act getting us toward that path?

OB: Anyone who has heard me talk, I will often talk about how water law has been all about resource extraction and not about stewardship. We have really had an outdated scheme in thinking about the environment only in terms of how it drives our economy. I think what is interesting about the Water Act is that it is one of the first times that there is a more comprehensive conversation about the role of stewardship. We can see some evidence of that with respect to protection of environmental flows. We are starting to see the environment as a rights holder. It moves the relationship towards a balancing. I don’t think they have gone a long way down the stewardship path but they are beginning to steer the ship towards giving environment some priority. Also, the governance piece opens up a real opportunity for local control and input. If I think about the two significant things that have changed from the outset 5 years ago to now – they have made the link between water and land. They recognize that this isn’t just about the Water Act but the linkage to a watershed approach. They have also recognized that governments need to be intimately involved. You can’t just manage the environment like they did in the 70s and 80s. Need much more of a governance structure of powers, who decides what role they play. It gives us some of those early signs. Obviously, there is a big problem with FITFR but at the same time they have opened the door ever so slightly around the public trust notion. It won’t be there formally. It seems there is push back but I think there is still an opportunity. Some of the other elements such as in their water objectives or in definitions of beneficial use may not go quite so far as a public trust concept but maybe it is set up to let us have that conversation down the road. So that would be a positive step towards looking at resources not just as an economic driver.

Question 6: Oliver – we have had some conversations on our webinars about local watershed governance with case studies in the Cowichan and the Columbia and the last webinar was about grassroots activities – groups like WaterWealth, OneCowichan, Skeena Watershed Conservation

Coalition. In terms of policy – how do you view the intersection of the local watershed governance, the grassroots and the policy piece? Are they interconnected?

OB: To make the ship change further towards a more holistic stewardship or ecological kind of approach requires a strong and vibrant constituency that may lead to becoming politically relevant. Building a constituency and giving them capacity. You can't just make requests without understanding the policy, the legal and the governance implications of that. Have to think of it strategically. You have in and out access with some people working with government and some people outside of government. But again they need to be in lock step with the constituency. I think you need to be able to see it a multi-scale level. You have to solve some local problems but demonstrate how they are provincially significant while balancing We have a government who – at least in their minds – were elected with an economic development priority. So we need to have new groups solving local problems with the capacity and sophistication to do that but also be able to be operate in a framework that actually allows them to make those changes, to make them last and see their impact. The final note – the challenge is to make both the institutional and legal environment more resilient. We know that many of the challenges are just emerging – we don't know what they are yet. It is the uncertainty that we need to be able to deal with – that's where you really need that resilience. The other side is the ecological resilience – that means forgoing some economic opportunities in some cases but who decides?

Question 6: Do you have one piece of advice to give the funders with respect to making progress on water policy in British Columbia, what would it be?

JO: My advice would be to hang in there. There are many good things about this proposal and it fundamentally needs to be supported. A lot of the detail regarding implementation comes in the regulation. Much of it can't be implemented without the regulations so we need the continuing support of the funders to make sure that we end up with a good suite of regulations that meets the intent of the Act and protects the public interest. I would like the funders to support the process for a couple of more years yet.

LM: For me – it's the idea of building a constituency that is willing to talk to their elected politicians and willing to engage the technical process. Folks at that grassroots level engaging on the technical side but also making it a political priority for their elected officials. At the broader level – it's a little less regular when they can engage – but having people that we can call on when needed to remind gov't that this is a priority; keeping it on government's radar.

OB: Funding should meet three criteria. First, it needs to be diverse . Governance is complex and therefore needs a diversity of actors (ie people with policy expertise, people on the ground, organizers, sophisticated umbrella groups). Second, it needs to be long-term. The work we have done to date are the result of 5-10 year level commitments so another 5-10 years is part of the game. Finally, we can't be afraid to fail. Some bets are going to fail but we still need to innovate so we can't always take the safe bet.

Appendix A

Attendees

Host & Resource Guests:

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|-------------------|-------------------|
| • Tim Morris | Morris Consulting |
| • Laura Brandes | Consultant |
| • Jennifer Archer | Archer Consulting |

Presenters:

- | | |
|------------------|---|
| • Ted White | Manager, Water Strategies and Conservation,
B.C. Ministry of Environment |
| • Lisa Matthaus | Organizing for Change |
| • Jon O’Riordan | Former Deputy Minister, Ministry of Sustainable Resource Management |
| • Oliver Brandes | POLIS Project on Ecological Governance, University of Victoria |

Present:

- | | |
|---------------------|---------------------------------|
| • Pearl Gottschalk | LUSH Cosmetics |
| • Steve Whitney | Bullitt Foundation |
| • Jim Shinkewski | Pacific Salmon Foundation |
| • Trina Prior | Vancouver Foundation |
| • Leanne Sexmith | Real Estate Foundation BC |
| • Nick Davies | Real Estate Foundation BC |
| • David Hendrickson | Real Estate Foundation BC |
| • Hedy Rubin | Real Estate Foundation BC |
| • Kathy Smail | Glasswaters Foundation |
| • Ivan Thompson | Gordon & Betty Moore Foundation |
| • Carolynn Beaty | Sitka Foundation |