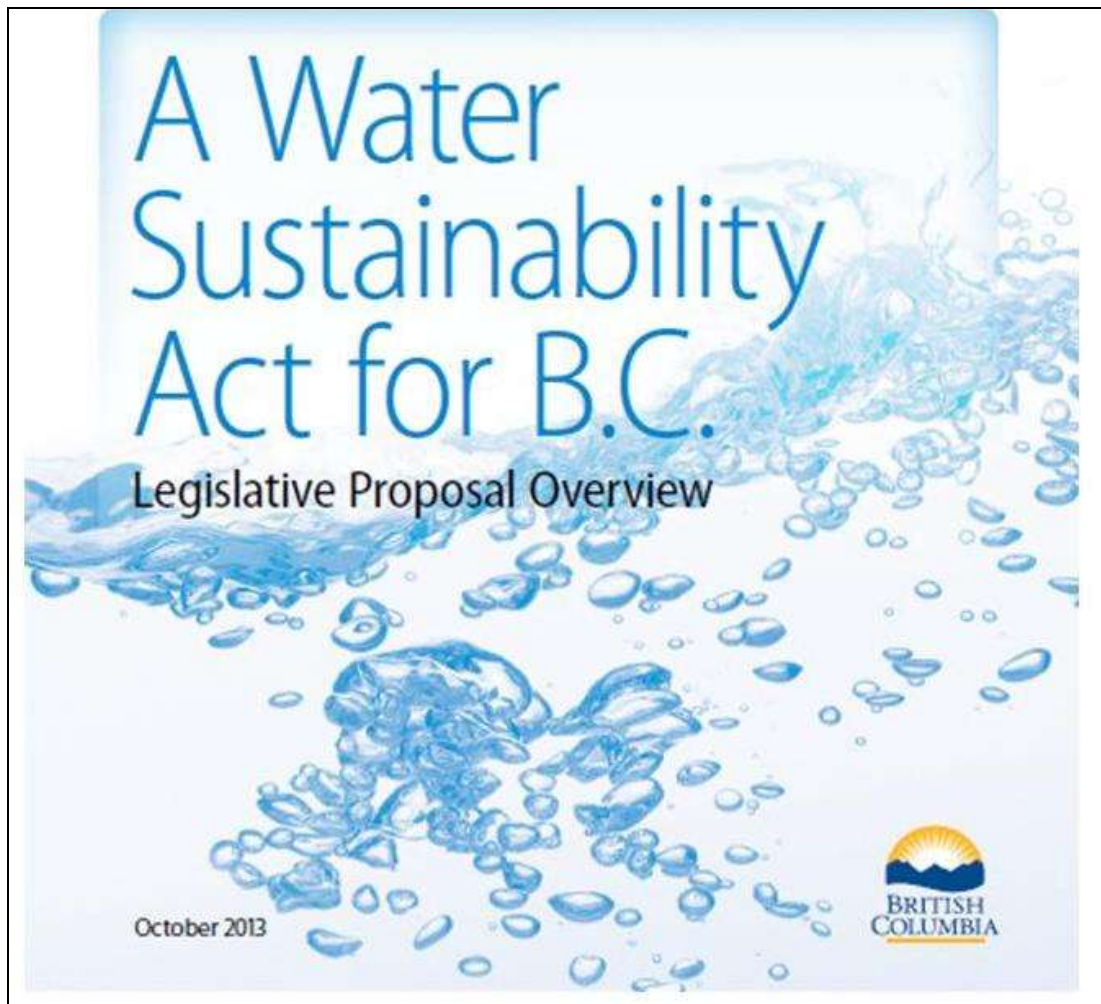


Green Scene: A New – and Improved - Water Sustainability Act?

by Elaine Golds

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The overview of BC's new *Water Sustainability Act* is now available for viewing and feedback online.

On October 18, Environment Minister Polak announced a four week window for BC residents to comment on a proposed new *Water Sustainability Act* for BC (full information is available at <http://engage.gov.bc.ca/watersustainabilityact/>) which is intended to be introduced at the 2014 spring session of the legislature. Modernization of our *Water Act*, which was first enacted in 1909, is certainly long overdue. In 2010, a series of well-attended regional workshops were held across the province following which over two thousand written submissions were received by the government. Given all this interest and consultation, we have every right to expect a first class *Water Sustainability Act*.

However, now that I have read the recently posted *Overview* of the government's intentions, I fear we may have been overly optimistic about the outcome.

In their own words, the government intends to “protect stream health and aquatic environments; consider water in land use decisions; regulate and protect ground water; regulate water use during times of scarcity; improve security, water use efficiency and conservation; measure and report large-scale water use and provide for a range of governance approaches”. All of this sounds quite wonderful. But, as the saying goes, the devil lies in the details...or in several instances, the lack of detail in this *Overview*.

For example, it is proposed the new *Water Sustainability Act* would ensure “Environmental Flow Needs are considered in new decisions on water allocation except in very low-risk situations”. However, no details are provided regarding how “Environmental Flow Needs” would be defined and measured or what would qualify as a low-risk situation. Nor is it adequate for a decision-maker to simply “consider” such needs. The public needs assurance that environmental needs such as protecting aquatic ecosystems will be met before water withdrawals for other purposes are allowed. Meeting “Environmental Flow Needs” (whatever this means) should also require information to be gathered to define these needs and monitoring of the water withdrawals to ensure that the agreed-upon environmental values do not become threatened over time.

Biologists have already developed a somewhat controversial methodology to determine the minimum requirement needs of salmon in streams. These are called “instream flow requirements” and have become the basis on which water removals from long stretches of rivers for the purpose of electricity generation are permitted. Currently, as much as 95% of the mean annual discharge of a stream is allowed to be diverted which means that only 5% is left in the stream to meet the needs of salmon. Many people feel water in these rivers has been allocated in an overly generous fashion to meet the needs of industry. If this is what the province has in mind for “Environmental Flow Needs”, then I am worried.

For as long as water use licenses have been granted by the province, they have been allocated on what is called a first-in-time, first-in-rights (FIT-FIR) basis. This means someone who received a water license in, e.g., 1954 always has precedence over someone given a water license at a later time period. I had hoped a new *Water Sustainability Act* would propose a more sensible scheme to allocate water on meaningful values rather than historical precedence. Instead, it is proposed in the *Overview* the FIT-FIR allocations will continue, for the most part, because they are easy to understand. I am disappointed – surely water should be allocated on a basis which recognizes need and societal benefits of the use intended.

Last year, under devastating revisions to the federal *Fisheries Act*, the federal government removed the ability of their decision-makers to protect fish habitat. However, there is an opportunity under the *Water Sustainability Act* to ensure habitat protection for salmon in BC. Section 9 of the existing *Water Act* contains provisions to protect habitat – these could be strengthened in the new *Sustainability Act* so that we can be assured that fish habitat protection will continue in BC. Another way this act could more effectively protect fish habitat would be to specifically prohibit the dumping of mining wastes into aquatic ecosystems – which is presently allowed under the weakened federal *Fisheries Act*. Other provinces have wisely prohibited such dumping; the province of BC should follow suit. The proposed

Overview is oddly silent on the issue of such dumping although other types of dumping (animal and human waste, pesticides and fertilizers) are mentioned.

The provincial government is proposing water licenses will be renewal (and reviewable) on a 30 year frequency - or 40 years for electricity generation. However, given the speed at which climate change is happening and the risk that some streams could suffer from much reduced water flows, it's likely more frequent reviews will be needed to provide assurances that environmental flow needs will continue be met.

For most people, water is one of our most precious resources. It is very important this new *Act* respects the wishes of the people of BC and contains legislation that will provide wise guidance for the future. People have until November 15 to submit comments to livingwatersmart@gov.bc.ca. I encourage all those who care about aquatic habitat in BC to participate in what could be the last opportunity to comment on a new *Water Sustainability Act* for BC.