

# The Real Estate Foundation of BC's Input to the Province on the Proposed Water Sustainability Act

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## **Real Estate Foundation of British Columbia Input to the Province on the Proposed Water Sustainability Act November 2013**

### **Purpose of the Submission**

The purpose of this submission is to provide feedback to the Province on the proposed new water legislation. The Real Estate Foundation of British Columbia (REFBC) has engaged in the process through the Provincial Government's website information, the October 17 Provincial teleconference update and a bilateral meeting request.

### **Real Estate Foundation of BC - Role and Purpose in BC**

The Real Estate Foundation supports real estate and land use practices that contribute to resilient, healthy communities and natural systems. The Foundation provides funding to non-profit organizations working to enable positive change in communities across British Columbia. Since launching our grants program in 1988, we have approved more than \$64 million for innovative real estate and land use initiatives across the province. Freshwater sustainability is one of our three grant making priority areas.



The Foundation plays a key role in connecting with communities and organizations to provide opportunities to share valuable information on land use issues in BC.

In fulfilling the Foundation's mandate, we have the opportunity to work with hundreds of groups throughout the province – non-profit, government, private sector, academics, First Nations and community stakeholders – all working in partnership to support progressive, sustainable land use practices.

## REFBC-Specific Interest/Role in Fresh Water Sustainability and WAM



Water is critically important to these efforts. Through our work, the Real Estate Foundation has gained considerable insight into important research and community interests related to water use and management.

The release of the Provincial Government's Living Water Smart Plan in 2008, and its commitment to making progress on Water Act modernization, has been a catalyst for critical research, education and policy initiatives that contribute to impactful, long term, progressive action on water issues in BC.


Since 2009, the Foundation has funded 62 freshwater projects totaling over \$1,600,000. These have included: province-wide forums aimed at exploring new models of collaborative, community-based watershed governance initiatives; watershed data collection, assessment and mapping; groundwater mapping and education; climate impacts mitigation and adaptation strategies; community-based water stewardship; lakeshore management, flood protection and watershed planning.

In 2013, the Foundation commissioned a research study on the “State of the Water Movement in BC”. Findings were based on interviews and surveys with 11 water leaders and over 60 community organizations working in the freshwater field. Among these groups, the major provincial water issues identified are Water Act modernization, First Nations’ water rights, shared decision-making and climate change.

We also recognize the key role the public plays when it comes to water management. A public opinion study commissioned by the Real Estate Foundation and the POLIS Project on Ecological Governance (University of Victoria) indicates that British Columbians (93%) view fresh water as our most precious natural resource, and there is a strong consensus (90%) that water is a public resource that nobody should be able to own. Fresh water is viewed as vitally important to the health and well being of people (95%), for food and agriculture (90%), and as natural habitat for birds, fish and animals (88%). British Columbians also perceive water as highly important for our way of life (75%); peace and relaxation (72%); and jobs and economic prosperity (71%) (2013 Angus McAllister Public Opinion Poll).

These are just a few examples of the values British Columbians place on water. These insights, and our work over the past 25 years, have helped inform our feedback to the Province on the proposed Water Sustainability Act (WSA).<sup>1</sup>

## Key Points:

- **Area Based Regulations are potentially a powerful innovation for various regions of British Columbia and should explicitly address environmental flow needs and critical environmental flows. They require monitoring for all new and existing licenses, which include closing new license applications if environmental flow needs are not being met.**
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- **Water license review periods should be reduced from 30 to 20 years or less, through a staggered approach; prioritized with the largest users first that include those applying for new groundwater licenses. Environmental Flow and Critical Environmental Flow provisions must be a key focus of these reviews and should be embedded in Provincial Water Objectives. An integrated approach should extend to surface water licenses with the oldest licenses prioritized first, starting by 2019. Beneficial Use should be defined to include Provincial Water Objectives and the notion that water is a public interest.**
  - **Local watershed governance structures are a needed innovation that should be included as a formal decision making role and have the ability to self-finance through collecting local levies or water royalties. Local governance authorities must be included in the list of authorized decision makers contemplated in the Act.**
  - **An independent Resource Practices Board should provide oversight and accountability for data gathering and reporting.**
  - **The Province should use the WSA as an opportunity to review and adjust the schedule of water fees and rentals. At a minimum the Province must cover administration costs.**

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<sup>1</sup> In preparing this submission REFBC consulted with a number of knowledgeable partners, including Oliver Brandes, Co-Director of the POLIS Project on Ecological Governance (University of Victoria).

## REFBC Input into the Proposed Water Sustainability Act

### 1. Legislative Proposal Area One: “Protect Stream Health and Aquatic Environments”

**REFBC Recommendations:** Ensure Environmental Flow Needs and Critical Environmental Flows are clearly defined in the WSA and scientifically defensible; incorporate them into decision making processes, Provincial Water Objectives and requirements for renewed, existing, amended and new water allocations; establish flow allocations for both surface water and groundwater; base decisions on a clear method of weighing tradeoffs between resource development and longer-term ecological health and cumulative effects.



**Discussion:** Given the essential role of water resources in supporting ecological health, clearer ways of defining ecologically based environmental flow needs and critical environmental flows should be incorporated into the legislative framework. They should be part of the decision-making processes and requirements for existing, amended and new water licenses. Flow allocations should apply to both surface water and groundwater. Decisions should be

based on a more clearly articulated regime for weighing trade-offs between resource development and the longer-term ecological health of watersheds and cumulative effects on them.

In November 2012, the Real Estate Foundation sponsored the Bulkley Valley Research Centre’s Conference, “Adding It All Up: Balancing Benefits and Effects of Resource Development.” There was evident concern for and interest in better understanding cumulative effects of development on land and water resources in northwestern BC. Long-term cumulative effects should be considered when assessing water allocations (in both new and existing licenses) and establishing environmental flows needs and protections. These could then be customized on a region-by-region basis through collaborative watershed sustainability plans.

Recent findings from the 2013 Angus McAllister Public Opinion Poll indicate that the protection of fresh water and freshwater ecosystems is the top environmental concern in British Columbia today, with the vast majority of residents (87%) agreeing that ensuring the protection of nature and natural ecosystems should always be a top priority (2013 Angus McAllister Public Opinion Poll).



## 2. Legislative Proposal Area Two – “Consider Water in Land Use Decisions”

**REFBC Recommendations:** Provide for a governance framework that creates a system in water allocation decisions where water objectives can be defined for streams, aquifers and areas of land. Water objectives should protect water quality, quantity and health of aquatic ecosystems. Water objectives apply equally to all major industries and to all government decisions likely to impact on water, as well as to existing, amended and new licenses.



**Discussion:** It is vitally important that real estate and land use practices respect the health of our watersheds to preserve land values and increase quality of life. An appropriate way to ensure this happens is to provide a governance framework – laws, regulations, plans and policies – that creates a system in water allocation decisions where water objectives can be defined for

streams, aquifers and areas of land. Water objectives should protect the water quality, quantity and health of aquatic ecosystems. Water objectives should be incorporated into the definition of “Beneficial Use”. There is no mention of contingency or emergency planning due to accidental contamination that should be addressed in the WSA.

The Real Estate Foundation is encouraged by the Province’s exploration in the development of Water Sustainability Plans that integrate water and land use planning with other local, regional or provincial planning processes.

We have seen growing interest and capacity among local cities, First Nations and regional governments to work in partnership with industry and community on local watershed planning initiatives, and we believe that governance frameworks that support this work offer significant potential. We have supported the Fraser Basin Council’s work in the Upper Fraser, Cariboo-Chilcotin, Thompson, Lower Fraser and Greater Vancouver, Vancouver Island, Okanagan, Columbia-Kootenay and Northern BC to develop the Water and Watershed Planning Guide, in partnership with BC Ministry of Environment and Natural Resources Canada. The Guide served as a tool kit for local governments, First Nations and stewardship organizations to integrate climate adaptation and best management practices into watershed planning initiatives to help meet water conservation targets.

The Cowichan Watershed Board was established in 2010 to implement the Cowichan Basin Water Management Plan (CBWMP). In partnership with Cowichan Tribes and the Cowichan Valley Regional District, the CBWMP has developed effective management and governance

models of their watershed that consist of setting targets for minimum flows, water quality, conservation and public education.

In all cases, land use plans and policies have been integral components of watershed planning initiatives. For example, the Okanagan Nation Alliance is developing a youth component of their water strategy that incorporates traditional ecological knowledge into how water resources are integrated into land use decision-making. Findings from the 2013 Angus McAllister Public Opinion Poll highlight the important role that local authorities and community representatives play in representing public interests in governance structures: when it comes to acting in the public interest, the majority of British Columbians have confidence in conservation groups (72%), local watershed authorities (66%) and their municipal government (58%).

### **3. Legislative Proposal Area Three: “Regulate and Protect Groundwater”**

**REFBC Recommendations:** The current threshold for regulating and reporting on water use is too high. Monitoring and reporting should be required for the majority of groundwater users in BC (not just users over 250 m<sup>3</sup>); baseline estimates of available water resources should be established before they are allocated; water usage should be tracked and managed through water use plans. Water licenses should be assessed to ensure that the use of the aquifer does not exceed recharge rates and does not negatively impact the health of the aquifer or nearby streams.



**Discussion:** British Columbia is the only province in Canada that does not currently regulate groundwater use. Changes to the Act to address this situation are very important. BC must regulate and protect groundwater reserves and ensure reliable data is collected on the status of aquifers that connect to the Province’s network of lakes and streams. An updated threshold for monitoring and reporting that captures the majority of users in BC is needed to replace the

outdated 250m<sup>3</sup> threshold for large-scale use. The WSA should create baseline estimates of available water resources through area-based plans before water resources are allocated. Water usage should be tracked and compared to water use plans. There could be flexibility to modify area-based plans depending on existing circumstances.

In practice this means that existing groundwater users should not receive licenses that provide any guarantees for future water use until the required information and planning is in place.

Short-term licenses or the potential for a broad review in the near to mid-future could provide for an appropriate transition. Licenses for existing water users must not lock in unsustainable use and therefore must include evaluation of impacts on aquifer health and surface water environmental flows.

Better understanding our groundwater resources and impacts from various types of use is essential for sustainable management of our water resources over time. Important research is underway in BC to support these efforts. For example, in Hudson's Hope, the Custodians of the Peace are conducting baseline samples of homeowners' water in areas where hydraulic fracturing is occurring to better understand potential effects on drinking water supplies. Lessons learned to date suggest that license review periods should not exceed 20 years and should commence with a phased approach for newly granted groundwater licenses. The license review should be prioritized to address largest users first that also include those applying for new groundwater licenses. Regional prioritizing may also be appropriate. Using an integrated approach should extend to surface water licenses and prioritize the oldest licenses first. Beneficial use should be broadened in definition to include the notion that water is a public interest.

#### ***4. Legislative Proposal Area Four: "Regulate Water Use During Times of Scarcity"***

**REFBC Recommendations:** Provide for stronger management tools and regulatory powers during times of scarcity; establish comprehensive monitoring and conservation strategies for water use at all levels (not just very large scale use); explore alternatives to FITFIR based on a more collaborative approach of shared responsibility during times of shortage; establish priorities based on essential ecological and community needs and priorities.



**Discussion:** The Foundation has seen increasing evidence of the importance of addressing growing water scarcity issues associated with climate change and other factors. We strongly support provisions in the WSA that increase management tools and regulatory powers during times of scarcity. We also believe that these efforts should be supplemented with proactive, preventative efforts (such as comprehensive monitoring and conservation strategies for

water use at all levels) prior to drought events and other times of water shortage.



The proposed legislation indicates that FITFIR (First-in-Time-First-in-Right) will be used as a basis for reducing water use rights during times of scarcity. The Foundation encourages the Province to explore other alternatives based on a more collaborative approach where all users share responsibility for reducing use during times of shortage. Priorities should be established based on essential ecological and community needs and priorities (contingent on beneficial use criteria and a clear framework of articulated priorities).

### ***5. Legislative Proposal Area Five: “Improve security, water use efficiency and conservation”***

**REFBC Recommendations:** Add provisions in the WSA to better support measurement and accountability; establish a provincial agency with responsibility for gathering and reporting all information on water use; embed the concept of the “Public Trust” into the legislation.



**Discussion:** Water use efficiency and conservation are best achieved when they are supported by strong tools for measurement and accountability. The Foundation believes that provisions in the WSA should support these tools. Having a provincial agency with responsibility for gathering and reporting all information on water use would also greatly assist in supporting water use efficiency and consideration efforts.

It is our understanding that the concept of “public trust” (i.e., duty to protect public rights to certain natural resources because they are considered crucial to common interests, and therefore should not be handed over for exclusive private possession or use) is not explicitly addressed in the proposed WSA legislation. Given the strong public interest in water, we believe incorporating the concept of public trust into the legislation would help provide a valuable framework for managing water resources in a way that supports environmental protection and water as a public interest.

### ***6. Legislative Proposal Area Six: “Measure and report large scale water use”***

**REFBC Recommendations:** Require measuring and reporting on water use at a greater range of scales (not just large scale use); provide resources, coordinated systems and designated authorities to oversee measuring and reporting; establish a provincial agency with responsibility for gathering and reporting all information on water use based on a cost recovery model.



**Discussion:** The proposed WSA legislation highlights that, “we can’t manage what we don’t measure.” The Foundation agrees that measuring and reporting on water use is critical to a long-term management and conservation strategy for water usage. We strongly support the proposal to require large-volume users to measure, record and report their water use and related information, but also think that greater consideration should be given to monitoring and

reporting on medium and smaller scale use. There is emerging evidence from Real Estate Foundation supported initiatives that local governments and community groups are willing to act and show leadership in this area. It is also evident that, to be effective, these initiatives require resources, coordinated systems and designated authorities to oversee them, such as provincial agency with responsibility for gathering and reporting all information on water use. An independent Resource Practices Board should provide oversight and accountability for data gathering and reporting, based on a cost-recovery model.

Examples of current monitoring initiatives in BC include pilot projects conducted in Summerland (Friends of Summerland Research Station Gardens Society) and the Kootenays (Wildsight); the BC Lake Stewardship and Monitoring Program (BC Lake Stewardship Society); groundwater mapping in the Englishman River watershed (Mid-Vancouver Island Habitat Enhancement Society) and water metering in the City of West Vancouver. These initiatives indicate there is strong interest in augmented water monitoring and reporting. Users at a variety of scales should be required to meter water they consume and report data regularly to an independent authority responsible for water use. While it is our understanding that the WSA does not deal with the schedule of water fees or rentals, at a minimum the Province must cover administration costs. A cost recovery model would provide sustainable funding sources for administering groundwater and surface water. To achieve this, the WSA serves as an opportunity to review pricing structures for water licenses and rentals, with the aim to develop a cost-recovery model for comprehensive monitoring and reporting of water use.

## 7. Legislative Proposal Area Seven: “Provide for a range of governance approaches”

**REFBC Recommendations:** Enable local watershed governance in the WSA; recognize the potential of community-based, local governance structures to uphold concepts of the public trust and collaborative alternatives to FITFIR; clarify how those most impacted by local water management decisions will have a voice in planning processes (i.e. specify that license reviews, setting of water objectives, setting of environmental flows, creation of area based regulations, and water efficiency standards will include public consultation). Clarify how local governance functions and management activities will be funded over time; enable local watershed governance bodies decision making authority and the ability to levy fees or access royalties to fund their work; provide oversight by a recognized independent decision maker such as a Sustainable Water Commission.



**Discussion:** The Foundation supports provisions in the WSA that enable local watershed governance. Many local governments and community groups across BC are working to support local watershed governance planning and community-based monitoring. The Real Estate Foundation has funded various initiatives that demonstrate community interest and capacity for local watershed governance. Examples include: the Fraser Basin Council’s regional workshop series on building capacity for community-based water and watershed

planning; the Coquitlam River Watershed Roundtable’s watershed planning process; Wildsight’s community-based water stewardship and shoreline management initiatives in the Kootenays; community watershed assessment and mapping; the Cowichan Watershed Board collaborative governance initiatives; and the recent 2013 Watershed Symposium co-hosted by the Columbia Basin Watershed Network, Living Lakes Canada and the Canadian Columbia River Inter-tribal Fisheries Commission. In 2012, the Real Estate Foundation provided a grant to Simon Fraser University’s Adaptation to Climate Change Team to promote sustainable water governance in BC. This multi-disciplinary team has developed education materials for practitioners and other audiences regarding the Water Act modernization process and renegotiation of the Columbia River Treaty.

Effective support for local watershed governance will require resources and oversight by a recognized independent decision maker (e.g., Sustainable Water Commission).

Under the proposed WSA, it is unclear how those most impacted by local water management decisions will have a voice in planning processes and how local governance functions and management activities will be funded over time. It is recommended that provisions in the WSA be added to address this interest, and enable local watershed governance decision-making authority and the ability to levy fees to fund their work.

Existing fee schedules are currently not sufficient to cover basic administrative fees. By increasing water-use fees, a portion of revenues could be allocated to support a BC water-use database that supports environmental monitoring and enforcement. In the REFBC's experience, communities are willing to pay for proper management of their watersheds. For example, Cowichan Watershed Board has conducted preliminary polling on establishing a water levy and the Windermere District Farmers Institute's pilot "Paid Ecosystem Services" study has determined that viability of a future long term regional payment for ecosystem services could help offset farm costs for implementing ecological enhancements.

As noted in Sections 4 and 5 of our submission, concepts of the public trust, and alternatives to First-in-Time-First-in Right (FITFIR), should also be incorporated into the WSA. Community-based local governance structures would assist in upholding these concepts and alternative approaches. The concept of public trust should be an underlying principle and tool to promote sustainable water management. It is applied in numerous jurisdictions that have responsibility for water management, including Washington, Oregon and California. The concept of public trust is also a value that underlies many Aboriginal communities' outlook on resource management.

## Closing Remarks

We commend the Province for bringing forward this critically important piece of legislative reform. There is a vital link between healthy watersheds, and healthy landscapes and communities. Based on our polling through public opinion surveys, 92% of British Columbians support community level involvement in water licensing decisions and 89% strongly support new rules for water governance that consists of strict province-wide rules and standards for water protection and management.

By governing and managing freshwater resources effectively, British Columbia will provide future generations with abundant, clean water. It is our hope and experience that the Water Sustainability Act legislation provides a strong foundation for BC to become a leader in water stewardship and the sustainable use of this most precious resource.