



## WATER SUPPLY ASSOCIATION OF B.C.

P.O. Box 22022, Penticton, B.C. V2A 8L1

Phone and Fax: (250) 497-5407

# **Striking a Balance – A Position Paper on the Proposed *Drinking Water Protection Act***

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## **Introduction**

The Water Supply Association of B.C. was established in 1923 and represents members throughout the southern interior of British Columbia. The original name of the organization was the Association of B.C. Irrigation Districts. The association's primary role is to assist our members to fulfill their water supply function and to provide a voice in shaping government policy in the water supply field.

To that end the association has worked with the government of the day on a number of issues ranging from the establishment of the office of Superintendent of Irrigation in the 1920's and 1930's to providing guidance to changes in the *Local Government Act* and *Municipal Act* in the 1990's and 2000's.

There is no question that the safety of the public water supply in British Columbia has been under scrutiny in recent years. The tragic events of Walkerton, Ontario seriously undermined public trust in the water supply and initiated reviews of the water regulations in provincial capitals across Canada. B.C. is no exception. Clearly, the time has come for thoughtful review of public policy and regulations pertaining to the protection and safety of the public water supply.

## **Striking a balance**

The *Drinking Water Protection Act* would appear to be a balanced piece of enabling legislation that touches on most of the key areas of concern to the WSABC. As such, it is an inherently complex piece of legislation with over fifty amendments to other water related Acts and regulations. It is beyond the scope of this submission to provide a thorough review of the entire Act. Rather, the following provides the WSABC's position on the fundamental issues related to providing the public with an affordable supply of potable water.

Water quality is inextricably linked to land use. Rainfall can pick up contaminants from the atmosphere, from natural sources, and from a whole range of human land uses before entering streams and lakes or seeping underground into aquifers. As the Auditor General reported in April of 1999 (*Protecting Drinking-Water Sources, Report 5*), water source management is not integrated in B.C. No less than ten ministries and agencies in this



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province have interests and responsibilities for the regulation and management of water in the province, often at cross-purposes.

Currently, outside the major urban centres of Victoria and the lower mainland, the impact of land use proposals on drinking water quality is typically a secondary consideration for those making land use decisions. There is no formal process to refer land use proposals to local water purveyors for comment. When referrals are forwarded, a water supplier's comments are only given equal weight with comments from local interest groups, clubs and other non-provincial agencies. Yet, it is the same water supplier that is given the responsibility and is held accountable for providing potable water to their customers.

The *Drinking Water Protection Act* must clearly define the priority of source water protection in relation to land uses that compromise water quality. The economic impact of protecting source water quality must be measured against both the added downstream costs of treating poor quality water and the long-term environmental impact to the watershed in general. Clearly, without the means to protect our water supply in the watersheds, water quality will suffer. If water quality and public health are truly a government priority, then the *Drinking Water Protection Act* will strike a balance between the regulation of water suppliers and the ability of water suppliers to protect sources.

### **The *Drinking Water Protection Act* (DWPA)**

The primary focus of the DWPA is on drinking water from a public health perspective. As referenced above, it includes amendments to a number of existing Acts. As these amendments are brought into force through regulation, they will become the responsibility of the ministry responsible for administering the specific Act. This approach to public health protection is piecemeal and will unlikely result in meaningful actions taken by affected ministries, which currently have difficulty fulfilling existing mandates.

As the Attorney General reported in 1999, the time has come to appoint a lead agency with the responsibility for looking after the province's drinking water resources. The Drinking Water Coordinators and Drinking Water Officers represent a logical step in this process.

### **Drinking Water Coordinators**

It will be the responsibility of the appointed Drinking Water Coordinators to ensure the letter of the law is carried out. To effectively fulfill this mandate, Drinking Water Coordinators will have to ensure all affected ministries recognize and assign drinking water and public health the priority granted by the DWPA.

The most contentious issues that will arise out of the DWPA, in terms of impacts on other crown jurisdictions, will be land use conflicts in community watersheds. Drinking Water Coordinators will only be effective if they have the authority in law, are strong advocates and can motivate all affected ministries of the importance of the DWPA.



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Clearly, the appointment of (a) qualified Drinking Water Coordinator(s) will be key in providing effective results.

### **Drinking Water Officers**

The establishment of the office of Drinking Water Officer for each health region in the province is a positive step. The effectiveness of the office will depend on a number of issues. The first issue is one of resources. Each health region covers a large area of the province and it is questionable whether one position can effectively fulfill the mandate.

Much will depend on the resources afforded the position and the specifics of the delegation authority specified in Sec. 3(4). If Drinking Water Officers do not have adequate resources or are unable to delegate authority, they will be reduced to collecting and reviewing water quality data from the numerous water systems in their region. This would effectively be a continuation of the status quo and would not be an improvement on the current system.

The health regions are too large for one person to effectively deal with the many issues faced by each purveyor in the region. Without adequate resources, the DWO will be unable to support and assist local water suppliers. Provisions such as sec 24 and 29 will undoubtedly tax the resources of the DWO even further and should be reviewed.

Ideally, where appropriate, the DWO will be able to delegate authority to the local water supplier to address threats within the watershed. This could be in the form of land use application referrals, where the comments of the local water supplier were endorsed by the DWO, or where authority were delegated by the DWO to the water supplier as per Sec.3 (4).

Finally, in reference to Sec. 3(1)(b), the Medical Health Officer should not have the authority to assume the Drinking Water Officer position. As noted, the appointment of one full-time DWO will likely be insufficient to properly fulfill the duties of the position; the assumption of these duties by the Medical Health Officer would be inadequate and is not acceptable.

### **Groundwater Protection**

The provisions in the DWPA for groundwater protection are generally acceptable. Again, in the absence of defined regulations, it is difficult to comment specifically. The need to protect groundwater from surface contamination is long overdue. The same is true for the licensing and control of groundwater resources, which are not addressed in the DWPA.

The issue of setting standards for well protection is not quite so clear-cut. There is a sound argument that if the provincial government were to assume their rightful jurisdiction over groundwater resources, that many aspects of groundwater protection would be a provincial obligation, specifically the identification and regulation of both non-point and point sources of groundwater contamination. The groundwater protection plans that water suppliers are being encouraged to adopt are complex and expensive, well beyond the in-house capabilities of most local water suppliers to produce. If these plans



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are made mandatory under new regulations, then resources to assist in their development must also be provided. Any regulations should be written to be sufficiently flexible to account for different levels of risk to varying numbers of customers.

### **Water System Assessment Plans**

The need for the assessment of water systems from source through to the end user could be a useful tool in identifying threats to the safety of the water supply. What are needed, however, are clearly defined guidelines detailing what constitutes a threat to a water system. This would assist water suppliers to quickly and economically identify potential problems.

The responsibility for remediation of threats to the water system under this part of the act needs to be addressed. No one would argue that threats to the safety of drinking water must be identified and dealt with to protect public health. Under the proposed procedure (s.18-22), however, the water supplier has to identify, inventory and assess “the drinking water source for the water supply system, including land use and other activities and conditions that may affect that source.” (S.18 (2)(a)). This approach does not consider or take into account the fact that the water supplier has had little, if any, input authority or consultation in the land use in the watershed. Now, the DWPA requires that same water supplier assess the threats that various stakeholders in the watershed are posing to drinking water.

Once the water supplier has identified the threats to the water supply, the Drinking Water Officer has the authority to order the water supplier to develop a response plan detailing how the water supplier will respond to the identified threat. Clearly, this will be difficult for the water supplier to do because it has no statutory authority over land use in the watershed.

There needs to be a fundamental shift in a number of areas in the approach of the DWPA in dealing with land use in the watershed:

1. The interests of water suppliers must be given priority in land use decision-making in the watershed;
2. The funding mechanism for watershed assessments must be clearly defined and the resources should come from all the stakeholders in the watershed, not just the water supplier;
3. Future land use applications must undergo a thorough review and address the impacts on drinking water quality;
4. Existing land uses tenures that are found to adversely affect drinking water quality must either be stopped or a portion of the tenure fee be directed to the affected water supplier to provide water treatment;
5. Resources must be provided to the water supplier to fund the watershed portion of the water system assessment.



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The other aspects of the water system assessment requirement make sense. The water distribution system, water treatment and system operations are all under the control of the water supplier. Monitoring water quality and identifying threats to public safety are within the means and authority of the water supplier.

The unknown at this point is what impact changes to the Safe Drinking Water Regulation may have on water suppliers. If the regulations are changed significantly, then many water suppliers will have to provide significant investment in upgrading water treatment systems. If this were the case, clearly, the province would be obligated to provide funding for these upgrades.

### **Water Quality Standards and Regulation**

There is incredible diversity amongst the water systems in the province. The key to setting water quality standards is to provide standards with the flexibility to take this diversity into account. Province-wide water quality standards must also account for the economic reality of the smaller water suppliers.

The best approach to regulating water quality is to establish broad principles in regulation and then enable appropriate standards to be developed at the local level. The Drinking Water Officer in consultation with the Medical Health Officer, the water purveyor and the public could develop such local standards. Public participation would be an integral part of the process, particularly if significant upgrading of the water system were required.

Such a system would recognize the inherent differences of large and small water systems and enable regulations to be phased in over a period of time in recognition of respective financial capabilities. The development of regulations must be sensitive to the tremendous diversity of water systems in the province and the costs associated with water treatment. Amendments to the Safe Drinking Water Regulation must be flexible enough to take into account the size of the population served, the water source and the water system hazards, as well as levels of risk.

### **Drinking Water Protection Plans**

The minister should be required to order the development of a Drinking Water Protection Plan if any two of the Drinking Water Officer, Local Authority or Water Supplier request it (s.31 (2)). The minister should provide some or all of the cost of preparing the Drinking Water Protection Plan.

Section 35 should allow for the levy of fees against land use tenures that are detrimental to drinking water quality. These monies would be payable to the local water supplier to partially compensate for downstream water treatment costs.



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### **Local Government Authority**

Section 38 provides for local government to request the assistance of the Lieutenant Governor in Council for implementing all or part of a drinking water protection plan. Section 38 should be amended to include “Local Authority” as defined in Section 1.

Improvement districts are defined as a local authority under the Act. The majority of water suppliers in the province are incorporated as improvement districts and it is appropriate to extend Section 38 to apply to improvement districts. Otherwise, this provision is of little practical value in delegating authority to local authorities in carrying out drinking water protection plans.

### **Implementation**

The successful implementation of the *Drinking Water Protection Act* will depend on two key areas.

The first is resources. Without adequate resources Drinking Water Officers will become little more than collectors of water quality monitoring data and have no real impact on protecting the drinking water supply. The resources required include funding, the authority to delegate and a sound legislative foundation.

The second critical issue is the getting all affected ministries to buy-in to the authority of the Drinking Water Officers. In the absence of a single lead agency to look after the drinking water resources in the province, the successful implementation of the DWPA will rely on all affected ministries buying in to the program. Without this buy-in, very little progress will be possible, particularly in land use and source water protection issues.

It is important that changes to drinking water regulations and legislation be designed to strike a balance among all stakeholders who affect water quality in the province. This approach will ensure water suppliers will be able to provide the public with safe, affordable, drinking water.