Water Sustainability Plans: Potential, Options, and Essential Content

Deborah Curran and Oliver M. Brandes

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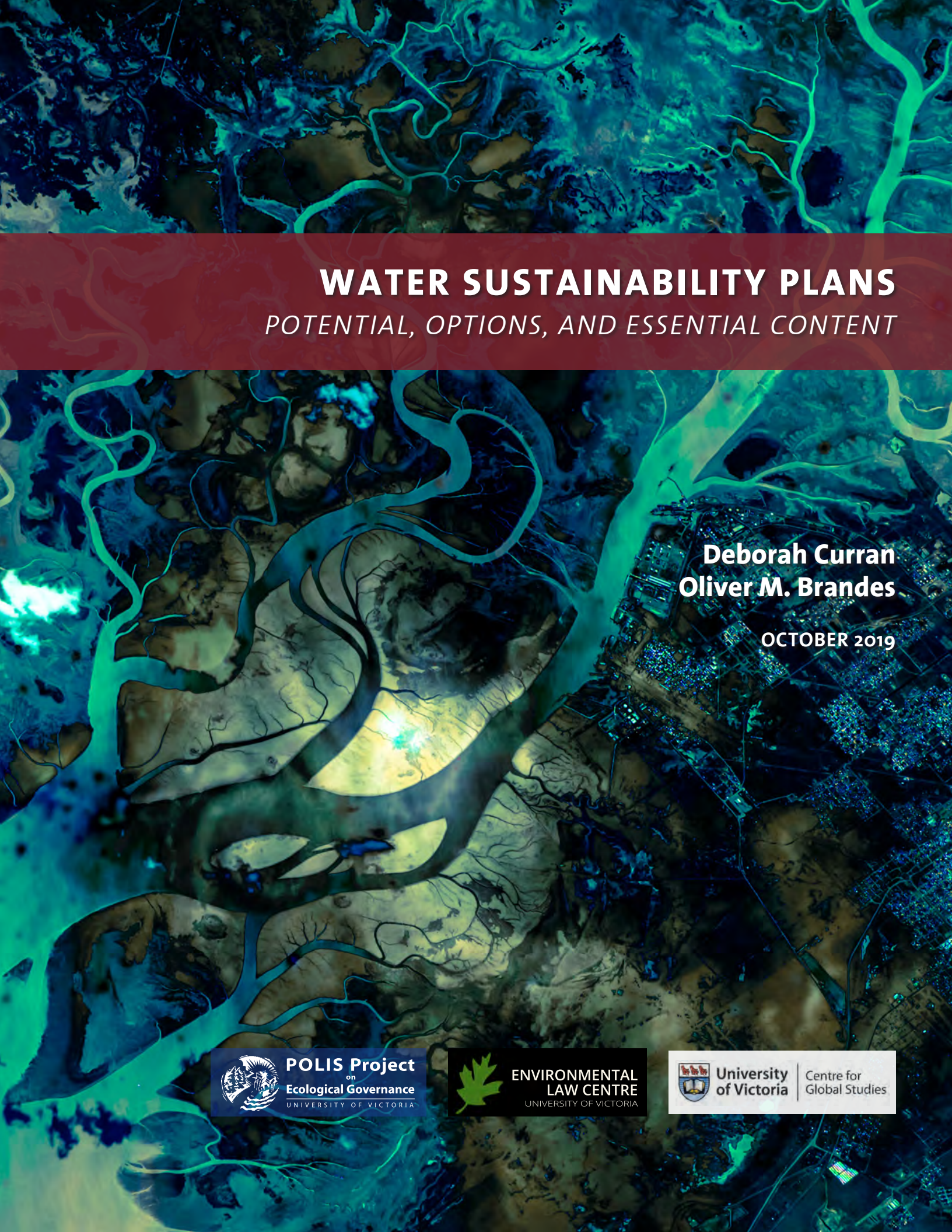

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SUMMARY

The purpose of this Innovation Brief is to explore the potential of Water Sustainability Plans (WSPs) enabled by British Columbia's *Water Sustainability Act*. They can assist watershed communities to begin addressing many of the challenges of the land and water governance regime in B.C., to improve watershed health, and to support collaborative governance between Indigenous communities, the provincial government, and other local actors. Key insights and observations from this brief include:

- As an element in the modernized provincial water regime, WSPs are a promising tool that can enable and enhance adaptive water management and new governance relationships that express core elements of government-to-government relationships for water and watersheds, as well as address the challenges of environmental flows, sustainable groundwater management, drought planning and protecting and enhancing watershed health.
- WSPs can express government-to-government agreements and parallel governance structures between Indigenous nations and the provincial government. WSPs offer many possibilities that can complement and support the framework for Indigenous legal orders and aboriginal rights, and can assist in moving towards reconciliation and the larger goal of Indigenous self-determination.
- WSPs are intended to be long-term and create both a vision and governance processes for a watershed that rely on Indigenous and local governments, as well as other sectors and community interests to oversee and implement over time.
- A thorough understanding of the local context and "state of the watershed" is needed to support any watershed vision or WSP. This requires ongoing data collection and monitoring to ensure understanding as the local context changes, and must consider the future impacts of climate change.
- Watershed-specific performance-based objectives and environmental flow standards will establish the socio-ecological framework within which decision-making processes can operate.
- Taking a whole-of-watershed approach, WSPs can link land- and water-use decision-making. By regulation, impacts on water establish the parameters within which decisions about forestry, agriculture, and urban development are made.
- WSPs can be adaptive. They have the potential to amend or change the existing allocation of water under licence, and can change water management priorities over time.
- WSPs can set out detailed and watershed-specific drought response strategies, such as protecting environmental and critical flows, promoting localized voluntary water sharing, and establishing water reserves for essential uses.
- WSPs can establish dispute resolution processes that are unique to a specific watershed, issue, or ecological concern, such as protecting (or restoring) drinking water sources, environmental flows, riparian areas, and watershed function.
- WSPs can contemplate their own adaptation by embedding regular review and amendment processes on a five-year cycle, for example.

ABOUT THIS BRIEF

This Innovation Brief is exploratory in nature, meant to investigate the possibilities associated with Water Sustainability Plans under British Columbia's new *Water Sustainability Act*. We target Water Sustainability Plans for two reasons relating to their unique status as one of the only statutory instruments in Canada with the potential to:

(1) Link land and water decision-making in a long-term watershed- or ecosystem-based framework;

(2) Express government-to-government agreements between Indigenous communities and the provincial government related to collaborative water governance.

Within the potential of existing B.C. law, this brief is explicitly meant to challenge current thinking about water management, expand the scope of what is considered possible for integrated watershed governance, and build capacity for the implementation of effective water planning regimes that support collaborative governance, healthy functioning watersheds, community resilience, and local economies.

We focus our attention on what the new B.C. water law establishes for watershed planning, and the opportunities such plans present for more integrated watershed governance. We ground our discussion in what the *Water Sustainability Act* specifically states, or can be interpreted as enabling in the context of modern water and watershed planning principles, and the supporting legislative governance regime in B.C. We do not discuss the wide range of possibilities and potential for land use or water planning initiatives more broadly, or delve into further reforms of either the current *Water Sustainability Act* (and its regulations) or the administrative resource management regime more generally.

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ACKNOWLEDGEMENTS

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1 INTRODUCTION AND CONTEXT

Effective and sustainable freshwater management and governance is an urgent priority for communities to maintain ecosystem health, sustain economic prosperity, and move toward reconciliation between state and Indigenous environmental management. This Innovation Brief offers a focused discussion of a powerful new legal tool: Water Sustainability Plans (WSPs) enabled by British Columbia's *Water Sustainability Act*, which have the potential to address many of the challenges of the land and water governance regime in B.C.

The goal of this Innovation Brief is to support meaningful conversations concerning the potential of, and the essential content needed in, WSPs. It also offers direction around possible WSP structures and outcomes through three hypothetical examples that illustrate key considerations. This brief documents current thinking about WSPs, including the innovative potential of WSPs as meaningful legal tools to drive effective local water management, sustainability, and an integrated approach to watersheds. It offers specific details based on the authors' experiences and ongoing discussions with partners.[1]

The lack of recent formal water or watershed plans—including WSPs—in British Columbia creates a unique opportunity to explore the potential of this tool and ensure that any watershed-based discussions take into account a number of current considerations, including the priority of parallel governance between Indigenous nations and the provincial government, a watershed vision, data, performance-based objectives, linkages between land and water use planning, environmental flows, adaptive licensing and management, drought response, water reserves, and the creation of meaningful legal tools for implementation of WSPs.

This brief offers a discussion of the context and potential of Water Sustainability Plans and insights on what an effective Water Sustainability Plan must contain to address the water challenges ahead for B.C. and as a potential model across Canada.

STRUCTURE OF THIS INNOVATION BRIEF

Part 1 introduces the topic, provides the context for this Innovation Brief, and outlines the potential of WSPs. Part 2 describes what WSPs can do according to the *Water Sustainability Act* and sets out some of the broader considerations that will influence the development of all WSPs across B.C. It sets out how, in law, WSPs are intended to resolve watershed-based conflicts, and the key triggers for WSPs. Parts 3 and 4 contain what we consider the preconditions for a robust, effective, and enduring WSP. Part 3 specifically addresses the need for parallel governance structures that respect the authority and government status of Indigenous nations

PUTTING WATER SUSTAINABILITY PLANS INTO CONTEXT: WHAT WILL WE GAIN?

» Without abundant clean and flowing fresh water there is no life, no economy, and no future. Yet, sustainable water use in B.C., and around the globe, is increasingly under threat due to growing climate impacts, human demand, and industrial pressures. Even though our future depends on the effective governance and management of fresh water, we are increasingly in an era of lurching from one water crisis to another.

Numerous reports produced in the past decade (in B.C. and beyond) outline the complex challenges and opportunities for water sustainability. Immediate action is required to mitigate and address the demands placed on our watersheds and freshwater systems, with impacts only accelerated by climate change. The broad societal priority of reconciliation between Indigenous peoples and state governments provides further urgency to address pollution and threats to water abundance and to reform those structures of water governance and management that permit unsustainable water use.

Water Sustainability Plans (WSPs) are one innovative tool enabled under B.C.'s updated *Water Sustainability Act*. A comprehensive understanding of how WSPs can operate and begin meeting the needs of communities and healthy functioning watersheds will be critical to building necessary watershed resilience and ensuring B.C.'s freshwater future.

and the direct government-to-government relationships with the provincial and federal governments that exist irrespective of a WSP process or agreement. Part 4 sets out the essential subject matter that is necessary for a robust WSP. Part 5 outlines the legal impacts of WSPs. And Part 6 offers a range of possibilities using illustrative examples. The appendices provide a more detailed description of the legal provisions, and lay out these provisions in full.

Water Sustainability Plans are an important tool in provincial law that can enable and enhance adaptive water management, improve water sustainability, and build new innovative governance relationships.

This Innovation Brief is short and focused by design. It is not comprehensive, nor does it provide all the detail needed in any fulsome WSP or in the process by which it is developed. The intent is to provide a thorough agenda for effective WSPs that can contribute to ongoing and new conversations between Indigenous nations, governments, communities, stakeholders, and local organizations working on watershed planning processes. The watershed-specific details of how each of the concepts described in this brief apply within any WSP process will require ongoing discussion. We look forward to interacting with many communities in the coming years and decades to contribute to this conversation and move B.C. towards water sustainability.

WHY THIS INNOVATION BRIEF? THE POTENTIAL OF WATER SUSTAINABILITY PLANS

The Province of British Columbia brought the Water Sustainability Act into force on February 29, 2016. This new provincial water law is a significant evolution in state water law in Canada, and contains many useful provisions to help protect fresh water in B.C.[2] Although it exerts provincial (Crown) ownership[3] and retains authority for licensing of water, it also attempts to address the most significant shortcomings of the provincial water management regime, including:[4]

- An inability to adapt licences to changing hydrological and socio-ecological circumstances.
- Lack of legal protections for environmental flows.
- Failure to incorporate groundwater regulation (and management) in the provincial allocation regime, which contributes to over-allocation in specific watersheds and undermines confidence in licensed surface water availability.
- Exclusive reliance on provincial staff and decision-makers to address local watershed conditions.

The *Water Sustainability Act* begins to address these concerns with a more robust and ecologically oriented legal regime. However, a fundamental weakness is its failure to

acknowledge Indigenous nations' oldest and ongoing relationship with, diversion of, and reliance on water in B.C.[5]

Aboriginal rights to water and Indigenous water uses are largely unquantified and not factored into the hydrological balance of each watershed, or into statutory decision-making. Although many First Nations use water under licence through the provincial or state regime and modern treaties define a few minor allocations,[6] there currently is no reconciliation of inherent aboriginal or Indigenous interests in water within the state regime under the *Water Sustainability Act*.

As one element in the modernized provincial water regime, Water Sustainability Plans are a promising tool that can enable and enhance adaptive water management and new governance relationships that express core elements of government-to-government relationships for water and watersheds, as well as address the challenges of environmental flows, sustainable groundwater management, drought planning and protecting and enhancing watershed health.

The Minister may order that an area be subject to a WSP process if a WSP would assist in preventing or addressing conflicts between water users or between the needs of water users and environmental flow needs, risks to water quality or aquatic ecosystem health, or will identify restoration measures in relation to damaged aquatic ecosystems (s 65).[7] Although the scope of any WSP is limited by its terms of reference, the Water Sustainability Act sets out explicit implementation authority that can allow a WSP to amend or change existing water licences or affect the decision-making jurisdiction of public officers under other provincial law.[8]

This ability to implement watershed- or area-based WSPs, which include consideration of both ground and surface water, by amending existing water entitlements and directing that decisions relating to land and water be made in a specific, more integrated way creates possibilities for adapting and advancing water management in areas where persistent scarcity or conflicts over water exist. Through a consultative planning process under the WSP regime, the intent is for local authorities, stakeholders, and partners to craft place-based, hydrologically appropriate approaches to the water quantity and quality (and watershed and ecosystem) issues they are facing. WSPs are not limited to just water allocation concerns but are a broader tool that may address water quality, drought planning, environmental flows, the interaction between land and water management, innovative short-term voluntary water sharing, local dispute resolution, improved measurement and reporting, and other creative solutions that meet socio-ecological priorities and needs in a watershed. Under the WSP provisions of the Water Sustainability Act there is considerable discretion and opportunity for moulding WSP processes to address the unique watershed contexts found throughout B.C. In particular, WSPs allow watershed communities to think about broader watershed health and function and longer-term outcomes beyond management that primarily responds to the crises of drought and flood. They can put in place comprehensive, cumulative, and adaptive management processes to improve watershed governance and deal systematically with root causes—not just symptoms.

Water Sustainability Plans can go beyond water allocations and allow communities to think about broader watershed health and function and longer-term outcomes beyond management that primarily responds to the crises of drought and flood. They can put in place comprehensive, cumulative, and adaptive management processes to improve watershed governance and deal systematically with root causes—not just symptoms.

WATER SUSTAINABILITY PLANS AND THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

By focusing on the sharing of authority and governance, WSPs offer a potentially useful legal mechanism to meaningfully address the United Nations Declaration on the Rights of Indigenous Peoples' (UNDRIP) call for free, prior and informed consent of Indigenous communities as part of the provincial legal regimes for water and other natural resources. Indigenous nations in B.C. are increasingly making declarations of Indigenous water laws and rights,[9] or undertaking community processes according to Indigenous laws and authority to review large-scale land development proposals.[10] Rejection of these development proposals are often on the basis of unacceptable risk to or impacts on water. In this current "waterscape," state governments (and communities) cannot realistically undertake a WSP without a parallel governance process arising from a government-to-government agreement with the Indigenous communities of the affected watershed or region, where the WSP might be one aspect of broader watershed governance-based efforts to advance reconciliation.

Governments (and communities) cannot realistically undertake a Water Sustainability Plan without a parallel governance process arising from a government-to-government agreement where the Water Sustainability Plan is one aspect of broader watershed governance-based efforts to advance reconciliation.

2 SEVEN ESSENTIAL CONSIDERATIONS FOR WATER SUSTAINABILITY PLANS ACROSS THE PROVINCE

Outside of the specific elements in the *Water Sustainability Act* (outlined in the box "Water Sustainability Plans Legislative Summary" on page 6), we identify seven key considerations under the legislation that require emphasis and should inform any WSP across the province:

1. WSPs are intended to be long-term documents. Advancing a thorough understanding of the local context and the key actors in the community is critical to ensuring not only a good plan but a well-supported vision for the watershed that will drive implementation and meaningful change in water management and ongoing governance.
2. Affected Indigenous nations and other local groups will want to be involved in establishing the terms of reference for a WSP since the terms of reference guide the entire WSP process, both in content and procedures. Terms of reference could include acknowledgement of the inherent authority of Indigenous nations and aboriginal rights and title to water, reference government-to-government agreements, emphasize the development of co-governance processes, and prioritize the need to protect environmental flows.
3. A WSP process can gather information to establish a baseline of data for "state of the watershed" reporting, water allocation, water and land use, hydrology, and scenarios of potential future impacts due to a changing climate.
4. WSPs can contemplate longer-term governance structures that include more than just provincial decision-makers dealing with water. Governance within a WSP context can include specific roles for Indigenous nations, water licence holders, community organizations, and local watershed entities created to oversee and implement the WSP.
5. Related to broader resource management and governance, WSPs can have an impact on other plans and decisions about land and water in a watershed. For example, WSPs, if adopted by regulation, could shape decisions about forestry, agriculture, and urban development, or could restrict whether a regional district or municipal officer approves local plans (for example, a subdivision plan). Therefore, WSP processes need to include discussions about land use, not just water, and ideally take a whole-of-watershed approach.
6. WSPs can set out dispute resolution processes that are unique to a specific watershed, issue, or ecological concern, such as protecting (or restoring) environmental flows and watershed function. Agreeing to a specific dispute resolution process will increase procedural transparency with watershed-based decision-making, build necessary social resilience, and ensure the adaptability of the WSP.
7. WSPs can contemplate adaptation by embedding regular review and amendment processes on a five-year cycle, for example.

WATER SUSTAINABILITY PLANS LEGISLATIVE SUMMARY

For a detailed discussion see Appendix A

- Water Sustainability Plans are detailed in Part 3 of the *Water Sustainability Act* and are initiated by the Minister of Forests, Lands, Natural Resource Operations and Rural Development (or by request) (s 64)
  - They are meant to assist in preventing or addressing:
  - Conflicts between water users.
  - Risks to water quality.
  - Risks to aquatic ecosystem health.
  - Restoration measures in relation to a damaged aquatic ecosystem (s 65).
- The terms of reference will shape the process and scope of a WSP, and how consultation, planning, and engagement will occur. It must describe how the WSP will be developed, in particular the organizational structure that will support its development and the committed resources—both financial and human—needed for its development. The terms of reference must set out processes for public, stakeholder, and government consultation and communication (s 68).
- The mandatory content of a WSP includes: reporting on the process, notification given during the process, and any recommendations made and responsibilities identified. It must quantify the costs of implementation and possible sources for covering these costs.
- A WSP must describe the plan area, issues considered by the plan, and the communication and consultation that occurred as part of the WSP process (s 73).
- A WSP may also include:
  - Processes for dispute resolution between water users.
  - A description of the relationship of the WSP to other provincial plans.
  - A recommended timeline for review of the plan (s 73).
- If a WSP recommends significant changes to licences, it must include consent provisions and a plan for compensation. If no consent is achieved, the WSP must identify why such impacts are in the public interest and sources of funding to compensate for changes to licences (s 74).
- Two options exist for the Minister to accept a WSP:
  1. If the proposed WSP **does not** contain recommendations that a regulation or order be made, the Minister may accept all or part of the proposed plan. In this scenario, the WSP will not be legally binding and enforceable, thus creating a voluntary plan that can set future direction and priorities.
  2. If the proposed WSP **does** contain recommendations that a regulation or order be made, the Minister may forward the proposed WSP to the Provincial Cabinet. Cabinet may accept all or part of the proposed WSP and adopt parts by regulation. Those parts of the WSP that Cabinet adopts into regulation will have the force of the law (s 75; also see Appendix C and ss 76-84 for a description of the effect of these regulations).

3 PARALLEL GOVERNANCE: FIRST NATIONS AND CANADIAN GOVERNMENTS[11]

WSPs are not government-to-government agreements. They are a tool under provincial state law that can have significant impacts on the way water is managed and governed locally to resolve persistent or emerging water issues. Therefore, it is important that affected Indigenous nations have a government-to-government relationship with the Province of B.C. that reflects a parallel governance and reconciliation process that either enables the effective development of WSPs as expressions of shared authority or operates alongside a WSP and safeguards Indigenous laws and rights.

WSPs cannot adequately account for Indigenous law and aboriginal rights as WSPs are embedded within provincial state law. Although it is a state process, it can be used to generate momentum—and create institutional and legal space—for parallel governance, and create opportunities for cooperation, reconciliation, and operation of legal systems to build trust, new institutions, and effective outcomes.

Any WSP process and ongoing adaptive implementation must be consistent with Indigenous laws as they re-emerge.[12] Many Indigenous communities are undertaking projects to restate their Indigenous laws, and the results of those processes will provide critical foundations and context for any WSP and its ongoing adaptation. The WSP process should be sensitive to the need for the expression of Indigenous law in a particular area, and be designed to support and enhance the re-emergence of these legal orders. The intent is to allow sufficient opportunity and space to interweave the authorities and principles of Indigenous laws into a sophisticated and comprehensive management and governance regime, thus helping fix water governance and management problems in a lasting and robust way.

A WSP can recognize aboriginal rights and title by explicitly incorporating elements of those rights into the WSP. For example, a WSP could allocate a certain amount of water for specific Indigenous uses through a licence or reserve, or establish a watershed-specific environmental flow regime that ensures adequate flows for fish and wetlands that support important plants and healthy riparian areas.

Finally, WSPs can also act as part of the framework and approach to achieve free, prior and informed consent. The governance and ongoing adaptation processes established in a WSP create venues within which relationships between the provincial government and Indigenous governments can be strengthened. They also create opportunities to address new water issues with the intention to return

While Water Sustainability Plans offer many possibilities that can complement and support the framework for aboriginal rights and Indigenous laws, they are only a step towards reconciliation and the larger goal of Indigenous self-determination.

to, revisit, and continuously confirm consent as an ongoing process. A key part of WSP implementation will ultimately be in directing how land and resource decisions can be made across a watershed; this direction needs to be rooted in a process that is acceptable to affected Indigenous communities.

Specific considerations might include:

- In areas that are particularly important to an Indigenous nation, or where aboriginal rights to fish are in jeopardy because of low flows, the WSP can require specific types of shared decision-making or enhanced consultation with Indigenous communities before the provincial government grants new licences.
- A WSP can set clear and specific ecological thresholds for when the provincial government will make an order restricting the diversion of water under a licence due to critical flow protection.
- Where a WSP contemplates reducing or amending some water licences for which compensation is owed, pursuant to aboriginal rights it may be the responsibility of the provincial government to compensate the water licence holders.
- If a WSP creates a framework that reflects free, prior and informed consent, the implementation of the WSP through regulation must express the understanding of how decisions will occur across the land and water.

Water Sustainability Plans are a useful tool for management and decisions but are not substitutes for government-to-government agreements, as they are embedded in state law and authority and thus cannot adequately account for Indigenous law and aboriginal rights. Any Water Sustainability Plan process and ongoing adaptive implementation must be consistent with Indigenous laws as they re-emerge. A Water Sustainability Plan can recognize aboriginal rights and title by explicitly incorporating elements of those rights into the plan, and act as part of the framework for free, prior and informed consent.

4 FUNDAMENTAL PROCESS AND TECHNICAL ELEMENTS OF WATER SUSTAINABILITY PLANS

In addition to the necessity of parallel governance with Indigenous communities, there are several fundamental technical elements that WSPs require to achieve effective and resilient watershed governance. The most important starting point for the development of any WSP is to take an integrated and watershed-based perspective. In addition, each WSP must address—and effectively incorporate—a variety of legal and other management tools in a holistic framework, including: data inputs, water objectives, linking water and land use planning, environmental flows, drought response, water reserves, decision-making, and ongoing adaptive management.

4.1 WATERSHED VISION

The primary perspective of a WSP must be from a whole-of-watershed context, as all land and water is connected in an integrated system within that ecological unit. A long-term vision for a watershed establishes the desired socio-ecological conditions that can then be expressed as key objectives, such as thresholds for environmental flows, riparian protection, or water quality. A clear long-term vision will influence what types of land use are considered appropriate from a water-centric perspective, ensure sufficient riparian and wetland protections, necessitate monitoring commitments, and envision special "area-based regulations." Area-based regulations might include sensitive stream designations, water reserves, or groundwater licensing for domestic users or special conditions to limit certain types of intensive users in sensitive areas or to ensure water availability to support salmon or other priority species.

Water sustainability plans can define several other approaches enabled under the *Water Sustainability Act*. For example, WSPs can establish watershed-specific environmental flows or water objectives. These other tools will likely be part of an overall watershed vision that does not rely on a staged approach to addressing water conflicts. In short, establishing water objectives or environmental flows are not preconditions to committing to a WSP. Water sustainability planning is comprehensive and will rely on the use of many different tools without limiting action to incremental steps.

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An important part of this watershed vision is reflecting who will make decisions and the kinds of processes through which those decisions will be made. Localized forms of decision-making will involve specific consideration and input from Indigenous nations, as well as collaborative decision-making where governments and organizations work together to achieve watershed goals.

4.2 ESSENTIAL COMPONENTS

The essential technical components of a WSP include generating critical baseline data, linking water and land use planning, establishing an environmental flow regime (including critical or minimum flow thresholds), changing priorities in water licensing, creating sophisticated region-specific phased drought response, contemplating water reserves for different future uses, and stating how the WSP will affect decision-making in other resource sectors or areas of lands and environment.

Data Inputs

During the development of a WSP, the "responsible person" is able to collect data from current water users (s 117). Establishing a baseline of actual and licensed water use, land uses, and hydrological function will facilitate the assessment of cumulative impacts in a watershed. To determine the trigger for a declaration of a water shortage, the WSP can establish policies for how to collect the necessary data to establish critical environmental flow thresholds.

Water Objectives

Under the *Water Sustainability Act* the Minister may create place-specific water objectives by regulation. The WSP process can identify the objectives needed in the watershed—including thresholds or indicators—and make specific recommendations on performance and outcome-based legal objectives to address identified concerns.

Hydrological and Land Use Planning

WSPs are the only opportunity to connect—legally and in operation and management—the interaction between land, water, and environmental flows. While the primary impetus for a WSP is healthy and resilient hydrological systems, WSPs can address the water-based impacts of decisions about private and public land. They can have a direct impact on land use or require that proposed changes to a landscape take into account many considerations, such as land cover, watershed porosity, water quality, flow timing, and quantity through tools, such as new zoning, designation of protected areas, protection of aquifer recharge zones, and strengthening riparian corridors.[13] Other planning tools related to forestry or agriculture can also be deployed as part of the overall planning process associated with a WSP to ensure better ecological function and locally sustainable outcomes. A WSP can recommend that the provincial government mandate that all local government and relevant provincial decisions abide by the WSP, including, for example, having net zero impact on hydrology.

Environmental Flows

Environmental flows are a key aspect of aboriginal rights and ecological health, as they are the necessary ecosystem condition upon which healthy water bodies rely. Reflecting legal tools in other areas of the *Water Sustainability Act*, a WSP can clearly establish thresholds for minimum environmental flow levels, for critical environmental flow protection orders, and for fish population protection orders (ss 86-88). Once a critical environmental flow threshold is established, if the water level in the stream drops below the threshold it can trigger the Minister declaring a water shortage for that stream or area or the Province of B.C. to restrict water use by select users to protect fish populations under threat. For example, to maintain flows in the Koksilah River on the east coast of Vancouver Island, the provincial government issued a Fish Protection Order to temporarily suspend use of surface and groundwater for industrial purposes and irrigation of forage crops from August 17 through September 30, 2019.[14] A declaration of a water shortage or determination that fish populations are threatened will force users to reduce the amount of water they take from the stream and hydrologically connected area, as set out in greater detail in the WSP. This reduction in water use will assist in the maintenance of minimum environmental flows and help build

long-term watershed resilience during the inevitable periods of drought and stress that are increasingly common across the province.

Establishing watershed-specific environmental flow thresholds in a WSP can also reflect the water flows expected by First Nations necessary to uphold their aboriginal rights. For example, an Indigenous community can make a declaration of environmental flows and put the Province of B.C. on notice that at the flow level specified in the WSP they expect the Minister to issue fish population protection and critical flow orders.

Licensing

The *Water Sustainability Act* enables two explicit ways to change existing water licences. First, after 2046 (30 years from the date the Act came into force) the Province of B.C. may review and amend licences that were in place at the time the Act came into effect (s 23). Second, a WSP can specifically recommend changes to licences, and the provincial government may implement those recommendations by regulation (s 79). In this way, a WSP can set out the long-term vision for shifting priorities for water use in a given region– from what it was historically (and what the existing licences reflect and entrench), to where it needs to get to over time with licences reflecting the needed adaptation to address changing climate and social priorities.

If a WSP recommends significant changes to a licence or drilling authorization, whether or not the licence holders agree, the WSP must set out how compensation will be made to the licensees (s 74). The *Water Sustainability Act* does not define "compensation" and uses the terms "pay" and "compensatory measures" distinctly, which means that compensation does not have to be monetary payment. This allows wide latitude for WSPs to set up innovative compensation regimes. For example, compensation for reduction in a water licence under specific circumstances may mean access to a defined percentage of stored water from a new or existing facility in key periods of regular shortage and curtailment. Such an approach would create a de facto priority. Other creative options might include compensation from a watershed fund generated by water licence holders as a surcharge on their water rents for agreeing not to divert water, for example for a third cut of hay, when low flow conditions hit a specific threshold.

Drought Response

The Province of B.C. currently implements a general regime of progressive measures for water use in times of drought, which is composed of:[15]

- Preparedness during normal or sufficient water conditions.
- Two stages of increased communications with water users that emphasizes stewardship and voluntary conservation, and increasing efforts on restricting unauthorized use.
- A fourth stage that includes the above activities augmented by potential regulatory action, including:
    - Legal orders to reduce flows, including critical flow protection or fish protection orders, and emergency responses.
    - Potentially, making a "FITFIR call" (first in time, first in right), which relies on the priority system established under the Water Sustainability Act that allows older water licence holders to continue to divert water, while more junior licensees cease diverting water.

This progressive approach requires drought conditions and severe low flow conditions before the Province of B.C. will consider the current legal dispute resolution approach—junior licensees stopping water use under FITFIR—under the *Water Sustainability Act*.

Water Sustainability Plans can set out a more staged, nuanced, and watershed-specific approach to drought management—one that might avoid the awkward approach of cutting off junior users entirely. The earlier stages could see significant attention to voluntary water use

reduction concentrated in urban areas where there is considerable room to cut back on non-essential uses, such as for outdoor watering of ornamental plants, including lawns. As dry conditions intensify, in addition to voluntary cutbacks there is potential for a localized water trust or watershed entity to stage cutbacks based on prioritized water uses (both types of use and specific licences). For example, one approach might include localized managed temporary water trading and reduction with a compensation system where each licensee within a WSP might pay a surcharge on their annual rent that is held in trust and used to pay out licensees who agreed to forgo water use in times of Level 3 or 4 drought. Under a WSP the stakeholders can agree how different licensees will cut back on water use when a specific flow level is reached. The WSP may also provide a plan for water storage capacity to help avoid the worst of the low flow situations. Under this type of agreement, there could also be specific allocations of water set aside for Indigenous use and to safeguard aboriginal rights.

Reserves

The *Water Sustainability Act* permits the designation of water reserves under a WSP (s 39) for future allocation or to reserve water for a particular purpose. A reservation sets aside unrecorded (unlicensed) water but is not a right or an entitlement. Instead, it holds water in reserve for future uses, such as those agreed to pursuant to treaty processes or demand for municipal water supply, power production, or environmental or fish protection. Reserves can set priorities for water use under different conditions and direct future allocation decisions by prohibiting the diversion of that water for other purposes.

WSPs can also enable, specifically, the dedication of agricultural water pursuant to a regulation under section 82 rather than as a true "reserve." Recognition of agricultural water can help realize a watershed vision for a vibrant and healthy agriculture sector and promote local food security.

Decision-Making

A WSP can clearly set out how it is intended to affect other decision-makers such as local governments and provincial staff making decisions about forestry, mining, oil and gas, and other land uses. A WSP can also identify a watershed organization or entity that has specific roles in data generation, monitoring, or making decisions delegated by the Province of B.C. [s. 126(d)], which creates a new opportunity for innovation in governance and institutional forms that can take a whole-of-watershed perspective.

4.3 ADAPTIVE MANAGEMENT

Monitoring ecological conditions and water use are crucial to adaptive management. WSPs can require water licence holders to monitor and report their water use, and contain metrics of ecological health that are reviewed and used to update the WSP on a regular basis, such as every five years. A five-year cycle, for example, allows for the generation of data, WSP policies to have an impact, the reporting of results, and adjustments to the WSP, creating an adaptation cycle related to the WSP that allows ongoing refinement of key thresholds or policies in response to impacts and new information.

WSPs can identify key decision points and contemplate roles for a local watershed entity to generate technical information and reports. A local watershed entity may thus have a direct role in adaptive management, such as making delegated decisions, compiling data, creating reports, or providing formal advice to decision-makers.

It is important to note that these fundamental elements of WSPs apply equally to groundwater as surface water, including in relations to protecting environmental

flows. Similar to environmental flows, regular monitoring of groundwater levels is a potentially important function for a local watershed entity or WSP partners, such as Indigenous nations. A WSP can create specific and locally appropriate thresholds for groundwater levels and quality. A WSP could dictate what actions licence holders must take should a groundwater threshold be triggered, just like environmental flows.

The WSP can contain important detail, such as describing monitoring techniques that determine water thresholds and environmental flows in an area. A WSP has a key role in driving towards appropriate metrics for improving ecological conditions, thus ensuring decision-makers have clarity and can be held to account. Specific methodologies and metrics, such as environmental flows, can then have legal force and affect decisions across the land- and waterscape in a watershed.

5 LEGAL IMPACT

As a WSP could be an important watershed-related component of government-to-government relationships between Indigenous nations and the Province of B.C., legal execution of a WSP requires both Indigenous nation and provincial adoption and implementation. Indigenous nations may agree to manage reserve or treaty lands or undertake habitat restoration activities that would require laws or resolutions by the First Nation.

To ensure clarity and effectiveness, each Water Sustainability Plan can identify those parts of the plan that require the provincial government to enact regulations to bring it into legal effect.

Much of the legal impact of a WSP is dependent on the extent to which the provincial government implements WSP actions and recommendations by regulation. The Province of B.C. has extensive authority and discretion under sections 76 to 80 to apply the WSP to land and water decision-makers and amend existing water licences. Regulations that implement a WSP can tell decision-makers in most areas of the provincial government what to do (although as general practice a WSP will not override public health and safety),[16] and can restrict and direct decisions about land, water, and natural resources. This is potentially extensive authority to implement WSPs that allows for creativity and innovation.

Examples of the possible legal impacts of a WSP include to:

- Require all staff within any Ministry issuing permits and licences to consider the WSP when making decisions.
- Restrict staff making decisions about named activities, such as mining leases or permits or forestry licences, from issuing those instruments.
- Prohibit provincial staff from issuing additional water or forest licences or permits in certain areas, or restrict how those licences may be exercised.
- Restrict or prohibit land being used for specific activities or the use of natural resources, such as for mining, waste disposal, urban development, or sewage treatment.
- Change the terms of water licences in a particular waterbody to prohibit diversion of water if the flow is below or temperature is above stated thresholds.
- Change the terms of water licences to decrease overall the amount of water diverted from a watercourse or aquifer.
- Require all licensees in an area or diverting water for a specified purpose to convert to water conservation technologies or specified water use practices.
- Make the WSP take precedence over other provincial laws and plans.[17]

Significant potential and opportunity exists for Indigenous communities to be directly involved in the implementation of WSPs. For example, if Indigenous nations want to ensure adequate water for fish, a WSP could:

- Establish environmental flow standards that adequately protect fish and recommend that the Province of B.C. adopt that standard in law.
- Establish environmental flow methodologies, including for the review and adaptation of the methods in an adaptive management and governance framework.
- Identify critical environmental flow thresholds at a sufficient level for fish in their own watercourses, and establish monitoring commitments for these watercourses.
- Put the Province of B.C. on notice that when water flows fall to the critical environmental flow thresholds the provincial government will take action to protect flows as part of protecting aboriginal rights and the environment.
- Request that the Comptroller of Water Rights (or relevant statutory decision-maker) make a critical environmental flow protection order when water flows reach Indigenous nation-defined critical environmental flow thresholds.

In addition, sections 124 and 126 allow the Provincial Cabinet to delegate, by regulation, specific powers and duties to another person or entity.[18]

One final note about legal impact: The only instance where compensation is owed to a water licence holder under the Water Sustainability Act is where a WSP recommends significant changes, such as amendment or cancellation, to a licence or drilling authorization, or where the Province of B.C. enacts a regulation identifying compensation circumstances (s 121). Compensation is not owed for any loss or damage for any impact on licences or permissions due to the implementation of a WSP. This no-compensation rule also applies to permissions given under other provincial laws dealing with land and resources.

While WSPs are designed to be comprehensive, the *Water Sustainability Act*'s provisions permit flexible, specific, and integrated law-making authority for WSP implementation. In law, WSP commitments and recommendations can extend into the watershed landscape, establish standards, and shape how decisions are made. To illustrate what such a comprehensive approach could involve, the examples below begin to explore the potential of WSPs in three different watershed types.

6 ILLUSTRATIVE EXAMPLES

The hypothetical examples in this section outline potential water management considerations that could be explored in specific scenarios that fit with different watershed circumstances found across the province. These examples illustrate our view and are intended to demonstrate the range and creativity of what is possible when developing WSPs. They are not exhaustive, as each watershed community will have its own priorities and approaches that it will view as leading to viable solutions that match local conditions.

A FEW WORDS ON GOVERNANCE

There is a critical interface between governance and how parties develop and implement WSPs. These examples specifically focus on a range of management interventions but do not provide detail about the various governance arrangements or the process steps involved in developing and implementing WSPs. The range of possibilities is enormous and will be driven by local context and priorities.[19]

As we have discussed, however, it is critically important that WSPs are developed in the context of government-to-government relationships and agreements between Indigenous nations and the provincial government. WSPs can be one approach through which government-to-government arrangements are expressed, and offer a useful vehicle to advance reconciliation and create space in the state legal regime for the expression of Indigenous water laws and authority. It is our view that in addition to creating a viable governance framework to initiate and develop a WSP,[20] an ongoing co-governance structure is likely needed. Shared governance will take many forms and will play a critical role not only during the planning and implementation phases, but also by providing ongoing oversight, including monitoring progress as conditions change and updates to the WSP are required.

SCALE, SCOPE, AND SIZE

In our scenarios we emphasize many of the regulatory or more formal legal tools and how they could be deployed, but any WSP could use many innovative voluntary approaches to help achieve water sustainability and a more integrated approach to watershed management. We also recognize that a range of possibilities exists when it comes to the scale, scope, and size of a WSP. Some WSPs might be localized within a sub-watershed area while others might cover a larger basin. Either possibility shows that WSPs are intended to be scalable both in geographic area and in the number of issues they address. They are very flexible tools and our examples outline only some of the likely considerations that would arise under different watershed conditions.

>> SCENARIO 1

URBAN WITH SEASONAL FLOOD AND DROUGHT CONDITIONS

LOCAL CONDITIONS: Heavy urban homogenization; regular flood, scarcity, and drought cycle; intensive forestry and development pressure altering impermeability and paving over the watershed; several large water users operate in the area.

Key considerations and possible Water Sustainability Plan features:

- **Requiring "state of the watershed"** reporting with enhanced monitoring and reporting of all users (including local governments).
- **Establishing environmental flow** water objectives and critical flow thresholds.
- **Limiting further development** in sensitive flood plain areas.
- **Establishing mandatory** water conservation audits for all water suppliers and mandatory water conservation requirements from May to October (e.g. can only water outdoors with automatic sprinkler twice per week).
- **Requiring a 50 per cent** decrease in urban water diversion before voluntary conservation from other licence holders.
- **Identifying options** for long-term urban-side storage that address flood and drought concerns.
- **Creating subdivision bylaws** that establish an explicit rainwater management standard of no net increase in post-development runoff (meaning rainwater must be handled on site or in the subdivision).
- **Identifying** aquifer recharge zones, tracking the increase in permeability over time starting in priority areas, and establishing total impermeability standards.
- **Creating** a stormwater utility that charges landowners for per cent of impermeable surface cover.
- **Expanding** the concept of multi-functioning infrastructure where flood control is extended to select public and private properties, with the potential for payment for that temporary use of land.
- **Agreeing** to work with local government to seek funding to address flood infrastructure.
- **Establishing** forestry and urban development approval processes that require extensive (precautionary) riparian protection—standards for the retention of land cover at any one time that shapes how and where harvesting can occur—and extending those standards to private managed forests as well as provincial land.
- **Identifying and protecting** source drinking water areas.
- **Establishing** water quality objectives.

>> SCENARIO 2

URBAN/RURAL MULTI-USE LANDSCAPE WITH SEASONAL DROUGHT CONDITIONS

LOCAL CONDITIONS: Drier climate with regular water scarcity based on environmental conditions; large number of small users on multiple water sources; largely rural with a few larger users such as local governments; land use activities creating water quality concerns.

Key considerations and possible Water Sustainability Plan features:

- **Requiring** "state of the watershed" reporting with enhanced monitoring and reporting of all large users (including local governments).
- **Establishing** environmental flow, temperature and water quality objectives, and critical flow thresholds.
- **Agreeing to work with** local government to seek funding to improve green infrastructure, such as drought-resistant planting and improved riparian and flood corridors.
- **Developing** a detailed drought response plan that includes incentives for upgrading water conservation technologies. A localized drought plan could include more specific voluntary actions to be taken during early stages of drought and what ecological conditions (including critical flows) trigger clear regulatory responses.
- **Making an order** or enacting a regulation to close the watershed to new water licences.
- **Initiating** a comprehensive review of historical water licences to reduce allocation and return water to natural systems to enhance ecosystem services.
- **Creating** a local water fund to compensate reduced agriculture and livestock water use during low flow and in water scarce (drought) seasons.
- **Requiring** nutrient management plans (see Agricultural *Environmental Management Code of Practice*[21]) and agricultural and grazing activity best practices.
- **Identifying and protecting** drinking water source areas.
- **Exploring the potential** of multiple small-scale storage facilities.

>> SCENARIO 3

RURAL WITH INTENSE RESOURCE DEVELOPMENT FACING WATER LIMITS

LOCAL CONDITIONS: Low population, highly rural; intense resource development with developing or established single industry; local economy primarily driven by resource development but complemented by a strong Indigenous economy and emerging recreation and tourism; large built infrastructure affecting local water bodies.

Key considerations and possible Water Sustainability Plan features:

- **Establishing** a community-based monitoring trust and requirement for detailed measurement and public reporting of water use by larger users.
- **Performing** a detailed audit of industry water use and infrastructure impacts on fish, recreation, and watershed health.
- **Identifying and mapping** important fish and wildlife habitat to inform riparian and protected spaces strategy and limit resource activities in sensitive areas.
- **Establishing legal objectives** for water quality, quantity, and temperature.
- **Requiring** large users to modernize water conservation technologies and adjust water use accordingly to meet (or beat) best management practices.
- **Updating** infrastructure (reservoir, weir, dam) management to better account for timing for fish, habitat, and downstream users with a local watershed entity.
- **Initiating** comprehensive review of historical water licences to reduce allocation and return water to natural systems to enhance ecosystem services.
- **Creating** water reserves for environmental flows and restored fish habitat, and directing future allocations towards ensuring diversified future economic opportunities, such as agriculture, urban, tourism, recreation, and local business uses.
- **Creating** a local water fund to support compensation for changing licences and initiating comprehensive watershed and fish habitat restoration through water licensing and resource management permit surcharges.
- **Agreeing** to work with local governments to seek funding to improve green infrastructure such as drought-resistant planting and improved riparian and flood corridors.
- **Developing** a detailed drought response plan that includes incentives for upgrading water conservation technologies. A localized drought plan could include more specific voluntary actions to be taken during early stages of drought and what ecological conditions (including critical flows) trigger specific and clear regulatory responses.
- **Requiring** nutrient management plans (as per the *Agricultural Environmental Management Code of Practice*[22]) and agricultural and grazing activity best practices.
- **Identifying** and protect drinking water source areas.

CONCLUSION

The passing of the *Water Sustainability Act* in 2016, coupled with the ongoing re-emergence of Indigenous water laws, provides important governance and legal tools to move towards watershed-based solutions and shift B.C. onto a more sustainable trajectory.

Water Sustainability Plans are an important feature of the new provincial water management regime and offer significant opportunity and space for localized, integrated watershed-based approaches. As a tool, they can create a platform for effective local partnerships and cooperation, thus accelerating the necessary evolution of provincial decision-making about water to local watershed entities.

This Innovation Brief is meant to share emerging ideas about what might be possible pursuant to WSPs and some of the key considerations in their development. We understand that each WSP will differ, as local circumstances, ecosystems, and community priorities vary across the province. We also understand that a lot of creativity, and resources, are still needed to develop and fully implement these tools. Through this brief, our hope is that we are contributing to a conversation about the potential of WSPs. We encourage communities and all levels of government to use this brief as a starting point for engaging in robust local processes to advance more sustainable approaches to water management and governance in watersheds across the province.

APPENDIX A: WATER SUSTAINABILITY PLANS: DETAILED LEGISLATIVE SUMMARY

Part 3, Division 4 of the *Water Sustainability Act* (ss 64-85, reproduced as Appendix C and summarized in Appendix B below) details how a WSP is started, what it may consider, and how it can be implemented. These provisions specifically allow for collaborative watershed planning, governance, and water use.

Water Sustainability Plan Process Establishment

The process for creating a WSP involves the Forest, Lands, Natural Resource Operations and Rural Development Minister, by request of another organization or person, or on their own initiative, designating an area for a WSP if the WSP will assist in preventing or addressing (at s 65):

- Conflicts between water users.
- Risks to water quality.
- Risks to aquatic ecosystem health.
- Restoration measures in relation to a damaged aquatic ecosystem.

Terms of Reference

The content of and what a WSP process may consider is shaped by its terms of reference, which are rules about the WSP scope: what it will include, how a proposed WSP will be developed, and how consultation, planning, and engagement will occur (at s 68). The Minister has the power to create terms of reference that must include the purpose and scope of the proposed WSP, the issues that it will address, and a time limit for completion. The terms of reference must describe how the WSP will be developed, in particular the organization structure that will support its development and the committed resources—both financial and human—needed for its development. Finally, the terms of reference must set out processes for public, stakeholder, and government consultation and communication.

The terms of reference may include considerations relating to water in a stream, groundwater, and surface water runoff not in a stream, and uses of land or resources that affect that water [s 68(2)].

These provisions give the Minister control over the content of the WSP, and the Minister may also limit, by order, the issues or recommendations that a WSP can make (s 67). However, the Minister also has the power to designate another person or group (within or outside of government) as a "responsible person" who can establish the terms of reference for the WSP, although the Minister will still have the final say for approval of the terms of reference [s 66(2)].

If the Minister delegates authority to a "responsible person," that person or organization (just as government itself) can require water users in the plan area to provide information related to their water use and to gather data relating to water use as needed (s 72).

Mandatory & Discretionary Content

Section 73(1) outlines the mandatory content of a WSP, which can be characterized as reporting on the process, notification, recommendations and responsibilities, and costs. The WSP must describe the plan area, issues considered by the plan, and the communication and consultation that occurred as part of the WSP process. It must also describe what affected people were notified, and a summary of their concerns. The WSP must set out recommendations for addressing the issues the planning processes addressed, including why they were made, who is responsible for carrying them out, and the likely outcomes. Finally, the WSP must identify implementation costs and possible sources for covering these costs.

In addition, the WSP may include:

- Processes for dispute resolution between water users.
- A description of the relationship of the WSP to other provincial plans.
- A recommended timeline for review of the plan.

If a WSP recommends significant changes to licences, the WSP must be accompanied by the consent of those licence holders and a plan for compensation. If no consent is included, the WSP must be accompanied by a statement of why such impacts are in the public interest, and a statement of sources of funding to pay compensation for the involuntary significant changes to licences [s 74(2-3)].

Note: Except as required for these WSP-driven changes to licences (or by future regulation), no compensation is generally owed to licence holders and others due to the implementation of WSPs or licence amendment (see s 121 and the discussion on page 11 under Licensing).

Adopting into Law and the Legal Force of a Water Sustainability Plan

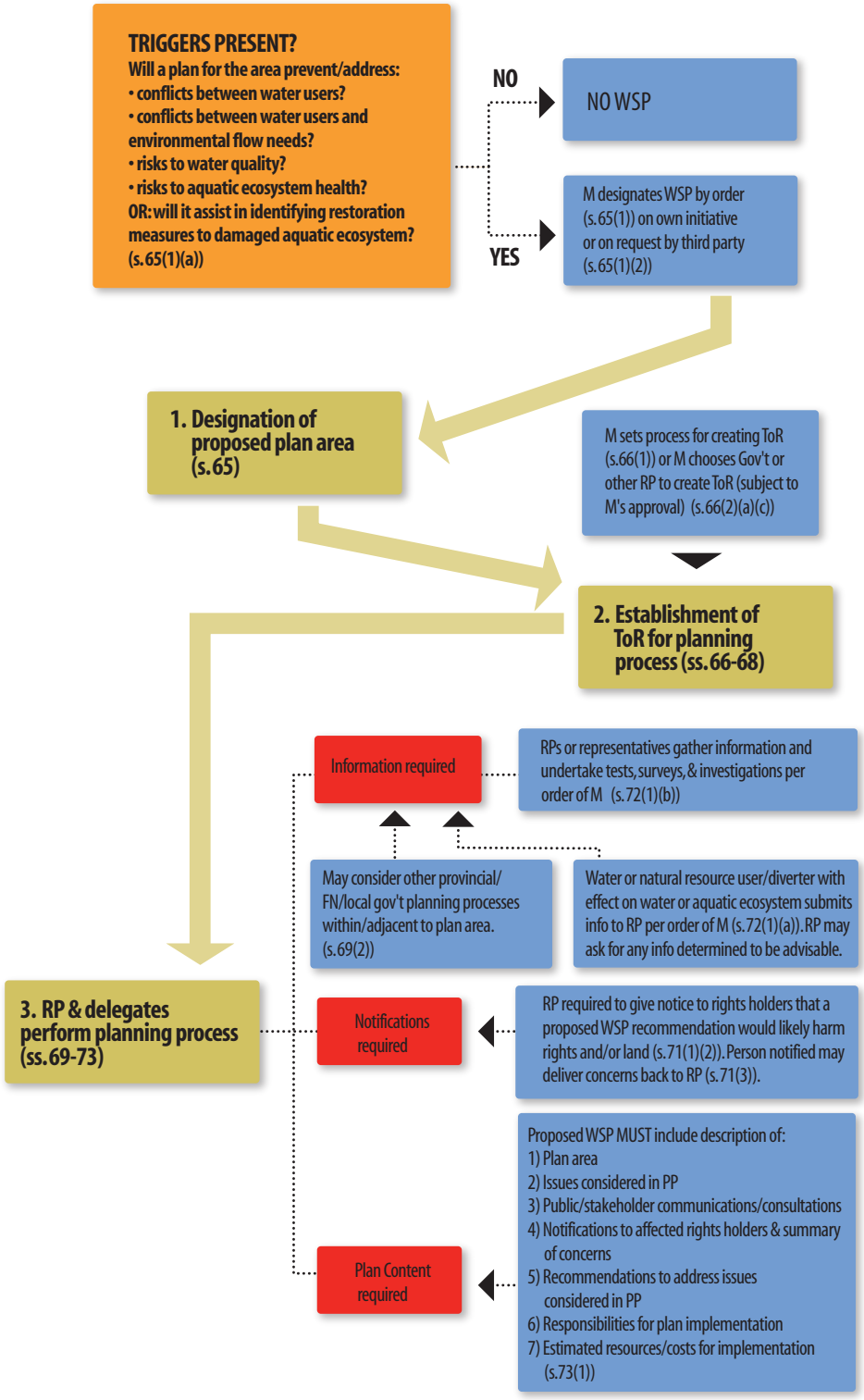
Once a proposed WSP is prepared, the "responsible person" may submit it to the Minister (s 74). The Minister can only accept a proposed WSP if it is complete, complies with the *Water Sustainability Act* and its regulations, and follows the terms of reference of the WSP (s 74). There are two options for the Minister to accept a WSP. If the proposed WSP does not recommend that a regulation or order be made regarding the plan, the Minister may accept all or part of the proposed WSP. This means the WSP will not be legally binding and enforceable, though parties and stakeholders can agree to abide by it and use it to direct future priorities and programs—as is often done with the various voluntary watershed-based plans across the province.[23] On the other hand, if the proposed WSP contains one or more recommendations that a regulation or order be made in relation to the plan, the Minister may forward the proposed WSP to the Provincial Cabinet. Cabinet, by regulation, may accept all or part of the proposed WSP and adopt parts by regulation. The aspects of the WSP that are adopted into regulation will have the force of the law (s 75).

If the Minister accepts a proposed WSP, the provincial government may give legal force to all or part of a WSP (s 74). If the elements of the WSP are made into regulations the regulations have the power to:

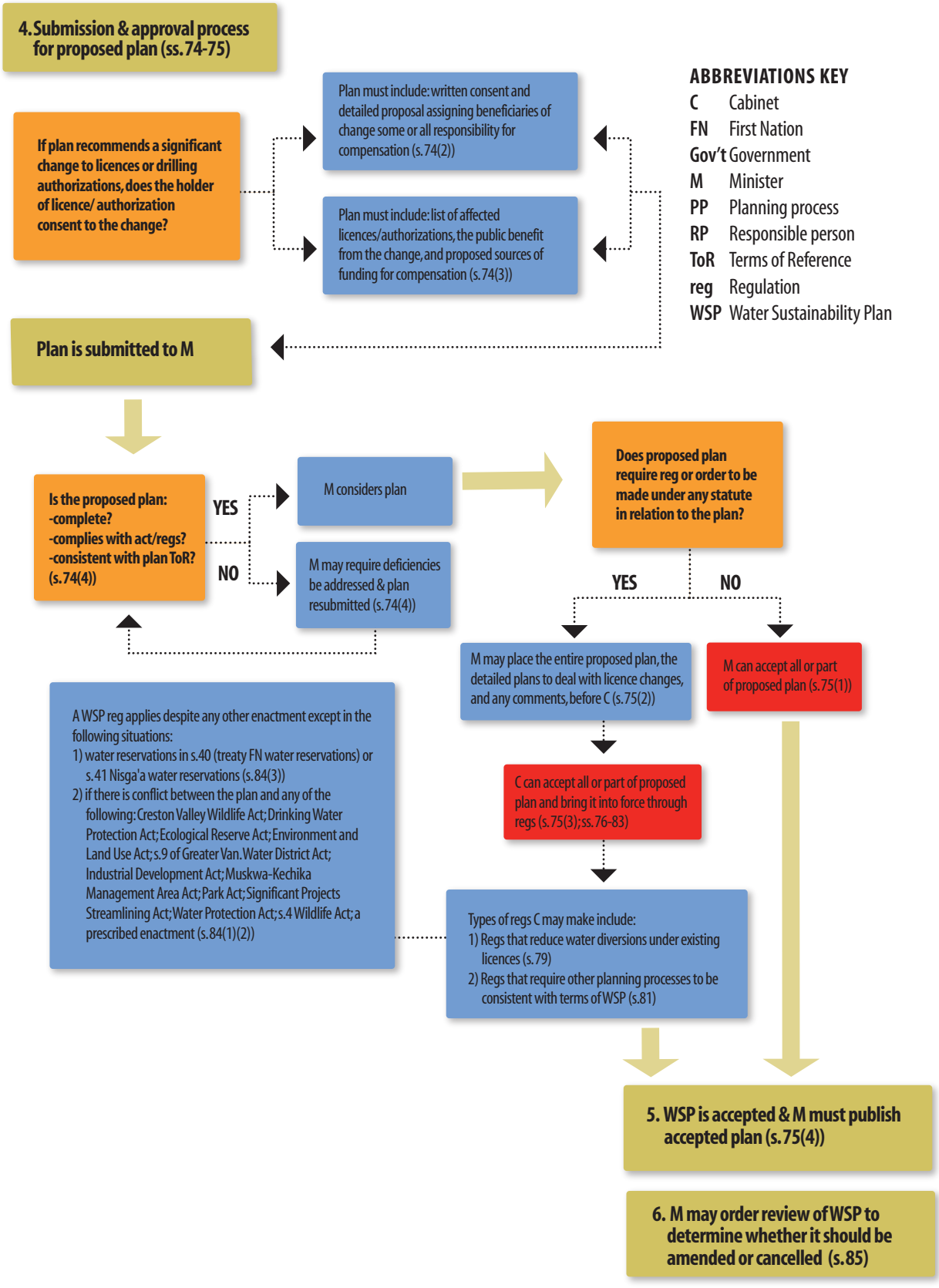
- Require a public officer to consider the WSP when making decisions (s 76).
- Require or restrict a public officer from issuing specified land or resource instruments such as permits and other approvals (s 76).
- Require, restrict, or prohibit a public officer from exercising a specified power (s 76).
- Restrict or prohibit a certain use of land or natural resources, or an activity (s 78).
- Change the terms and conditions of water licences, regardless of previous rights, to reduce the maximum quantity of water that may be diverted under the licences from a specified stream or aquifer (s 78).
- Cancel licences (s 79).
- Change the terms and conditions of water licences to reduce the maximum amount of water they can take, or change when they can take and use of water (s 80).
- Alter, install, repair, replace, or remove works (s 80).
- Require the use of more efficient water use practices (s 80).
- Establish that the WSP takes precedence over other provincial plans and enactments (ss 81 and 84).[24]
- Dedicate a certain amount of water for agriculture (s 82).
- Restrict or prohibit activities relating to a well or groundwater (s 83).

In summary, the provincial government has significant authority to implement a WSP, which includes limiting activities across the broader watershed landscape and altering existing water licences.

APPENDIX B: WATER SUSTAINABILITY PLANNING FLOWCHART



Source: Brandes, O.M., Carr-Wilson, S., Curran, D., & Simms, R. (2015). *Awash with opportunity: Ensuring the sustainability of British Columbia's new water law*. https://poliswaterproject.org/polis-research-publication/awash-opportunity-ensuring-sustainability-british-columbias-new-water-law/


4. Submission & approval process for proposed plan (ss.74-75)
If plan recommends a significant change to licences or drilling authorizations, does the holder of licence/ authorization consent to the change?
Plan must include: written consent and detailed proposal assigning beneficiaries of change some or all responsibility for compensation (s.74(2))
Plan must include: list of affected licences/authorizations, the public benefit from the change, and proposed sources of funding for compensation (s.74(3))
ABBREVIATIONS KEY
C Cabinet
FN First Nation
Gov't Government
M Minister
PP Planning process
RP Responsible person
ToR Terms of Reference
reg Regulation
WSP Water Sustainability Plan
Plan is submitted to M
Is the proposed plan:
-complete?
-complies with act/regs?
-consistent with plan ToR?
(s.74(4))
YES
NO
M considers plan
M may require deficiencies be addressed & plan resubmitted (s.74(4))
Does proposed plan require reg or order to be made under any statute in relation to the plan?
YES
NO
M may place the entire proposed plan, the detailed plans to deal with licence changes, and any comments, before C (s.75(2))
M can accept all or part of proposed plan (s.75(1))
C can accept all or part of proposed plan and bring it into force through regs (s.75(3); ss.76-83)
A WSP reg applies despite any other enactment except in the following situations:
1) water reservations in s.40 (treaty FN water reservations) or s.41 Nisga'a water reservations (s.84(3))
2) if there is conflict between the plan and any of the following: Creston Valley Wildlife Act; Drinking Water Protection Act; Ecological Reserve Act; Environment and Land Use Act; s.9 of Greater Van. Water District Act; Industrial Development Act; Muskwa-Kechika Management Area Act; Park Act; Significant Projects Streamlining Act; Water Protection Act; s.4 Wildlife Act; a prescribed enactment (s.84(1)(2))
Types of regs C may make include:
1) Regs that reduce water diversions under existing licences (s.79)
2) Regs that require other planning processes to be consistent with terms of WSP (s.81)
5. WSP is accepted & M must publish accepted plan (s.75(4))
6. M may order review of WSP to determine whether it should be amended or cancelled (s.85)

APPENDIX C: WATER SUSTAINABILITY ACT LEGISLATIVE PROVISIONS FOR WATER SUSTAINABILITY PLANS

Division 4 — Water Sustainability Plans

Definitions

64 For the purposes of this Division:

"local authority" means

(a)the council of a municipality,

(b)the board of a regional district,

(c)a local trust committee,

(d)an improvement district or greater board, or

(e)a body prescribed by regulation as a local authority for the purposes of a particular Water Sustainability Plan;

"plan regulation" means a regulation under

(a)section 76 *[plan regulations — effect on statutory decisions]*,

(b)section 77 *[plan regulations — effect on approval by approving officer]*,

(c)section 78 *[plan regulations — restriction or prohibition on use of land or resources]*,

(d)section 79 *[plan regulations — reduction of water rights]*,

(e)section 80 *[plan regulations — directions regarding works or operations]*,

(f)section 81 *[plan regulations — relationship with other planning processes]*,

(g)section 82 *[plan regulations — dedicated agricultural water]*, and

(h)section 83 *[plan regulations — restrictions on groundwater activities]*;

"responsible person", in respect of a proposed Water Sustainability Plan, means the person designated by the minister under section 66 (2) (a) *[order establishing plan development process]* as the person responsible for preparing the proposed plan;

"significant change" means a change in relation to a licence or a drilling authorization, whether the change is voluntary or involuntary, that is recommended by a proposed Water Sustainability Plan and that, if implemented, would,

(a)in the case of a licence,

(i) significantly reduce the quantity of water that the licensee is authorized to divert under the licence,

(ii) result in significantly different works than the works authorized under the licence,

(iii) restrict the water use purposes for which water may be used under the licence, or

(iv) cancel the licence, and

(b)in the case of a drilling authorization, cancel the drilling authorization.

Order designating area for planning process

65 (1) The minister, on request or on the minister's own initiative, by order, may designate an area for the purpose of the development of a Water Sustainability Plan

(a)if the minister considers that a plan for the area will assist in

(i) preventing or addressing

(A)conflicts between water users,

(B)conflicts between the needs of water users and environmental flow needs,

(C)risks to water quality, or

(D)risks to aquatic ecosystem health, or

(ii) identifying restoration measures in relation to a damaged aquatic ecosystem, or

(b)in other prescribed circumstances.

(2) A request to the minister referred to in subsection (1) must

(a)be made in the prescribed manner, if any, and

(b)include the prescribed information, if any.

(3) An order under subsection (1) must include the reasons for which the order is made.

(4) Section 124 (4) (d) *[general regulation-making powers]* applies to an area designation under subsection (1) of this section.

Order establishing plan development process

66 (1) The minister, by order, may establish the process by which a proposed Water Sustainability Plan for a plan area is to be developed.

(2) Without limiting subsection (1), an order under that subsection may do one or more of the following:

(a)designate the government or another person as the person responsible for preparing the proposed plan;

(b)if the government is the responsible person,

(i) establish the terms of reference for the plan, and

(ii) establish one or more technical advisory committees in relation to development of the plan;

(c)if a person other than the government is the responsible person,

(i) authorize the responsible person to prepare the terms of reference for the plan, subject to approval by the minister, and

(ii) require the responsible person to establish one or more technical advisory committees in relation to development of the plan;

(d)subject to subsection (3), do one or more of the following:

(i) provide whether remuneration will be paid to members or classes of members of the technical advisory committee and set the remuneration to be paid to a member or a class of member of a technical advisory committee;

(ii) require the responsible person or another person specified in the order to pay the remuneration referred to in subparagraph (i);

(iii) require the responsible person or another person specified in the order to reimburse a member of a technical advisory committee for reasonable travelling and out-of-pocket expenses necessarily incurred by the member in relation to the person's participation in the technical advisory committee.

(3) If an order under subsection (2) (d) requires the government to pay remuneration to or reimburse the expenses of a member of a technical advisory committee,

(a)no payment, other than as reimbursement under subsection (2) (d) (iii), may be made to a public service employee, and

(b)any payment or reimbursement under the order must be in accordance with the directives of Treasury Board.

Order limiting planning process or recommendations

67 (1) The minister, by order, may limit

(a)the issues to be considered in a Water Sustainability Plan development process, or

(b)the recommendations that may be made in the plan for measures to address the issues considered.

(2) Without limiting subsection (1), an order under that subsection may provide that a proposed Water Sustainability Plan may not contain a recommendation that

(a)a specified regulation or order under this or another specified Act be made, or

(b)any regulations or orders under this or another Act be made.

Content of plan terms of reference

68 (1) The terms of reference for a proposed Water Sustainability Plan must include the following:

(a)the purpose of the proposed plan;

(b)the scope of the proposed plan;

(c)the issues to be addressed in the proposed plan;

(d)a description of the organizational structure supporting the development of the proposed plan, which structure must meet any prescribed minimum requirements;

(e)an estimate of the financial, human and other resources required for the plan development process and a description of the funding commitments and committed sources of other resources identified in the estimate;

(f)a process for public and stakeholder communications and consultations, which process must meet any prescribed minimum requirements;

(g)if the responsible person is a person other than the government, a process for consultations with the government throughout the plan development process;

(h)a time limit for completing the proposed plan;

(i)any other prescribed information.

(2) Without limiting the terms of reference that may be established for a proposed plan, the terms of reference may include

(a)considerations relating to water in a stream, groundwater and surface water runoff not in a stream, and

(b)uses of land or resources that affect the water referred to in paragraph (a).

(3) Subject to subsection (4), the terms of reference established for a proposed plan may be amended during the plan development process,

(a)if the terms of reference were established by the minister under section 66 (2) (b) (i) *[order establishing plan development process]*, by the minister, or

(b)in any other case, by the person who prepared the terms of reference under section 66 (2) (c) (i), subject to the approval of the minister,

and subsections (1) and (2) of this section apply in relation to a proposed amendment.

(4) The minister, by order, may extend the time set out in the terms of reference for completing a proposed plan, whether or not the time previously set has expired.

Other planning processes

69 (1) In this section:

"band" has the same meaning as in the *Indian Act* (Canada);

"first nation government" means

(a)a Nisga'a Government,

(b)the governing body of a treaty first nation, and

(c)the governing body of a band.

(2) In preparing a proposed Water Sustainability Plan, consideration may be given to the results of other Provincial government, local authority and first nation government strategic, operational and land or water use planning processes in relation to land or water within or adjacent to the plan area.

(3) A proposed plan may be prepared in conjunction with the preparation of

(a)a proposed drinking water protection plan under the *Drinking Water Protection Act*, or

(b)a land use or water use plan prepared under a prescribed enactment.

Information to be considered

70 In preparing a proposed Water Sustainability Plan, the responsible person must ensure that consideration is given to any prescribed information or prescribed records.

Notice to affected persons

71 (1) This section applies if the responsible person for a Water Sustainability Plan becomes aware that the plan may contain recommendations that, if implemented, would likely

(a)detrimentally affect the rights of any of the following:

(i) an authorization holder;

(ii) a change approval holder;

(iii) a drilling authorization holder;

(iv) an applicant for an authorization, change approval or drilling authorization;

(v) a riparian owner;

(vi) a person holding a right in relation to the use of land or resources, or

(b)physically affect the land of a land owner.

(2) In the circumstances referred to in subsection (1), the responsible person must, as soon as reasonably possible after the circumstances arise, give notice, in accordance with section 117 *[delivery and publication of documents and information]* or the regulations, to the person whose rights or land would likely be affected that a Water Sustainability Plan is proposed to be prepared, or is being prepared, as applicable, and that the person's rights may be detrimentally affected, or the person's land may be physically affected, as the case may be.

(3) A person who is given notice under subsection (2) may deliver to the responsible person within the period specified in the notice any concerns the person has with the proposed recommendations.

Powers for development of plan

72 (1) For the purposes of developing a proposed Water Sustainability Plan, the minister, by order, may

(a)require a person who diverts or uses water from a stream or aquifer in the plan area, or who engages in a land or resource activity that may affect the sustainability of the quality or quantity of water in a stream or aquifer or an aquatic ecosystem in the plan area, to provide to the responsible person, or a specified representative of the responsible person, the information related to that diversion or use or land or resource activity that the responsible person or representative, as the case may be, considers advisable, and any consents required to verify that information, which information may include but is not limited to

(i) the person's contact information,

(ii) information respecting the person's diversion and use of water in the plan area, and

(iii) information respecting the person's activities that affect the quality or quantity of water in a stream or aquifer or an aquatic ecosystem in the plan area,

(b)authorize the responsible person or representative, as the case may be,

(i) to undertake investigations, tests and surveys that that responsible person or representative considers advisable, including, without limitation, authorizing the person to collect relevant public personal information, and

(ii) to authorize other persons to undertake investigations, tests and surveys, or collect the information, referred to in subparagraph (i),

(c)direct that, for the purposes of this section, section 89 *[right of access to land and premises by authorized persons]* applies to the responsible person or representative, as the case may be, and persons working under the direction of that responsible person or representative,

(d)establish limits or conditions on the authority, under the order, of the responsible person or representative, as the case may be, or a person working under the direction of that responsible person or representative, and

(e)authorize the government to collect from the responsible person or representative personal information collected by the responsible person or representative for the purposes of the Water Sustainability Plan.

(2) The minister may provide a responsible person with relevant government water records.

(3) If the comptroller, a water manager or an engineer is specified as a representative of a responsible person in an order under subsection (1), an order of the comptroller, water manager or engineer, as the case may be, in exercising a discretion under the order under subsection (1) is final and may not be appealed to the appeal board.

Plan content

73 (1) A proposed Water Sustainability Plan must include the following:

(a)a description of the plan area;

(b)a description of the issues considered in the planning process;

(c)a description of the public and stakeholder communications and consultations undertaken in the planning process;

(d)a description of any notifications provided to potentially affected persons as required by section 71 *[notice to affected persons]* and a summary of any concerns received under that section;

(e)the recommendations for measures to address the issues considered in the planning process and the rationale for the recommendations;

(f)a description of the implications of, and who is responsible for, implementing the plan recommendations;

(g)an estimate of the financial, human and other resources required for implementation of the plan and possible sources of the resources identified in the estimate, including funding commitments, if any;

(h)prescribed information.

(2) Without limiting subsection (1) (e), a proposed plan may recommend a process for the resolution of disputes between water users.

(3) A proposed plan may include, but is not limited to,

(a)a description of the relationship of the plan to other provincial plans,

(b)prescribed information, and

(c)a recommended timeline for review of the plan.

Submission of proposed plan to minister

74 (1) After a proposed Water Sustainability Plan has been prepared, the responsible person may submit the proposed plan to the minister.

(2) If a proposed plan submitted to the minister under subsection (1) recommends a significant change in respect of a licence or a drilling authorization and the holder of the licence or drilling authorization has consented to the change, the proposed plan must be accompanied by

(a)a copy of the written consent of the holder of the licence or drilling authorization, and

(b)a detailed proposal assigning to each person or other entity who would benefit from implementation of the recommendation some or all of the responsibility for compensating the licensee or drilling authorization holder, consented to in writing by each such person.

(3) If a proposed plan submitted to the minister under subsection (1) recommends a significant change in respect of a licence or a drilling authorization and the holder of the licence or drilling authorization has not consented to the change, the proposed plan must be accompanied by

(a)a list of the affected licences and drilling authorizations,

(b)a statement of the public benefit from the significant change, and

(c)a statement of any available source of funding to pay compensation or for compensatory measures for the involuntary significant changes.

(4) If the minister considers that a proposed plan submitted under subsection (1)

(a)is incomplete,

(b)does not comply with this Act or the regulations, or

(c)is inconsistent with the terms of reference for the plan,

the minister may require that the deficiencies in the plan be addressed and the plan be resubmitted under subsection (1) before the minister considers the plan.

Acceptance of plan

75 (1) If a proposed Water Sustainability Plan submitted to the minister under section 74 (1) does not contain a recommendation that a regulation or order under this or another Act be made in relation to the plan, the minister may accept all or part of the proposed plan as a Water Sustainability Plan.

(2) If a proposed Water Sustainability Plan submitted to the minister under section 74 (1) contains a recommendation that a regulation or order under this or another Act be made in relation to the plan, the minister may place the following before the Lieutenant Governor in Council:

(a)the proposed plan;

(b)if the proposed plan recommends a significant change in respect of a licence or a drilling authorization, the details of any information provided to the minister in respect of the licence or drilling authorization under section 74 (2) or (3), as applicable;

(c)any comments of the minister in respect of the proposed plan.

(3) The Lieutenant Governor in Council, by regulation, may accept as a Water Sustainability Plan all or part of a proposed plan placed before the Lieutenant Governor in Council under subsection (2).

(4) Subject to section 117 (4) *[delivery and publication of documents and information]*, the minister must arrange for a Water Sustainability Plan accepted under this section to be published.

Plan regulations — effect on statutory decisions

76 (1) In this section:

"issue" includes replace, amend, extend and renew;

"land or resource instrument" means an instrument that, under an enactment, authorizes the use of or disposes of Crown land or Crown natural resources.

(2) For the purposes of a Water Sustainability Plan, the Lieutenant Governor in Council, by regulation applicable in relation to all or part of the plan area, may do one or more of the following:

(a)require that the plan be considered by a public officer making a specified decision under a specified enactment;

(b)require or restrict the issuance of specified land or resource instruments by a public officer under a specified enactment;

(c)prohibit the issuance of specified land or resource instruments by a public officer under a specified enactment, unless the specified enactment requires that the land or resource instruments be issued;

(d)require or restrict the exercise by a public officer of a power under a specified enactment;

(e)prohibit the exercise by a public officer of a power under a specified enactment, unless the specified enactment requires that the power be exercised.

(3) A regulation under subsection (2) (b) may establish requirements that must be imposed by the public officer as terms and conditions on a land or resource instrument under the specified enactment.

(4) A regulation under subsection (2) (d) may establish requirements that must be imposed on a person by the public officer in exercising a power under the specified enactment.

(5) Requirements imposed under subsection (3) or (4) are deemed to be imposed under the enactment under which the land or resource instrument is issued or the power is exercised, as the case may be.

(6) The issuance of a land or resource instrument contrary to a regulation under subsection (2) (b) or (c), or the exercise of a power contrary to a regulation under subsection (2) (d) or (e), has no effect.

Plan regulations — effect on approval by approving officer

77 (1) In this section, **"approving officer"** has the same meaning as in section 1 of the *Land Title Act*.

(2) For the purposes of a Water Sustainability Plan, the Lieutenant Governor in Council, by regulation applicable in relation to all or part of the plan area, may

(a)restrict the issuance of an approval of a plan requiring the approval of an approving officer under a specified enactment, or

(b)require an approving officer to reject a plan referred to in paragraph (a).

(3) A regulation under subsection (2) (a) may establish requirements that must be imposed as terms and conditions of an approval of a plan referred to in that subsection.

Plan regulations — restriction or prohibition on use of land or resources

78 (1) For the purposes of a Water Sustainability Plan, the Lieutenant Governor in Council, by regulation applicable in relation to all or part of the plan area, may restrict or prohibit

(a)a specified use of land or natural resources,

(b)a specified activity in relation to land or natural resources, or

(c)use of specified works.

(2) A regulation under subsection (1) may be made applicable to any land or natural resources in British Columbia.

(3) A regulation under subsection (1) applies whether or not the specified use or activity, or the use of the specified works, is authorized under an enactment, unless otherwise provided in the regulation.

Plan regulations — reduction of water rights

79 (1) For the purposes of a Water Sustainability Plan, the Lieutenant Governor in Council, by regulation applicable in relation to all or part of the plan area, may direct the comptroller or a water manager to

(a)amend the terms and conditions of licences identified in the regulation, regardless of the precedence of the rights under those licences, to reduce, in accordance with the regulation, the maximum quantity of water that may be diverted under the licences from a specified stream or aquifer, or

(b)cancel licences identified in the regulation.

(2) Without limiting subsection (1), a regulation under that subsection must

(a)identify the licences, specifically or by class, that are to be subject to the regulation, and

(b)set out the method for calculating the reduction in water quantity applicable to each of those licences.

(3) The precedence of the rights of the holder of a licence to the quantity of water the holder is authorized to divert after a reduction under subsection (1) is unaffected by the reduction in the quantity of water.

Plan regulations — directions regarding works or operations

80 (1) For the purposes of a Water Sustainability Plan, the Lieutenant Governor in Council, by regulation applicable in relation to all or part of the plan area, may direct the comptroller or a water manager to amend the terms and conditions of a licence to require the licensee to, in accordance with the regulations,

(a)reduce the maximum rate of diversion of water that may be diverted under the licence,

(b)alter the timing of diversion, use, including storage, of water under the licence,

(c)construct, alter, install, replace, repair, maintain, improve, seal, deactivate, decommission or remove works, including for the more efficient use or conservation of water, under the licence,

(d)adopt a more efficient practice, or

(e)make other changes to works or operations of the licensee in relation to the licence, as set out in the regulation.

(2) The rights of the holder of a licence amended by the comptroller or a water manager to comply with a regulation under subsection (1), other than rights in relation to the terms and conditions amended as required by the regulation, are unaffected by the amendment.

Plan regulations — relationship with other planning processes

81 For the purposes of a Water Sustainability Plan, the Lieutenant Governor in Council, by regulation, may do one or more of the following:

(a)require that in other specified Provincial government or local authority strategic or operational planning processes, consideration be given to a specified part or all of the plan;

(b)require that the results of specified Provincial government strategic or operational planning processes be consistent with a specified part or all of the plan;

(c)provide that specified Provincial government strategic or operational plans do not have legal effect to the extent of any inconsistency with a specified part or all of the plan.

Plan regulations — dedicated agricultural water

82 (1) For the purposes of a Water Sustainability Plan, the Lieutenant Governor in Council, by regulation applicable to all or part of the plan area, may dedicate, for qualifying agricultural use on qualifying agricultural land in the plan area or part, a specified quantity of water, in a stream or aquifer, that is

(a)both unrecorded and unreserved, or

(b)held under a licence issued for a qualifying agricultural use on qualifying agricultural land in the plan area.

(2) A dedication under this section applies to water that becomes unrecorded water by reason of the abandonment, cancellation or expiry of all or part of the rights under a licence

(a)issued in respect of dedicated agricultural water described in subsection (1) (a), or

(b)described in subsection (1) (b).

(3) A regulation amending or repealing a regulation under subsection (1) must specify the date on which the amendment or repeal is to come into force, which date must be at least 30 days after the amending or repealing regulation is published in the Gazette.

(4) Applications for unrecorded water dedicated under a regulation repealed under subsection (3) may be accepted during the period between the date of publication in the Gazette and the effective date of the repeal, but an authorization issued in respect of the application must not be given a date of precedence that is earlier than the effective date of the repeal.

Plan regulations — restrictions on groundwater activities

83 (1) For the purpose of a Water Sustainability Plan, the Lieutenant Governor in Council, by regulation applicable in relation to all or part of the plan area, may restrict or prohibit one or more of the following or may impose requirements on a person doing one or more of the following:

(a)constructing a well;

(b)installing well pumps;

(c)conducting flow tests;

(d)performing another activity in relation to a well or groundwater.

(2) Without limiting subsection (1), a restriction in a regulation under that subsection may include a requirement that a person hold a drilling authorization in order to carry out one or more of the activities referred to in section 62 (1) *[drilling authorizations]*.

(3) Without limiting subsection (1), a regulation under that subsection may require that the comptroller or a water manager amend or cancel a drilling authorization.

General provisions in relation to plan regulations

84 (1) Subject to subsections (2) to (4), a plan regulation applies despite any other enactment.

(2) Subsection (1) does not apply in respect of a conflict between a plan regulation and any of the following enactments or regulations made under any of the following enactments:

(a)the *Creston Valley Wildlife Act*;

(b)the *Drinking Water Protection Act*;

(c)the *Ecological Reserve Act*;

(d)the *Environment and Land Use Act*;

(e)section 9 of the *Greater Vancouver Water District Act*;

(f)the *Industrial Development Act*;

(g)the *Muskwa-Kechika Management Area Act*;

(h)the *Park Act*;

(i)the *Significant Projects Streamlining Act*;

(j)the *Water Protection Act*;

(k)section 4 of the *Wildlife Act*;

(l)a prescribed enactment.

(3) A plan regulation does not apply to licences applied against a water reservation referred to in section 40 *[treaty first nation water reservations]* or 41 *[Nisga'a water reservation]*.

(4) A plan regulation applies whether or not a right that is acquired, accrued or accruing, at any time before or after the regulation is made, is affected by the regulation.

(5) If the decision maker considers that the amendments made to a licence in accordance with regulations under section 79 *[plan regulations — reduction of water rights]* or 80 *[plan regulations — directions regarding works or operations]* would substantially change the licence, the decision maker may substitute a new licence.

Review and amendment of plans

85 (1) The minister, by order, may direct that a Water Sustainability Plan be reviewed to determine whether the plan should be amended or cancelled.

(2) Except as provided by order of the minister, this Division applies to

(a)a review under subsection (1), and

(b)any amendment to a plan proposed by a review.

ENDNOTES

1 The authors have worked with all types and levels of governments, community organizations, and sectors over the past 20 years and substantively engaged in the development of the *Water Sustainability Act*. The authors have worked on and written about many aspects of the new Act and sustainable water and watershed management and governance more generally and have thought extensively about the potential of water-based plans and WSPs specifically. Over the past two years, the authors have explored what WSPs could mean for water sustainability in British Columbia with First Nations, community organizations, and other water and resource governance professionals.

2 For a more detailed discussion of the benefits and limitations of the new Act and the evolution of western water law see: Brandes, O.M., Carr-Wilson, S., Curran, D., & Simms, R. (2015). *Awash with opportunity: Ensuring the sustainability of British Columbia's new water law*. Retrieved from the POLIS Project on Ecological Governance's website: https://poliswaterproject.org/files/2015/11/Awash-FINAL-WebVersion-compressed.pdf; Curran, D. (2017). Leaks in the system: Environmental flows, Aboriginal rights, and the modernization imperative for water law in British Columbia. *University of British Columbia Law Review, 50*(2), 233-291; and Brandes, O.M. & Curran, D. (2016). Changing currents: A case study in the evolution of water law in western Canada. In S. Renzetti & D.P. Dupont (Eds.), *Water policy and governance in Canada* (pp.45-67). New York, NY: Springer Publishing.

3 Technically water is not owned in its natural state, but under the Canadian Constitution provinces have certain authorities and jurisdiction that enable them to exercise proprietary rights to make laws and create licensing and allocation regimes.

4 See: Curran, D. (2017). Leaks in the system: Environmental flows, Aboriginal rights, and the modernization imperative for water law in British Columbia. *University of British Columbia Law Review, 50*(2), 233-291; and Brandes, O.M., Carr-Wilson, S., Curran, D., & Simms, R. (2015). *Awash with opportunity: Ensuring the sustainability of British Columbia's new water law*. Retrieved from the POLIS Project on Ecological Governance's website: http://polisproject.org/files/pub_database/awash-final-webversion-compressed.pdf.

5 Brandes, O.M. & Curran, D. (2016). Changing currents: A case study in the evolution of water law in western Canada. In S. Renzetti & D.P. Dupont (Eds.), *Water policy and governance in Canada* (pp.45-67). New York, NY: Springer Publishing.

6 See, for example, Nisga'a and Maa-nulth water allocations pursuant to those treaties.

7 At the time of writing the Minister of Forests, Lands and Natural Resources Operations and Rural Development is responsible for the *Water Sustainability Act*.

8 Section 84 outlines the provincial laws where WSP provisions and regulations do not apply.

9 See: Sylix Nation. (2014). Sylix Nation Siwlkw [Water] Declaration. Retrieved from: https://www.syilx.org/wp/wp-content/uploads/2016/11/Okanagan-Nation-Water-Declaration_Final_CEC_Adopted_July_31_2014.pdf; and Nadleh Whut'en First Nation & Stellat'en First Nation. (2016). *Yinke Dene 'Uza'Hné surface water management policy* (Version 4.1). Retrieved from: http://www.carriersekani.ca/images/docs/Yinka%20Dene%20%27Uzah%27ne%20Surface%20Water%20Management%20Policy%20(March%2018%202016)%20(00303183xC6E53).pdf

10 See: Treaty, Lands, & Resources Department – Tsleil-Waututh Nation. (2015). *Assessment of the trans mountain pipeline and tanker expansion proposal*. Retrieved from the Expert Panel Review of Environmental Assessment Processes website: http://eareview-examenee.ca/wp-content/uploads/uploaded_files/twn-assessment-report-11x17-small.pdf; and Stk'emlúpsemc te Secwépemc Nation. (2017). *Honouring our sacred connection to Pípsell: Stk'emlúpsemc Te Secwépemc says yes to healthy people and environment*. Retrieved from Stk'emlúpsemc te Secwépemc Nation website: https://stkemlups.ca/files/2013/11/2017-03-ssnajaxdecisionsummary_0.pdf

11 See: The First Nations Fisheries Council. (2018). *Protecting Water Our Way: First Nations Freshwater Governance in British Columbia*. Retrieved from the First Nations Fisheries Council website: https://www.fnfisheriescouncil.ca/wp-content/uploads/2018/05/FNFC-Protecting-Water-Our-Way-Report_May-2018_FINAL-1.pdf

12 See: Indigenous Law Research Unit. (2016). *Secwepemc: Lands and resources law research project*. Retrieved from the Indigenous Law Research Unit at the University of Victoria's website: https://www.uvic.ca/law/assets/docs/ilru/SNTC%20Law%20Book%20July%202018.pdf

13 WSP regulations cannot override the *Parks Act* and protected areas can not directly be created under WSA (or with a WSP) but a WSP could trigger action under other statues through recommendations or legal objectives that require consideration by other statutory decision makers.

14 Fish Protection Order (Ministerial Order No. M280). See https://news.gov.bc.ca/releases/2019FLNR0215-001616

15 Ministry of Environment on behalf of the Inter-Agency Drought Working Group. (2016). *British Columbia drought response plan*. Retrieved from: https://www2.gov.bc.ca/assets/gov/environment/air-land-water/water/drought-info/drought_response_plan_final.pdf

16 Section 84(2) lists the enactments or regulations that a WSP regulation cannot affect, including the *Drinking Water Protection Act*, the *Ecological Reserve Act*, the *Environment and Land Use Act*, Section 4 of the *Wildlife Act*, the *Water Protection Act*, the *Park Act*, the *Industrial Development Act* and the *Significant Projects Streamlining Act*.

17 See: *Water Sustainability Act*, SBC 2014, c15, s. 81 & s.84 (2019) (enacted). Retrieved from BC Laws website; http://www.bclaws.ca/civix/document/id/complete/statreg/14015. Section 84 states that a WSP regulation applies despite any other enactment. However, there are several exceptions to that precedent, which include the *Drinking Water Protection Act*, the *Park Act*, the *Significant Projects Streamlining Act*, the *Water Protection Act* and section 4 of the *Wildlife Act*.

18 For a more detailed discussion of these shared governance aspects of the *Water Sustainability Act* see: Brandes, O.M., Carr-Wilson, S., Curran, D., & Simms, R. (2015). *Awash with opportunity: Ensuring the sustainability of British Columbia's new water law*. Retrieved from: http://polisproject.org/files/pub_database/awash-final-webversion-compressed.pdf; and Brandes, O.M., & Simms, R. (2018). *Advancing freshwater protection: Tools and opportunities in British Columbia's Water Sustainability Act*. Retrieved from: https://poliswaterproject.org/files/2018/09/POLIS-WSATools-webfinal.pdf

19 For a deeper exploration of the range of considerations associated with watershed governance more generally in British Columbia see: Brandes, O.M., O'Riordan, J., O'Riordan, T., & Brandes, L. (2014). *A Blueprint for Watershed Governance in British Columbia*. Retrieved from the POLIS Water Sustainability Project's website: https://poliswaterproject.org/files/2014/01/POLIS-Blueprint-web1.pdf

20 See for example Nicola Watershed Pilot Memorandum of Understanding https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/nicola_watershed_pilot_mou_-_signed_2018.pdf and release at https://news.gov.bc.ca/releases/2018ENV0012-000484

21 *Environmental Management Act – Agriculture Environment Management Code of Practice*, SBC 2003, c53, (2019). Retrieved from BC Laws website: http://www.bclaws.ca/civix/document/id/complete/statreg/8_2019

22 *Environmental Management Act – Agriculture Environment Management Code of Practice*, SBC 2003, c53, (2019). Retrieved from BC Laws website: http://www.bclaws.ca/civix/document/id/complete/statreg/8_2019

23 See: Westland Resource Group Inc. (2007). *Cowichan basin water management plan*. Retrieved from the Cowichan Watershed Board website: http://cowichanwatershedboard.org/wp-content/uploads/2019/04/CowichanBasinWaterManagementPlan-March2007.pdf; and Coquitlam River Watershed. (2014). Watershed plan. Retrieved from https://www.coquitlam-riverwatershed.ca/roundtable/watershed-plan/?cp_watershed-plan=3

24 See: *Water Sustainability Act*, SBC 2014, c15, s. 81 & s.84 (2019) (enacted). Retrieved from BC Laws website http://www.bclaws.ca/civix/document/id/complete/statreg/14015. Section 84 states that a plan regulation applies despite any other enactment but restricts that statement by outlining certain enactments and regulations that will supersede regulations resulting from a Water Sustainability Plan if there is a conflict.

POLIS Water Sustainability Project

The POLIS Water Sustainability Project (WSP) is an action-based research group that recognizes water scarcity and sustainability is a social dilemma that cannot be addressed by technical solutions alone. The project focuses on five themes crucial to a sustainable water future:

- Water Law and Policy
- Watershed Governance
- International and Transboundary Water Governance
- The Water-Energy Nexus
- Water Conservation and the Water Soft Path

The WSP works with Indigenous nations, industry, government, civil-society, not-for-profits, communities, and individuals to develop and embed water conservation and watershed governance approaches that benefit the economy, communities, and the environment. The WSP is a focused initiative of the POLIS Project on Ecological Governance at the University of Victoria's Centre for Global Studies.

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watersustainabilityproject

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The Environmental Law Centre

The **Environmental Law Centre** works within the Faculty of Law at the University of Victoria to train the next generation of public interest environmental lawyers while providing legal capacity to community organizations and First Nations in British Columbia. As the oldest environmental law clinic in Canada, each year it serves over 30 client organizations, collaborates with many more, and puts 4,000 hours of pro bono student energy towards solving B.C.'s environmental issues. From mining and plastic pollution, to protecting caribou and sturgeon, the Environmental Law Centre's staff and students engage in law reform, advocacy, and legal education for a healthy environment.

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