# Opening the tap: the B.C. government proposes new Watershed Security Strategy

**March 16, 2023**

The Province is considering new ways to regulate and promote watershed security in British Columbia, while furthering its reconciliation efforts with Indigenous groups. Watersheds are areas of land that drain rainfall and snowmelt into bodies of water, such as streams, rivers, and lakes. Watershed security is concerned with ensuring the protection of these areas, to safeguard access to good quality water, protect ecosystems, reduce risks from hazards such as drought and flooding, and ensure enough water to support local economies, recreation, food security, and more.

On March 6, 2023, the B.C. Ministry of Water, Land and Resource Stewardship published a Watershed Security Strategy and Fund Intentions Paper (Intentions Paper). The Intentions Paper marks the mid-point of the development of the Strategy, following the Province's Discussion Paper and What We Heard Report in January and March 2022, respectively.

As outlined below, the Intentions Paper proposes a number of changes to the regulatory process including increased collaboration with Indigenous groups through, in part, shared decision making. This represents another step in a long list of multi-sector, regulatory changes the Province has introduced, or proposed, since the release of the its Declaration Act Action Plan in March 2022. These changes have caused many companies to take a fresh look at their Indigenous relations strategies and policies and consider how they may assist (or hinder) obtaining regulatory approvals.

Although the Province has yet to announce important details, some key takeaways from the Intentions Paper include:

- Future regulation of watersheds may be more localized, with co-governance structures including First Nations and recognizing Indigenous laws.
- As part of efforts to align provincial laws with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Province may require free, prior and informed consent and/or joint decision making for certain activities that impact Aboriginal territory and rights.
- The Intentions Paper foreshadows broad changes to *Water Sustainability Act* (WSA), the *Groundwater Protection Regulation,* and other legislation relating to watersheds.

- The Province plans to create a permanent “Watershed Security Fund” to support initiatives around ecosystems and watershed health, climate resiliency, and other interests.

## Watershed governance and collaboration with Indigenous Peoples

Following the enactment of the *Declaration on the Rights of Indigenous Peoples Act* (Declaration Act), the Province has committed to ensuring that all provincial laws are consistent with UNDRIP. The Watershed Security Strategy is part of this effort, with proposals to review statutes such as the WSA, and other related legislation, to ensure alignment with the UNDRIP and Declaration Act.

A key component of the proposed Watershed Security Strategy is increased collaboration with Indigenous peoples on new policies, legislation, and practices. This will include recognizing First Nations as first water users and affirming Aboriginal and treaty rights to water as priority right. The Province proposes to explore water co-governance and management structures that include First Nations and recognize First Nation laws in decision-making contexts. Additionally, the Province may begin requiring free, prior and informed consent and/or joint decision making where appropriate and agreed to in WSA decisions that have impacts on Indigenous territory and rights.

Businesses will need to be aware of diverse governance structures that may regulate the use of watersheds and surrounding areas. This will include federal, provincial, Indigenous, regional, and municipal levels of governance. Further, future laws may require that projects in or around watersheds have the free, prior and informed consent of affected First Nations.

## Ongoing reviews of environmental legislation and policy

The Watershed Security Strategy fits into the broader context of ongoing changes to provincial environmental legislation and policy. Recent legislative initiatives by the Province include changes to soil relocation requirements under the *Environmental Management Act* and *Contaminated Sites Regulation*, new regulation for hydrogen and carbon capture and storage and expanded liability for persons responsible for energy resource activities.

The Watershed Security Strategy will be implemented in concert with other strategies and projects including the Climate Preparedness and Adaptation Strategy, the Coastal Marine Strategy, and the Flood Strategy.

The Watershed Security Strategy contemplates wide-ranging amendments to environmental legislation, including the WSA, the *Drinking Water Protection Act,* the *Environmental Management Act,* and the *Forest and Range Practices Act,* as well as other related statutes, regulations, standards, and policies to ensure water and watershed protection is prioritized. This includes potential expansion of well classes requiring submission under the *Groundwater Protection Regulation,* which may have

implications for people and businesses involved in the construction, maintenance, and decommissioning of wells.

## Next steps

Members of the public can comment on the Intentions Paper online. The deadline for submission is 4 p.m. (PST) on April 17, 2023. The Ministry of Water, Land and Resource Stewardship will publish a report in the summer of 2023 containing comments on the intentions paper received during the engagement period. The Watershed Security Strategy will be launched in the winter of 2023/2024.

BLG can assist clients who wish to comment on the Intentions Paper, monitor future developments, or better understand how this may affect your interests. We can also assist in a review of any Indigenous relationship strategies and polices. For further information, including assistance with your submission, please contact the authors listed below or any member of BLG's Environmental or Indigenous teams.

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