

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 policies. For further information, including assistance with your submission, please contact the authors listed below or any member of [BLG's Environmental](#) or [Indigenous teams](#).

By

[Rick Williams](#), [Chris Roine](#), [Roark Lewis](#), [Stephanie O'Connell](#)

Expertise

[Environmental](#), [Indigenous Law](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific

situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.