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West Coast Environmental Law

LAW REFORM PAPERS

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Improving the opportunities for public involvement in the Crown land tenure and water licence approval process for run-of-river electrical generation projects in British Columbia

Executive Summary

West Coast Environmental Law believes that British Columbians deserve to have a strong voice in the decision-making processes around Independent Power Producer (IPP) projects. This paper focuses on one important problem identified by WCEL's previously published *IPP Background*. Specifically, there are weaknesses in the provincial process for reviewing applications for Crown land tenure and water licences for run-of-river electrical generation projects. These weaknesses impede the ability of members of the public to be involved in the IPP projects decision-making processes.

This paper examines Crown land tenure and water licence pre-adjudication process, managed by FrontCounter BC, the Crown land tenure adjudication process managed by the Integrated Land Management Bureau (ILMB), and the water licence adjudication process managed by Water Stewardship Division-Ministry of Environment (WSD-MOE). For each of these three key elements, we provide an overview, note some problems and conclude with some recommendations on how the process should be improved.

Readers are encouraged to consult the BC Government's "*IPP Guidebook*" in tandem with this paper. The *IPP Guidebook* is the best source of detailed information about the process by which proponents of run-of-river projects obtain Crown land tenure and a water licence.

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I. Introduction

1.1 This paper and West Coast's IPP Projects Series

In May 2009, West Coast Environmental Law (“West Coast”) published a backgrounder on *Independent Power Producers (IPPs) Power Projects in British Columbia*¹ (“*IPP Backgrounder*”), the first in West Coast’s series of law and process reform publications on IPP Projects. That Backgrounder examines the climate change context and the land-use controversies associated with the development of clean or renewable electric power generation by IPPs in British Columbia.

This paper focuses on one important problem identified in West Coast’s *IPP Backgrounder*, and the platform of *Recommendations for Responsible Clean Energy Development in BC* that West Coast co-authored (released in December 2009). The problem is that weaknesses in the provincial process for reviewing applications for Crown land tenure and water licences for run-of-river electrical generation projects (“run-of-river projects”) impede the ability of members of the public to be involved in the decision-making processes. This is of concern because Crown land tenure and water licences are the two key approvals that run-of-river projects must obtain before any work can begin.

West Coast’s position on the IPP decision-making process is clearly stated in our *IPP Backgrounder*:

*“West Coast Environmental Law believes that British Columbians deserve to have a strong voice in the decision-making processes around IPP projects.”*²

While this publication focuses specifically on run-of-river projects, it should be noted that *wind* power projects, and any other type of power project that requires the use of Provincial Crown land and/or surface water, are subject to a land tenure and water licence application process that is similar to the process for run-of-river projects.

1.2 Crown land tenure

Virtually all proposed run-of-river projects in B.C. are located on *Crown* land (as distinct from *privately owned* land). Therefore, the project proponent must obtain the legal right to use Crown land (“Crown land tenure”).

The term “Crown land tenure” covers various legal instruments: investigative use permits, temporary permits, works permits, licences of occupation, leases, right of ways, and easements. This publication focuses on Crown land *leases*, which provide the right to occupy the defined property.

A typical run-of-river project requires land for an intake structure, a penstock, a powerhouse, a tailrace, transmission lines and access roads. A successful proponent will obtain a Crown land lease for the structures and rights of way for road and power lines. The duration of the lease

¹ www.wcel.org/articles/IPP-QandA.pdf.

² *IPP Backgrounder*, p.3.

(usually for periods of 30 to 45 years) typically matches the duration of the proponent's electricity purchase agreement with BC Hydro. The lease requires lease payments and contains other important terms and conditions.

Decisions concerning Crown land tenure are made by the Integrated Land Management Bureau ("ILMB"), which is housed in the Ministry of Agriculture and Lands. Crown land tenure is issued under the BC *Land Act*.

1.3 Water licences

All run-of-river power projects entail diverting water from a stream, river or lake and returning the water at a lower elevation. The BC *Water Act* gives the Province legal ownership of all water in the BC and establishes a legal regime governing allocation of rights to use water for various purposes, including diverting water for power generation.

A successful run-of-river project proponent acquires a "conditional water licence" issued by the Water Stewardship Division of the Ministry of Environment ("WSD-MOE"). The owner of a conditional water licence must pay a "water rental" fee based on the volume of water allowed to be diverted. A water licence does not guarantee that "nature" will provide water, but it gives the licence holder legal priority over subsequently issued licences, as well as unlicensed uses of the water.

As BC reviews and possibly reforms its *Water Act* in the near future, aspects of water licensing procedures may change. Readers are advised to check on the status of these revisions, which could render some of the description of the current water licensing system out of date.

1.4 FrontCounter BC

As noted, the ILMB issues Crown land tenure and the WSD-MOE issues water licences. A third important provincial government agency is FrontCounter BC ("FCBC"), which, like ILMB, is housed in the Ministry of Agriculture and Lands. FCBC provides project proponents with a 'first window' into the government approvals processes for natural resources businesses, including proposed run-of-river projects. FCBC does not make statutory decisions, but it "helps clients [proponents] complete strong application packages".³

1.5 Other approvals and requirements

In addition to Crown land tenure and a water licence, a Run-of-river project in BC must obtain additional approvals and meet numerous other requirements that are beyond the scope of this publication. The following are three major examples:

First Nations engagement. The proponent of a run-of-river project on Crown land that is within the traditional territory of one or more First Nations in B.C. must, for both practical and legal reasons, engage with the First Nation(s) regarding the project.

³ See the FCBC website: www.frontcounterbc.gov.bc.ca

Contract for purchase of power. Run-of-river projects are sometimes built to provide off-the-grid electricity in remote locations. However, most⁴ run-of-river projects are built to sell power to BC Hydro.

Small run-of-river projects (less than 10 megawatts nameplate capacity) can sell power to BC Hydro under a standard electricity purchase agreement, the price and terms of which are defined in BC Hydro's "Standing Offer Program". However, power from larger run-of-river projects (more than 10 megawatts nameplate capacity) is usually sold to BC Hydro by the proponent obtaining an electricity purchase agreement through a competitive bid process (referred to as "calls for power").

Environmental assessment. A run-of-river project with a nameplate capacity of 50 megawatts or more triggers the BC *Environmental Assessment Act*. A project that requires federal money, land or regulatory approval may trigger the *Canadian Environmental Assessment Act*.

1.6 The Government's "IPP Guidebook"

In late 2008, the Province of BC released the *Independent Power Production in BC: An Inter-agency Guidebook for Proponents* (the "IPP Guidebook").⁵ The *IPP Guidebook* provides an overview of the statutory, regulatory and procedural requirements applicable to all types of IPP power projects, including Run-of-river projects. The *IPP Guidebook* is the best source of detailed information about the process by which proponents of run-of-river projects obtain Crown land tenure and a water licence. Rather than repeat that information in this publication, readers are encouraged to consult the *IPP Guidebook* in tandem with this Paper.

1.7 Organization of this paper

This paper examines the three main elements of the process by which Provincial agencies process applications and issue Crown land tenure and water licences for run-of-river projects. It is set out in the following manner.

- Part 2 examines the pre-adjudication process managed by FrontCounter BC,
- Part 3 examines the Crown land tenure adjudication process managed by ILMB, and
- Part 4 examines the water licence adjudication process managed by WSD-MOE.

Part 5 of the paper contains references and website links.

The Appendix contains the Statement of Expectations on Reform of the BC *Water Act* from BC Nongovernmental Organizations, released in December 2009 and supported by West Coast Environmental Law.

⁴ Legally, an independent power producer is entitled to build a power plant, connect it to the grid, pay the B.C. Transmission Corporation for transmission services, and sell the plant's power to a purchaser other than BC Hydro. However, this approach is rare.

⁵ Ministry of Agriculture and Lands. Online at www.agf.gov.bc.ca/clad/IPP_guidebook.pdf

2. PRE-ADJUDICATION PROCESS – FrontCounter BC

The pre-adjudication process for Crown land tenure and water licences is overseen by FrontCounter BC. This section of the paper provides an overview of the pre-adjudication process, notes some problems with that process and concludes with some recommendations on how the process can be improved.

2.1 Application Package

The proponent of a run-of-river project usually initiates the application/adjudication process for both Crown land tenure and a water licence at the same time by submitting an application package to FrontCounter BC, either online or at one of nine offices throughout the province.

The *IPP Guidebook* (p. 59) says that the application package should include:

- the completed application forms,
- the certificate of incorporation (of the proponent's company),
- the title certificates and legal plans,
- the Project Scope (formerly called the "preliminary project definition"), and
- the application fees.

The *IPP Guidebook* (p. 59) says that the "Project Scope" should include:

- an Executive Summary,
- The Proponent Identification,
- the Project Concept,
- the Capacity of Project,
- Linkages with other Projects,
- the Market for Electricity,
- a Schedule for Completion of Project, and
- a section addressing any impacts.

According to the *IPP Guidebook* (p.59), FrontCounter BC "checks the completed application package to ensure that it meets specified quality standards and provides sufficient detail." The *IPP Guidebook* (p. 59) also states that FrontCounter BC staff "check with land and water officers to ensure [the] application is complete and acceptable."

The ILMB describes FrontCounter BC's review of the application package somewhat more modestly:

It [the application package] is "accepted" [as being complete – not approved] when the application is reviewed and determined to be complete [by FrontCounter BC], which is to say that all the items required on the application

checklist have been included. FCBC can only do a limited quality check. [underline added]

2.2 Preliminary Status Report

After conducting its initial review of the completed application package, FrontCounter BC completes a “Preliminary Status Report.” The *IPP Guidebook* states that, among other things, the Preliminary Status Report identifies any “known show stoppers or conflicts” relating to the proposed project.⁶ Asked to give an example of a “known show stopper or conflict,” the ILMB responded:

A portion of the application could be located in a Provincial Park, conservancy, Indian Reserve, Ecological Reserve or within an area leased to a third party. It may be in an area of a [Land Use Regional Plan] prohibiting IPP development or within a Wildlife Management area in which IPP development has been determined to be a non compatible use.⁷

Even if it identifies “known show stoppers or conflicts”, however, FrontCounter BC apparently lacks the legal authority to deny the project application. That is, FrontCounter BC must still forward the completed application package (including the “known show stoppers or conflicts”) to the ILMB for the decision about Crown land tenures and to the Water Stewardship Division–Ministry of Environment for a decision about the water licence. ILMB states:

...FCBC cannot refuse a complete application, although they can refuse to process incomplete ones. They can also advise a client [IPP project proponent] if, when reviewing the application for completeness, they notice something that is likely to result in the ultimate disallowance of the application, at which point the applicant may chose to withdraw the application. ILMB undertakes and completes the adjudication process in making the decision to approve or disallow an application. FCBC is not actually involved in the adjudication process. Their role is to try to get the most complete application possible.⁸

The “Preliminary Status Report” is not made available to the public as a matter of course. Asked if the “Preliminary Status Report” is publicly available at all, ILMB stated:

Not by direct application. It would not be released until after a decision is made on the application and then it is likely by FOI [Freedom of Information] request.

Problem: Keeping the “Preliminary Status Report” from the public until *after* Crown land and water licence decisions have been made prevents concerned members of the public from being fully informed when they make comments on the run-of river project applications.

⁶ *IPP Guidebook* at pg 59.

⁷ Personal email from K. Anderson, ILMB, Crown Lands and Resources Regional Operations Division – Coast (June 1, 2009).

⁸ Personal email from K. Anderson, ILMB, Crown Lands and Resources Regional Operations Division – Coast (June 2, 2009).

2.3 Posting on the ILMB Application and Reasons for Decision Database

After FrontCounter BC determines that an application package is complete, it:

- posts some information about the project on ILMB’s publicly accessible “Application and Reasons for Decision Database” (“ILMB Decision Database”) (discussed in this section),
- posts certain information about the project on the Integrated Land and Resource Registry (“ILLR Registry”) (discussed in section 2.4, below), and
- makes “preliminary referrals” (discussed in section 2.5, below).

In some cases FrontCounter BC only posts *maps* pertaining to the run-of-river project on the ILMB Decision Database, and not the proponent’s preliminary project description. Asked about this, ILMB stated:

Yes a preliminary project description is not always posted to the web site. This is one area of consistency that the IPP OFFICE is trying to implement between ILMB offices.⁹

Problem: In cases where FrontCounter BC only posts the project maps on the ILMB Decision Database, and not the preliminary project description, members of the public have no textual information from which to determine if the proposal should be of concern to them. In addition, by posting a map without the preliminary project description, FrontCounter BC gives the impression that it is trying to hide the proposal from the public.

A related issue is that FrontCounter BC does not notify the public when a run-of-river project application is posted on the ILMB Decision Database (and thus when members of the public can provide comments on the project application through the database website). Asked about this, ILMB stated:

No the public is not notified, however, most IPP applications are advertised in local newspapers at some point in their adjudication process which provides an opportunity for input. Most NGO's and other interested groups are aware of the Reasons for Decision web site and will do searches on a regular basis to determine if new applications have been added.¹⁰

Problem: The public is not notified when a completed application package has been posted on the ILMB Decision Database. As a result, citizens concerned about run-of-river proposals must resort to searching the ILMB Decision Database daily. Although public notice about the proposed project will eventually be given in a local newspaper in most cases, notice on the Internet or through some electronic means could reach many interested people who would not be reached by an advertisement in a local newspaper.

⁹ Personal email from K. Anderson, ILMB, Crown Lands and Resources Regional Operations Division – Coast (June 2, 2009).

¹⁰ Personal email from K. Anderson, ILMB, Crown Lands and Resources Regional Operations Division – Coast (June 2, 2009).

A third and related area of concern is that for at least some project applications, the ILMB Decision Database states that public comments will only be accepted until a certain date in the future (for example, until 30 days or six weeks in the future). Asked about this, ILMB says:

...There is no actual time limited for the public to provide comments to based on the web posting, provided of course that a decision has not already been made. The public is given 30 days to respond to a newspaper advertisement, however, generally those comments will be accepted and reviewed up until the time a decision is made. IPP applications generally take substantially longer to adjudicate than most other program applications and so the real window of opportunity for public comments to be considered is longer than the 30 days.¹¹

Problem: For some applications, the ILMB Decision Database states that comments will be received only until a certain date. There are two problems flowing from this. First, since the public is not notified that the application has been posted concerned members of the public may miss the comment period. Second, based on ILMB's explanation (above), members of the public coming across the posted deadline after it has expired may refrain from providing comments, believing, possibly incorrectly, that they will not be considered.

A final area of concern is that the ILMB does not retain the proponent's application package on the ILMB Decision Database for more than about six months after a final decision about the project has been made. Asked about this, ILMB stated:

The system is set to automatically archive (remove) applications within a certain period after the final decision has been posted, likely 6 months. However, we think that some applications may also be removed if there is no activity after a period of time, as some older applications appear to have been removed from the listing. I am checking into this.¹²

Problem: By removing applications from the ILMB Decision Database six months (or so) after a final decision, or even earlier for some dormant applications, the ILMB deprives concerned citizens from having effective access to public information about the administrative fate of run-of-river applications. For example, it would be impossible for a member of the public to use the ILMB Decision Database to analyze how many run-of-river applications have been filed, withdrawn, rejected or approved.

¹¹ Personal email from K. Anderson, ILMB, Crown Lands and Resources Regional Operations Division – Coast (June 2, 2009).

¹² Personal email from K. Anderson, ILMB, Crown Lands and Resources Regional Operations Division – Coast (June 2, 2009).

2.4 Posting on the Integrated Land and Resource Registry

After FrontCounter BC receives the application package and determines that it is complete, FrontCounter BC also posts some information related to the application information on the online Integrated Land and Resource Registry (“ILLR”).¹³ The ILLR describes itself as “the place to go for a complete first-cut view of BC Crown Land status.”¹⁴ It provides information regarding Crown land that is similar to the information about private land provided by BC Online (a fee-based service).

Asked about what information gets posted to the ILLR, ILMB says:

*In the case of an IPP project, the shape of the Crown land application and the boundaries of any tenure disposition are entered. For waterpower IPPs, the point of diversion is also entered.*¹⁵

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*A shape is a digital polygon that defines the boundary and related interest on the land. For example, an IPP client may apply for an area to investigate the feasibility of a project. This area or shape is entered into the electronic system so that the interest can be documented in the digital mapping system.*¹⁶

ILLR is a large, not particularly user-friendly database. To access ILLR, a person needs an online account called a BCeID. A BCeID is needed to access to many BC government online databases and services, not just ILLR.

There are three types of BCeID: (1) business (including non-governmental organizations), (2) personal and (3) basic. The business and personal BCeIDs require verification of the identity of the user; a basic BCeID does not. There is no fee for a BCeID, and there is no fee for using ILLR (but there are fees for the use of some of the other government databases that can be accessed with a BCeID).

Problem: The Integrated Land and Resource Registry is not very user friendly.
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2.5 Preliminary Referrals

After completing its review of the status of the application, FrontCounter BC sends “preliminary referrals” to relevant federal and provincial agencies, local governments and First

¹³ *IPP Guidebook*, p.60.

¹⁴ www.ilmb.gov.bc.ca/ilrr/ILRR.htm

¹⁵ Personal email from H. MacKnight, Regional Executive Director, Coast Executive Director, IPP Office Integrated Land Management Bureau (June 12, 2009).

¹⁶ Personal email from H. MacKnight, Regional Executive Director, Coast Executive Director, IPP Office Integrated Land Management Bureau (June 16, 2009).

Nations. A preliminary referral includes a copy of the completed application package and invites the recipient to provide written comments flagging potential issues.¹⁷

FrontCounter BC may also require the proponent to contact neighbouring Crown land tenure holders and water licencees.

Problem: According to FrontCounter BC, parties such as recreational groups and environmental organizations are not generally provided with preliminary referrals. The ILMB states that these groups will obtain notice of the proposed project through a newspaper advertisement (see below) or by monitoring the ILMB Decision Database (see above).¹⁸ As a result, the NGOs may not receive timely notice of a run-of-river project application. And, the impression is given that the government does not particularly *want* to give them timely notice.

2.6 Development Plan

After comments have been received in response to the preliminary referrals (see above), the proponent is expected to discuss its project with government agencies, First Nations and others. The proponent then refines its project plans before submitting a formal Development Plan to FrontCounter BC.

The Development Plan is used by the various government agencies as the basis for their individual adjudication on approvals (including by the ILMB for Crown land tenures and WSD-MOE for water licences). The Development Plan also contains the information required by federal departments to determine if a federal environmental assessment is triggered.

The *IPP Guidebook* (p. 64) says that the Development Plan should include:

- a project description,
- an environmental impact assessment,
- information addressing relevant legislation,
- a project construction plan,
- an operation phase and monitoring plan, and
- a summary report.

A proponent whose Development Plan falls short is asked to provide additional information. The “summary report” is supposed to document that the proponent has addressed all agencies’ concerns and requests.

Asked about whether the Development Plan is made available to the public as a matter of course, the IMLB says:

¹⁷ *IPP Guidebook* at pg. 71.

¹⁸ Personal email from K. Anderson, ILMB, Crown Lands and Resources Regional Operations Division – Coast (June 2, 2009).

I believe that the EAO website contains all the detailed information for all of the applications requiring an EAO Certificate.¹⁹

Problem: The Development Plan is a key document in the approval process, and contains the full and final description of the proposed project. However, it is not made available to the public as a matter of course for projects that are not subject to the *Environmental Assessment Act* (less than 10 megawatts nameplate capacity).²⁰

2.7 Project Advertising

The proponent of a run-of-river project is generally required to publicly advertise the project proposal at some point before final adjudications are made. It is less clear *when* during the application process advertising will be required.

The *IPP Guidebook* (p.60) states that when FrontCounter BC determines that an application package is complete one of the things that happens is that:

Proponents are instructed to stake and advertise and contact existing tenure holder/applicants if required.

(The wording is ambiguous as to whether “if required” applies only to contacting existing tenure holder/applicants, or to staking and advertising as well.)²¹

The *IPP Guidebook* (p.64), also states that “Proponents may be required to advertise their project publicly” [underline added] when the proponent submits a completed Development Plan (discussed further, below).²²

The *IPP Guidebook* (p.66) says that if and when a proponent applies for an amendment of existing Crown land tenure that requires new land “the application goes through the standard processes of referral, staking, and advertising.” [underline added] This implies that advertising is part of the standard application for Crown land tenure.²³

In the chapter on “community stakeholder engagement,” the *IPP Guidebook* (p.130), states affirmatively that when FrontCounter BC receives an IPP proponent’s application package:

Applicants are required to advertise their project in local papers. [underline added]

That said, in most cases, advertising is not required until *after* the proponent has submitted the formal Development Plan to FrontCounter BC. However, the ILMB says:

¹⁹ Personal email from K. Anderson, ILMB, Crown Lands and Resources Regional Operations Division – Coast (June 2, 2009).

²⁰ Personal email from K. Anderson, ILMB, Crown Lands and Resources Regional Operations Division – Coast (June 2, 2009).

²¹ The *IPP Guidebook* (p.82), uses exactly the same language in the chapter (ch. 5) that focuses specifically on water power projects.

²² Again, the *IPP Guidebook* (p.86), uses exactly the same language in the chapter specifically on water power projects (ch. 5).

²³ The same wording is used at p. 89 regarding water power projects.

The individual ILMB office may feel that there is a benefit to having the advertising undertaken very early in the process if it is expected to be controversial or if there is likely to be a lot of issues that need to be brought to the applicant's attention so that they can direct their efforts in developing a management plan which addresses those issues.²⁴

Problem: In cases where the proponent is not required to, or does not voluntarily, advertise the project proposal until after the Development Plan has been filed the public's input (other than possibly through the ILMB Decision Database, see above) will not be considered until after the project Development Plan has already been developed and forwarded to the referral agencies.

ILMB must make its Crown land tenure decision in accordance with the purposes and requirements set out in the *Land Act* and WSD-MOE must make its water licence decisions in accordance with the purposes and requirements set out in the *Water Act*. These are limited purposes and requirements under the respective Acts that often do not cover all of the issues that members of the public may be concerned about.

The advertisement that is placed will include a general area map and information from the proponent's application package.²⁵ Notably, the advertisement does not specify the factors that the ILMB and WSD-MOE will consider in their respective decisions. However, because the advertisement does not explain this, members of the public may think that all of their concerns will be considered when in fact they will not. Asked about this issue, the WSD-MOE stated (in relation to water licences):

No, the scope of what the Comptroller will consider [in relation to a water licence decisions] is generally not communicated in the advertisement. I agree that the public has high expectations that the decision maker will consider a variety of general concerns related to the proposal over and above the normal water related issues.²⁶

Problem: Failing to advise of the factors that govern the Crown land tenure and water licence decisions can cause members of the public to have overly optimistic expectations of what the respective decision makers will in fact take into consideration. As a result, public comments sometimes fail to emphasize concerns regarding specific factors (see below) that will actually be taken into account by the decision-makers, and members of the public who do submit comments can feel they were 'not heard.'

²⁴ Personal email from K. Anderson, ILMB, Crown Lands and Resources Regional Operations Division – Coast (June 2, 2009).

²⁵ Personal email from K. Anderson, ILMB, Crown Lands and Resources Regional Operations Division – Coast (June 1, 2009).

²⁶ Personal email from G. Davidson, Director & Comptroller of Water Rights, WSD-MOE (June 9, 2009).

2.8 West Coast's pre-adjudication process reform recommendations

In relation to the above noted problems, West Coast recommends that ILMB:

- (1) post FrontCounter BC's "Preliminary Status Report" on the ILMB Decision Database,
- (2) ensure that its offices in all regions of the province post the proponent's "Preliminary Project Description" (in addition to the maps) on the ILMB Decision Database,
- (3) establish better mechanisms for notifying interested parties that an IPP project application has been posted on the ILMB Decision Database (such as mandatory advertising, in addition to the advertising that is done after the Development Plan has been submitted, the use of RSS feeds and other means),
- (4) clarify whether the public has a certain period of time in which to provide comments through the ILMB Decision Database and, if so, the consequences of not providing comments within that timeframe,
- (5) retain the project application and decisions information on the ILMB Decision Database for a period of time that is far longer than six months (perhaps indefinitely),
- (6) investigate ways in which the Integrated Land and Resource Registry be made more user-friendly, and
- (7) post the proponent's "Development Plan" on the ILMB Decision Database.

In addition, West Coast recommends that:

- (8) FrontCounter BC send preliminary referrals to groups and parties who would likely have a clear interest in providing comments on the project, and
- (9) members of the public be advised in the project advertisement where they can go to find out what specific factors will be considered relevant by the decision-makers in the Crown land tenure and water licence adjudication processes.

3. CROWN LAND TENURE ADJUDICATION – ILMB

After FrontCounter BC finishes the pre-adjudication process, the ILMB is responsible for adjudicating the application for Crown land tenure. This section of the paper provides an overview of the Crown land tenure adjudication process, notes some problems with that process and concludes with some recommendations on how the process can be improved.

3.1 Responsibility for adjudicating Crown land tenure applications

Decision-making powers under the *Land Act* are delegated from the Minister of Agriculture and Lands to specific positions in the Integrated Land Management Bureau (“ILMB”). The ILMB is housed in the Ministry of Agriculture and Lands. The Minister provides direction to the delegated decision-makers via operation policies (see below).

3.2 Factors taken into consideration in the Crown land tenure adjudication process

After receiving the proponent’s Development Plan, the ILMB decides on the type, term and conditions of Crown land tenure to grant.

The ILMB makes its decisions on an application by application basis. Although this is not set out on its website, the ILMB states that it is guided by an array of principles, guidelines and factors, including:

- the provisions of the *Land Act*,
- the Crown Land Allocation Principles,²⁷
- “Strategic Support for Land Use Planning” documents, that describe how the different types of land use plans in BC are to be incorporated into decision making,
- approved local and regional plans,
- the rules for ‘establishment and use’ found in any applicable Crown land designations, such as parks, protected areas, special use zones, reserves and old growth management areas,
- other government agency perspectives including local, provincial and federal,
- comments and concerns of the local First Nation(s),
- comments from other tenure holders who may be affected, and
- public input.²⁸

Problem: The ILMB does not clearly list on its website or elsewhere the list of factors it will take into consideration when adjudicating Crown land tenure applications. As such, members of the public are not aware of what factors are relevant to the decision-making process and on what basis they can object to the application.

²⁷ www.al.gov.bc.ca/clad/leg_policies/policies/allocation_principles.pdf

²⁸ Personal email from H. MacKnight, Regional Executive Director, Coast Executive Director, IPP Office Integrated Land Management Bureau (June 12, 2009).

3.3 Section 63 objections to a Crown land tenure application

Pursuant to section 63 of the *Land Act*, “At any time before a disposition is made on an [Crown land tenure] application, any person may object to the application by filing a notice of objection, setting out the particulars of the objection” and filing it in the appropriate office.

In such cases, the Minister (or his/her delegate), “has the absolute discretion to decide whether or not the objection warrants a hearing”.²⁹ If the Minister decides a hearing is warranted, the Minister appoints a person “who the minister considers to be qualified.” The qualified person holds a hearing, and must submit a report to the Minister “containing recommendations that the person considers just respecting the disposition of the Crown land involved.”³⁰ The Minister must review then report and, “after taking into account the recommendations contained in the report, may make any order that the Minister considers just respecting the disposition” of the land.³¹

Asked questions about the Section 63 process, the ILMB stated:

a. Where can I find more information about this process?

The process is fully described in the *Land Act*, section 63.

b. Are there any guidelines that govern this process?

The Ministry is guided by the *Land Act*. There are no other guidelines that govern this process.

c. Is there a database that tracks the hearings that have been held and the reports that have been issued?

At this time there is not a database in this regard...³²

Problem: The ILMB has not published any resources for the public describing how the section 63 “objection” process works. Nor is there a database that tracks hearings that have been held and reports that have been issued under section 63.

That problem noted, however, the ILMB did also state:

Typically, if a person objects to an application they provide the details to the appropriate local office. In most cases when a problem has been brought to the

²⁹ Section 63(2).

³⁰ Section 63(4).

³¹ Section 63(5).

³² Personal email from H. MacKnight, Regional Executive Director, Coast Executive Director, IPP Office Integrated Land Management Bureau (June 12, 2009).

attention of ILMB, the problem has been resolved between the person identifying the problem and the proponent, or by ILMB adjudicators clarifying information or working with the applicant to resolve issues. In a very few cases, the person identifying the problem may not have been satisfied with the proposed resolution and may have contacted the Minister's office.³³

3.4 The ILMB Crown Land tenure written decision

Based on the applications we reviewed, the ILMB's written decision on a Crown land tenure application (which can be found on ILMB Decision Database) is short and provides very little information about *why* the decision was made and *what factors* were taken into consideration in making the decision.³⁴

Problem: Where the ILMB's written decisions concerning Crown land tenure applications are short and do not state what factors were considered the decision is not transparent and provides little comfort to members of the public that their concerns (where relevant) have been considered.

As noted above, the information on the ILMB Decision Database, including the written decision, remain on the database for only about six months.

Problem: By removing the decision from the ILMB Decision Database six months (or so) after it is made, ILMB deprives concerned citizens of effective access to public information about the administrative fate of run-of-river applications. This means, for example, that it would be impossible for a member of the public to use the Decision Database to analyze how many run-of-river Crown land tenure applications were rejected or approved.

3.5 West Coast's Crown land tenure adjudication reform recommendations

In relation to the above noted problems, West Coast recommends that the ILMB:

- (1) provide on its website, and elsewhere, more and better information for the public about the factors that ILMB considers in assessing an application for Crown land tenure, particularly regarding run-of-river projects,
- (2) provide on its website, and elsewhere, prominent information about how members of the public can utilize the *Land Act* section 63 "objection" process,

³³ Personal email from H. MacKnight, Regional Executive Director, Coast Executive Director, IPP Office Integrated Land Management Bureau (June 12, 2009).

³⁴ Further, only the decision relating to the "General Area – Licence of Occupation" is posted, not the decision for each possible type of Crown land tenure that can be awarded throughout the life of a project Personal email from K. Anderson, ILMB, Crown Lands and Resources Regional operations Division – Coast (June 2, 2009).

- (3) post on the ILMB Decision Database all objections, hearings, reports and minister's decisions under section 63,
- (4) provide more-detailed written reasons for decision in relation to run-of-river projects, and
- (5) retain the decision and other information on the ILMB Decision Database, rather than deleting it six months after the decision has been made.

4. WATER LICENCE ADJUDICATION – Water Stewardship Division

After FrontCounter BC finishes the pre-adjudication process, the Water Stewardship Division – Ministry of Environment (“WSD-MOE”) is responsible for adjudicating the application for the water licence. This section of the paper provides an overview of the water licence adjudication process, notes some problems with that process and concludes with some recommendations on how the process can be improved.

The section begins with a discussion of the government’s plans to reform the *Water Act*. Water licencing procedures are likely to change in the near future, and readers are advised to check on the status of the revisions, which will likely affect public participation and licencing procedures.

4.1 Water Act Reforms

The *Water Act* is currently under review. The government has pledged to modernize this law as part of the provincial water plan, Living Water Smart, released in June 2008. A discussion paper outlining proposals for reform in the areas of protecting stream health, governance, allocation and groundwater regulation will be issued this month (January 2010).

These proposed reforms will likely affect public participation procedures in the water licence decision-making process. Legal experts have singled out the restricted appeal rights for water licence decisions as a notable defect of the current legislation. The limited class of people who may appeal – licencees, applicants, and riparian owners whose rights may be prejudiced, and property owners whose land is likely to be physically affected by an order – “excludes a host of potentially affected parties such as tourism businesses, salmon enhancement organizations, water-based recreation users, and communities concerned about the public amenities provided by a river, lake or stream.”

Many commentators have noted how BC’s water laws restrict public participation.

The proposed modernization of the *Water Act* may also specifically focus on how water licences are issued for IPP projects. This issue was highlighted in a “Statement of Expectations” prepared by BC NGOs in relation to reform of the *Water Act*. The Statement observes: “the recent development of river-based independent power projects (which require water licences issued under the BC *Water Act*) currently proceeds in an inadequate regulatory environment to protect watershed health and function.”

Among other recommendations, this Statement calls on the government to reform the *Water Act* to:

- Ensure that projects with the potential for harmful impacts on water are permitted only in areas identified as appropriate through watershed and aquifer planning.
- Provide for effective public engagement through transparency, oversight and opportunities for participation.

The full text of this Statement is attached as an Appendix to this paper.

4.2 Responsibility for adjudicating water licence applications

The BC *Water Act*³⁵ governs the requirements for water licences and the approval of applications for water licences within BC jurisdiction. The *Act* authorizes either the Comptroller of Water Rights (or Deputy Comptroller) or a regional water manager to approve an application for a water licence. The *Water Act* is administered by the WSD-MOE. The Comptroller of Water Rights (or Deputy Comptroller) are located in WSD-MOE.

Water licences in BC are issued on a “first in time, first in right” basis. This means that if a water licence application is complete it is adjudicated prior to any later-filed application. Similarly, water law in BC uses the principle of “prior allocation”. This means that in times of water shortage, a senior (as determined by section 15 of the *Act*) licensee is allowed to take as much water as is stipulated in its licence before a junior licensee is allowed to take any. The *IPP Guidebook* states that ILMB will accept overlapping run-of-river project licences (same stream and Crown land).³⁶

Problem: The ‘first in time, first in right’ principle may encourage proponents to apply for more licences than they can reasonably expect to use. Also, concerned members of the public, not knowing whether the proponent intends to use the licence or not, must monitor, comment on and respond to each licence application with the assumption that the project is going forward. The end result can be a substantial – but unnecessary -- investment of time and resources.

There are several categories of water licences that can be issued under the *Water Act*. Water licences for the run-of-river projects that generate electricity for sale are classified as “power-general”.³⁷

4.3 Information taken into consideration by the Comptroller

The Comptroller bases his or her decision to issue a water licence on the contents of a “Technical Assessment” (or “Technical Report”) and any other relevant information. The Technical Assessment is prepared by WSD-MOE staff. It is intended to provide a summary overview of potential issues relating to the licence, such as:

- water reserves,
- lands affected by the proposed works,
- existing water licences on the watercourse,
- riparian rights,
- other affected landowners,

³⁵ *Water Act*, RSBC 1996, c.483.

www.bclaws.ca/Recon/content/site?id=freeside&xsl=/Recon/template/toc.xsl/group-W/>

³⁶ *IPP Guidebook* at pg. 70.

³⁷ Section 15, *Water Regulation*.

- fishery flow and environmental impact on water resources,
- wildlife habitat,
- flood control,
- recreation,
- other potential uses of the water,
- transportation,
- hazard to the public,
- impact on Crown land-owned resources,
- aesthetic values,
- First Nations consultation,
- public consultation and interest, and
- socio-economic effects.³⁸

The extent to which the WSD-MOE really does in fact review water licence applications as claimed is disputed in an August 2007 report by the Watershed Watch Salmon Society. The author of that report, T. Douglas, states:

According to [BC Environment] Minister Penner, when a water licence is applied for, the MOE looks at possible impacts to fish, recreation impacts, access roads, and conflicts with wildlife, and does an assessment on the overall ecosystem impact on the watercourse, in addition to referring to other agencies. Based on our knowledge of project approvals to date, Minister Penner describes a best-case scenario and project reviews don't necessarily address access, ecosystem or wildlife impacts in a consistent way. [underline added]³⁹

According to WSD-MOE, the Technical Assessment *may* be made available to the public on request *after* the licencing decision has been made by the Comptroller.⁴⁰

Problem: The Technical Assessment is not available to the public as a matter of course. In the course of our research, we were provided with the Technical Assessment by the WSD Victoria office for one project simply by asking for it. However, we were informed by the WSD Lower Mainland (Surrey) office, that we would have to file a Freedom of Information request to obtain the Technical Assessment for two other projects.

³⁸ This is taken from the Cascade Heritage Power Project, Technical Report, Water Licence Application (August 2006) prepared by the WSD, Licensing and Allocation branch. It was forwarded to us on request.

³⁹ T. Douglas, Watershed Watch Salmon Society, "'Green' Hydro Power Understanding Impacts, Approvals, and Sustainability of Run-of-river Independent Power Projects in British Columbia" (August 2007), p.18.

⁴⁰ Personal email from C. Morgan, Water Resource Specialist Management & Standards Branch, Water Stewardship Division (May 29, 2009).

4.4 Objections to a water licence application

Pursuant to the *Water Act*, the following people may file an objection to the granting of the application:

- an existing licensee,
- a riparian owner, and
- an applicant for a licence who considers that his or her rights would be prejudiced by the new licence.⁴¹

In cases where an objection is filed, the Comptroller may order a hearing. However, according to WSD-MOE, public hearings are not generally used for run-of-river project water licence applications because any large waterpower project (over 50 MW) would require an environmental assessment by the BC Environmental Assessment Office (BCEAO), which involves public input.⁴² As such, the environmental assessment process has, in a sense, taken the place of some of the public process defined in the *Water Act* for large projects.

WSD-MOE states that it is not aware of any hearings that have been held separately from the BC EAO process in recent years for run-of-river project water licence applications.⁴³ WSD-MOE adds that although the Comptroller will not hold hearings for large projects he will participate in the BC EAO processes.⁴⁴

4.5 Factors taken into consideration in the water licence adjudication process

The BC Environmental Appeal Board has jurisdiction to hear appeals from the WSD-MOE's decision on a water licence application (discussed further, below). As a result, the Environmental Appeal Board has issued reasons for its decision in particular cases that set out some of the rules applicable to approval of applications for water licences.

As a starting point, the Environmental Appeal Board has stated that, "the main purpose of the licencing provisions in the *Water Act* is to control and regulate the use of water for beneficial purposes."⁴⁵

While there continues to be debate on what are and are not relevant considerations regarding the issuance of a water licence,⁴⁶ the Environmental Appeal Board has recognized the following as relevant considerations:

- whether there was a valid licence application,
- whether the applicant could hold a water licence, such as by being an owner of appurtenant land that was part of the project,

⁴¹ Section 11(1).

⁴² Personal email from G. Davidson, Director & Comptroller of Water Rights, WSD-MOE (June 9, 2009).

⁴³ Personal email from G. Davidson, Director & Comptroller of Water Rights, WSD-MOE (June 9, 2009).

⁴⁴ Personal email from G. Davidson, Director & Comptroller of Water Rights, WSD-MOE (June 9, 2009).

⁴⁵ *Wood v. Engineer under the Water Act*, BC Environmental Appeal Board 2009 EAB Decision No. 2008-WAT-003(b) at para. 40: www.eab.gov.bc.ca/water/2008wat003b.pdf

⁴⁶ *Planedin* EAB Decision No. 2006-WAT-012(a) at pg. 12: www.eab.gov.bc.ca/water/2006wat012a.pdf

- whether the proposed use of water was recognized under the *Water Act*,
- that the proposed volumes of water and other aspects of the application seemed reasonable in relation to the proposal,
- that there was water available,
- that there was some comparison between water demand and water supply,
- that supply was available for the proposed demand,
- that the demand was reasonable for the proposed project,
- that other rights were considered, such as the rights of other existing licencees on the stream and riparian owners,
- that the licence could be issued without affecting those rights,
- that fisheries concerns had been addressed,
- that First Nation concerns had been addressed,
- that the general layout of the works, based on preliminary designs and supporting information, appeared reasonable, including the proposed diversion points and the proposed points where water would be returned to the river and related works,
- how works might affect the flow of water in the river and hydraulic considerations,
- general layout and general engineering considerations, i.e. that the water could be used in the manner proposed, that it could reasonably be done in the manner proposed, and that water could be diverted at that location and returned to the stream in the manner proposed,
- whether any issues raised were within the scope of the *Water Act* or properly part of another process, and
- “economic impacts” that are not speculative.⁴⁷

At the same time, the EAB has suggested that the following considerations are *not* relevant:

- the provincial government’s energy policy, other than for the limited purpose of determining whether there was likely to be a beneficial use of the water if the licence was granted,⁴⁸
- the project’s land-based cumulative impacts,⁴⁹
- the community’s overall opposition to a project⁵⁰ – although the adjudicator *must* consider the interests of an existing licencee, riparian owner, or other applicant for a licence.

⁴⁷ *Planedin* EAB Decision No. 2006-WAT-012(a) at pgs. 17-19: www.eab.gov.bc.ca/water/2006wat012a.pdf

⁴⁸ *Planedin* EAB Decision No. 2006-WAT-012(a) at pgs. 17-19: www.eab.gov.bc.ca/water/2006wat012a.pdf

⁴⁹ Personal email from G. Davidson, Director & Comptroller of Water Rights, WSD-MOE (June 4, 2009). see also comments in *Planedin* EAB Decision No. 2006-WAT-012(a) at pg. 12: www.eab.gov.bc.ca/water/2006wat012a.pdf

Regarding consideration of cumulative impacts, according to WSD-MOE, land based cumulative effects are considered in the other land use planning processes, such as park and protective area designations, Land Resource Management Plans (“LRMPs”) and local zoning processes. WSD-MOE states that it will generally allocate the water resource to be consistent with these designations. That said, WSD-MOE maintains that the cumulative effects on the water resource, such as the total volume of water extracted from a specific reach of the stream, are definitely considered.⁵¹

The Environmental Appeal Board has also stated that much of the information that is gathered/considered during the environmental assessment act process will not be considered. This appears to mean that the adjudicator will not will weigh competing interests and uses such as tourism, aesthetics, recreation, social-economic factors, etc.⁵²

4.6 No ‘reasons for decision’ regarding issuance of water licence

The Comptroller does not issue “reasons for decision” in relation to his decision to grant/not grant a water licence. Rather, when a water licence is granted, it is accompanied by a cover letter which provides information particular to the licence, as well as standard information pertaining to all water licences and the right of appeal information.⁵³ In the run-of-river project water licences we reviewed, the Comptroller’s brief cover letter does not assess or weigh the various issues that were taken into consideration in issuing the licence.⁵⁴

When asked if there had been any thought given to issuing/posting written “reasons for decision” that would detail how the decision was arrived at, the WSD-MOE stated,

Yes, some thought was given to posting reasons for decisions, however this has not been done to date due to information system issues and other workload pressures. Each licencing decision is accompanied by a technical report which is kept with the application/licence. Since this is public information it is possible for groups or individuals to see a summary of the information and recommendations that were given to the statutory decision maker at the time of the decision.⁵⁵

Problem: The Comptroller does not issue and post written “reasons for decision” in relation to water licence applications. As a result, the decision-making is not transparent and provides little comfort to members of the public that their concerns (where relevant) have been considered.

⁵⁰ Personal email from G. Davidson, Director & Comptroller of Water Rights, WSD-MOE (June 4, 2009).

⁵¹ Personal email from G. Davidson, Director & Comptroller of Water Rights, WSD-MOE (June 4, 2009).

⁵² *Planedin* EAB Decision No. 2006-WAT-012(a) at pg. 12: www.eab.gov.bc.ca/water/2006wat012a.pdf

⁵³ Personal email from C. Morgan, Management & Standards Branch, Water Stewardship Division, (May 29, 2009).

⁵⁴ See for example, the Cascade Heritage Power Project, Technical Report, Water Licence Application (August 2006) prepared by the Water Stewardship Division, Licensing and Allocation branch. We received a copy of it on request.

⁵⁵ Personal email from G. Davidson, Director & Comptroller of Water Rights, WSD-MOE (June 9, 2009).

4.7 Appealing a water licence decision

A decision to issue a run-of-river project water licence (an “order”) can be appealed within 30 days⁵⁶ to the Environmental Appeal Board by the following classes of people:

- the applicant,
- an owner whose land is or is likely to be physically affected by the order, or
- a licensee, riparian owner or applicant for a licence who considers that their rights are or will be prejudiced by the order.⁵⁷

Problem: There is no statutory right of appeal to the Environmental Appeal Board for members of the public generally.⁵⁸

The decisions of the Environmental Appeal Board concerning the *Water Act* are subject to judicial review⁵⁹ to the British Columbia Supreme Court in cases where the Board has exceeded or abdicated its jurisdiction. Parties must meet the relevant legal test(s) to obtain standing in such matters.⁶⁰

4.8 Publicly available information about water licence decisions

Information about water licences can be found in two different publicly available online databases: the *Water Licences Query* and the *Scanned Licences Directory*.

The *Water Licences Query* database⁶¹ contains active water licences and applications. The user can fill in one or more fields with the stream name, purpose of licence, licensee name, etc. and do a search. The results of the search will include:

- stream name,
- water licence number or application number,
- purpose (the type of water use authorized by the licence or requested in the application),
- maximum quantity of water that can be diverted,
- name of licensee(s),
- water district/precinct,

⁵⁶ *Water Act*, section 92(4).

⁵⁷ *Water Act*, section 92.

⁵⁸ *Columbia River & Property Protection Society*, Appeal No. 95/42, at www.eab.gov.bc.ca/water/95-42.HTM.

⁵⁹ Judicial review occurs under the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241. See *Berscheid v. Ensign*, 1999 CanLII 6494 at para. 43: canlii.ca/en/bc/bcsc/doc/1999/1999canlii6494/1999canlii6494.html

⁶⁰ The *Water Act* contains a privative clause that restricts the scope of review of decisions of the Comptroller or engineer other than for jurisdictional errors. Section 49: *Gemex Developments Corp. v. Coquitlam (City)* 2002 BCSC 412 at para. 10. canlii.ca/en/bc/bcsc/doc/2002/2002bcsc412/2002bcsc412.html

⁶¹ *Water Licences Query* database. a100.gov.bc.ca/pub/wtrwhse/water_licences.input

- water rights map and “point of diversion” (identified by a digital code), and
- licence or application status.

The *Water Licences Query* database is not particularly user friendly, but there is a detailed Help page.⁶²

Having obtained a water licence number from the *Water Licences Query* database, a user can then access a copy of the licence on the *Scanned Licences Directory*.

The WSD-MOE staff’s Technical Assessment and the Comptroller’s cover letter are not available on these databases.

Problem: As noted above, the WSD-MOE staff’s Technical Assessment and the Comptroller’s cover letter are not available to the public as a matter of course. In some cases, the WSD-MOE will provide them on request. In other cases, the WSD-MOE will require that a *Freedom of Information* request be filed.

Problem: Users must visit two different databases in order to obtain the publically available information about water licences.

4.9 West Coast’s water licence adjudication reform recommendations

In relation to the above noted problems, West Coast recommends that:

- (1) WSD-MOE make the “Technical Assessment Report” regarding a water licence application readily accessible, such as by including it in the *Water Licences Query* database,
- (2) the Comptroller of Water Rights issue written reasons for a decision to issue a water licence for run-of-river projects
- (3) WSD-MOE make the Comptroller’s written reasons for decision publicly accessible, such as on the *Water Licences Query* database,
- (4) WSD-MOE consider recommending legislative changes to expand the classes of people who have a statutory right to object to a water licence application under section 11 and to appeal a water licence decision under s.92 of the *Water Act*, and
- (5) WSD-MOE combine the two existing databases that contain water licence information into one database that is user-friendly (i.e., allows searches by the run-of-river project’s name, etc.)

⁶² www.env.gov.bc.ca/wsd/wrs/query/licences/help/all.htm

5. Website Links

5.1 Statutes

- All B.C. Statutes and Regulations
www.bclaws.ca/Recon/content/site?id=freeside&xsl=/Recon/template/toc.xsl/group-A/
- All Federal Statutes
laws.justice.gc.ca/en/BrowseTitle
- All Federal Regulations
laws.justice.gc.ca/en/BrowseRegTitle
- B.C. *Environmental Assessment Act*, SBC 2002, c.43, and Regulations
www.bclaws.ca/Recon/content/site?id=freeside&xsl=/Recon/template/toc.xsl/group-E/
- B.C. *Water Act*, RSBC 1996, c.483
www.bclaws.ca/Recon/content/site?id=freeside&xsl=/Recon/template/toc.xsl/group-W/
- B.C. *Land Act*, RSBC 1996, c.245
www.bclaws.ca/Recon/content/site?id=freeside&xsl=/Recon/template/toc.xsl/group-L/
- *Canadian Environmental Assessment Act*, SC 1992, c.37
laws.justice.gc.ca/en/showtdm/cs/C-15.2
- B.C. *Utilities Commission Act*, RSBC 1996, c.473
www.bclaws.ca/Recon/content/site?id=freeside&xsl=/Recon/template/toc.xsl/group-U/
- B.C. *Freedom of Information Act and Protection of Privacy Act*, RSBC 1996, c.165
www.bclaws.ca/Recon/content/site?id=freeside&xsl=/Recon/template/toc.xsl/group-F/

5.2 Agencies

- FrontCounter BC
www.frontcounterbc.gov.bc.ca
- Integrated Land Management Bureau
www.ilmb.gov.bc.ca
- Water Stewardship Division – Ministry of Environment
www.env.gov.bc.ca/wsd
- B.C. Environmental Assessment Office
www.eao.gov.bc.ca
- Fisheries and Oceans Canada
www.dfo-mpo.gc.ca/index-eng.htm
- BC Hydro Standing Offer Program
www.bchydro.com/planning_regulatory/acquiring_power/standing_offer_program.html

- BC Hydro and Power Authority – Acquiring Power
www.bchydro.com/planning_regulatory/acquiring_power.html

5.3 Databases and Publications

- *Independent Power Producers (IPPs) Power Projects in British Columbia* (West Coast Environmental Law: May 2009)
www.wcel.org/articles/IPP-QandA.pdf
- *Independent Power Production in BC: An Inter-agency Guidebook for Proponents* (B.C. Ministry of Agriculture and Lands: 2008)
www.agf.gov.bc.ca/clad/IPP_guidebook.pdf
- ILMB Application and Reasons for Decision online database
www.arfd.gov.bc.ca/ApplicationPosting/index.jsp
- Crown Land Allocation Principles
www.al.gov.bc.ca/clad/leg_policies/policies/allocation_principles.pdf
- Waterpower Projects, WSD-MOE
www.env.gov.bc.ca/wsd/water_rights/waterpower/index.html
- Waterpower: Land Use Operational Policy
www.al.gov.bc.ca/clad/leg_policies/policies/waterpower.pdf
- Strategic Support for Land Use Planning documents
www.al.gov.bc.ca/clad/strategic_land/lup_support.html
- Integrated Land and Resource Registry (ILLR)
www.ilmb.gov.bc.ca/ilrr/
- T. Douglas, Watershed Watch Salmon Society, “‘Green’ Hydro Power Understanding Impacts, Approvals, and Sustainability of Run-of-river Independent Power Projects in British Columbia” (August 2007)
http://www.rivershed.com/documents/green_hydro_power.pdf
- *Water Licences Query* database
a100.gov.bc.ca/pub/wtrwhse/water_licences.input
- Water Resource Information A-Z Index
www.env.gov.bc.ca/wsd/a-z_index.html
- *Scanned Licences Directory*
ftp://ftp.env.gov.bc.ca/pub/outgoing/lic_images/

5.4 NGOs (Pro, Con and Neutral re IPP power)

- BC Creek Protection Society
www.bc-creeks.org
- BC Guardians
www.bcguardians.ca/content/view/11/11/

- BC Sustainable Energy Association
www.bcsea.org
- Citizens for Public Power
www.citizensforpublicpower.ca
- BC Citizens for Green Energy
www.greenenergybc.ca
- COPE 378
www.cope378.ca
- David Suzuki Foundation
www.davidsuzuki.org
- Dogwood Initiative
www.dogwoodinitiative.org
- Friends of Bute Inlet
www.buteinlet.net
- Independent Power Producers Association of BC
www.ippbc.com
- Lead the Way BC
leadthewaybc.wordpress.com
- MegaWatt: B.C. Renewable Energy Blog
www.bcenergyblog.com/articles/general-renewable-energy
- Pembina Institute
www.pembina.org
- Private Power Watch
www.ippwatch.info/w
- Save Our Rivers
www.saveourrivers.ca
- Sierra Club British Columbia
www.sierraclub.bc.ca
- Squalk.com
www.sqwalk.com/home.shtml
- Watershed Sentinel
www.watershedsentinel.ca
- Watershed Watch Salmon Society
www.watershed-watch.org
- West Coast Environmental Law
www.wcel.org

- West Kootenay Ecosociety
eco.kics.bc.ca
- Wilderness Committee
wildernesscommittee.org
- Wildsight
www.wildsight.ca
- Zero Carbon Canada
www.zerocarboncanada.ca

APPENDIX

Statement of Expectations on Reform of the BC *Water Act* from BC Nongovernmental Organizations (December, 2009)

As recognized by government in *Living Water Smart*, the failure to fundamentally reform BC water laws jeopardizes the environment and the well being of British Columbians. This document answers the call of the Premier of British Columbia for citizens to become part of the solution for securing our water future. It outlines key minimum steps critical to protecting this precious resource. This statement of expectations was developed through study and consultation, and the undersigned groups urge the BC government to take swift and decisive action on the issues described below.

BC's Water At Risk

The following issues are self-evident:

- Without an adequate supply of clean, safe water, human health, the BC economy, and the environment are threatened.
- Water in all its forms is owned as a public resource. Private rights to use water are limited, temporary, and must therefore be subject to conditions that protect the public interest.
- Many of BC's water bodies experience water shortages during certain seasons/years.
- Addressing the unprecedented challenges brought about by changing climate necessitates a fundamental re-thinking of how we store and deliver water, generate power, protect ecosystems and ecosystem resilience, ensure food security, and provide people with access to adequate, clean water.
- In BC, many land use practices such as forestry, mining, agriculture, oil and gas extraction and increasing urbanization can affect water quality and quantity, both inside the province and outside our borders. The scale and intensity of many practices and industries continues to grow, as does the demand for water. For example, the recent development of river-based independent power projects (which require water licenses issued under the BC *Water Act*) currently proceeds in an inadequate regulatory environment to protect watershed health and function.
- BC's water governance regime evolved at a time when there was little recognition of the need to legally allocate water for environmental needs, guarantee an equitable distribution of water, provide credible public oversight and accountability, or to resolve issues of water scarcity and conflict.

- BC is one of only a few jurisdictions in North America that fails to issue groundwater extraction licenses.
- BC provides limited independent oversight, accountability and opportunity for public input on water licencing decisions, even though it is well recognized that public input increases the quality of environmental decision-making, and water is a resource that supports public and environmental values, in addition to private needs.
- Jurisdictions worldwide are reforming governance and developing allocation systems that recognize rivers, lakes, wetlands and groundwater as priority water users based on the principle of seasonal sharing of an available consumptive pool among all identified water users, and based on the value of ecosystem services.
- The BC Government has commendably and wisely recognized the need to take action and has made the bold commitment to modernize the law as a core part of the BC Living Water Smart (LWS) strategy, released June 2008.

Transparency and Participation in the Legislative Reform Process

The undersigned urge the government to use a transparent and participatory process to develop the law, including:

- opportunities for public input at all stages of the legislative reform process;
- creation of an advisory committee, composed of people outside government from a variety of interests, to provide strategic advice to the Government of British Columbia;
- a registry for public input regarding any policy option being considered (e.g., “white papers”);
- regional public engagement processes to allow public input;
- a plan to ensure the key aspects of any water policy reform are enshrined in a legally binding manner.

Securing our Water Future with a Modern Water Act

A modern BC *Water Act* must provide comprehensive protection for BC’s water resources, maintain or restore natural ecological function, build public confidence in government’s role in managing water, and secure safe drinking water for communities.

A modern BC *Water Act* will set standards for all BC waters, whether surface, ground or diffuse, in all areas of the province, rural and urban. BC’s water laws will protect transborder rivers, lakes and aquifers. The legislation must create a structure that allows for the engagement and participation of all levels of government (including First Nations), and members of the public.

A modern BC *Water Act* will set strong standards for protecting water, and will require collaborative governance to implement the standards at the watershed or basin scale.

The legislation should prioritize all uses of water and provide protection for all users of water. The new law will guard against overuse of water, address threats to water quality, prevent changes to riparian features, and enable adaptation to climate change. A modern *Water Act* will recognize the crucial “public interest” role for government in managing the resource and affirm

that licenses are only temporary rights to use the resource and not permanent or property rights. A new *Water Act* will codify an allocation principle based on recognizing the environment as a priority and equitable sharing of a consumptive pool among all users. Ultimately, the provincial government must be responsible and accountable for protecting water resources in accordance with the precautionary approach.

In particular, a modern BC *Water Act* will:

1. Protect stream health and aquatic environments.
2. Improve water governance arrangements.
3. Improve the water allocation system.
4. Regulate groundwater use.

1. Protect stream and aquifer health and aquatic environments.

A new BC *Water Act* will:

- Protect water for the environment by legislating instream or environmental flows with priority over other licensed uses; and require a “cap” on water withdrawals to protect key physical, biological and chemical processes in the aquatic system (ecosystem services).
- Ensure that projects with the potential for harmful impacts on water are permitted only in areas identified as appropriate through watershed and aquifer planning.
- Require due consideration of the public interest, protection of the environment, conservation, efficiency, and use of best available technology in the issuance of water licences.
- Ensure adaptive capacity and maintain and enhance resilience both in natural and social systems to deal with a changing climate and unexpected events.
- Facilitate reuse and recycling of water to reduce demands on watersheds and aquifers, anticipate the effects of climate change, and provide flexibility to accommodate increased hydrologic variability and other future threats to watershed function or aquatic health.

2. Improve water governance arrangements.

A new BC *Water Act* will:

- Provide water for the future by requiring legally binding watershed plans, developed at the local level with public consultation in accordance with strong provincial standards, to address threats to water quality and quantity, and ecosystem protection. The Act must require ongoing public engagement in monitoring, implementation and updating of watershed plans.
- Provide for effective public engagement through transparency, oversight and opportunities for participation.

- Give effect to Aboriginal title and rights: In recognition and respect of First Nation traditional environmental knowledge, as well as their aboriginal and treaty rights, the province must pursue a strategy with the federal government and First Nations that will support the ability of First Nations to be full participants in watershed protection planning and implementation.
- Enable new municipal powers for the purposes of water and watershed protection, including: the ability to manage threats to drinking water sources; the requirement to update bylaws to be consistent with watershed plans; enabling water reuse and recycling; requiring metering, reporting of use and full cost accounting; and, as part of watershed plans, municipalities should be required to develop, implement and publicly report on water conservation plans according to provincial standards, which must include the ability to impose water conservation and efficiency requirements on all users, and to collect and report data on water use by sector.
- Ensure adequate resources are available for all authorities responsible for the development and implementation of watershed planning including funding or funding tools, technical expertise and training.

3. Improve the water allocation system.

A new BC *Water Act* will:

- Embed requirements for conservation, efficiency, and quantity monitoring.
- Continue to affirm crown ownership, subject to constitutionally protected aboriginal title and rights, of both ground and surface water and explicitly recognize water licenses as temporary "use" rights and not permanent or property rights.
- Create systems to prevent water scarcity where possible and equitably resolving water conflicts where it is not. Establish a "public interest" test to assist in resolving conflict and guide future allocations in areas of scarcity or drought and prioritize existing water use.
- Develop a progressive allocation systems that recognize rivers, lakes, wetlands and groundwater as "legitimate priority users" and moves beyond a prior allocation ("first in time, first in right" - FITFIR) system and codifies a system based on the principle of equitable sharing of an available consumptive pool among all identified water users.
- Require ongoing monitoring to facilitate increased reporting of water quality and quantity monitoring and trend analysis.
- Promote cost recovery so that all those who impact water quality or quantity, as well as those who benefit from the provision of clean water, contribute to the costs of source protection, to a degree appropriate to their impact or benefit.
- Require metering of all large groundwater and surface water users, both existing and new.

4. Regulate ground water use.

A new BC *Water Act* will:

- Treat water as one interconnected resource by requiring water management plans to evaluate both groundwater and surface water systems and the linkages between them.
- Require groundwater licensing in all areas of the province. The province should revisit its plan to regulate only in ‘priority areas’, as referred to in LWS. If any geographical areas are proposed to be exempted from groundwater licensing requirements, the province must justify the exemption through scientifically derived criteria.
- Provide a remedy for those negatively affected by existing groundwater extractions. Due to the existing lack of regulatory controls on groundwater use, there are many areas of the province where residents are negatively affected by groundwater extraction, yet lack a remedy.

Supporting Organizations

1. Alouette River Management Society
2. B.C. Federation of Drift Fishers
3. BC Nature (Federation of BC Naturalists)
4. Burns Bog Conservation Society
5. Burke Mountain Naturalists
6. Canadian Parks and Wilderness Society
7. David Suzuki Foundation
8. Ecojustice
9. Environmental Law Centre, University of Victoria
10. Fraser River Coalition
11. Georgia Strait Alliance
12. Pacific Streamkeepers Federation
13. POLIS Water Sustainability Project
14. Raincoast Conservation Foundation
15. Salmon River Enhancement Society
16. Shuswap Environmental Action Society
17. Sierra Club BC
18. Smart Growth BC
19. Squamish River Watershed Society
20. Steelhead Society of British Columbia
21. T. Buck Suzuki Environmental Foundation
22. The Pembina Institute
23. Watershed Watch Salmon Society
24. West Coast Environmental Law Association
25. Wilderness Committee
26. WWF-Canada