

Report

Date January 18, 2023

File:

Subject Provincial Legislation related to the use of groundwater in British Columbia

PURPOSE

To provide Council with an assessment of the regulations and policies on the use of groundwater in British Columbia and the efficacy of a North Cowichan bylaw to prohibit the bottling and sale of groundwater.

BACKGROUND

At the regular Council meeting held on March 20, 2019, Council received a letter from Mr. B. Gibbons of Merville BC, on behalf of the Merville Water Guardians (Attachment 1), requesting that the Municipality of North Cowichan (MNC) consider changing:

"...the zoning bylaws of the Municipality of North Cowichan to prohibit the bottling of groundwater for commercial sale or bulk export."

Mr. Gibbons also expressed opposition to the structure of the *Water Sustainability Act*, which he stated:

"...denies appeal of a water licence unless the licence physically detrimentally affects your land, not your water, not your access to water."

Mr. Gibbons' letter stated that he and the Merville Water Guardians had been lobbying the municipalities, regional districts, and the provincial government to stop approving licenses to bottle and sell water from all aquifers in BC. The Merville Water Guardians argue that aquifers depletion by water bottling and bulk export poses a threat to drinking water security for residents and food production by farmers. Mr. Gibbon's letter also asserts that anticipated climate change effects exacerbate the risk of aquifer depletion and that the *Water Sustainability Act (WSA)* does not account for this threat.

Similar letters were sent by Mr. Gibbons to municipalities and regional districts throughout BC in the late winter/early spring of 2019. Consequently, the Strathcona Regional District submitted a motion to the April 2019 Association of Vancouver Island and Coastal Communities meeting, which was subsequently endorsed, that:

"... the Premier of British Columbia and the Minister of Forests, Lands and Natural Resources Operations and Rural Development be requested to immediately cease the licensing and extraction of groundwater for commercial water bottling and/or bulk water exports from aquifers."

The 2019 meeting of the Union of BC Municipalities (UBCM) subsequently also endorsed the above resolution.

In response to the letter from Mr. Gibbons, Council passed a motion that:

"... staff be requested to bring back a staff report to a future Council meeting on the request to prohibit the sale of groundwater."

This report addresses the motion.

DISCUSSION

In BC, the rules for the ownership and use of water are governed by the *Water Protection Act* (WPA) and the WSA. The provincial response to the UBCM resolution was based on the provisions of these two Acts;

- the bulk removal of water from the Province is prohibited by the WPA,
- the WSA protects stream health, regulates the diversion and use of groundwater, and addresses water use during times of scarcity,
- all applications for water use, including bottling, are reviewed for sustainability and the protection of other existing uses, and
- water licenses may include terms and conditions to protect the water source.

Provisions under the WSA Protecting Surface and Groundwater

The Province began the process of updating and modernizing the WSA in 2009. As part of the WSA update, submissions and feedback were sought from First Nations and stakeholder groups like industry, stewardship organizations, local governments, and concerned individuals. Topics in the submissions included; groundwater protection, the health and sustainability of surface water, protection of water access for users, and protection of water during land use decisions.

The updated WSA was enacted in February 2016. Changes that are in the updated Act relevant to water protection include;

- Licensing groundwater for non-domestic use,
- New fees and rentals for water use,
- Stronger protection for aquatic ecosystems,
- Expanding protection of groundwater related to well construction and maintenance,
- Increasing dam safety and awareness, and
- *Fish Protection Act* repealed, and provisions brought into the WSA or the *Riparian Areas Protection Act*

Protection of existing users' access to surface and groundwater is achieved via the first in time, first in right (FITFIR) system of precedence in section 22 of the WSA. The date of precedence establishes who is allowed their full allocation of water first during times of water scarcity or drought. Licensing under FITFIR establishes how much license holders can use and thus reduce conflicts between water users in times of scarcity.

The WSA can be used to protect a water body's environmental requirements through a critical environmental flow threshold (CEFT). A CEFT establishes a short-term restriction on water use if that water use is deemed to be causing a threat to stream habitat. When a CEFT is in effect, it has precedence over most water use rights. An example of the use of a CEFT occurred in August 2021 when

industrial and certain agricultural water users in the Koksilah watershed were ordered to curtail their water use. The order, however, allowed water use for livestock, vegetable crops and domestic needs.

Provincial water managers assess licenses in the context of monitoring information from the use of water within specific aquifers to ensure the sustainable long-term use of groundwater. Provincial regulators use groundwater licensing to manage water in an integrated way in cases where a connection is suspected between stream water and groundwater. An example of such management can be seen in the conditions set for MNC in its groundwater license for the Chemainus aquifer 172 to supply drinking water to residents of Chemainus in the summer. Under the license, MNC is required to report on its monitoring of surface and groundwater characteristics at various locales in the watershed to the Ministry of Forests, the Environmental Assessment Office, and Halalt First Nation. This monitoring is intended to ensure that use of groundwater near the Chemainus River is not causing detrimental effects on water quality or quantity within the river.

Provisions under the WPA for Surface and Groundwater Ownership

The WPA protects BC's water by establishing the Province's ownership of surface and groundwater, clearly defining limits for bulk water removal, and prohibiting the large-scale diversion of water between major provincial watersheds and/or to locations outside of the province. Under the WPA, no one is allowed to remove water from the province unless they;

- Are registered with the Comptroller of Water Rights, or
- Are removing water in containers of 20 litres or less, or
- Obtained the water outside the province, or
- Carry the water in vehicles, vessels or aircraft for the use of people and animals while in transit across BC's borders.

Provisions Made by Other Municipalities or Regional Districts

Mr. Gibbons' letter states that 12 communities on Vancouver Island, with a specific reference to the City of Courtenay, do not permit water bottling. Staff was unable to verify this assertion after a search of the bylaws of several island municipalities. Mr. Gibbons also referenced the Sunshine Coast Regional District Policy Manual, which he states provides for groundwater protection. The policy, in fact, directs staff to not support "... any application to Provincial and Federal agencies for the extraction of freshwater resources in gas, liquid or solid form for the purpose of commercial bottled water sales." This is, therefore, not a prohibition on sales but a commitment to inform federal and provincial agencies making groundwater licensing decisions of the community's opposition to all commercial bottling applications regardless of any particulars in such license applications.

Provisions under North Cowichan's Waterworks Bylaw affecting Water Sales

Section 22 of Waterworks Bylaw No. 3620 creates several restrictions on municipal water use, including the following prohibitions:

- a) allow water to run to waste, whether willfully or by allowing leaky, imperfect, defective or improper taps, pipes, meters, indicators or other fixtures to remain unrepaired;
- b) sell, give or dispose of water; and
- c) allow water to be carried, taken away, used or applied to or for
 - (i) another person's benefit or use, or

- (ii) a use or benefit other than the consumer's own use or benefit in the usual course of the purpose for which the same is supplied.

OPTIONS

1. **(Recommended Option):** THAT Council receive the Senior Environmental Specialist's report dated January 18, 2023, for information.
 - Surface and groundwater is owned and regulated by the Province, which therefore has jurisdiction over the awarding of licenses for water use and the protection of water rights of existing users. Furthermore, the Province now assesses environmental requirements associated with groundwater licenses.
 - The Waterworks Bylaw protects access to municipal water by residents.
2. **Option 2:** THAT Council direct staff to review legal requirements to develop a bylaw banning the sale of groundwater from the municipality.
 - Staff was unable to find an instance of a municipality from BC that has enacted a bylaw banning groundwater sales which reflects either confidence placed by municipalities in the management of groundwater by the provincial regulators or the absence of a legal context to enact such a bylaw.
3. **Option 3:** THAT Council direct staff to draft a policy that formalizes Council's position to oppose all referrals from the Province regarding groundwater licensing for the purposes of commercial bottling and sales of groundwater.
 - In referrals from the Province on groundwater license applications for the purposes of bottling and sales, staff would advise the Province that the MNC would not support the application regardless of details or conditions in the application.

IMPLICATIONS

The provincial government has sponsored an update to the WSA which protects access to groundwater by existing users in BC.

The update to the WSA introduces protections to environmental requirements associated with groundwater sources.

Municipalities have expressed their concern to the BC government through a UBCM resolution in 2019 that the Province enact a ban on the sale and export of groundwater. The Province has stated that the WSA prohibits bulk water export and that provisions of the updated WSA and WPA protect water users in the Province and environmental requirements.

As owner and regulator of groundwater resources, the Province is not compelled to reject a groundwater license application without municipal support for that groundwater license application. Provincial ownership and regulation of groundwater would likely supersede any municipal bylaw on groundwater use.

RECOMMENDATION

THAT Council receive the Senior Environmental Specialist's report dated January 18, 2023, for information.

Report prepared by:



Dave Preikshot, PhD, RPBio
Senior Environmental Specialist

Report reviewed by:



David Conway, PEng
Director, Engineering Projects

Approved to be forwarded to Council:



Ted Swabey
Chief Administrative Officer

Attachment: Letter from Mr. B. Gibbons, March 20, 2019