

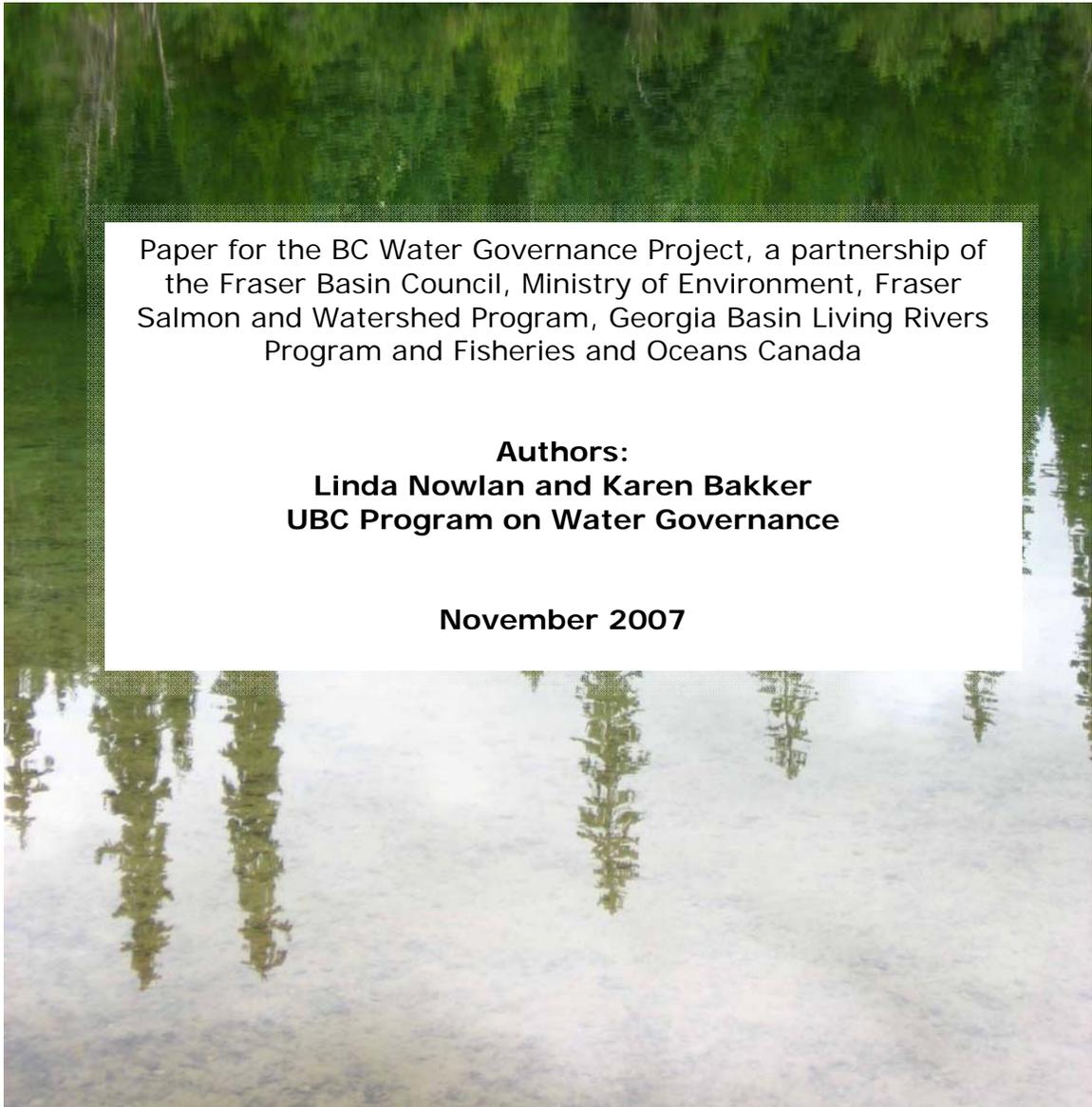


# **Delegating Water Governance: Issues and Challenges in the BC Context**

Paper for the BC Water Governance Project, a partnership of the Fraser Basin Council, Ministry of Environment, Fraser Salmon and Watershed Program, Georgia Basin Living Rivers Program and Fisheries and Oceans Canada

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**PROGRAM ON  
WATER GOVERNANCE**



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## GLOSSARY

Delegated governance: Delegated (or 'shared' or 'collaborative') water governance may be broadly defined as the involvement of non-state actors in decision-making for water management; this frequently (but not always) implies the delegation of decision-making to lower scales of governance such as the watershed, municipality, or region.

Governance: the process through which decision-makers are chosen, stakeholders (including citizens and interest groups) articulate their interests, decisions are made, and decision-makers are held accountable. Governance is distinct from management.

Harmonization: the process of achieving regulatory efficiency, effectiveness and clarity through legislative and policy standardization and centralization.

Management: operational, on-the-ground activity to regulate a resource and conditions of its use.

Subsidiarity: the principle whereby a central authority does not take action (except in the areas which fall within its exclusive competence) unless it is more effective than action taken at lower scales.

Water governance: The range of political, organizational and administrative processes through which interests are articulated, input is absorbed, decisions are made and implemented, and decision makers are held accountable in the development and management of water resources and delivery of water services.

Watershed governance: Water governance (see above definition) at the watershed scale, covering the full range of watershed issues: water resources and delivery of water services, as well as the protection and conservation of water and aquatic ecosystems including their associated riparian area, and land use issues as they impact water.

Watershed groups are typically smaller than watershed partnerships, are not initiated by government, and are composed of like-minded individuals (such as landowners or environmentalists).

Watershed partnerships are made up of a broad range of stakeholders with diverse views. Delegated water (shed) governance partnerships are the focus of this report (as opposed to watershed groups).

Watershed plan: A watershed plan is a document that results from the watershed planning process and provides assessment and management information for a geographically defined watershed, including the analyses, actions, participants, and resources related to development and implementation of the plan.

Water management plan: A water management plan is a plan established under Part 4 of the BC Water Act designed to address or prevent (a) conflicts between water users, (b) conflicts between water users and instream flow requirements, or (c) risks to water quality.

Water use plan: A water use plan is a technical document defining the proposed operating parameters to be applied in the day to day operations of all BC Hydro hydroelectric facilities, which recognizes multiple water use objectives, and is based on the outcomes of advisory consultative processes.

## LIST OF ACRONYMS

ASASG	Abbotsford Sumas Aquifer Stakeholder Group
AWC	Alberta Water Council
BCUC	British Columbia Utilities Commission
BRBC	Bow River Basin Council (Alberta)
CA	Conservation Authority (Ontario)
CBT	Columbia Basin Trust
CBWAC	Cowichan Basin Water Advisory Council
CCME	Canadian Council of Ministers of the Environment
CORE	Commission on Resources and the Environment (BC)
CRB	Central Regional Board (Clayoquot Sound)
CVRD	Cowichan Valley Regional District
CWA	Clean Water Act (Ontario)
DFO	Department of Fisheries & Oceans , now Fisheries and Oceans Canada
DWPA	Drinking Water Protection Act
FBC	Fraser Basin Council
FCM	Federation of Canadian Municipalities
FITFIR	"First in Time, First in Right"
FN	First Nations
GTA	Gas Tax Agreement Revenues
ICS	Integrated Community Sustainability
IPP	Independent Power Producer
IMEA	Interim Measures Extension Agreement (Clayoquot Sound, BC)
LBH	Local Board of Health
LRTF	Living Rivers Trust Fund
LWMP	Liquid Waste Management Plan
MDBI	Murray-Darling Basin Initiative (Australia)
MOE	Ministry of Environment
MVLWB	Mackenzie Valley Land and Water Board
NGO	Non-governmental Organisation
OBWB	Okanagan Basin Water Board
OWSC	Okanagan Water Stewardship Council
PHO	Provincial Health Officer (BC)
SCC	Supreme Court of Canada
SCRD	Sunshine Coast Regional District
TDML	Total Daily Maximum Load
TLUWMP	Trepanier Landscape Unit WMP
UBCM	Union of BC Municipalities
WJWC	Westside Joint Water Committee

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WMP	Water Management Plan (Quebec)
WPAC	Watershed Planning & Advisory Council
WQO	Water Quality Objectives
WUP	Water Use Plan

## 1. EXECUTIVE SUMMARY

This report on evolving approaches to water governance in Canada, focusing on BC, was commissioned by the BC Water Governance Project, a partnership of the Fraser Basin Council, BC Ministry of Environment, Fraser Salmon and Watershed Program, Georgia Basin Living Rivers Program and Fisheries and Oceans Canada.

The paper is intended to provide useful information and tools for government and other stakeholders participating in the ongoing dialogue on water governance in the province of British Columbia. It presents an independent, academic analysis of select water governance issues, focusing on 'delegated' (also known as 'devolved' or 'shared' or 'distributed') water governance. The analysis is based on research conducted by the University of British Columbia's Program on Water Governance in the latter half of 2007. It will be published in the public domain, as mandated by UBC's Ethics Review Board.

The analysis is predicated upon a recognition that water governance has undergone dramatic changes in Canada over the past decade, characterized by three key trends: the introduction of **new watershed-based delegated governance management models** in a number of Canadian provinces; legislative and policy reform setting **higher standards for drinking water supply** in a number of Canadian jurisdictions; and **greater citizen involvement** in environmental policy-making and environmental management. These trends have occurred for several reasons: **a shift in the view of the role and mandate of governments; new legal requirements** (particularly with respect to First Nations, and also mandated by a new generation of environmental laws); awareness of the **expertise** available outside of government, particularly in the context of decreased government resources; **new approaches to citizen participation**; increased emphasis on **integrated management of environmental issues** and **watershed based management**; and concern over the implications of **climate change** for both water resources and supply.

With this context, the paper examines the advantages and disadvantages of delegated water governance, and discusses the questions:

- What are the barriers to delegating water governance?
- Do the potential advantages of delegating water governance to lower scales outweigh the disadvantages?
- Which issues/aspects of decisions about water should be delegated, and which should not?

The paper seeks to provide information that will enable the sponsors of the BC Water Governance Project to effectively answer these questions.

- Section 2 outlines new approaches to and trends in water governance.

- Section 3 outlines a conceptual framework for water governance to facilitate discussion of the three key questions listed above, including principles of good governance.
- Section 4 applies this conceptual framework and these principles to specific cases of delegated water governance in BC, Canada, and internationally.
- Section 5 discusses the wide range of water governance models currently used in BC.
- Section 6 outlines potential models and principles that may be used as pathways for legislative and policy reform, and discusses factors to consider in making decisions about new governance processes.

## **Key Findings**

- **The current provincial approach to delegated water governance is fragmented and ad hoc:** Currently, delegated water governance arrangements in the province are characterized by a patchwork of jurisdictions, legal authority, differing governance models, and mandates. This situation has resulted because most of the models have evolved in an ad hoc fashion, with little coordination between different levels of government or governmental bodies. Consequently, two other important issues to consider when debating new delegated water governance models in BC are: how do they relate to existing models, and how can productive synergies (rather than unproductive compartmentalization or duplication of effort) be produced?
- **Policy and legislative gaps exist on key issues:** There are a number of factors to consider in making decisions about new governance processes, such as how these new governance structures respect and include First Nations water rights, and the geographic areas of the province to be covered. The biggest gaps that exist today in water governance in the province are:
  - the absence of an overall provincial water strategy including management measures and implementation targets, and clear delineations of authority
  - an uneven patchwork of governance arrangements throughout the province
  - a lack of transparency about the requirements for initiating the planning provisions which would allow greater local level involvement
  - regional inequities in water management
  - a lack of funding mechanisms available to local governments or regional bodies to use for water management activities,
  - limited public participation opportunities in the existing water governance framework in general and with the water licensing framework in particular.

- **Performance of the delegated governance partnerships which have been created is mixed.** Accountability is one of the good governance principles associated with effective leadership. Using this principle to evaluate the BC models, performance was mixed. No provincial policy or law guides the efforts of these different collaborative efforts. Most models are outside the *Water Act* licensing and allocation process. Two good governance principles associated with the formation of interpersonal trust are transparency and respect for the rule of law. The BC models are mixed in terms of transparency. General data on enforcement and compliance with the BC *Water Act*, and provincial environmental legislation is no longer routinely compiled and released to the public in the form of non-compliance reports and summaries of enforcement actions. The models respect the rule of law, though respect for First Nations rights and enforcement remain issues. Though most models include public involvement, the primary legislation, the *Water Act*, does not allow for broad public participation in the licensing or allocation process, or in appeals to the Environmental Appeal Board. Financial sustainability is a concern for almost all the BC models. Providing water governance bodies with a manageable geographic area, a manageable time frame in which to carry out their activities, and a manageable scope of activities are factors of success. Some of the governance models have built in policy feedback processes, but as there is no overall provincial water strategy, it is difficult to judge the success of all the disparate implementation efforts.
- **Significant barriers exist to devolved water governance:** There are a number of barriers to devolved governance. One barrier in BC is a lack of strong provincial standards to protect drinking water quality and aquatic habitat and species. There are few tools available to protect groundwater or instream flows, to name two examples. Another barrier may be reluctance to form governance bodies which could recommend changes to the current licensing and allocation system because of the implications of paying compensation to existing licensees. Financial support for new governance processes may also be a barrier to greater devolved governance. The creation of bodies which will require both direct financial support for the processes and implementation of the plans, as well as indirect support through devoting staff time to participate in and enforce the plans will have considerable financial implications.
- **Constructive pathways for legislative and policy reform are available:** Specifically, the province could use the following pathways for legislative and policy reform :
  - *Identify and Remove Barriers to Greater Use of Existing Governance Structures:* The relatively new and as yet untested planning procedures available under the *Water* and *Drinking Water Protection Acts* may assist communities who seek

- additional control over their water resources, and want to develop localized plans to address water protection. Clarifying the criteria for initiating these planning procedures will assist local communities interested in making use of these options.
- *Reform of Existing Allocation, Licensing, and Funding Policies:* Problems with the current licensing, allocation and funding of water could be addressed through the usual policy routes, retaining the single government decision maker governance model, and perhaps changing the procedures for public participation of non-state actors.
  - *Reform Laws and Policies to Provide a Unified Structure for Watershed Councils:* Another option for greater devolved governance in BC could be the adoption of a provincial position on province-wide or geographically limited (for example, to the most populated parts of the province) watershed councils.
- **The province should retain decision-making authority in key areas:** A major issue is which issues should be delegated and to whom. Once the decision has been made to delegate governance in a particular region, the province is then faced with the task of deciding which topics should be addresses by a multi-government or multi-stakeholder group. While there are no universal rules to assist with this decision, the guidance from other jurisdictions suggests that the province should retain decision-making authority in certain areas such as water quality and quantity standards for both surface and groundwater, licensing and allocation, in order to provide a level playing field across the province and avoid the problem of jurisdictions using lower standards to attract business, ensure there is no undue influence from a local powerful interest, and most importantly, to maintain its duty to protect public and environmental health as trustee of the water resource.

Appropriate topics for delegation include:

- Deciding broad categories of allocation between different user groups, once an overall allocation decision respecting ecological limits has been made for all the water bodies in the watershed in question,
- Making recommendations on restoration or water improvement projects that should proceed,
- Proposing local water protection, conservation, recycling or reuse bylaws to be adopted by a number of different jurisdictions in the region the group operates in, such as a watershed which could include sprinkling restrictions, detergent or pesticide bans, rebate programs for low-flow appliances or rainwater collection barrels.
- Proposing integrated solutions for difficult problems that traditional command and control programs have been unable to address such as

- nonpoint source pollution and the control of urban runoff, agricultural practices reform, or integrated land and water use planning.
- Non-regulatory activities, such as public education and awareness.

The final section of the paper provides observations, describes a potential provincial government process to investigate and explore policy development, and points out possible directions for substantive reforms.

**Table 3.**  
**Delegated water governance partnerships:**  
**Examples of factors of success and associated good governance**  
**principles, and potential avenues for reform in BC**

Factor of Success	Good Governance Principle (example)	Recommendations for Potential Reform
Effective leadership	Accountability	Building on BC's Vision for water, the province should develop a provincial water strategy, which should include definition of the provincial interest in water, accompanied by management measures and implementation targets. This strategy should include effective links between surface water and ground water protection; and systematically incorporate ecological values into water policy. This may imply modifications to the Water Act. For example, consideration should be given to the possibility that water management plans under Part 4 of the Water Act be empowered to restrict authorizations or the exercise of powers under forest or range laws
Interpersonal trust	Transparency	The process of delegated water governance should be refined to improve transparency. This could be facilitated through increasing the currently limited public participation opportunities in the existing water governance framework in general and within the water licensing framework in particular. Moreover, consideration should be given to increasing transparency in the Water Management Plan approval process (which may entail changing the current Cabinet-level approval requirement).
	Respect for the rule of law	Clear delineations of authority between the province, local governments and collaborative governance bodies, enshrined in an amended <i>Water Act</i> .
Committed participants	Equitable participation	The province should create an integrated provincial framework for the creation and funding of collaborative governance bodies. This should include clear specifications regarding which geographical areas of the province will be eligible to engage in delegated governance arrangements.
Sufficient scientific information	Access to (funding for) best available scientific data	The provincial strategy for delegated water governance should include a strategy for the provision of effective, comprehensive scientific information to decision-makers. While some of these activities might be delegated, the province should maintain a high degree of involvement in information-gathering, standard-setting, monitoring, and enforcement.
Sufficient funding	Financial sustainability	The integrated provincial framework for collaborative water governance should include specific funding mechanisms available to local governments or regional bodies to use for water management activities. This funding should enable sustainable governance processes; accordingly, the funding mechanism should need to take the different capacities of specific jurisdictions to mobilize resources.
Manageable scope of activities	Sufficient time to complete process and optimal geographical scope	The geographical scope of the various delegated water governance bodies should correspond to watershed boundaries, the now commonly accepted and scientifically justified scale for water management.
Policy feedback	Shared decision-making	Authority over water decisions should not be delegated in the absence of a set of provincially applicable rules for water management. However, once delegation does occur, to avoid frustrating the efforts of local groups who invest substantial time, energy and money in collaborative planning processes, the delegated governance bodies should be granted decision-making authority as appropriate. Where the province retains decision-making power, it must commit to implement the results from these processes in an accountable and transparent manner.