



# **Water for the Future: Why BC Needs an Immediate Moratorium on New Water Bottling Licences**

## **EXECUTIVE SUMMARY**

An ELC Clinic submission prepared for:  
Golden and District Water Protection Committee

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**Cover Images:** Drought Level sign in Merritt, BC (used with the permission of the Nicola Watershed Community Roundtable); Free Water on Tap sign in Campbell River, BC (Deborah Curran); Central Coast Watershed (Holly Pattison)

**Copyediting and layout:** Holly Pattison, Environmental Law Centre

# Executive Summary

There is remarkable convergence between communities and governments in British Columbia (BC) on the importance of water. A recent poll revealed that 91% of residents agree that fresh water is our most precious resource, and 85% agree that “fresh water is a basic human right not to be denied or sold off by governments or corporations.”<sup>1</sup> The Province of BC has acknowledged the immense value of water and the importance of its protection, aiming “to guarantee clean air, land and water for future generations,”<sup>2</sup> as well as enhance watershed security in a changing climate.<sup>3</sup> One provincial Ministry’s service plan commits to “ensur[ing] environmentally-responsible natural resource management practices,” and “fully implement[ing] the *Water Sustainability Act*,”<sup>4</sup> which includes implementing groundwater licensing for the first time in BC. These policy objectives operate within the longstanding pledge of BC water law to use water within watersheds, which includes prohibiting both the transfer of water between major watersheds and bulk water exports.<sup>5</sup> In addition, these commitments operate alongside the Province of BC’s pledge to ban plastics as single use packaging, reduce plastics overall, and better deal with the entire life cycle of plastic products.<sup>6</sup>

The drive towards water sustainability in BC is happening at a time when Indigenous communities are entering into agreements with the Province of BC to develop collaborative watershed governance structures to manage water at a local scale and pursuant to consent- and ecosystem-based objectives.<sup>7</sup> The Province of BC is moving beyond the consultation and accommodation framework established under section 35 of the *Constitution Act, 1982* by committing to implement and align provincial laws with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The new provincial *Declaration on the Rights of Indigenous Peoples Act* (DRIPA) also explicitly enables consent-based agreements and the delegation of authority to Indigenous governing organizations.<sup>8</sup>

Two distinct problems are interrupting this water-rich policy and territorial governance context. The first is that there is limited information about watersheds in the province,<sup>9</sup> and water scarcity issues are accelerating across BC.<sup>10</sup> Some analysts have identified 63% of the population as living in water-stressed

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<sup>1</sup> McAllister Opinion Research, “2018 BC Freshwater Public Opinion Insights Topline Report” (June 2018) at 14, online (pdf): <[https://d3n8a8pro7vhmx.cloudfront.net/freshwateralliance/pages/2527/attachments/original/1608160893/2018\\_McAllister-CFA\\_BC\\_Fresh\\_Water\\_Opinion\\_Insights\\_v2020.pdf?1608160893](https://d3n8a8pro7vhmx.cloudfront.net/freshwateralliance/pages/2527/attachments/original/1608160893/2018_McAllister-CFA_BC_Fresh_Water_Opinion_Insights_v2020.pdf?1608160893)> [perma.cc/N4NT-C9KN].

<sup>2</sup> Government of British Columbia, “CleanBC: Our nature. Our power. Our future.” (December 2018) at 15, online (pdf): <[https://www2.gov.bc.ca/assets/gov/environment/climate-change/action/cleanbc/cleanbc\\_2018-bc-climate-strategy.pdf](https://www2.gov.bc.ca/assets/gov/environment/climate-change/action/cleanbc/cleanbc_2018-bc-climate-strategy.pdf)> [perma.cc/N2NH-RXAK].

<sup>3</sup> Government of British Columbia, “CleanBC: Climate Preparedness and Adaptation Strategy: Draft Strategy and Phase 1 Actions for 2021-2022” (no date), online (pdf): <[https://www2.gov.bc.ca/assets/gov/environment/climate-change/adaptation/cpas\\_2021.pdf](https://www2.gov.bc.ca/assets/gov/environment/climate-change/adaptation/cpas_2021.pdf)>.

<sup>4</sup> Ministry of Forests, Lands, Natural Resource Operations and Rural Development, “2018/19 – 2020/21 Service Plan,” (February 2018) at 9, online (pdf): *Government of British Columbia* <<https://www.bcbudget.gov.bc.ca/2018/sp/pdf/ministry/flnr.pdf>> [perma.cc/49LG-9VB5].

<sup>5</sup> *Water Protection Act* RSBC 1996 c 484 ss 4-6.

<sup>6</sup> CleanBC: Plastics Action Plan, online <https://cleanbc.gov.bc.ca/plastics>.

<sup>7</sup> See, for example, the Nicola Watershed Pilot <<https://news.gov.bc.ca/releases/2018ENV0012-000484>> and the Koksilah Water Sustainability Plan Scoping Initiative <<https://www.koksilahwater.ca>>.

<sup>8</sup> *Declaration on the Rights of Indigenous Peoples Act* SBC 2019 c 44.

<sup>9</sup> Oliver M Brandes and Rosie Simms, “Top 5 Water Challenges that will Define British Columbia’s Future,” (September 2016) at 11, online (pdf): *POLIS Water Project* <<https://poliswaterproject.org/files/2016/09/POLIS-Top5-final-web.pdf>>.

<sup>10</sup> *Ibid* at 8.

areas,<sup>11</sup> while many Indigenous communities have variable access to safe drinking water and no control over water use in their territories. Groundwater experts note that “the province lacks comprehensive aquifer mapping and classification, and significant knowledge gaps exist,”<sup>12</sup> and groundwater regulation of existing commercial uses is incomplete. The second problem is that applications for water bottling operations, which include applications aiming to export the bottled water, are on the rise. There are at least eight applications for new groundwater licences for water bottling purposes, and at least two of those are within arid areas of the province. In 2020 alone the water bottling industry in Canada extracted 2.611 billion litres of bottled water.<sup>13</sup> In BC, water bottling users pay just \$2.25 per million litres – less than a penny per bottle – returning almost no revenue to the Province of BC for water management. At the same time, one of the most common forms of pollution found in garbage cleanups across Canada are bottles,<sup>14</sup> and over 120 million bottles were unaccounted for in BC over the past year.<sup>15</sup> It is clear that water bottling is at odds with BC’s commitments to reduce single use plastics and improved water security. It is also now occurring at a scale that may infringe the legal commitment prohibiting the export of water. While there are important equity considerations for sharing water globally, there must be water justice for all BC communities at the same time as there is a public debate about whether ecosystems and the regulatory regime can handle water exports.

The purpose of this submission is to address the conflict (or connect the dots) between water security, Indigenous governance, and groundwater regulation as expressed by the spectre of expanding water bottling in BC by making recommendations to the Province of BC for aligning groundwater and watershed governance with existing policy and legal objectives, particularly those related to sustainable water use and the UNDRIP. The report focuses on groundwater extraction and the export of water, as well as plastics production and waste as they relate to the water bottling industry in BC. The principal recommendations are to enact a moratorium on all new licences for groundwater extraction for the purpose of water bottling, and to approve new water licences only through consent-based collaborative watershed governance processes directed by Indigenous communities and the Province of BC in partnership with local communities.

**Part 1** sets out the **Context** of water use and regulation in BC, highlighting the importance of water to residents of BC yet the uncertainty of adequate groundwater in BC for allocation, as well as providing an overview of recent Province of BC commitments to furthering the protection of water. Part 1 also contains a review of the history of water regulation in BC, detailing the significant focus on water sustainability and Indigenous rights in recent changes in law and policy.

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<sup>11</sup> T Gower and A Barroso, “Tapped Out: A Special Report on Water Scarcity and Water Solutions in British Columbia,” (September 2019) at i, online (pdf): *Watershed Watch Salmon Society* <<https://watershedwatch.ca/wp-content/uploads/2019/09/2019-09-24-Tapped-Out-RGB.pdf>> [perma.cc/8Y7P-8D24].

<sup>12</sup> Tara Forstner, Tom Gleeson, Leigh Borrett, Diana M Allen, Mike Wei and Andarge Baye, “Mapping Aquifer Stress, Groundwater Recharge, Groundwater Use, and the Contribution of Groundwater to Environmental Flows for Unconfined Aquifers across British Columbia,” (August 2018), online (pdf): *Water Science Series* <[https://a100.gov.bc.ca/pub/acat/documents/r54468/WSS-2018-04GWfootprint\\_1532281350342\\_2278704448.pdf](https://a100.gov.bc.ca/pub/acat/documents/r54468/WSS-2018-04GWfootprint_1532281350342_2278704448.pdf)> [perma.cc/85QT-K8LN]; Oliver M Brandes and Rosie Simms, “Top 5 Water Challenges that will Define British Columbia’s Future,” (September 2016) at 11, online (pdf): *POLIS Water Project* <<https://poliswaterproject.org/files/2016/09/POLIS-Top5-final-web.pdf>> [perma.cc/9ARR-H6BD].

<sup>13</sup> Euromonitor International, “Market Sizes: Canada Bottled Water, Total Volume,” (2020), online: *Euromonitor* <<https://www.portal-euromonitor-com.ezproxy.library.uvic.ca/portal/statisticsevolution/index>> [Accessed 29 March 2021].

<sup>14</sup> Loujain Kurdi “MEDIA BRIEFING: 2018 Plastic Polluters Brand Audit Canada Results,” (9 October 2018), online: *GreenPeace Canada* <<https://www.greenpeace.org/canada/en/qa/5378/media-briefing-2018-plastic-polluters-brand-audit-canada-results/>>.

<sup>15</sup> Return-It, “2019 Annual Report: Deposits, Refunds, and Recovery Rates,” (2019) at 29, online: *Return-It* <[https://www.return-it.ca/ar2019/pdf/Encorp\\_AR2019\\_Section6.pdf](https://www.return-it.ca/ar2019/pdf/Encorp_AR2019_Section6.pdf)>.



**Part 2** follows with a deeper dive into problems with new groundwater licensing and water bottling in BC, including the lack of assessment of cumulative effects and climate change relating to groundwater extraction. In response to these and other weaknesses in the science-policy relationship, Part 2 concludes by noting that the Province of Ontario has imposed a moratorium on new and increased groundwater extraction permits for water bottling and is exploring legislative amendments for an area-based approach to water management and will engage with the public, stakeholders and Indigenous communities.<sup>16</sup> Incomplete groundwater regulation and insufficient watershed knowledge leads to three recommendations:

- **Recommendation 1: Place a Moratorium on New Water Licences for Water Bottling**
- **Recommendation 2: Extend the Moratorium on New Water Licences for Water Bottling Purposes at least until Watershed-Based Governance is in Place**
- **Recommendation 3: Restrict Water Licences for Water Bottling Purposes to Short-Term Licences Only**

**Part 3** highlights the rapidly evolving context for **Indigenous Relationships with Water**, noting that Indigenous communities have not agreed to existing water allocation and management approaches, and the Province of BC has not co-developed meaningful consent-based governance processes. For the Province of BC to uphold its commitments to implementing UNDRIP and reconciliation in the context of water requires collaborative and consent-based decision-making structures:

- **Recommendation 4: Obtain the Consent of Indigenous Governing Organizations Before Issuing New Water Licences**

**Part 4** summarizes the legal prohibition on **Bulk Water Export** in BC, which raises the issue of whether growth in water bottling for export is, in effect, water export. Legislators developed the BC water law on bulk water export in an era when the global trade in bottled water did not exist. This law now requires reconsideration as it creates an unintended loophole for the bulk export of bottled water that does not adequately reflect the cost to BC communities:

- **Recommendation 5: Charge a Higher Water Rental for Water Extraction**

**Appendix A** details how a water bottling industry in BC results in significant contributions to plastic waste at all scales and is contrary to local, provincial, national, and international law and policy commitments.

**Appendix B** canvasses factors related to the value of the water bottling industry for local communities in BC, noting the many local government that have prohibited water bottling operations.

In conclusion, BC communities are in an exciting but fragile transition between provincial water management through water allocation, and watershed- and territory-based collaborative governance. Integrating groundwater into the water regulatory framework is incomplete, as is an understanding of the extent and distribution of groundwater in the province. Water bottling operations now look much more like a form of water export, and BC political and regulatory processes have not yet considered how such a growth industry should be treated in the context of existing commitments to collaborative governance relationships between Indigenous governing organizations and the Province of BC, sustainable water use and groundwater regulation. At minimum, the Province of BC must place a

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<sup>16</sup> Government of Ontario, ERO 019-2319, "Proposal to extend the current moratorium on water bottling permits," (30 September 2020), online: *Environmental Registry of Ontario* <<https://ero.ontario.ca/notice/019-2319>>.

moratorium on approving new licences for water bottling until consent-based and watershed governance processes are established across BC.