



August 19, 2011

File: 44800-20/NICO-WUMP

John Anderson, Chair, Steering Committee  
Nicola Water Use Management Plan  
c/o Nicola Watershed Community Round Table  
Box 400  
Merritt, BC V1K 1B8

Dear John Anderson,

**Re: Nicola Water Use Management Plan**

The purpose of this letter is to provide a provincial response to the Nicola Water Use Management Plan (WUMP) dated March 2010. I apologize for the delay in response; although there have been informal communications about aspects of the plan with you and Elizabeth Salomon-de-Friedberg, this is my first written response. I have reviewed the plan in detail, and have discussed it with Victoria Ministry of Environment (MOE) staff, with members of the regional management team of the Ministry of Forests, Lands and Natural Resource Operations (MFLNRO), Thompson Okanagan Region, and other provincial regional agency staff.

For your information, many of the water, fish, wildlife, and ecosystems functions previously within MOE and referenced in the WUMP are now within MFLNRO. MFLNRO Regional Executive Director Kevin Dickenson has authorized me to respond on behalf of the region.

**General Comments**

The Nicola WUMP is a substantial document and successfully reflects the investment of time, effort and resources that went into its development. I would like to offer my commendation to the various committees, stakeholder groups, agencies and consultants that contributed to the development of the WUMP. The end result is a comprehensive and well organized document that clearly articulates a range of complex issues facing the Nicola Basin. The studies that were undertaken to support the plan development provide a rich source of information that will continue to inform resource managers, agencies and governments for years to come.

The Nicola WUMP is consistent with British Columbia's water plan – *Living Water Smart* – in many ways. First and foremost, it embraces a holistic approach to integrated watershed and water management with the key goal of water sustainability. It is community driven and demonstrates local leadership and accountability on resource management issues. It emphasizes the use of partnerships to achieve common goals. It acknowledges the potential impact of

climate change on future water supplies and proposes actions to make the Nicola basin more resilient in the face of possible future water challenges. It identifies the importance of access to water to support agriculture and food security, and acknowledges the need to balance that access with ecosystem needs.

While the focus of the WUMP is on balancing water use and ecosystem needs, there is little reference to drinking water source protection, which is an interest of the Province, especially Interior Health Authority (IHA) and MFLNRO. I understand that City of Merritt has been pursuing a parallel planning process to look at drinking water source protection for its municipal supplies.

### **Legal Status**

I take note that in your 2008 correspondence to then Minister of Environment Barry Penner, you requested that the Province undertake a Water Management Plan (WMP) under Part 4 of the *Water Act*, which would be a legally binding plan. While the Minister acknowledged the complexity of water issues in the Nicola Basin and agreed to take your request under consideration, the Province did not commit to undertake a WMP, or any other type of higher level provincial plan. The Nicola WUMP Steering Committee then elected to proceed with WUMP development despite the Province's lack of commitment to a WMP. As I have previously advised you, because of the specific procedures and criteria required to initiate a WMP, the *Water Act* does not allow for the conversion of a completed plan like the Nicola WUMP into a legislated WMP.

Because the Nicola WUMP was not developed under any statutory authority, the current legal status of the Nicola WUMP is that of a voluntary community-led plan. As such, the plan is not legally binding, and therefore the success of implementing its recommendations is contingent on the voluntary participation of the member agencies. Many such voluntary plans have been successfully implemented in BC, and in my opinion many of the recommendations of the Nicola WUMP can also be successfully implemented without legally binding plan status.

In your cover letter, you indicated that the Nicola WUMP document was being submitted for adoption by the provincial government. While the various provincial agencies (MFLNRO, MOE, Ministry of Agriculture, Ministry of Communities, Sport and Culture, Interior Health, etc) have either been partners in the plan development or may take the plan recommendations under advisement when executing their program responsibilities, there is no mechanism by which the Province can "adopt" the plan, i.e. take ownership of the plan. The ownership of the Nicola WUMP remains with the entity that developed it, the Nicola WUMP Steering Committee, Multi-Stakeholder Committee, and other subcommittees.

The Province's expectation is that the Nicola WUMP Steering Committee will continue to take a leadership role in working with agencies, stakeholders, and the community to advance the goals and objectives of the WUMP, monitor its effectiveness, and review and revise the plan if necessary. The role of the Province, as a partner agency, will be to support the WUMP and its implementation as the Province's jurisdiction and resources allow.

## Recommendations

The Nicola WUMP makes 37 recommendations, 34 of which contain actions for the Province. The following are general comments about the recommendations. I have provided more detailed comments on each of the recommendations in a separate attachment.

Some recommendations go beyond the current scope of provincial agency operations and would require regulatory change, particularly those recommendations dealing with ground water. However I am pleased to report that the proposed *Water Sustainability Act* (WSA), which is being developed to replace the *Water Act*, will likely address some of these recommendations if it gets passed into law. You may be interested to note that Nicola Basin water management challenges, and the resultant Nicola WUMP planning process, helped to inform the development of some of the policies supporting the new WSA.

While most of the WUMP's recommendations are consistent with government's direction for water management, there will be challenges in implementing them given the current provincial fiscal climate. MFLNRO has not allocated additional budget to support implementation of the WUMP in this fiscal year (outside of routine program allocations for dam management and ecosystems studies), and actions arising from the recommendations would need to compete with business plan priorities that have already been set by the Province. However, some recommendations can be taken under advisement by the Province when making resource management decisions (such as water licensing and dam operations) where appropriate. Work has already been done on some recommendations (i.e. the drought response and communication plan), and others are in progress.

Two recommendations in particular will not likely be pursued at this time due to cost of implementation and government resourcing constraints: Recommendation 1 regarding development of a Water Management Plan under Part 4 of the *Water Act*, and Recommendation 20 regarding potential Nicola Dam completion. These recommendations should remain on the list for future consideration. Regarding the former, there may be other planning avenues under the new *Water Sustainability Act* that may be more appropriate for the Nicola Basin.

With those recommendations that are tasked to be led by other agencies or groups, the Province has a lesser role but can support actions by providing expertise, information and data sharing and by ensuring that the appropriate permits are obtained and that regulations are complied with.

I generally concur with the estimated range of costs attached to each of the recommendations and appreciate that the Nicola WUMP Steering Committee has gone through a prioritization exercise to help determine which actions should be undertaken first. Also very useful is Table 3, which provides a list of proposed studies to be undertaken should funding become available.

Please note that the duty of the Crown is to consult with First Nations on any actions or activity that may impact Aboriginal rights and/or title. The level of First Nations involvement that you have identified in the Nicola WUMP is not sufficient to constitute consultation or sign off of an agreement; therefore the Crown is obligated to follow established consultation procedures when

implementing any recommendations that may be of interest to First Nations. I recommend that you continue to seek First Nations engagement on the WUMP.

### **Next Steps**

In support of the Nicola WUMP I plan to:

- Share the Nicola WUMP document with regional provincial agency decision makers in different program areas and bring the appropriate recommendations to their attention;
- Continue dialogue with Victoria staff about the possibility of applying new *Water Sustainability Act* provisions to the Nicola basin potentially as a pilot;
- Seek opportunities to advance Nicola WUMP objectives, i.e. exploring the application of the Okanagan's SWURT (Streamlined Water Use Reporting Tool) to the Nicola Basin to report on water use;
- Communicate with you regarding the outcome of these actions; and
- Participate in further discussions on the implementation of the WUMP (recognizing that there may be some limitations on future provincial agency involvement).

Thank you for your efforts in developing the Nicola Water Use Management Plan. It is widely acknowledged within provincial circles that the individuals who participated in the Nicola WUMP demonstrated exceptional commitment over a significant period of time, all the more notable in that much of this effort was volunteered. I will look forward to further discussions with you on how best to implement some components of the plan. Please feel free to contact me directly at 250 371 6270 to discuss the plan further.

Yours truly,

Valerie Z. Cameron, P. Geo.  
Water Stewardship Manager  
Provincial Operations

pc: Kevin Dickenson, Regional Executive Director, Thompson Okanagan Region, MFLNRO, Kamloops  
Peter Lishman, Director, Authorizations, Thompson Okanagan Region, MFLNRO, Kamloops  
Dan Peterson, Director, Resource Management, Thompson Okanagan Region, MFLNRO, Kamloops  
Chuck van Hemmen, Manager, Cascades District, Thompson Okanagan Region, MFLNRO, Merritt  
Andrew Petersen, Regional Resource Specialist, Ministry of Agriculture, Kamloops  
Ted White, A/Manager, Strategic Initiatives, Water Protection and Sustainability Branch, MOE, Victoria  
Barry Rosenberger, Area Director, Fisheries and Oceans Canada, Kamloops  
Matt Noble, CAO, City of Merritt, Merritt  
Bob Finley, Manager of Planning Services, Thompson Nicola Regional District, Kamloops  
Brent Mueller, Manager, Ministry of Community, Sport and Cultural Development, Victoria  
Chief Victor York, Lower Nicola Indian Band, Merritt  
Chief Danny Manuel, Upper Nicola Band, Merritt  
Chief Harold Aljam, Coldwater Indian Band, Merritt  
Chair Jim Billy, Nicola Tribal Association, Merritt  
Chief Ruby Adams, Shakan Indian Band, Merritt  
Chief Kowaintco Michel, Nooaitch Indian Band, Merritt  
Chair Robert Pasco, Nlaka'pamux Nation Tribal Council, Lytton  
Brenda Aljam, Esh-kn-am Cultural Resource Management Services, Merritt

## Summary of Nicola WUMP Recommendations - Provincial Comments

### Key:

	<b>Complete</b>		<b>Support/Advisement</b>
	<b>In Progress</b>		<b>Go Slow</b>

### Acronyms:

WUMP	Water Use Management Plan
MOE	Ministry of Environment
MFLNRO	Ministry of Forests, Lands, and Natural Resource Operations
WMP	Water Management Plan (under Part 4 of the <i>Water Act</i> )
LWS	Living Water Smart
NWCRT	Nicola Watershed Community Round Table
NWAC	Nicola Water Advisory Council
COM	City of Merritt
TNRD	Thompson Nicola Regional District
Prov	Province of BC
Fed	Federal Government
FN	First Nations
SWERT	Streamlined Water Use Reporting Tool
INAC	Indian and Northern Affairs Canada
DFO	Fisheries and Oceans Canada
MCS/MCSCD	Ministry of Communities, Sport, and Cultural Development
WSA	<i>Water Sustainability Act</i> (under development)
AAFC	Agriculture and Agri-Food Canada
LRMP	Land and Resource Management Plan
TSA	Timber Supply Area
IHA	Interior Health Authority
BC Ag Council	BC Agriculture Council
MEMPR	Ministry of Energy, Mines and Petroleum Resources, now Ministry of Energy and Mines
EC	Environment Canada
WSC	Water Survey of Canada
BMPs	Best Management Practices
IFNs	Instream Flow Needs
C&E	Compliance and Enforcement

#	Recommendation	Lead Agencies	Provincial Comments
1	Initiate and implement a Water Management Plan for the Nicola watershed under Part 4 of the Water Act	MOE (MFLNRO)	Due to fiscal and staff time constraints, a Part 4 WMP is not being considered by the Province at this time. However, other planning instruments under the proposed <i>Water Sustainability Act</i> (WSA) will be explored.
2	Enhance public education and outreach program	COM/TNRD/ Prov/Fed/FN	Supports <i>Living Water Smart (LWS)</i> . While all partners, including NWCRT and NWAC, should have a role in education and outreach, these programs have been proven to be very effective when led and coordinated at the local level.
3	Initiate a staged conservation initiative, which may include installing and reading flow meters and reporting usage on an annual basis	COM/TNRD/ Prov/Fed/FN	Supports LWS and proposed elements of the <i>Water Sustainability Act (WSA)</i> . Metering is currently possible under existing legislation ( <i>Water Act</i> , municipal bylaws) but metering costs are high and would need to be borne by water users or through grant funding. Okanagan SWERT model can be applied as a reporting tool on water usage for minimal cost.
4	Mandate drilling authorizations for new water supply wells	MOE/DFO/ INAC	Under consideration for water-short areas under the new WSA
5	Work towards the implementation of a water licensing system for all new water supply wells	MOE (MFLNRO)	Under consideration for the new WSA
6	Support condition of no new permanent water licences unless backed by storage	MOE (MFLNRO)	Implemented. Nicola River and all tributaries are fully recorded and have restrictions against new water licenses unless backed by storage.
7	Harmonize surface water allocations/licences with groundwater use/demand/licences	MOE (MFLNRO)	Supports LWS. Under consideration for WSA. Requires monitoring and data.
8	Ensure that all provincial and federal infrastructure grants are contingent on	MCS (MCSC) Fed (AAFC)	MCSC will take this recommendation under advisement

	water metering		
9	Seek opportunities to renegotiate and hold in reserve unused portions of water licences	MOE (MFLNRO)	MFLNRO supports this recommendation and will take it under advisement when assessing “beneficial use” of existing water licences
10	Update land use plans to be consistent with WUMP goals and objectives	TNRD/COM/MFLNRO/FN	There is currently no LRMP (Land and Resource Management Plan) for the Merritt TSA (Timber Supply Area), and no plans to develop an LRMP, or any other higher level land use plan, in the foreseeable future
11	Implement a new bylaw for facilitating grey water systems and any needed regulatory changes	TNRD/COM/Prov/IHA	Supports LWS. MCSC will take this recommendation under advisement.
12	Recommend new bylaws and development permit requirements to better conserve water supplies	TNRD/COM	Supports LWS and WSA
13	Implement a graduated summertime sprinkling restriction system	COM/TNRD/Prov/Fed/FN	Supports LWS and WSA for residential use. Does not apply to agricultural use. No direct role for Province in this action beyond metering for water licensees (#3)
14	Implement a rebate program encouraging water conservation	COM/TNRD	Supports LWS and WSA
15	Develop an integrated drought management plan	MOE/NWAC/COM/TNRD	Complete. MOE completed the BC Drought Response Plan in 2010. In addition MOE/MFLNRO supported NWCRT in developing the Nicola Basin drought communication plan in 2010.
16	Develop a program to identify and cap free flowing artesian wells	MOE (MFLNRO)	In progress. There is only 1 free flowing artesian well in the basin. MFLNRO is aware of the problem and is working with the well owner towards resolution.
17	Encourage more efficient irrigation systems	Ministry of Agriculture/MOE (MFLNRO)	In progress. Supports LWS and WSA
18	Support LWS’s requirement for mandatory purple pipes in new construction by 2010	MOE/IHA	The date has been extended for the policy development but this is still a targeted government action. MOE or MFLNRO would not be the lead

			agency to implement this action.
19	Initiate periodic and planned communication meetings between WUMP Advisory Council, stakeholders, and MOE (MFLNRO) dam operators (for Nicola Dam)	MOE (MFLNRO)/ NWAC	MFLNRO will take under advisement. Current dam related communications include media releases, email communications to stakeholders, and meetings with key stakeholders when warranted. The value-added benefit of having additional scheduled information meetings on top of existing communications would need to be demonstrated.
20	Undertake a detailed options assessment to find a preferred management solution to Nicola dam operation	MOE (MFLNRO)/ DFO/NWAC	WUMP contains a good summary of potential dam operating options, but a more expanded options assessment would provide more detail and additional options such as change of dam ownership. An expanded assessment would determine who would be the beneficiaries of any operating regime change, and whether they would be willing and able to bear the costs. At the current time, options requiring capital investment by the Province are not being entertained given government fiscal restraints. MFLNRO is willing to take non-capital options and recommendations under advisement; however it retains the legal liability and accountability for the Nicola dam and is obligated to apply unfettered judgment in its operation.
21	Initiate an aquatic ecosystem study associated with lake level changes in Nicola Lake (and downstream)	MOE (MFLNRO)/ DFO/NWAC	In progress. MFLNRO is continuing with an established ecosystem study of Nicola Lake
22	Recommend a review of the operations for Mamit Lake and all other existing small dams	MOE (MFLNRO)/ NWAC	The three largest dams in the Nicola basin are Chaperone, Mamit, and Nicola dams. All are operated in a professional manner but there is some merit in seeing if there could be better coordination in their operation. There are many small dams in the basin, mostly for irrigation. Coordinating the operation of these dams would be

			a difficult exercise, as most dam operators insist on exercising their full water rights as they need them. The costs of undertaking a coordination exercise would need to be evaluated against the potential benefit of that exercise. In MFLNRO's opinion, the benefit would be questionable.
23	Revisit and identify potential new storage dams given water deficit	MOE (MFLNRO)/ NWAC/ Property Owners	Because the property owners would be the beneficiary of additional storage, they or the NWAC should be the lead on this action. MFLNRO would take the results of the study under advisement when processing new water licence applications.
24	Explore potential program to encourage use of cisterns to store rain water	MOE (MFLNRO)/ COM/TNRD/IHA	Supports LWS. MOE/MFLNRO would not be the lead to implement this recommendation.
25	Encourage farms to undertake nutrient management plans	AAFC/Ministry of Agriculture	Supports LWS and water quality components of WSA
26	Encourage agriculture, mining, and other industries to adopt best management practices around water use and conservation	BC Ag Council/MEMPR MFLNRO	Supports LWS and WSA. BC Ministry of Agriculture currently encourages BMPs and water conservation through numerous programs. Some, which have been piloted in the Okanagan, may have application in the Nicola
27	Support ongoing (environmental) enhancement initiatives	DFO/MOE (MFLNRO)/ FNs/COM/TNRD/ NWAC	In progress. Supports LWS and WSA
28	Develop a Fish-Water Management Tool (for Nicola Dam)	DFO/MOE (MFLNRO)/NWAC	Currently the dam is operated in a manner to maximize benefits to fish via regular communications between dam operators and fisheries agencies. The value-added benefit of developing a fish-water management tool needs to be demonstrated, given the cost. In order to be effective, more real-time data needs to be available.
29	Develop suitable riparian setback requirements for new water supply wells in priority areas.	MOE (MFLNRO)	In progress, included in Phase 2 of Ground Water Protection Regulation. Supports LWS and WSA

30	Ensure that instream flow needs (IFN) are taken into account within any harmonized surface and groundwater licensing system.	MOE (MFLNRO)/ DFO	In progress. Currently IFN are taken into account in all surface water allocation decisions. New WSA will have specific objectives for IFN
31	Prepare bi-annual report on the state of water in the watershed and the effectiveness of WUMP	MOE (MFLNRO)/ NWAC	Supports LWS and possibly WSA. Leadership for this action would need to be determined as MFLNRO has limited staff capacity to do so. Suggest that reporting on WUMP effectiveness could be the role of the NWAC. MFLNRO can provide monitored data results to support any reports.
32	Develop a monitoring program to better determine baseline conditions for water quantity and quality trends including climate change adaptation	MOE (MFLNRO)/ EC (WSC)/ NWAC	Supports LWS. While there is a monitoring network in place, it would be worthwhile to determine if improvements are needed.
33	Undertake specific studies: a) Contaminant inventory b) Nicola Lake aquatic impact study c) Complete preliminary Instream Flow Needs (IFN) d) Detailed IFN assessment in priority areas e) Groundwater storage study f) Detailed water budget g) Storage sites assessment	MOE (MFLNRO)/ Env Canada (WSC)/ IHA/ NWAC	Support as resources allow. Currently MFLNRO does not have base budget for undertaking studies. NWAC may be able to coordinate partnership agreements to access grant funding.
34	Establish a community driven governance system to inform water management systems	MOE (MFLNRO)/ NWAC	Supports LWS and is being considered in WSA
35	Create secure and stable funding sources to support water management activities	NWAC	Support.
36	Support a compliance and enforcement system for monitoring activities associated with the	MOE (MFLNRO)/ Local govts/ regulators	a) Compliance monitoring and enforcement of licensed water use is the responsibility of MFLNRO. Capacity to do monitoring is limited;

	delivering of WUMP		<p>however new organizational structures in MFLNRO may allow for better local C&amp;E. May also be possible to appoint a bailiff(s) under existing legislation. MFLNRO will take this recommendation under advisement.</p> <p>b) Regarding compliance monitoring and enforcement of other (non-water licence related) WUMP recommendations, the responsibility should fall under the authorizing agency.</p> <p>c) Monitoring the effectiveness of WUMP as a whole should fall to the local entities that developed it (NWCRT, NWAC).</p>
37	Review the WUMP at a 5 year review, or earlier as required	MOE (MFLNRO)	The Nicola WUMP is a locally developed and owned plan; therefore the responsibility for reviewing and updating the plan should fall to local entities (NWAC, NWCRT, etc)