

ABOUT THIS SUBMISSION

This is a joint submission of Nigel Bankes and Arlene Kwasniak, both of the Faculty of Law, University of Calgary, in respect of the South Saskatchewan River Basin (SSRB) Draft Water Management Plan (the Draft WMP). This submission primarily focuses on the role that water conservation objects (WCOs) play in the Draft WMP. We make a number of recommendations to alter and strengthen that role. In doing this we:

- ♦ challenge the legality of the proposed WCOs for the SSRB,
- ♦ review the role of WCOs in the *Water Act* and regulations and argue that there are no serious legal or practical constraints to setting WCOs on the basis of a reasonable and scientific assessment of instream flow needs (IFN), and
- ♦ support an appropriate amendment to the *Water Act* to enable private parties to hold WCO instream licences and offer wording for an appropriate amendment.

We also comment on:

- ♦ the Draft WMP's proposed treatment of licensed uses and we suggest that government exercise more flexibility *vis-à-vis* existing allocations,
- ♦ the potential of using storage to help meet IFNs, and
- ♦ the potential for a cooperative strategy with the federal Department of Fisheries and Oceans.

Appendix "A" provides a summary of our recommendations.

WATER PLANNING, WATER CONSERVATION OBJECTIVES AND THE PROTECTION OF THE AQUATIC ENVIRONMENT

Authority under the Water Act to establish WCOs

In this part of our submission we examine and make some recommendations in relation to the proposed WCOs. We begin by looking at the link between the planning process and WCOs and we then turn to examine the definition of WCOs and the effect of WCOs.

The *Water Act* provides that the Minister must establish a framework for water planning and that that framework must include a strategy for protecting the aquatic environment (s.7). The framework may include WCOs and the prescribed strategy may also include guidelines for establishing WCOs (s.8 (3) (b)). The government published the framework at the end of 2001. It did not include any relevant guidelines.

The last section (s.15) of the sub-division of the *Act* dealing with water planning gives the Director the power and the discretion to establish WCOs. Although section 15 is found within the *Water Act* Division titled "Planning" the *Act* does not limit the establishment of WCOs to planning processes. A Director may

establish a WCO at any time.

The definition of a WCO and a critique of how government is setting WCOs

The definition of a WCO reads as follows:

- (hhh) A “water conservation objective” means the amount and quality of water established by the Director under Part 2, based on information available to the Director, to be necessary for the
- (i) protection of a natural water body or its aquatic environment, or any part of them,
 - (ii) protection of tourism, recreational, transportation or waste assimilation uses of water, or
 - (iii) management of fish or wildlife,
- and may include water necessary for the rate of flow of water or water level requirements;

This definition emphasises that a WCO must establish the amount of water that the Director considers “to be necessary” for certain purposes. These purposes are all related since they refer generally to non-consumptive uses and are concerned with issues of protection and management. While the Director clearly has some discretion to establish (or not) a WCO (see section 15), having decided to establish a WCO, the Director has very little discretion as to the contents of any WCO. This is because the WCO has to be: (1) based on the information available to the Director, and (2) that amount or quality of water which is “necessary” to achieve the prescribed objectives. Regarding (1), the information cannot be just any information. In particular, it cannot be information about the amount of water required for the economic development of different sectors of the provincial economy. It must be information related to the legislated purposes for which a WCO is to be established. Clearly the most important information currently available for this purpose is the Instream Flow Report prepared by the Department. Neither the operative section (s.15), nor the definition, allow the Director, or anybody else (including Basin Councils, the Minister or Cabinet) to ask questions about whether the level of the WCO is “appropriate” or “strikes an appropriate balance between aquatic ecosystem health and the economy”.

Accordingly, all of the recommendations in the Draft WMP with respect to establishing a WCO would seem to be flawed on at least two grounds: (1) the WCOs are not the WCOs that are “necessary” for the listed protection and management purposes, and (2) the WCOs are not based (or at least there is no evidence that they are based and lots of evidence to the contrary¹) on the *relevant* information available to

¹ See, for example, the statement at page 8 of the terms of reference for Phase II to the effect that: “The process for arriving at WCO recommendations will comprise an iterative approach involving a number of water management scenarios. The scenarios will be tested and evaluated by computer simulations. The goal will be to

the Director. Hence, there is a strong argument that the so-called “WCOs” are not water conservation objectives at all, as the Act defines “water conservation objective”. A reviewing court might well strike them down.²

RECOMMENDATION #1:

We recommend that the Director withdraw the proposed WCOs and formulate new WCOs that are based on the relevant information and that meet the “necessary” test of the definition.

The decision to establish a WCO

As we have indicated above, the Director may establish a WCO at any time. The Director is not confined to doing so as part of a water planning exercise. We also noted above that the *Act* affords the Director a certain amount of discretion in deciding whether or not to establish a WCO. This conclusion was based on the language of section 15, the principal operative clause in relation to WCOs which provides that:

- 15(1) The Director may establish water conservation objectives.
- (2) The Director must engage in public consultation that the Director considers appropriate during the establishment of a water conservation objective.
- (3) Information on a water conservation objective established by the Director must be made available to the public in a form and manner satisfactory to the Director.

The Director’s discretion is not unlimited but it would be hard to make the case that the Director had an affirmative duty to establish a WCO. The Director owes two types of procedural duties in relation to establishing a WCO (the director must consult the public and make information available to the public) and while the Director must fulfil both of those obligations the Director has a substantial margin of appreciation in deciding how to fulfil them.³

The Director’s decision to establish a WCO is not a matter that can be appealed to the Environmental Appeal Board. Nor can the substance of any WCO be made the subject of an appeal. That said, a Director’s decision to establish a WCO that does not meet the definitional requirements of the *Act* may be

develop a scenario that offers an acceptable and realistically achievable long-term compromise between the two extremes of consumptive use of all the water and a natural aquatic environment. It is proposed that this long-term compromise could be the water conservation objective in many reaches.” [emphasis added].

² We think that the standard of review on this sort of question would be that of correctness since we believe that the issue raises a pure question of law: namely, “do the proposed WCOs meet the requirements of the statutory definition?”

³ On all of these questions a Court would likely apply a “reasonableness” or “patent unreasonableness” standard of review.

made the subject of an application for judicial review.

The legal effect of a WCO

This part of our submission deals with the legal effect of a WCO. Although it may appear somewhat academic we are providing this analysis for a couple of reasons. The first reason is that we have heard some argue that people should not be too concerned about the content of WCOs (i.e. that they might be set too low) because we are proposing to close the basin. The premise here must be that WCOs are really only relevant to new applications. The analysis below shows that that is not the case. Second, we have also heard the argument that WCOs have to be set at a “realistic” level or in a balanced way or otherwise we might shut down development. The premise here must be that WCOs are very hard edged and can somehow bind the Director to particular results and perhaps trump the provisions of existing licences. The analysis below suggests that while WCOs establish useful and important targets and certainly will and should affect the exercise of the Director’s discretionary powers they do not, for the most part, compel particular conclusions in any specific case. In sum the suggestion that we would be looking at economic stagnation were we to adopt “real”, science-based WCOs is unfounded. Third, we provide the analysis in the interests of encouraging an open debate of these issues.

With that introduction, let’s turn to the analysis. Assuming that a WCO is properly established, what is the legal effect of a WCO? There are a number of provisions of the *Act* (in addition to those already discussed which pertain to the creation of a WCO, namely sections 7(2) (f), 8(3) (b) and 15 that refer to WCOs. We shall deal with each sequentially.

Subsection 29(2)

Section 29 deals with determining the priority of a licence. The general rule is that priority is determined on the basis of the date and time that completed applications are received by the Director. Without going into the details, subsection 29(2) establishes somewhat more generous rules for licence applications in relation to at least some of the purposes for which a WCO may be established. These more generous rules would allow such a WCO licence to have a priority dating back to the date that the *Act* enters into force, provided that the application is made within five years of that date. It also deals with the creation of WCO licences out of a reservation. Since the *Act* entered into force on January 1, 1999 this provision became effectively *functus* as of January 1, 2004 and therefore is of no further interest in relation to the current planning process. We understand that no such retroactive licences were issued.

Subsection 51(2)

Section 51 deals with the application for, and issuance of, a licence for “the purpose of implementing” a WCO. It serves three purposes. First, it makes it clear that the Director may only issue a licence for the purposes of implementing a WCO to “Government”. This limitation applies not only to an original application for a licence but also to the transfer of an allocation of water under a licence under sections 81 -

83 of the *Act* since the result of that process is the issuance of a new licence. Second, it serves to prescribe the range of activities that may be authorized by a WCO licence. These extend to: (1) the diversion of water, (2) the operation of a works, and (3) providing or maintaining a rate of flow of water or water level requirements. Third, the section serves to emphasise that the Director may issue or refuse to issue a licence for a WCO purpose, even though that application is made by the government itself.

In the context of the Phase II planning process subsection 51(2) is important for at least a couple of reasons. First, while it may be possible (i.e. the *Act* does not preclude it) for a party to acquire an instream licence (a licence to keep water in its natural state rather than to divert it out) that is de-coupled from a WCO, it seems most likely that instream licences will ordinarily be associated with WCOs. This means that the WCO provides an effective ceiling to the acquisition of instream licences. Second, at present, a private person or conservation organization may not acquire a licence for a WCO purpose.

Although the Draft WMP suggests that there will be amendments to the *Water Act* to enable private instream licences for the purposes of implementing WCOs (p. 15), this proposal, in our view, is unduly restrictive. The Draft WMP states that “AENV put forward a proposal to amend the *Water Act* to permit private parties to hold such licences, when obtained under the transfer provisions of the *Water Act*” (emphasis added). We see no reason for limiting private WCO instream licences to situations where the holder obtained the licence under the transfer provisions. The restriction would prevent a private person from holding a junior instream licence for WCO purposes participating in the assignment provisions (s.33 of the *Act*) to obtain the use of a more senior allocation on a temporary basis. As well, it would prevent a person applying for a junior instream licence for WCO purposes in water courses that are not presently stressed, but may be so in the future.⁴

These two considerations lead us to two further observations and recommendations.

RECOMMENDATION #2:

We recommend that WCOs be set on the basis proposed in recommendation 1 since otherwise licences for WCO purposes may not be acquired at the levels necessary to protect the aquatic environment.

RECOMMENDATION #3:

We strongly support the proposal (at p. 15) that parties other than government be permitted to acquire licences for WCO purposes. However we recommend that the licences not be limited to those obtained under the transfer provisions.

There are several reasons for these recommendations. First, they allow Albertans to show their preference

⁴ It should be noted that the *Water Resources Act* specifically allowed instream licences (s. 11(1)(c)), and the western states of the United States almost universally recognize instream use as a beneficial use of water.

for the protection of aquatic environment values. At present, while sections 81 - 83 permit a market to develop in water rights those sections primarily serve to benefit consumptive values rather than conservation values. It is therefore a very imperfect market - certain interests are effectively precluded from entering the market. The proposed amendment should create a more efficient market and may encourage a variety of participants. The amendment will allow private, charitable water trusts (formed on the land trust model) to develop. A water trust might facilitate restoration of IFNs through transfers and assignments.⁵ Second, a license for a WCO purpose will allow the holder of that licence to participate in the section 33 assignment procedures. This would permit even a junior licensee to enter the short term market to acquire water to maintain flows. A person without a licence cannot be a party to a section 33 agreement. Third, the recommendations support government's (and industry's) preference for using economic approaches over command and control ones.

In terms of implementing this proposal we recommend the following.

RECOMMENDATION #4:

We recommend that Government table an amendment to subsection 51(2) of the Water Act as follows:

On application ~~by the Government~~ for a licence by a person in accordance with this Act, the Director may issue a licence ~~to the Government but to no other person,~~ or may refuse to issue a licence, for

(a) the diversion of water,

(b) the operation of a works, or

(c) providing or maintaining a rate of flow of water or water level requirements

for the purpose of implementing a water conservation objective.

In proposing this language we intend that it should also allow a person to take a transfer of an existing licence and dedicate that allocation to a WCO. If there is any doubt on this matter it would be a simple task to draft an additional "for greater certainty" provision but our preliminary view is that this is not necessary. We think that it may also be necessary to examine whether the current provisions of the *Act* are adequate to deal with the enforcement of a WCO.

As well, we see no reason why any moratoria on licensing in the SSRB should apply to private instream

⁵ Water trusts are private, non-profit entities that acquire, or assist others in acquiring, water rights or other water interests for conservation purposes. The water rights or interests acquired are used for instream purposes such as to enhance or maintain aquatic ecosystem or riparian ecosystem integrity. A number of the western U.S. states have water trusts. Arlene Kwasniak is completing a research paper on the potential for water trusts in the prairie provinces.

licences issued to implement a water conservation objective, or otherwise to enhance or protect aquatic environment. Such an exemption makes sense since the main purpose of the moratoria is to deal with adverse effects on the aquatic environment (Draft WMP, p.7). A junior instream licence could then participate in the assignment provisions to obtain the use of a more senior allocation on a temporary basis. Accordingly, we make the following recommendation:

RECOMMENDATION #5:

We recommend that the WMP stipulate that any closures in the SSRB shall not apply to instream licences to implement a WCO or otherwise to enhance aquatic environment, whether held by the Government or privately.

Subsection 51(4)

This subsection serves to provide the Director with a list of “matters and factors” that the Director either *may* or *must* take into account in deciding to issue (or refuse to issue) a preliminary certificate or licence. The *may* list includes “any other matters applicable to the licence that in the opinion of the Director are relevant, including any applicable water guideline, water conservation objective and water management plan.”

The shorter *must* list is comprised of the matters and factors specified in an applicable water management plan. This provision makes it possible for a WMP to shift a matter or factor (including a WCO) from the may list to the must list. This is in fact just what the draft WMP does at page 14, table 2. We support this proposal but we also believe that the language of the proposal might be tightened up. Here is our recommendation.

RECOMMENDATION #6:

We recommend that the first entry in Table 2 of the Draft WMP be amended in a couple of ways. First, we recommend that it would be appropriate to distinguish between: (1) existing, potential and cumulative effects on the aquatic environment, and (2) any applicable IO or WCO. Second, we recommend that the Guideline would be much clearer with respect to WCOs if the relevant bullet simply stated that licences should be issued “subject to the terms of any applicable WCO”.

Subsection 53(3)

This subsection deals with basin closures and provides a familiar list of *may* and *must* matters that the Director is to take account of when deciding whether or not to make such a decision. As with subsection 51(4), the WCO is on the may list but may be moved to the must list as part of the requirements of an approved WMP.

Here we note that while the Draft WMP (at 7) proposes closures for the Bow, Oldman and South

Saskatchewan Sub-basins there is no comparable Table for the powers under subsection 53(3) of the Act requiring the Director to take account of WCOs when deciding to make (or revise) a basin closure order.

RECOMMENDATION #7:

We recommend that the Draft WMP include a general statement to the effect that the Director shall (“must”) take into account any relevant WCO when deciding whether or not to close a basin or any part thereof.

Clause 60(3) (c)

Section 60 deals with the renewal of licences. The basic scheme under the *Act* is as follows. Prior to the *Act* licences were generally issued without term i.e. they are perpetual. They do not lose this status under the new *Act* (s.18). However, all licences issued under the new *Act*, including licences issued out of transfers, must be issued for a limited term. Hence there is a need for a mechanism to deal with renewals. Section 60 of the *Act* provides this mechanism and subsection (3) lists the grounds upon which the Director *may* decide not to renew a licence. One of those grounds is that “the water conservation objective of a natural water body from which the diversion of water will be made is not being met.”

This is an important power but it is equally important to mention two limitations on the exercise of this power. First, it only applies with respect to new (*post-Act*) and therefore junior licences (with the exception of licences issued out of transfers. Second, the subsection does not require the Director to refuse to renew a licence where a WCO is not being met.

Subclause 66(3)(c)(iii)

Section 66 deals with the issuance of a preliminary certificate which functions much like the old interim licence to permit the construction of works necessary for a diversion. This section tracks the “*may*” and “*must*” language of section 51 and our comments on that section are equally applicable here and we support the recommendation of the Plan (page 14 and Table 2) which will serve to move consideration of the WCO from the permissive list to the mandatory list.

Subclause c 82(5)(b)(i) and subsection 83(1)

These two provisions of the *Act* deal with transfers. Section 82 deals with the approval of transfers and section 83 deals with the water conservation holdback. As with the sections dealing with the issuance of licences and preliminary certificates, section 82 creates a list of may and must factors for the Director to consider and as with those earlier sections we support the recommendations contained in the draft Plan (Table 1, box 1, page 13) which will serve to move the WCO from the permissive list to the mandatory list. We also repeat the recommendation that we made above with respect to re-framing the language of the first box of the table.

We also believe that the Plan might usefully offer more guidance to the Director under clause 82(5)(a) as to

the types of factors that the Director should be considering since we are concerned that transfers will lead to more intense water use with lower return flows and therefore less water in the streams.

RECOMMENDATION #8:

We recommend that the Table 1 of the Draft WMP be amended to direct the Director to take into account the estimated return flows under the original licence and under the proposed use by the transferee and that the appropriate entry in the guideline column should read "no significant reduction in the quantity or quality of return flow".

Section 83 accords the Director the discretion to exercise a maximum 10% conservation holdback. We support that recommendation. However we note that the Director may only exercise this discretion where s/he forms the opinion that it is necessary to (1) protect the aquatic environment, or (2) to implement a water conservation objective. This section therefore provides another reason for not setting WCOs at an artificially low level (i.e. one that represents "a balance" or one that is primarily based on an assessment of the water actually available taking into account licensed diversion) since to do so will effectively constrain the exercise of this important power.

RECOMMENDATION #9:

We support the Draft WMP's recommendation that the Director be authorized to impose a maximum 10% conservation holdback to assist in reaching WCOs. However, to make this authorization effective to better restore IFNs, we recommend that WCOs be set to reflect scientifically based IFNs as noted in recommendation # 2.

The regulations

The regulations contain three references to WCOs. The first is the bare reference in the *Water (Ministerial) Regulations* which simply stipulates in subsection 11(1) that a licence may be issued for "implementing water conservation objective".

The second reference is in section 12 which deals with the duration of water licenses. This section stipulates that if there is no applicable approved water management plan, order of the Minister or water guideline that specifies what an expiry date of a licence should be or how an expiry date of a licence should be determined, the Director must issue a licence for a municipal, agricultural, irrigation or implementing a water conservation objective purpose with an expiry date of

- (a) 25 years,
- (b) less than 25 years if
 - (i) the applicant for the licence has applied for a licence with an expiry date of less than 25 years, or
 - (ii) in the opinion of the Director, the expected duration of the project is

- less than 25 years, or
- (c) more than 25 years if the Director has considered any one or more of the criteria specified in subsection (4) and is of the opinion that the licence should be issued with an expiry date of more than 25 years.

Finally, section 15 deals with disclosure of information and subclause 15(1) (b) (vii) requires that the Department must disclose all reports prepared with respect to water conservation objectives.

FLEXIBILITY IN MANAGING EXISTING ALLOCATIONS, STORAGE, AND THE ROLE OF THE DEPARTMENT OF FISHERIES AND OCEANS

Retrofit provisions and Water Act grandparenting provisions

We understand that the current planning process has proceeded on the basis of certain premises. These premises include (at 35):

Forced reductions in allocations

A premise of the SSRB water management planning process was that no licence would be cancelled for the sole reason of accomplishing recommended plan outcomes.

The Draft WMP does however contemplate (at 6) that “Normal administration of water allocations by Alberta Environment will continue and this may involve cancelling licences on grounds stated in the *Water Act*.” Part of the rationale for this premise was no doubt section 18 of the *Water Act* which grandparents *pre-Act* licences.

But the Draft WMP also recognizes that the government has more flexibility in relation to some licences. These are described in the planning document as licences containing a retrofit provision and are further defined as “licences issued in recent years [that] contain a condition indicating that once a water conservation objective is established, the licence may be amended to include the objective.”

RECOMMENDATION #10:

We fully support the idea of using the retrofit provision in existing licences to help achieve WCO objectives. However, we also recommend that the Plan recognize that the Department may have further flexibility in relation to existing licences (in addition to the licences covered by the definition of the retrofit provision) and that the Department be directed to fully explore these flexibilities and use them to attain WCOs.

This recommendation may require further commentary. We think that the Plan’s premise paints the issue in

terms that are far too stark and in terms that fail to recognize the actual language of section 18. First of all, the issue is not “cancellation” (just as it is not in relation to new licences that contain retrofit provisions). Rather the issue is one of taking advantage of those terms and conditions that the regulators at the relevant time chose to include in licences in order to protect the public interest. Second, the terms of the grandparenting contained in section 18 of the *Act* cannot be taken to have *bettered* the terms of an old licence (a “deemed” licence). In other words if the terms of the deemed licence afforded the Director (or other relevant official) the opportunity to limit diversions in order to protect instream flows (however such a term might have been phrased in the language of the time) then the Director did not lose that power or discretion when the new *Act* was enacted. It is unclear to us how limited or extensive these opportunities might be but the current document with its language of “cancellation” suggests that these opportunities have not been explored.

Public storage, grandparented rights, and the Department of Fisheries and Oceans

We also think that the availability of publicly owned storage may provide the Department with additional leverage with respect to deemed licensees. It is one thing to say that a licence grants a “right” to a share of a stream’s natural flow but it is another thing to argue that this affords the licensee the same quality of right in relation to stored water where that storage is publicly owned and operated.

RECOMMENDATION #11:

We recommend that AENV explore

- (1) the use of storage to increase instream flow and*
- (2) whether licensed entitlements include a right to enhanced flows through release of storage, or whether such enhanced flows may remain instream not subject to use by licensed allocations.*

Finally, we think that there is some opportunity for the Department of the Environment to explore common interests with the federal Department of Fisheries and Oceans as a way of achieving flow objectives in relation to deemed licensees. For example, at the Calgary open house, the comment was made that Trans Alta might be prepared to modify flows at some of its facilities, but only if the province was prepared to compensate TAU. It is our view that a provincial licence does not authorize the licensee to ignore the terms of the federal *Fisheries Act* and de-water streams or otherwise impair fish habitat. In other words it is entirely possible that Trans Alta may be required to modify its dam operations in order to meet fisheries objectives and without the province needing to compensate Trans Alta but these opportunities need to be explored. Federal-provincial bickering should not be allowed to get in the way of opportunities to better protect the aquatic environment.

RECOMMENDATION #12:

We recommend that the Draft WMP direct the provincial Department of the Environment to explore common interests with the federal Department of Fisheries

and Oceans as a way of achieving flow objectives in relation to deemed licensees.

Operation of public storage

We agree with the various references in the Plan (e.g. at 15) to the importance of provincially owned storage facilities as an important tool in achieving instream flow objectives. However, these references seem to us to be excessively general and the overall recommendation that “Operating practices will continue to be improved” equally general and lacking in specificity, transparency and accountability.

RECOMMENDATION #13:

We recommend that the Draft WMP contain specific terms and conditions relating to the operation of provincial storage. If this is not possible then we recommend that the Draft WMP require the development of new operating conditions for provincial storage facilities so as to meet instream flow requirements as well as more traditional flood control, power and irrigation storage values. The WMP might put in place an appropriate review mechanism for these new operating conditions.

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APPENDIX “A”

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION #1:

We recommend that the Director withdraw the proposed WCOs and formulate new WCOs that are based on the relevant information and that meet the “necessary” test of the definition.

RECOMMENDATION #2:

We recommend that WCOs be set on the basis proposed in recommendation 1 since otherwise licences for WCO purposes may not be acquired at the levels necessary to protect the aquatic environment.

RECOMMENDATION #3:

We strongly support the proposal at p. 15 that parties other than government be permitted to acquire licences for WCO purposes. However we recommend that the licences not be limited to those obtained under the transfer provisions.

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- (a) the diversion of water,*
- (b) the operation of a works, or*
- (c) providing or maintaining a rate of flow of water or water level requirements*

for the purpose of implementing a water conservation objective.

RECOMMENDATION #5:

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RECOMMENDATION #9:

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RECOMMENDATION #10:

We fully support the idea of using the retrofit provision in existing licences to help achieve WCO objectives. However, we also recommend that the Draft WMP recognize that the Department may have further flexibility in relation to existing licences (in addition to the licences covered by the definition of the retrofit provision) and that the Department be directed to fully explore these flexibilities and use them to attain WCOs.

RECOMMENDATION #11:

We recommend that AENV explore
(1) the use of storage to increase instream flow and
(2) whether licensed entitlements include a right to enhanced flows through release of storage, or whether such enhanced flows may remain instream not subject to use by licensed allocations.

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We recommend that the Draft WMP direct the provincial Department of the Environment to explore common interests with the federal Department of Fisheries and Oceans as a way of achieving flow objectives in relation to deemed licensees.

RECOMMENDATION #13:

We recommend that the Draft WMP contain specific terms and conditions relating to the operation of provincial storage. If this is not possible then we recommend that the Draft WMP require the development of new operating conditions for provincial storage facilities so as to meet instream flow requirements as well as more traditional flood control, power and irrigation storage values. The WMP might put in place an appropriate review mechanism for these new operating conditions.