

Errata

Submission to the CEC:

Part 2: Selected Legislative Developments

FN 74 – Should read: “Interestingly, ss. 150.1 to 150.5 enable regulations to be made giving the Minister the authority to establish objectives for areas such as i) watersheds with significant downstream fisheries values and significant watershed sensitivity; ii) lakeshore management zones; iii) scenic areas; and iv) streams, wetlands and lakes.”

FN 75 – Should read: “*Water Act*, RSBC 1996, c 483. Section 12.2 states that licence renewals under the WA are treated as if the application were for a new licence. Licenses for water projects built after 2003 and licence renewals and amendments are limited to 40 years. Licensing applications must be viewed with reference to the Columbia Basin Management Plan.”

p. 23 – “Section 23 of the WSA articulates express considerations for the review of certain licenses including:” should read: “Section 23(6) of the WSA articulates express considerations for the review of certain licenses including:”

p.24 (now on p.23) – Should read: “ It offers interesting approaches to: agreement to compensate the First Nation for any loss or damage or determination of compensation prior to the issuance of a license.” The paragraph “In making space for indigenous people, the water regime acknowledges that consent is required for water uses that would adversely affect the waters of the Gwich'in, Sahtu First Nations, or the Tlicho Government.” has been deleted.

FN 87 – Should read: “Sections 146 and 148 of the MVRMA state that cumulative impact monitoring and an environmental audit must be conducted every five years with the participation of First Nations and the Tlicho Government.”

FN 90 – Should include: “MVRMA, s. 78.”

FN 91 – Should read: “MVRMA, s. 60.1.”

FN 92 – Should read: “According to section 73 of the MVRMA, “the Gwich'in and Sahtu First Nations have the right to use waters or deposit waste without a license for purposes of trapping and non-commercial wildlife harvesting other than trapping, for purposes of transportation related to those activities and for traditional heritage, cultural, and spiritual purposes.” Section 74 provides exclusive rights to use water flowing through first nations lands.”

FN 95 – Should be added: “The Umbrella Final Agreement is a modern treaty formed between the government of Canada and the Indigenous people of the Yukon in the late 1980s. The modern treaty agreements outlined in the Umbrella Final Agreement are

intended to ensure that First Nations in the Yukon have a meaningful role in water management decisions and that their rights to water are protected. The government must consult with First Nations before making any inter-jurisdictional agreement that will affect their water rights. UFA (s.14.10.2)”

FN 96 – Should be deleted: “The Umbrella Final Agreement is a modern treaty formed between the government of Canada and the Indigenous people of the Yukon in the late 1980s. The modern treaty agreements outlined in the Umbrella Final Agreement are intended to ensure that First Nations in the Yukon have a meaningful role in water management decisions and that their rights to water are protected. The government must consult with First Nations before making any inter-jurisdictional agreement that will affect their water rights. UFA (s.14.10.2)”

FN 98 – Previous FN 98 should be deleted

FN 100 – Should read: “UFA, s. 14.4.1.”

FN 104 – “16 U.S.C. 839” should read “16 USC 839b”

FN 106 – Should read: “FPA, 16 USC 791-828c.”

FN 108 – Should read: “16 USC 803”

FN 109 – New footnote

FN 111 – Should read: “16 USC 797(e).”

FN 112 – Should read: “16 USC 797(e).”

FN 113 – Should read: “In order to adequately protect fish and wildlife affected by the development or operation of the project, (including their spawning grounds and habitat) each license must include conditions for protection, mitigation of damage, and enhancement of fish and wildlife. These conditions are based on recommendations of various federal and state agencies, including the U.S. Fish and Wildlife Service.”

FN 114 – Should read: “*Endangered Species Act of 1973*, 16 USC 1536.”

p. 28 – “Section 7(a) (2) of the *Endangered Species Act* (ESA) requires FERC to determine whether the proposed license will jeopardize the existence of an endangered or threatened species.” should read: “The *Endangered Species Act* (ESA) requires FERC to determine whether the proposed license will jeopardize the existence of an endangered or threatened species.”

FN 116 – Should read: “This was under *The Bonneville Project Act* of 1937, 16 USC 12B.”

Part 4: The Common Law and our Obligation to the Natural Environment

FN 167 – Should read: “See Appendix 7.”

FN 174 – Should read: “*Canfor*, para 155.”

FN 176 – Should read: “*Canfor*, paras 77-80.”

Part 5: Gaps, Silos and Grandfathers

FN 178 – Should read: “*The Water Rights Act*, CCSM, c W80.”

FN 179 – Should read: “*The Water Protection Act*, CCSM, c W65. Section 14 gives the LG in C the authority to make regulations designating watersheds and requiring a water planning authority to develop a watershed plan.”

FN 221 - Should read: “FERC is also required to give equal consideration to power and non-power values to ensure that the license is the best use of the waterway and must consult with Indian tribes and federal and state agencies [16 USC 797(e)]”

FN 226 –Should read: “In the U.S., s. 803(j)(i) of the FPA requires FERC to include conditions based on recommendations submitted by federal and state fish and wildlife agencies pursuant to the *Fish and Wildlife Coordination Act*”

Previous FN 234 should be deleted

Appendix 2 – Selected Legislative Developments in Canada

p. 5 – “Section 14 of the *Waters Act* sets out the recording and reporting requirements for both types of licenses.” should read: “Section 14 of the *Waters Regulation* sets out the recording and reporting requirements for both types of licenses.”

FN 31 – Should read: “*Waters Act*, s. 25; MVRMA, s. 83.”

p. 7 – “Sections 72 and 73 of the MVRMA also explicitly provide protection for Aboriginal water rights including the use for traditional heritage, cultural and spiritual purposes.” should read: “Section 73 of the MVRMA also explicitly provide protection for Aboriginal water rights including the use for traditional heritage, cultural and spiritual purposes.”

FN 35 – Should read: “According to s. 73(1) of the MVRMA, “the Gwich'in and Sahtu First Nations have the right to use waters or deposit waste without a license for purposes of trapping and non-commercial wildlife harvesting other than trapping, for purposes of transportation related to those activities and for traditional heritage, cultural,

and spiritual purposes.” Section 74 provides exclusive rights to use water flowing through first nations lands.”

FN 61 – Should read: “UFA s. 14.4.1”

Appendix 3 – Selected Legislative Developments in Other Jurisdictions

FN 5 – Should read: “16 USC 797(e)”

FN 6 – Should read: “16 USC 797(e)”

FN 8 – Should read: “16 USC 797(e)”

FN 11 –Should read: 16 USC 803(a)”

FN 13 – Should read: “16 USC 808(e)”

FN 26 – Should read: “16 USC 12H, see s.839(6) and 839d-1”

FN 42 – Should read: “ORS 543.260”

FN 36 to 50, 63, 64, 69, 73-75 – “RSO” should be changed to “ORS”

FN 51 – Should read: “RCW 90.54.080”

FN 54 – Should read: “RCW 90.03.010”

FN 61 – Should read: “16 USC 797(e)”

FN 62 – Should read: “16 USC 797(e)”