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Coping with Water Scarcity in River Basins  
Worldwide: Lessons Learned from Shared  
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2016

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### SLIDES: Scarcity and BC's Water Future - The Evolution of Western Water Law?

Oliver M. Brandes

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# Scarcity and BC's Water Future – The *Evolution* of Western Water Law?

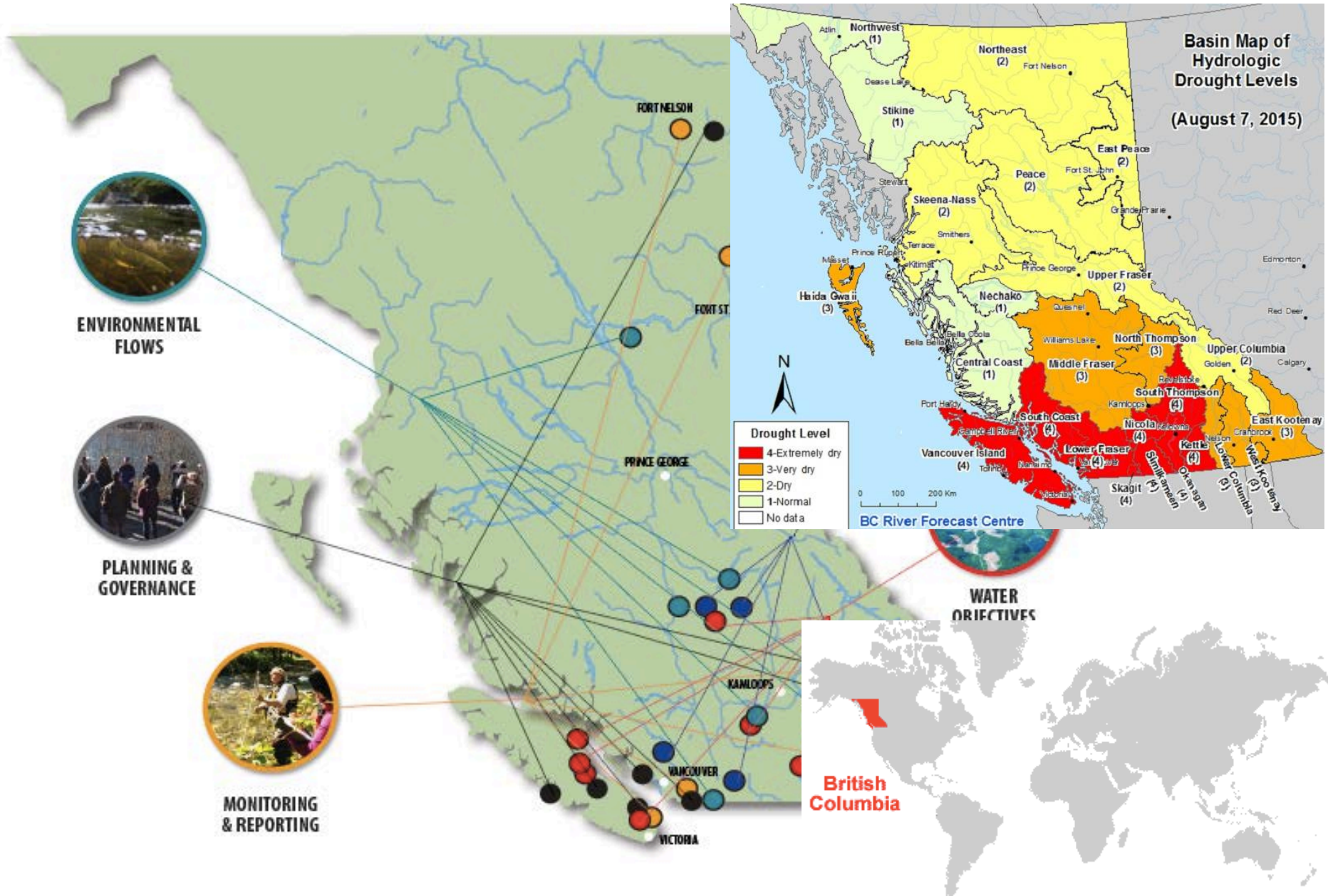


# Overview

- BC Water Law and Governance Context
  - Where have we come from?
- Water Law Reform and BC's New *Water Sustainability Act*
  - Evolution of western water law?
- Where next?
  - Watershed Governance an emerging priority

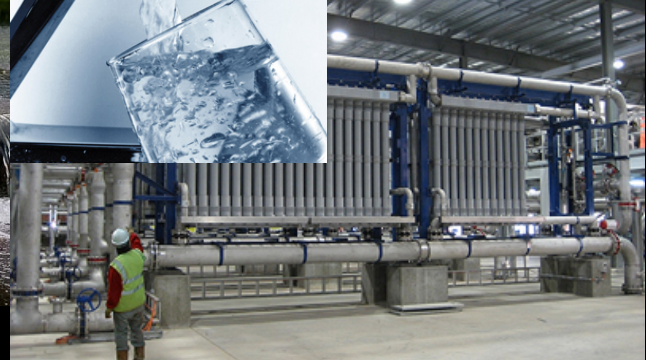


# B.C.'s Emerging Water Issues




# Putting BC's Water Law in Context

# Same Water – Different Rules





**thinkwater.ca** 





Where BC's water law came from



# Old BC *Water Act*: Colonial Water Law Foundations

- \* Over 100 years old (1909)
- \* Primary purpose to facilitate gold mining and agricultural development
- \* Served its purpose of creating certainty for investment for its time
- \* Not environment law, resource extraction rules
- \* Ignores First Nations Rights and Title – asserts ***Crown ownership***



Miners, ground sluicing, Grouse Creek, 1867 or 1868. ([British Columbia Archives and Records Service, HP765](#)).

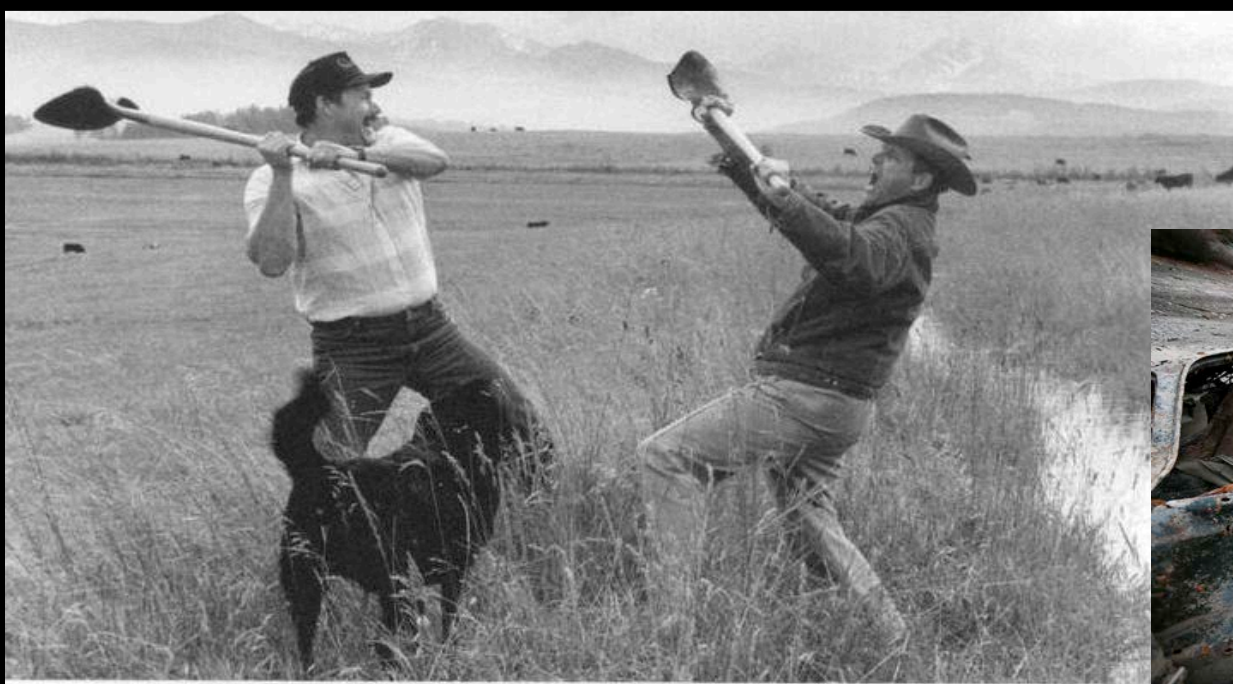
# Colonial Water Law Foundations

## \* Principles of BC *Water Law*

- (prior allocation) ***FITFIR***:  
first come, first serve
- economic link to  
“beneficial use”
- “use it or lose it”
- management and  
enforcement through  
administrative action
  - Reliant on discretionary  
***Statutory Decision Making***
  - Silo-ed/fragmented decisions

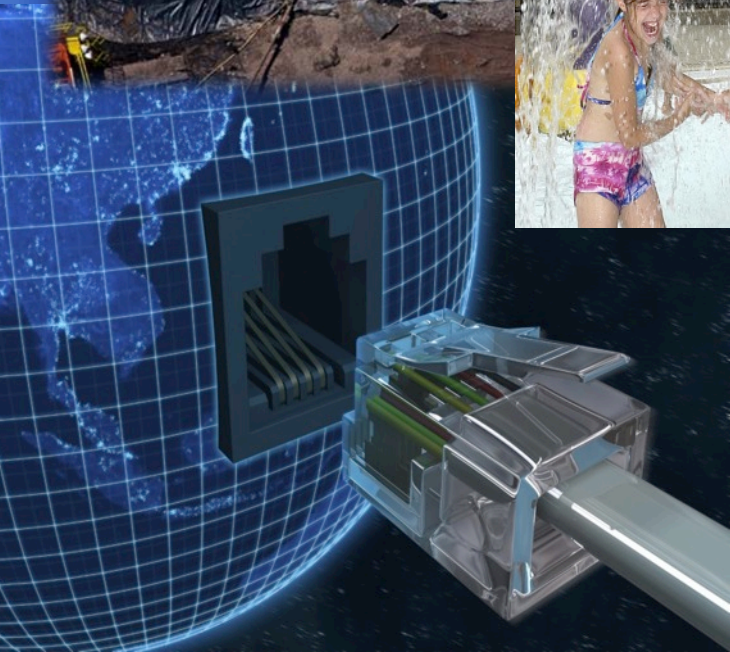
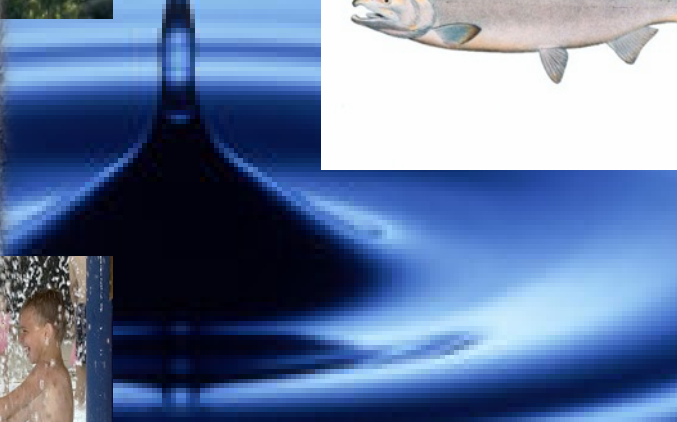
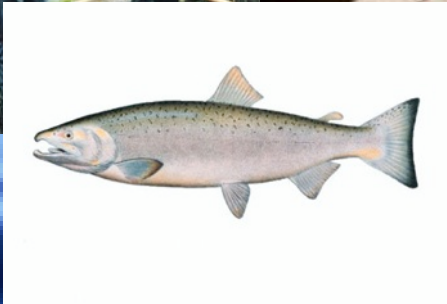


# BC Water Law Reform



*Discussing Water Rights, A Western Pastime*





# Water: Uncommonly Common Consensus

How much do you **AGREE** or **DISAGREE** with the following statements? (%)

90%  
AGREE

Require that decision-makers ***involve the public*** at the community level -

84%  
AGREE

supporting ***new rules*** for water governance and management

90%  
AGREE

Fresh water is a ***public resource*** and nobody should be able to own it.



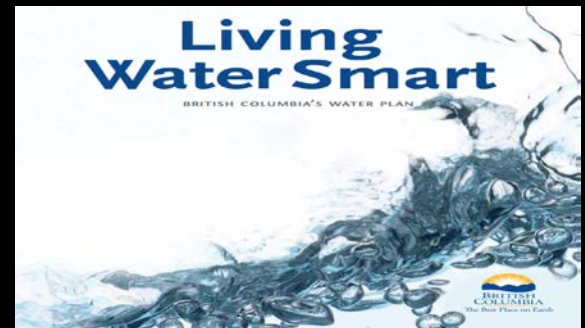
- Trouble in the Water



- Awakening to a new water reality



- Policy window & political commitments



= BC's new *Water Sustainability Act*

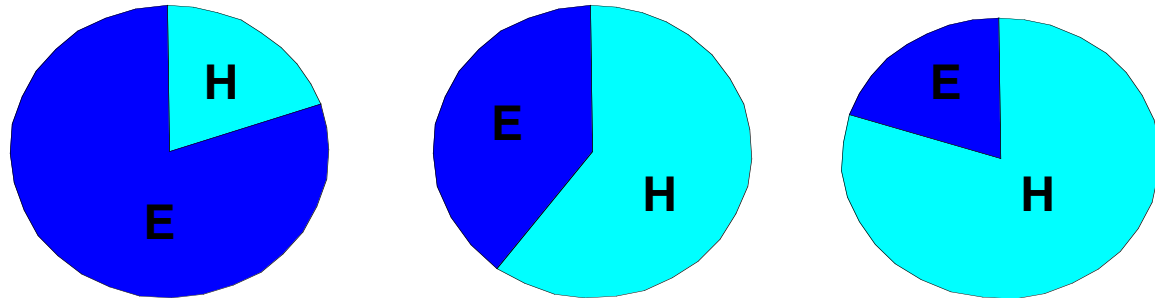
What will the *Water  
Sustainability Act* give  
BC?

# WSA: What's changed or new?

- Extends to **groundwater** for the first time
- **FITFIR “off-ramps”**
- Definition of **beneficial use** which includes efficiency requirement
- Legal protection for **environmental flow needs**
- New provisions for planning and delegated governance: foundation for a new **partnership model**
- NOT NEW ... but confirmed (for now) **rejection of formal water markets** (water entitlements remain “appurtenant” to land/works/mines)

# Allocating water in the 21st Century

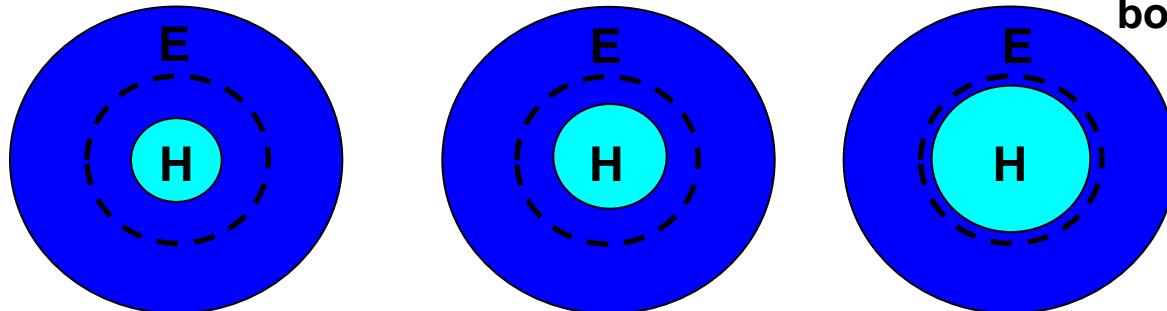
Traditional  
Water  
Management



Time

----- Sustainability  
boundary

A 21<sup>st</sup>  
Century  
Approach



Time

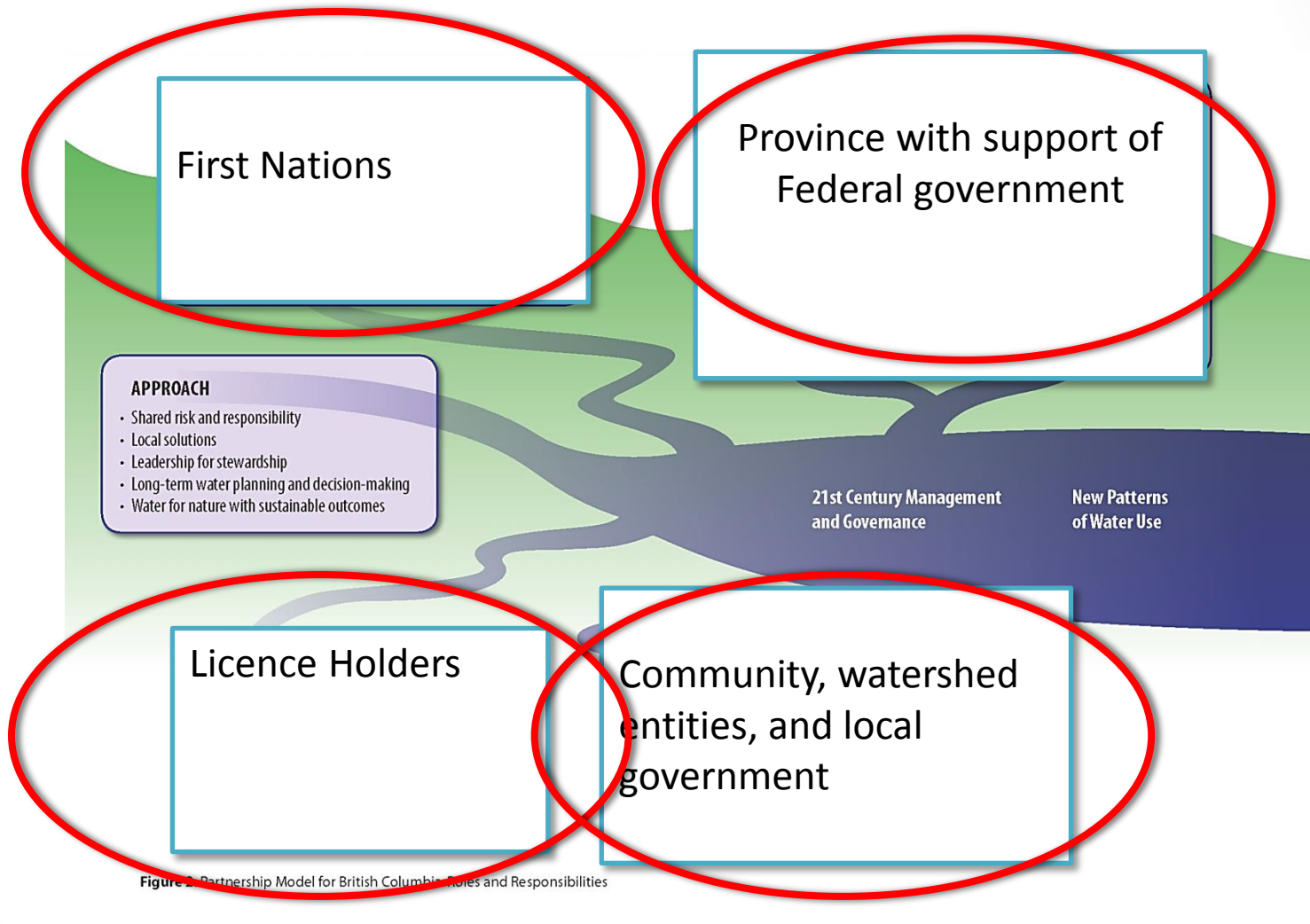
# WSA & Environmental Flows

- **What BC had:** Limited protection through regional policies or fish protection mechanisms
- **What's new?**
  - Decision-makers **MUST CONSIDER** eflows when issuing new licenses (*non-domestic uses*)
  - Critical environmental flow and fish population protection orders
  - Linkage to between quantity & quality and land & water management



# Prerequisites to Success

- New partnership approach for management and governance



# Much still the same?

- Lots of overlap with old *Water Act*; primarily deals with water allocation/licensing – FRAMEWORK LEGISLATION
- Concerns:
  - Colonial structure remains
    - **FITFIR** remains & is extended to groundwater
    - Asserts **Crown ownership** & continues exclusion of **Indigenous water rights**
  - Relies largely on discretionary decision-making by statutory decision-makers

*... Highly vulnerable to agency capture  
... and government foot-dragging*



"Sacred Water Spirits" – Artist Mark Anthony Jacobson



**Where to next?**



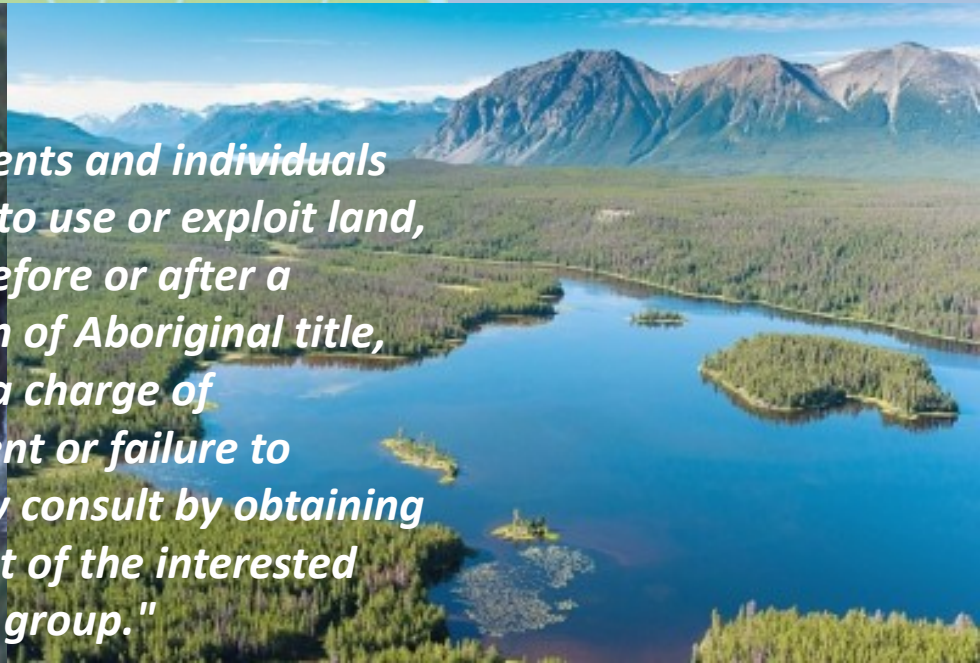


## Tsilhqot'in

2014 SCC decision – affirms that Indigenous people have an explicit role in decision making in traditional territories is **not** optional



*"Governments and individuals proposing to use or exploit land, whether before or after a declaration of Aboriginal title, can avoid a charge of infringement or failure to adequately consult by obtaining the consent of the interested Aboriginal group."*



# First Aboriginal water laws declared

- Declared March 2016 by Nadleh Whut'en and Stellat'en nations
- Laws aim to protect surface waters: **“substantially unaltered in terms of water quality and flow”**
- No development to take place in traditional territories unless water laws followed
- Sets out 11-step consultation process

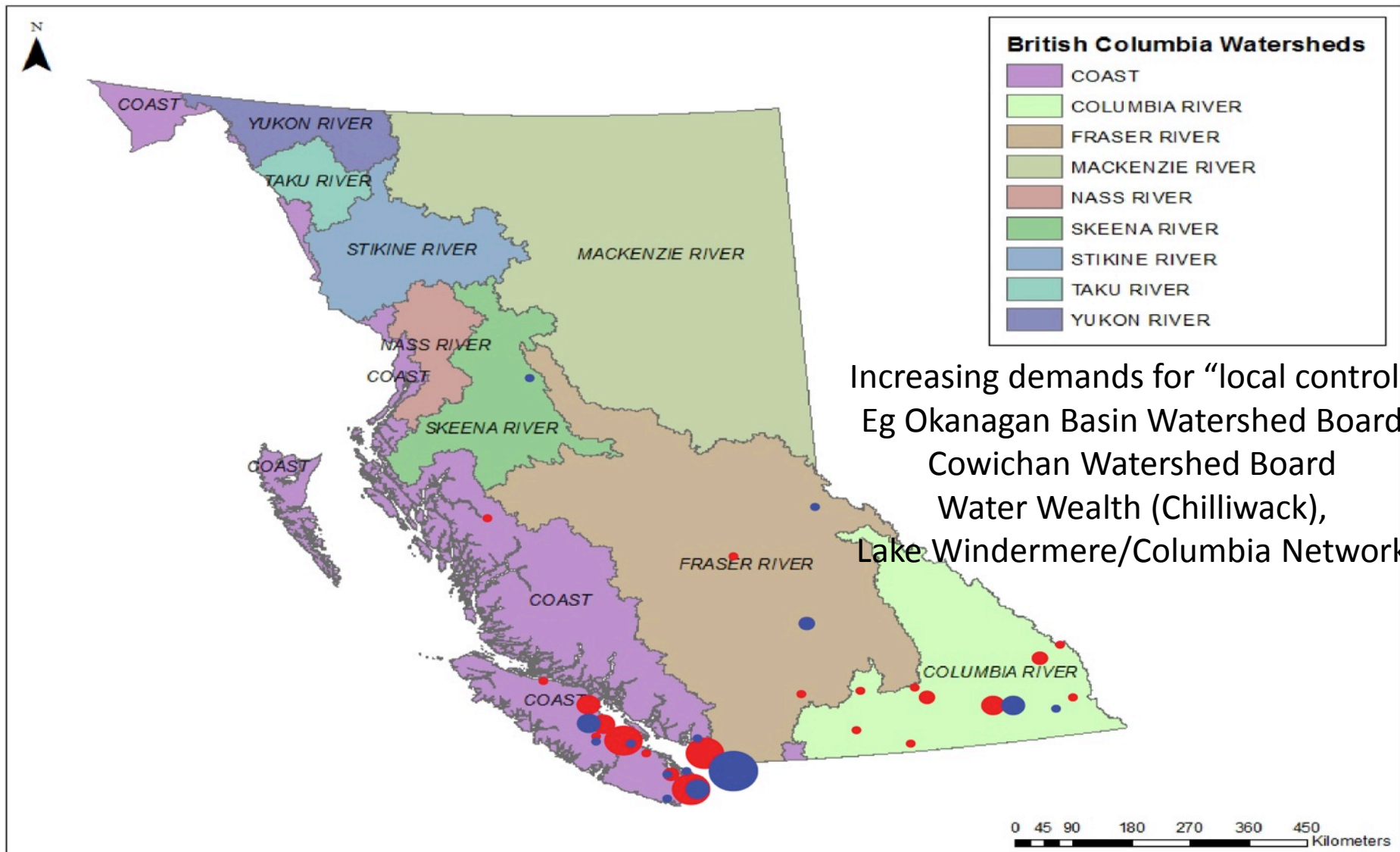



# Towards Better Governance

- The public intuitively understands that protecting water has something to do with...
  - Expertise / Science
  - Rules / Enforcement + Planning
  - Citizens and Local Control



# Towards a Watershed Paradigm in BC?



A close-up photograph of a hand holding water, with water dripping down. The background is blurred, showing what appears to be a garden or outdoor setting. The text is overlaid on the image in a large, bold, black font.

**Move from  
managing the  
watershed  
to  
managing people  
in the watershed.**