

## Out of water?

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By [Ben Parfitt](https://www.policynote.ca/author/benparfitt/) (<https://www.policynote.ca/author/benparfitt/>).



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Cattle ranchers and farmers are big groundwater users. But many ranchers and farmers have failed to apply for groundwater licences. Photo: Matt Miles.

4

## As deadline looms, thousands of BC groundwater users risk losing access to water, but not most water bottling, fracking and mining companies

In February 2018, the head of a little-known Surrey-based company asked the BC government for a licence to withdraw 864 cubic metres of water per day from a well drilled deep into the ground near the village of Clinton.

The village in south central BC is in an agricultural valley a half-hour's drive north of Cache Creek along Highway 97.

Ranching has been a fixture of the region's economy since the late 1800s. Local ranchers typically rely on well water, also known as groundwater, to water their cattle and irrigate their fields.

But what distinguishes the application by Lange Feng, president of the Surrey-based Clinton Hongyan Zhenghong International Investment Inc., is that the company proposes to use the water to bottle and export, something that has not occurred in the Clinton region before.

Even more noteworthy is the timing of Clinton Hongyan Zhenghong's or CHZ's application, which has yet to be approved.

In 2016, water management in BC entered a new era. The [Water Sustainability Act](https://www2.gov.bc.ca/gov/content/environment/air-land-water/water/laws-rules/water-sustainability-act) (<https://www2.gov.bc.ca/gov/content/environment/air-land-water/water/laws-rules/water-sustainability-act>), which came into force that year, was the first substantially new piece of water legislation in the

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**Ben Parfitt**  
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Ben joined the CCPA staff team as a resource policy analyst in 2005 after years working as an investigative journalist with numerous magazines, and previous to that as a reporter with The Vancouver Sun. He is author and co-author of two books on forestry issues and currently devotes much of his policy research to natural resources, with special attention paid to energy, water, and forest resources and climate change.

Ben values being part of a great team at the CCPA as well as the opportunities provided to meet regularly with First Nations, community leaders, environmental advocates and the many people who work in the province's resource industries and who are committed to progressive change.

Ben is an avid cyclist and budding day hiker who likes to take advantage of the many outdoor recreation options open to him and others living in Victoria and south Vancouver Island. He is the proud father of a super-talented daughter, Charlotte Priest, who is wise beyond her years and has taught him much. He also loves to listen to music—the good old fashion way—on vinyl. [Follow Ben on Twitter](https://twitter.com/benparfittccpa) (<https://twitter.com/benparfittccpa>).

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province in a century and made it a legal requirement that all non-domestic groundwater users in BC be licensed or otherwise authorized.

Until then, only water users drawing from surface sources such as rivers, lakes and streams had been regulated in BC. Now, all non-domestic water users—groundwater and surface water users alike—were required to play by the same set of rules.

## Only 10 per cent of groundwater users licensed

At the time of the act’s passage into law, there were an estimated 20,000 non-domestic groundwater users in BC that were given three years to apply for licences. The majority are in the agricultural sector and use water to irrigate crops and fields and to water their livestock. Research by the BC office of the Canadian Centre for Policy Alternatives shows, however, that despite the government extending the deadline to March 1, 2022 and devoting millions of dollars and dozens of additional staff to the licensing drive, only 1,998—or 10 per cent—of those users have actually been issued licences by the government.

Worse, in the face of such anemic uptake and with only 10 months remaining in the extended deadline to get all historical non-domestic groundwater users in the province to apply for licences, the government has substantially fewer staff working on the file than it did just a few years ago.

If the deadline passes and thousands of groundwater users fail to apply, there could be big trouble ahead for the government and groundwater users alike. If existing historical users—some of whom can trace their use of specific water wells back generations—fail to apply before the deadline, they will find themselves in the same queue along with new entrants like CHZ, creating a regulatory nightmare for the government and water users alike.

Complicating matters further may be how the government deals with First Nations who may have historically used groundwater for purposes other than supplying well water to individual residences. The CCPA analysis shows that a total of 17 groundwater licence applications have been filed by First Nations. But it is unclear how many such applications may be outstanding.

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All of this leaves former provincial servants feeling exceedingly nervous about what lies ahead.

“Historical water users who have not applied by the March 1, 2022 deadline will be using water illegally. ([https://waterbucket.ca/wcp/2021/04/20/news-release-trouble-is-brewing-around-groundwater-licensing-in-british-columbia-april-20-](https://waterbucket.ca/wcp/2021/04/20/news-release-trouble-is-brewing-around-groundwater-licensing-in-british-columbia-april-20-2021/#:~:text=Water%2DCentric%20Planning,NEWS%20RELEASE%3A%20Trouble%20is%20Brewing%20Around%20Groundwater%20licens)

[2021/#:~:text=Water%2DCentric%20Planning,NEWS%20RELEASE%3A%20Trouble%20is%20Brewing%20Around%20Groundwater%20licens](https://waterbucket.ca/wcp/2021/04/20/news-release-trouble-is-brewing-around-groundwater-licensing-in-british-columbia-april-20-2021/#:~:text=Water%2DCentric%20Planning,NEWS%20RELEASE%3A%20Trouble%20is%20Brewing%20Around%20Groundwater%20licens) warns Ted van der Gulik, formerly with the Ministry of Agriculture and now president of the Partnership for Water Sustainability in BC. “There may be any number of reasons why historic groundwater users are not applying for their licences but it doesn’t really matter. With the deadline less than a year away, Government needs to embark upon a concerted education and communication effort to urge them to do so.”

Data analyzed by the CCPA shows that as of mid April only 2,430 individual groundwater licence applications were listed in a provincial government water licence database (<https://www2.gov.bc.ca/gov/content/environment/air-land-water/water/water-licensing-rights/water-licences-approvals/water-rights-databases>). Of those, 1,998 were listed as “current,” meaning actual water licences had been awarded. The remaining 433 applications were flagged as “active,” meaning documents had been received by the government but not yet approved or denied. CHZ’s application is among them, meaning those in the queue consist both of long-time groundwater users and new users.

In response to questions from the CCPA, the provincial Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) said that as of the end of January 4,020 groundwater licence users, just over 20 per cent of an estimated 20,000 *existing* groundwater licence users, had applied for licences, meaning that four of every five users had not.

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([https://www.policynote.ca/wp-content/uploads/2021/05/pn\\_may2021\\_groundwater\\_spring.jpg](https://www.policynote.ca/wp-content/uploads/2021/05/pn_may2021_groundwater_spring.jpg)).

Spring water, seen here emerging from the ground, is what many businesses tap into when they sink wells. Photo: Matt Miles.

## Millions spent, only “disappointing” few in queue

“The low application rate is disappointing,” Tyler Hooper, a public affairs officer with the ministry acknowledged in response to emailed questions. “Several steps will be taken to communicate the message to users and reinforce the need to apply for a water licence and the consequences of not applying prior to March 2022.”

Hooper said the government does not contemplate extending the deadline, which means that barring a massive surge in applications thousands of groundwater users could risk losing their access to water in less than a year.

When the Water Sustainability Act was first introduced, it was one of those rare pieces of legislation that enjoyed widespread if at times qualified support from the governing and opposition parties alike. In introducing the bill, then Liberal environment minister Mary Polak, said the time had come to effectively count and manage every drop of water in the province.

“This legislation delivers on government’s commitments to modernize B.C.’s water laws (<https://www.leg.bc.ca/documents-data/debate-transcripts/40th-parliament/2nd-session/20140311am-Hansard-v8n1#2067>), regulate groundwater use and strengthen provincial water management in light of growing demands for water and changing climate. Water is our most precious resource, and this legislation will help ensure that our supply of fresh, clean water is sustainable to meet our needs today and for generations to come,” Polak said in the Legislature, later adding that the act “recognizes that groundwater and surface water are interconnected and addresses the need to manage them under the same regulatory regime.”

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The legislation’s key objective to regulate groundwater was widely supported by NDP opposition members as well as the Legislature’s then lone Independent and Green MLAs.

But as then Green MLA Andrew Weaver noted when the proposed legislation moved to second reading, it was one thing to say that groundwater users would be licensed and quite another to make it a reality.

“My main concern with regards to this bill concerns the government’s ability to effectively implement it (<https://www.leg.bc.ca/documents-data/debate-transcripts/40th-parliament/2nd-session/20140402pm-Hansard-v9n8#2701>). I’m left wondering if the government currently possesses and will continue to possess the necessary resources and internal capacity to enforce many of the provisions in this bill,” Weaver said in the Legislature.

Ultimately, the government committed \$25 million over three years to implement the new law, starting in 2016 when it came into effect. The vast majority of that money—nearly \$22 million—paid for 86 full time equivalent (FTE) government workers. Most of those workers were in the Forests Ministry, whose primary responsibilities were to get groundwater users in the queue and subsequently licensed.

## **Government response to failed effort? Cut staff and budget**

By 2019, the government had only managed to get 1,411 groundwater users to apply for licences, meaning that 93 per cent of the estimated 20,000 groundwater users were still not in the queue.

Despite the glacially slow uptake, which former senior Ministry of Environment employees believe is at least partly attributable to the government's failure to adequately convey the seriousness of failing to comply with the new law, the government actually began to scale back dedicated resources to the groundwater file. Hooper says the current complement of government workers having at least some responsibility for getting the licensing drive completed is now 58—a 32-per-cent decline from 2018.

Not only has the number dropped dramatically, but according to former forests minister Doug Donaldson government workers with responsibility for the groundwater file often got pulled off to do other things. In response to questions from Green Party MLA Sonia Furstenau during estimates debates in April 2019, Donaldson noted:

“Of course, in the last couple of fire seasons, it has been an all-team effort as far as supporting emergency operations centres and covering for people whose jobs have involved assisting with their firefighting efforts. So some of these people might have been part of the teams approach on the emergency operations centre, or they might have been covering off for other people (<https://www.leg.bc.ca/documents-data/debate-transcripts/41st-parliament/4th-session/20190402pm-Hansard-n229#229A:1740>) who have been away from their jobs.”

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Should thousands of existing groundwater users fail to register before the fast-approaching March 1, 2022 deadline, conflicts could easily arise because of BC's longstanding practice that surface water users who were the first to draw water in a given watershed have priority rights that supersede those of later applicants.

The so-called “First in Time, First in Right” concept is a long-time fixture of the province's regulatory framework. As the provincial government explains:

“During times of water scarcity, licensees with the earlier priority dates are entitled to take their full allocation of water over the junior licensees (<https://engage.gov.bc.ca/watersustainabilityact/firstintime/#:~:text=Water%20rights%20in%20BC%20may,to%20their%20respective%20pri>) For example (sic.) a water licence with a 1930 priority date would have precedence over a licence with a 1960 priority date, regardless of the purpose for which the water is used.”

Now, groundwater users will be governed by the same rules. When they apply for licences, they will be asked to demonstrate when they first drew water from their wells. That date then becomes the “priority date” associated with their licences. But if they miss the application deadline, they forfeit their priority dates.

In the Clinton area where prospective water bottler CHZ has applied for its licence, long-time rancher Keith Coxon has the earliest priority date of any groundwater user to so far apply for licences. Water at two of his wells was first drawn in 1912, while water was withdrawn at a third well in 1908.

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If they miss the application deadline, they forfeit their priority status.

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Between the three licences that Coxon has been issued under the new act, he is entitled to use up to 5,490 cubic metres of water per year to water his cattle and up to 6,500 cubic metres of water per year to irrigate his pasturelands.

Ranchers like Coxon have been encouraged by the BC Cattlemen's Association to get their licence applications in. But the association's manager, Kevin Boon, says it has been tough convincing some ranchers to apply because of the complexity of the application process, which he says has been pointed out to government officials in face-to-face meetings.



([https://www.policynote.ca/wp-content/uploads/2021/05/pn\\_may2021\\_groundwater\\_cattle-wide.jpg](https://www.policynote.ca/wp-content/uploads/2021/05/pn_may2021_groundwater_cattle-wide.jpg)).

Photo: Matt Miles.

## Going nowhere fast

About 1,200 cattle operations account for 80 per cent of all livestock raised in BC each year, with another 2,300 or so much smaller operators who might raise just a few head of cattle each year. Almost all cattle operators use water wells, Boon says. But six years into the licensing process, Boon believes that less than a quarter of the province's cattle operators have completed their licence applications.

He believes a similar situation may prevail across the entire agricultural sector, which is significant because, he says, about 75 per cent of BC's estimated 20,000 existing groundwater users draw water for farming purposes of one kind or another.

"Very early on in the process—because we could see that this was going nowhere fast—we requested that government get together with us and work with us to go through the process," Boon said.

Staff from three provincial ministries—Forests, Environment and Agriculture—sat down with the Association's executive and together worked through actual licence applications.

"And those government people, they should have known what they were doing, it was taking them three-plus hours to get it done. In the workshop time, only two of them got it completed," Boon said.

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**Almost all cattle operators use water wells.**

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For some BC Cattlemen's Association members, Boon says the application process has stretched over many hours and multiple days in some cases. And everything has had to be done online, which is a big deal for many in the ranching community who live in remote locations where cellphone and high-speed internet service can be poor to non-existent.

“This is one of the very first (government) application processes that was done completely online. You could not go into a Front Counter [government office] and actually fill out an application. You actually had to do it online. And even if you went into Front Counter BC, they would either plunk you at a computer or they would give you instruction and you had to do it yourself. There was none of that real assistance there to help them do it,” Boon said.

He added the association has organized half-day workshops to try to help members navigate through the complex application process.

“We’re spending a lot of time with our members because we don’t want to see them lose that opportunity for water security,” Boon said. “We’re telling people you’ve got to licence your volumes used or you’re going to lose it and then you’re going to be in trouble.”

“But there are people right now who I don’t know if they ever will. They may sit back and, to be quite honest, say: ‘You know what? You’ve made this so difficult. I was willing to at the start. But now I’m not. If you’ve got a problem with me using the water, you better come and shut me down!’”

Boon says with the deadline fast approaching, the government should do all it can to make the application process as simple as possible. Distill it down to the bare essentials of where the water well is, how much water is being used and what it’s being used for.

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**For some, the application process has stretched over many hours and multiple days in some cases.**

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Allan Chapman, a former water manager at the BC Oil and Gas Commission and before that a hydrologist with the provincial environment ministry, is a consulting hydrologist in Victoria.

He says it took him nearly 11 hours to complete a draft application for a new water well for a First Nation in northeast BC.

“And I would suspect that it would take an inexperienced person such as a landowner substantially longer,” Chapman said. “As a consulting hydrologist, I am not cheap. So therefore, if a landowner without experience wished to hire a consultant and submit the information for a water licence application the cost would be a few thousand dollars.”

## **Corporate advantage**

Corporations and industries using large volumes of groundwater can more easily shoulder such costs and write them off as business expenses, Chapman adds.

Not only have many industrial users submitted their groundwater licence applications, but in many cases their applications are already approved.

Data analyzed by the CCPA, show that:

- Twenty-nine separate licences have been applied for by oil and gas companies to use groundwater primarily in fracking operations, with all but one of those applications already approved. (Alone among all industries in the province, the fossil fuel industry has its own dedicated regulator—the Oil and Gas Commission—and the commission has regulatory authority to issue water licences.)
- Hard rock and coal mining companies have filed 11 different licence applications to use large volumes of groundwater for ore-processing or coal washing, with all 11 applications already approved.
- Placer mining operations, which are intense users of water, have filed 41 licence applications, with all but eight of those licence applications now approved.
- Bottled water proponents have filed 16 licence applications, with 10 already approved.

- And four pulp and paper companies have completed their groundwater licence applications and already received their licences.

## **From first to last in line?**

With all of those licences and many others already approved, all existing groundwater users should have added incentive to get in the queue before the deadline passes.

Because if the deadline passes, and historical water users have not applied, they will be at the back of the queue behind all existing licence holders as well as new applicants like CHZ.

Worse, they will be treated as if they were new water users. And that will carry additional costs.

“New applications may be significantly more costly due to additional costs associated with new applications, including assessments of impacts on the environmental flow needs of nearby streams,” says Donna Forsyth, who as a former senior civil servant with the ministry of environment acted as a legislative advisor for the government when it drafted the Water Sustainability Act.

“By not applying, the historical water users are effectively giving the government back the volumes of water they were using. After March 1, 2022, these volumes go back into the communal system for reallocation and when they apply, the historical users will be at the back of the line,” Forsyth says.

Moreover, they won’t be legally entitled to draw that water until their licence applications are filed and reviewed, “even if it takes years” for that review and approval process to be completed, she adds.

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These and other consequences have not been adequately conveyed to groundwater users, says Mike Wei, a former deputy comptroller of water rights for the province.

“In my view, government simply has not done enough to communicate in plain language that non-compliance on March 1, 2022 means historical water users will lose not only their seniority but their right altogether to access the water they have always been using. This has far-reaching implications,” Wei warned.

He added that the government has compounded problems by not being tough when it comes to penalizing companies that break existing water rules.

In recent years, the CCPA has highlighted that lack of enforcement, showing how oil and gas companies broke BC’s water laws in spectacular fashion (<https://theyee.ca/News/2018/03/29/Unauthorized-Fracking-Dam-Problem-Growing/>), by building dozens of unregulated dams and illegally diverting surface waters into dam reservoirs in violation of provincial water laws without once facing charges for violating the provincial water and dam safety regulations.

“By extension,” Wei says, “users conclude that government is not serious about unauthorized use ([https://waterbucket.ca/cfa/wp-content/uploads/sites/3/2021/04/PWSBC\\_Groundwater-Licensing-in-BC\\_April-2021.pdf](https://waterbucket.ca/cfa/wp-content/uploads/sites/3/2021/04/PWSBC_Groundwater-Licensing-in-BC_April-2021.pdf)).”

If the government doesn’t disavow water users of that notion now, its job come March of next year will be that much harder, Wei fears.