

Water Act

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Part 1 — Definitions and Application

Definitions

1 In this Act:

"appeal board" means the Environmental Appeal Board continued under section 93 of the *Environmental Management Act*;

"approval" means an approval of the comptroller, regional water manager or engineer under section 8 or 9;

"aquifer" means

- (a) a geological formation,
- (b) a group of geological formations, or
- (c) a part of one or more geological formations

that is water bearing and capable of storing, transmitting and yielding water;

"changes in and about a stream" means

- (a) any modification to the nature of a stream including the land, vegetation, natural environment or flow of water within a stream, or
- (b) any activity or construction within the stream channel that has or may have an impact on a stream;

"close a well" means take a well out of service permanently;

"comptroller" means a person employed by the government or a government corporation and designated in writing by the minister as the Comptroller of Water Rights and includes any persons designated in writing by the minister as acting, deputy or assistant comptrollers;

"conditional licence" means a licence that authorizes the construction of works or the diversion and use of water before the issue of a final licence;

"conservation purpose" means the use and storage of water or the construction of works in and about streams for the purpose of conserving fish or wildlife;

"construct a well" means to

(a) drill a well,

(b) alter a well,

(c) develop a well,

(d) repair or maintain a well,

(e) inject water or any other substance into a well, or

(f) construct, install, replace, repair, alter, maintain or remove works that relate to ground water or a well;

"Crown land" means land the fee of which is in the government;

"deactivate a well" means take steps to secure and protect a well while it is temporarily out of service;

"development district" includes a district within the meaning of the *Drainage, Ditch and Dike Act*, and every other drainage, diking or development district incorporated before January 1, 1965 under an Act other than the *Water Act*;

"divert", or a word of similar import, means taking water from a stream and includes causing water to leave the channel of a stream and making a change in or about the channel that permits water to leave it;

"domestic purpose" means the use of water for household requirements, sanitation and fire prevention, the watering of domestic animals and poultry and the irrigation of a garden not exceeding 1 012 m² adjoining and occupied with a dwelling house;

"drill a well" means to make a well by drilling, boring, driving or jetting or by excavating;

"drilling authorization" means an authorization under section 81 [*drilling authorizations*];

"drinking water officer" has the same meaning as in the *Drinking Water Protection Act*;

"engineer" means a professional engineer employed by the government or a government corporation and designated in writing by the comptroller as an engineer and includes a regional water manager;

"final licence" means a licence that authorizes the diversion and use of water, and does not authorize the construction of additional works or an extension of the use of water;

"former Act" means any Act of British Columbia, passed before October 31, 1939, containing provisions respecting the diversion and use of water;

"government corporation" means government corporation as defined in the *Financial Administration Act*;

"ground water" means water below the surface of the ground;

"improvement district" means, as the context requires, either the public corporate body or the tract of land incorporated under the *Local Government Act* and includes an improvement district constituted under a former Act;

"industrial purpose" means any use of water in British Columbia designated by regulation as a use for industrial purpose, but does not include

(a) the use of water for any of the other purposes defined in this section, or

(b) the carriage or supply by a person of water to or for use by any other person;

"irrigation purpose" means the beneficial use of water on cultivated land and hay meadows to nourish crops;

"land improvement purpose" means the diversion or impounding of water to protect property, to facilitate the development of a park or the reclamation, drainage or other improvement of land or to carry out a project of a similar nature;

"licence" means a licence issued under this or a former Act;

"licensee" and **"holder of a licence"** mean an owner of any land, mine or undertaking with respect to which a licence is issued under this or a former Act;

"mine" includes a placer or mineral claim or land held or occupied under the mining laws of British Columbia for the purpose of winning a mineral from it, whether held in fee simple or by virtue of a record, lease, licence or application;

"mineral" includes a precious or base metal and coal;

"mineral trading purpose" means bottling, distributing, using and dealing in water so impregnated with foreign ingredient as to give it medicinal properties, or water of a temperature that gives it a commercial value;

"mining purpose" means

(a) the use of water, including the use of water under head, for recovering mineral from the ground or from ore, or

(b) the use of water under head to move earth, sand, gravel or rock;

"monitoring well" means a well that

(a) is used or intended to be used for the purpose of ongoing monitoring, observing, testing, measuring or assessing

(i) the level, quantity or quality of ground water, or

(ii) subsurface conditions, including geophysical conditions, and

(b) is not used or intended to be used for the purpose of

(i) exploring for or extracting ground water for use, or

(ii) injecting water or any other substance into ground water on an ongoing basis;

"municipality" includes a regional district;

"natural boundary" has the same meaning as in the *Land Act*;

"obligation" includes a requirement, restriction, limitation, condition and duty;

"officer" means

(a) a person or class of persons employed by the government or a government corporation and designated in writing by the comptroller as an officer, or

(b) a conservation officer defined in section 1 (1) of the *Environmental Management Act*;

"order" includes a decision or direction, whether given in writing or otherwise;

"owner" means a person entitled to possession of any land, mine or undertaking in British Columbia, and includes a person who has a substantial interest in the land, mine or undertaking;

"permit" means an authority to flood Crown land or to construct, maintain or operate works on Crown land;

"person" includes a firm, association or syndicate;

"power purpose" means the use of water in the production of electricity or other power;

"private dwelling" means

(a) a structure that is occupied as a private residence, or

(b) if only part of a structure is occupied as a private residence, that part of the structure;

"regional water manager" means a person employed by the government or a government corporation and designated in writing by the minister as a regional water manager and includes a person designated in writing by the minister as an acting or assistant regional water manager;

"registrar" means the registrar under the *Land Title Act* for the land title district in which the land affected is located;

"regulate" includes allow, commence, stop, limit, open, shut and prohibit;

"right" includes power, authority, benefit, privilege and remedy;

"river improvement purpose" means clearing and improving the bed, channel and banks of a stream to facilitate the driving and booming of timber;

"serve", and words of similar import, include deliver to or send to by registered mail;

"storage" or **"storage purpose"** means the collection, impounding and conservation of water;

"store", in relation to water, means collect, impound and conserve;

"stream" includes a natural watercourse or source of water supply, whether usually containing water or not, and a lake, river, creek, spring, ravine, swamp and gulch;

"stream channel" means the bed of a stream and the banks of a stream, whether above or below the natural boundary and whether usually containing water or not, including all side channels;

"undertaking", in relation to an application or licence, means a project for the diversion, carriage, use and sale of water or power produced from water the use of which is referred to in the application or licence, and includes all land and other property acquired or to be acquired in connection with the project, and the general scheme for the acquisition, maintenance and operation of the works;

"unrecorded water" means water the right to the use of which is not held under a licence or under a special or private Act;

"water users' community" means any public corporate body incorporated under section 51, and includes a water users' community formed under a former Act;

"waterworks purpose" means the carriage or supply of water by a municipality, improvement district, development district or person for the use of the residents of an area in British Columbia;

"well" means an artificial opening in the ground made for the purpose of

- (a) exploring for, or extracting and using, ground water,
- (b) testing or measuring ground water,
- (c) recharging or dewatering an aquifer,
- (d) ground water remediation,
- (e) use as a monitoring well, or
- (f) use as a geotechnical well other than as a monitoring well,

but does not include

(g) an artificial opening regulated under the *Geothermal Resources Act*, the *Mines Act* or the *Petroleum and Natural Gas Act*, or

(h) an artificial opening of a prescribed class or made for a prescribed purpose;

"well pump" means a pump that

- (a) is at or in a well, and
- (b) is used or intended to be used for the purposes of
 - (i) extracting ground water from the well,
 - (ii) adding water to a well to recharge the well or an aquifer, or
 - (iii) dewatering an aquifer;

"wellhead" means

- (a) the physical structure, facility, cover, adapter or device
 - (i) that is at the top or side of the well, and
 - (ii) from or through which ground water flows or is pumped from a well, and

(b) any casing, cap, valve, grout, liner, seal, vent, drain or pump house relating to the well,
but does not include a well pump;

"works" means

(a) anything capable of or used for

(i) diverting, storing, measuring, conserving, conveying, retarding, confining or using water,

(ii) producing, measuring, transmitting or using electricity,

(iii) collecting, conveying or disposing of sewage or garbage, or

(iv) preventing or extinguishing fires,

(b) booms and piles placed in a stream,

(c) obstructions placed in or removed from streams or the banks or beds of streams,

(d) changes in and about a stream,

(e) access roads to any of the works referred to in paragraphs (a) to (d), and

(f) except in Parts 2 and 3, unless made applicable by a regulation under section 1.1,

(i) wells,

(ii) wellheads,

(iii) anything that can be or is used for injecting or otherwise adding water or any other substance to a well,

(iv) anything that can be or is used to construct a well, deactivate a well or close a well,

(v) anything that can be or is used for exploring for, testing, extracting or monitoring ground water,

(vi) anything that can be or is used for disinfecting a well,

(vii) an injection system attached to a work that is used for conveying, from a well, ground water that will be used for applying fertilizers or pesticides,

(viii) anything that can be or is used in relation to a monitoring well or a well made for the purpose of ground water remediation, and

(ix) access roads to wells.

Application of Act to ground water

1.1 (1) Subject to a regulation under subsection (2), Part 2 [*Licensing, Diversion and Use of Water and Related Matters*] and Part 3 [*Water Users' Communities*] of this Act do not apply to ground water.

(2) The Lieutenant Governor in Council may, by regulation, fix a day on and from which some or all of Parts 2 and 3 of this Act apply to ground water in British Columbia or in an area of British Columbia the Lieutenant Governor in Council designates in the regulation.

(3) A regulation under subsection (2) may

(a) describe the area that it designates by any delineation of the area that adequately describes it including, for example, name, map, plan, legal description, reference to a stream, reference to an aquifer or other geological formation or part of one, depth or other dimension, or by any combination of methods, and

(b) modify or add to any provision of the Act or regulations as the Lieutenant Governor in Council considers necessary or advisable for the purpose of making some or all of Parts 2 and 3 effectively applicable to ground water.

Part 2 — Licensing, Diversion and Use of Water and Related Matters

Vesting water in government

2 (1) The property in and the right to the use and flow of all the water at any time in a stream in British Columbia are for all purposes vested in the government, except only in so far as private rights have been established under licences issued or approvals given under this or a former Act.

(2) No right to divert or use water may be acquired by prescription.

Repealed

3 [Repealed 2001-9-91.]

Prohibition

4 Except for a purpose defined in section 1 of this Act, a person who is not registered under the *Water Protection Act* must not divert, extract, use or store any water from a stream.

Rights acquired under licences

5 A licence entitles its holder to do the following in a manner provided in the licence:

(a) divert and use beneficially, for the purpose and during or within the time stipulated, the quantity of water specified in the licence;

(b) store water;

(c) construct, maintain and operate the works authorized under the licence and necessary for the proper diversion, storage, carriage, distribution and use of the water or the power produced from it;

(d) alter or improve a stream or channel for any purpose;

(e) construct fences, screens and fish or game guards across streams for the purpose of conserving fish or wildlife.

Rights subject to Act

6 The exercise of every right held under a licence is always subject to this Act and the regulations, the terms of the licence, the orders of the comptroller and the engineer and the rights of all licensees whose rights have precedence.

Who may acquire licences

7 A licence for any one, 2 or 3 of the purposes defined in section 1 may be issued by the comptroller or the regional water manager to any of the following:

(a) an owner of land or a mine;

(b) a holder of a certificate of convenience and necessity issued under the *Public Utilities Act*, R.S.B.C. 1960, c. 323, or under the *Water Utility Act*;

(c) a municipality, improvement district, water users' community or development district;

(d) the Crown as represented by a minister appointed by the Governor General or the Lieutenant Governor;

(e) a commission, board or person having charge of the administration of any land, mine or other property owned or controlled by a ministry, department, branch or other subdivision of the government of Canada or of British Columbia;

(f) the Greater Vancouver Water District or any other water district incorporated by an Act of the Legislature;

(g) the British Columbia Hydro and Power Authority.

Short term use of water

8 (1) If diversion or use of water is required for a term not exceeding 12 months, the comptroller or a regional water manager may, without issuing a licence, grant an approval in writing, approving the diversion or use, or both, of the water on the conditions the comptroller or regional water manager considers advisable, but the diversion or use, or both, are subject to the same provisions as if the approval were a licence.

(2) Even though a licence has not been issued, a person is not prohibited from diverting or using water in accordance with an approval given under this section.

Changes in and about a stream

9 (1) The comptroller, a regional water manager or an engineer may grant an approval in writing authorizing on the conditions he or she considers advisable

(a) a person to make changes in and about a stream,

(b) a minister of the Crown, either in right of Canada or of British Columbia, to make changes in and about a stream, or

(c) a municipality to make changes in and about a stream.

(2) A minister, municipality or other person may only make changes in and about a stream in accordance with an approval under this section or in accordance with the regulations or a licence or order under this Act.

Procedure to acquire licences

10 (1) Subject to subsection (2), a person who applies for a licence must, within the time prescribed by regulation,

(a) comply with any requirements established by regulation,

(b) comply with the directions of the comptroller or the regional water manager with respect to filing the application, giving notice of it by posting, service or publication and paying the prescribed fees, and

(c) provide the plans, specification and other information the comptroller or the regional water manager requires.

(2) The comptroller or regional water manager may

(a) shorten or extend the time prescribed under subsection (1), or

(b) if no time has been prescribed, set a time for compliance with a direction or requirement under subsection (1) (b) or (c).

Objections to applications

11 (1) A licensee, riparian owner or applicant for a licence who considers that his or her rights would be prejudiced by the granting of an application for a licence may, within the prescribed time, file an objection to the granting of the application.

(2) The comptroller or the regional water manager has authority to decide whether or not the objection warrants a hearing, and he or she must notify the objector of his or her decision.

(3) If the comptroller or the regional water manager decides to hold a hearing, the applicant and objectors are entitled to be notified, to be heard and to be notified of his or her decision following the hearing.

Powers of comptroller or regional water manager respecting applications

12 (1) With respect to an application, whether objections to it are filed or not, the comptroller or the regional water manager may

(a) refuse the application,

(b) amend the application in any respect,

(c) grant all or part of the application,

(d) require additional plans or other information,

(e) require the applicant to give security for the purposes and in the amount and form the comptroller or the regional water manager considers in the public interest, and

(f) issue to the applicant one or more conditional or final licences on the terms the comptroller or the regional water manager considers proper.

(1.1) An applicant must comply with any order made under subsection (1) (d) or (e) within the time specified by the comptroller or the regional water manager.

(1.2) Without limiting subsection (1), the comptroller or the regional water manager may refuse an application or reject an application without consideration if

(a) the applicant fails to comply with any directions or requirements under subsection (1) (d) or (e) or section 10 (1), or fails to comply within the required time,

(b) the application is incomplete, or

(c) the application fails to meet the requirements of an approved plan.

(1.3) For the purposes of this section, an "**approved plan**" means the following:

(a) and (b) [Not in force.]

(c) a prescribed resource management plan that

(i) designates an area for the plan that includes the stream or part of the stream in respect of which the application under section 10 is made, and

(ii) restricts the issuance of water licences in that designated area.

(2) In considering an application under subsection (1) that relates to the region as defined by the *Columbia Basin Trust Act*, the comptroller or the regional water manager must consider the current long term Columbia Basin Management Plan adopted for the Columbia Basin Trust under section 15 of that Act.

(3) With respect to an application for a licence, the comptroller or regional manager must determine, in accordance with section 13, the precedence and appurtenancy of any licence to be issued under the application.

Quick licensing procedures

12.1 (1) In this section:

"**eligible application**" means an application, other than an application in relation to an excluded stream, that complies with any requirements established by regulation and is

(a) an application for a licence, if

(i) the licence relates to

(A) a domestic purpose,

(B) an irrigation purpose or an industrial purpose for agricultural use, or

(C) another use or purpose established under subsection (10) (a), and

(ii) the proposed diversion or use of water to be authorized by the licence for a use or purpose referred to in subparagraph (i) does not exceed the maximum eligible quantity,

(b) an application for an amendment referred to in section 18, if

(i) the licence is for a use or purpose referred to in paragraph (a) (i),

(ii) in the case of an amendment for a change in purpose, the proposed purpose is for a use or purpose referred to in paragraph (a) (i), and

(iii) the diversion or use of water authorized by the licence for a use or purpose referred to in paragraph (a) (i) does not exceed the maximum eligible quantity,

(c) an application for a transfer of appurtenancy under section 19, if

(i) in the case of an application in relation to a licence or approval, the licence or approval is for a use or purpose referred to in paragraph (a) (i),

(ii) in the case of an application in relation to a permit, the permit relates to a licence or approval that is for a use or purpose referred to in paragraph (a) (i), and

(iii) the total diversion or use of water authorized to be transferred does not exceed the maximum eligible quantity, or

(d) an application for an apportionment under section 20, if

(i) the current licence and the proposed licences are for a use or purpose referred to in paragraph (a) (i), and

(ii) the diversion or use of water authorized by the current licence for the use does not exceed the maximum eligible quantity;

"excluded stream" means

(a) a stream that is designated as a sensitive stream under the *Fish Protection Act*, or

(b) a stream, or part of a stream, that is designated as an excluded stream by order under subsection (10) (b), including the tributaries of that stream or part unless otherwise expressly provided by the order;

"maximum eligible quantity" means,

(a) in relation to a domestic purpose,

(i) if no other quantity is established under subsection (10) (c), 500 gallons per day, and

(ii) if another quantity is established, the established amount,

(b) in relation to an irrigation purpose or an industrial purpose for agricultural use,

(i) if no other quantity is established under subsection (10) (c),

(A) 2 500 gallons per day in the case of a licence for which the quantity authorized for the purpose is stated in terms of gallons per day, or

(B) 1 acre foot per year, in the case of a licence for which the quantity authorized for the purpose is stated in terms of acre feet per year, and

(ii) if another quantity is established, the established amount, and

(c) in relation to a use or purpose referred to in paragraph (a) (i) (C) of the definition of "eligible application", the quantity established under subsection (10) (c).

(2) Subject to subsections (4) and (5), an eligible application may be accepted for filing under this section, in which case

(a) the application may be dealt with by a person authorized under subsection (6),

(b) the functions, duties and powers referred to in subsection (6) may be exercised in relation to the application, and

(c) the otherwise applicable requirements for notice and consideration of objections under sections 10, 11, 18, 19 and 20 do not apply.

(3) Subsection (2) does not apply to restrict the authority under any other provision of this Act to give directions with respect to an application.

(4) The applicant may request that an eligible application be dealt with in accordance with the otherwise applicable procedures under this Act.

(5) The comptroller or regional water manager may refuse to accept an eligible application for filing under this section if

(a) the applicant fails to provide the information required under this Act in respect of the application, or

(b) in the opinion of the comptroller or regional water manager, circumstances respecting the stream or the application are such that the requirements referred to in subsection (2) (c) should apply.

(6) The comptroller or regional water manager may, in writing, authorize another official or class of official employed by the government or a government corporation to exercise, in respect of eligible applications, the functions, duties and powers of the comptroller or regional water manager under subsection (5) of this section and sections 10, 12, 13, 18, 19, 20 and 26 (1).

(7) An authorization under subsection (6) may be subject to any limits or conditions specified by the comptroller or regional water manager, including a condition that licences under section 12

and permits under section 26 that are issued by an authorized official must include terms and conditions specified by the comptroller or regional water manager in the authorization.

(8) A decision under this section, or under a section referred to in subsection (6),

(a) as to whether an application is accepted for filing under this section, or

(b) respecting an application that has been accepted for filing under this section

is not appealable under section 40.

(9) For certainty, an application that is not accepted for filing under this section continues as an application to be dealt with in accordance with the otherwise applicable procedures under this Act.

(10) The minister may, by order, do one or more of the following:

(a) establish purposes or uses that may make an application an eligible application under this section, which may be different for different streams, different parts of a stream and streams in different areas;

(b) designate streams, or parts of streams, as excluded streams, by designating them

(i) specifically,

(ii) by area description,

(iii) by tributary relationship with other streams, or

(iv) by any other means that describes the excluded streams in a manner that allows them to be identified,

and, in relation to this, may provide that the tributaries of a designated stream or part of a stream are not to be considered excluded streams for the purposes of this section;

(c) establish the maximum eligible quantity of water that will allow an application to be an eligible application under this section, which may be different for different purposes, different uses, different streams, different parts of a stream and streams in different areas.

Licences for power purposes

12.2 (1) This section applies to

(a) a licence issued for a power purpose after this section comes into force,

(b) a licence issued for a power purpose before this section comes into force, if the licence was issued for a specified term and the holder of the licence applies to renew or amend the licence or the licence is renewed or amended to extend its term, and

(c) a licence issued for a purpose other than a power purpose, if the holder of the licence applies to amend the licence, or if the licence is amended, to authorize the use of water for a power purpose.

(2) The term of a licence that is issued for a power purpose after this section comes into force, or is issued for a power purpose and renewed or amended to extend its term after this section comes into force, is 40 years.

(3) The term of a licence issued for another purpose and amended to authorize the use of water for a power purpose after this section comes into force is 40 years in respect of the use of water for a power purpose.

(4) The holder of a licence may apply to renew the licence before the expiry of the term of that licence.

(5) This Act and the regulations apply to the application to renew the licence as if the application were for a new licence.

(6) The rights exercisable under a renewed licence have the same precedence as under the original licence.

(7) Despite subsection (2), (3), or (8), if an application is made under subsection (4), the licence does not expire until the comptroller or the regional water manager makes a decision respecting the application.

(8) If the holder of a licence fails to apply to renew the licence before the expiry of the term of the licence and the failure is, in the opinion of the comptroller or regional water manager, not the fault of the holder of the licence, the comptroller or regional water manager may extend the expiry date for not more than six months from the original expiry date.

(9) Subsection (8) does not apply to a licence for which the expiry date has been extended under that subsection.

(10) Despite section 40, a decision of the comptroller or regional water manager under subsection (8) may not be appealed.

Purpose, precedence and appurtenancy of licences

13 The comptroller or regional water manager must ensure that every licence issued on or after June 21, 1995

(a) specifies the date of precedence of the licence,

(b) is for the diversion, extraction, use or storage of water, or for any combination of those things, for one, 2 or 3 of the purposes defined in section 1 and the purpose is or the purposes are specified in the licence, and

(c) specifies as the appurtenancy of the licence an appurtenancy that

(i) is located entirely in British Columbia,

(ii) consists of land, a mine or an undertaking, or any combination of those things, and

(iii) is adequately described in the licence.

Issue of final licences

14 (1) When the time for completing the works authorized under a conditional licence expires or the licensee completes the works, the comptroller or the regional water manager may issue to the licensee a final licence authorizing the diversion and use of the quantity of water that the comptroller or the regional water manager finds to have been used beneficially for the purpose authorized under the conditional licence.

(2) On the issue of a final licence, the conditional licence is of no further effect.

Precedence of licences on same stream

15 (1) Except as otherwise provided in subsections (2) and (3), the respective rights exercisable under 2 licences authorizing the diversion of water from the same stream have precedence in law according to the respective priorities of the dates from which the licences take precedence as set out in them.

(2) The respective rights exercisable under 2 licences taking precedence from the same date have precedence in law according to the ranking of the respective purposes for which water is authorized to be used under the licences respectively, and the ranking of the several purposes for which water may be used under licences are, from highest rank to lowest rank: domestic, waterworks, mineral trading, irrigation, mining, industrial, power, hydraulicking, storage, conservation, conveying and land improvement purposes.

(3) The rights exercisable under 2 licences taking precedence from the same date and authorizing the diversion of water from the same stream for the same purpose have equal precedence in law.

Transfer of licence, approval or permit

16 (1) A licence, approval or permit that is made appurtenant to any land, mine or undertaking and any rights and obligations granted and imposed under the licence, approval or permit pass with a conveyance or other disposition of the land, mine or undertaking.

(2) A person conveying or otherwise disposing of land, a mine or an undertaking to which a licence is appurtenant, or in respect of which an approval or permit was issued or, in the case of a transmission of land, a mine or an undertaking to the personal representative or other person representing the owner, the personal representative or other person must give written notice of the conveyance or other disposition to the comptroller or regional water manager.

Licence or permit as evidence

17 The production of a licence, permit or approval, or bylaw of an improvement district, or a copy of any of them certified to be a copy by the comptroller or other person authorized by the minister to certify copies is, without further proof, evidence in a court of the matters and things set out in the licence, permit, approval or bylaw.

Amendment and substitution of licence or approval

18 (1) Subject to subsection (1.1), on notice to all persons whose rights would be injuriously affected, and after consideration of any objections filed and after notifying the objectors of his or her decision, the comptroller or the regional water manager may amend a licence to do any of the following:

- (a) extend the time set for beginning construction of the works;
- (b) extend the time set for completion of the works;
- (c) extend the time set for making beneficial use of the water;
- (d) authorize additional or other works than those previously authorized;
- (e) correct an error in the licence;
- (f) remove a provision of the licence that is inconsistent with this Act;
- (g) authorize the use of water for some purpose other than that specified in the licence;
- (h) extend the term of the licence;
- (i) increase or reduce the quantity of water authorized to be diverted or stored if it appears to have been erroneously estimated.

(1.1) If satisfied that no person's rights will be injuriously affected, the comptroller or the regional water manager may dispense with providing notice under subsection (1).

(2) If the comptroller or the regional water manager considers that an amendment to a licence under subsection (1) would substantially change that licence, the comptroller or the regional water manager may issue in substitution for it another licence on the conditions he or she considers advisable.

(3) In cases not coming within subsection (2), the comptroller or the regional water manager may, with the written consent of the licensee, issue in substitution for a licence a conditional or final licence on the conditions the comptroller or regional water manager considers advisable.

(4) The comptroller or a regional water manager may amend an approval granted under section 8 or 9 and an engineer may amend an approval granted under section 9, on the conditions he or she considers advisable.

(5) If the amendment to the approval would substantially change that approval, the comptroller or regional water manager acting under section 8 or 9, or the engineer acting under section 9, may issue in substitution for it another approval on the conditions he or she considers advisable.

Transfer of appurtenancy

19 (1) On the application of the holder of a licence, approval or permit and on compliance by the holder and by the proposed transferee with the comptroller's or the regional water manager's directions as to giving notice, the comptroller or the regional water manager, on the terms he or she considers proper, may

(a) transfer all or part of the rights and obligations granted and imposed under the licence, approval or permit from the holder to the proposed transferee, and

(b) issue a new licence, approval or permit to the transferee or transferor, or both, and determine the appurtenancy of the licence, approval or permit.

(2) Subject to section 11 of the *Water Protection Act*, the comptroller or regional water manager must not exercise his or her discretion under subsection (1) of this section to determine an appurtenancy that is not in British Columbia.

(3) Despite subsection (1), if satisfied that no person's rights will be injuriously affected, the comptroller or the regional water manager may dispense with providing directions as to giving notice under subsection (1).

Apportionment of rights under licence

20 (1) If satisfied that no licensee's rights will be injuriously affected, the comptroller or the regional water manager may apportion the rights and obligations granted and imposed under a licence among the owners of the several parcels comprising the land to which the licence is appurtenant.

(2) The comptroller or the regional manager may issue, on the conditions the comptroller or regional water manager considers advisable, one or more new licences in substitution for a licence the rights and obligations under which are apportioned under subsection (1).

Rights and responsibilities under licence or approval

21 (1) The following persons must exercise reasonable care to avoid damaging land, works, trees or other property, and must make full compensation to the owners for damage or loss resulting from construction, maintenance, use, operation or failure of the works:

(a) an applicant;

(b) a licensee;

(c) a holder of an approval;

(d) a person who, in accordance with the regulations or an order, makes changes in and about a stream or diverts or uses water.

(2) Subject to subsection (1), a holder of a licence for power purpose, waterworks purpose or irrigation purpose may fell and remove any tree and remove any rock or other thing that endangers the holder's works.

Records

22 The following persons must keep the prescribed records and any other records that the comptroller, a regional water manager or an engineer directs, and must produce those records for inspection when required:

(a) an applicant;

(b) a licensee;

(c) a holder of an approval;

(d) a person who, in accordance with the regulations or an order, makes changes in and about a stream or diverts or uses water.

Beneficial use declaration

22.01 (1) A licensee must submit to the comptroller, regional water manager or engineer a signed declaration in accordance with subsection (2) when directed to do this by the comptroller, regional water manager or engineer.

(2) A declaration required under subsection (1) must

(a) state whether the licensee has

(i) during the 3 years preceding the date of the declaration, made beneficial use of the authorized quantity of water for the purpose authorized under the licence,

(ii) during that period, diverted and used the water in the manner authorized under the licence, and

(iii) complied with all other terms and conditions of the licence,

(b) include any other information required by the comptroller, regional water manager or engineer, and

(c) be in the form required by the comptroller, regional water manager or engineer.

Suspension and cancellation of rights and licences

23 (1) In this section:

"**licence**" includes a permit or an approval under section 8 or 9;

"**licensee**" includes a holder of a permit and a person who has obtained approval under section 8 or 9.

(2) The rights of a licensee under a licence are subject to suspension for any time by the comptroller or a regional water manager, and a licence and all rights under it are subject to cancellation in whole or in part by the comptroller or a regional water manager for any of the following:

(a) failure by the licensee for 3 successive years to make beneficial use of the water for the purpose and in the manner authorized under the licence;

(b) failure by the licensee within the time specified to construct the works authorized under the licence;

(c) failure by the licensee for 3 years to pay the rentals due to the government in respect of the licence;

(d) failure by the licensee for 6 months to pay any water bailiff's fees payable by the licensee;

(e) the licensee's failure to comply with this Act or the regulations;

(f) the licensee's failure to comply with a term or condition of the licence;

(g) the licensee's failure to comply with an order of the comptroller or a regional water manager or an engineer;

(h) material misstatement or misrepresentation in the application for the licence or in the information provided to the comptroller or a regional water manager with respect to it;

(h.1) material misstatement or misrepresentation in a declaration under section 22.01;

(i) cancellation or other termination of the licensee's title to the land or mine on which the water is to be used, if the cancellation or termination results from the operation of a statute or the exercise of a statutory authority.

(3) Three days' notice of the comptroller's or regional water manager's proposal to suspend rights under a licence must be given to the person exercising the rights or to the person occupying the land to which the licence is appurtenant and, if the comptroller or the regional water manager considers the matter urgent, the rights may be suspended without a hearing.

(4) In the case of a licence appurtenant to land, notice of the proposal to cancel the licence must be sent to every registered owner of the land and to every person who has notified the comptroller or a regional water manager that he or she has an interest in it, but if the land comprises more than 20 parcels, notice of the proposal to cancel the licence may be given by publication of at least one insertion each week for 3 consecutive weeks in a local newspaper.

(5) In the case of a licence that is not appurtenant to land, notice of the proposal to cancel the licence must be sent to the holder of the licence and to every person who has notified the comptroller or a regional water manager that he or she has an interest in the licence.

(6) If within 30 days after mailing of the notice or the last publication of it an objection to the proposed cancellation is filed with the comptroller or a regional water manager by a person claiming an interest in the licence, the comptroller or a regional water manager must, on the hearing he or she considers suitable, determine whether the alleged grounds for cancellation are substantiated and must make the order he or she considers proper.

(7) If the engineer reports in writing to the comptroller or a regional water manager that he or she examined the works authorized under the licence and found them unfit or unsuitable for use or that he or she examined the place of use referred to in the licence and found no indication of recent beneficial use of water, the onus lies on the licensee to prove that the licensee has complied with this Act, the regulations and the licence.

(8) The rights of the different licensees under a licence are separable, and fulfillment by a licensee of his or her obligations as a licensee does not prevent or delay the suspension or cancellation of the rights of another licensee.

(9) [Repealed 2003-66-69.]

(10) If a licence has been cancelled in part, the comptroller or a regional water manager may issue to the licensee

(a) a conditional licence on the conditions he or she considers advisable, or

(b) a new final licence,

but the licensee does not, by the issue of the conditional licence or the new final licence, obtain or retain any right, power or privilege that has been the subject of the cancellation.

Abandonment of rights under a licence

24 (1) A registered owner of land, an owner of a mine or undertaking, a minister of the Crown or a board, corporation or person having control of any land, mine or undertaking to which a licence is appurtenant may, by notice in writing to the comptroller or a regional water manager, abandon all or part of the rights held under the licence.

(2) If the land, mine or undertaking to which the licence is appurtenant is mortgaged, and a copy of the mortgage, or particulars of it, is filed with the comptroller or a regional water manager, the abandonment is not effective without the written consent of the mortgagee.

(3) If a part of the rights held under a licence has been abandoned, the comptroller or a regional water manager may issue to the licensee

(a) a conditional licence on the conditions he or she considers advisable, or

(b) a new final licence,

but the licensee does not, by the issue of the conditional licence or the new final licence, obtain or retain a right, power or privilege that has been the subject of the abandonment.

Liability of owner for damage remains

25 The abandonment, suspension, termination or cancellation of all or part of the rights held under a licence or approval does not relieve the owner of the land, mine or undertaking to which the licence or approval is or was appurtenant of liability for damage resulting from the works constructed, operated or maintained by the owner, or from a defect, insufficiency or failure of the works.

Permits over Crown land

26 (1) On compliance with the regulations by a licensee or a person to whom approval was given under section 8 or 9, the comptroller or regional water manager may issue to the licensee or person one or more permits authorizing the flooding of Crown land or the construction, maintenance or operation on the land of works authorized under a licence or approval.

(2) A person must not cause Crown land to be flooded or construct, maintain or operate works on it unless the person holds a permit authorizing that flooding, construction, maintenance or operation.

Licensee's right to expropriate land

27 (1) In this section and in sections 28 to 30, "**land**" includes an estate or interest in or easement over land.

(2) A licensee has the right to expropriate any land reasonably required for the construction, maintenance, improvement or operation of works authorized under his or her licence.

(3) In addition to the right under subsection (2), the holder of a licence that authorizes the diversion of water for domestic purpose or waterworks purpose has the right to expropriate any land the control of which by the licensee would help to prevent pollution of the water authorized to be diverted.

(4) In addition to the rights under subsections (2) and (3) and with the consent of the Lieutenant Governor in Council, the holder of a licence that authorizes the construction of a dam has the right to expropriate any land that would be flooded if the dam were constructed and utilized to the maximum height authorized.

(5) The owner of land expropriated under this section must be compensated for it by the licensee, and the procedure to be followed in expropriating land and the method of determining the compensation is the prescribed procedure and method.

(6) If expropriation proceedings relate to land on or in which there are works authorized under a licence, an owner or other person must not interfere with the works or prevent the licensee from maintaining, operating, using or improving them so long as the licensee diligently prosecutes the expropriation proceedings.

Licensee's rights when owner refuses compensation

28 (1) If an award of compensation is made and the amount is tendered to the owner and the owner fails to execute and deliver to the licensee the required conveyance or other instrument, the licensee is then constituted the attorney of the owner for the purpose of executing the conveyance or instrument on the owner's behalf.

(2) The registrar must register the licensee as owner of the land affected or holder of a charge on it as indicated in the award if the licensee

(a) pays the amount of compensation to the comptroller, or the part of it that is payable at the time,

(b) files with the registrar

(i) the executed conveyance or instrument,

(ii) a copy of the award, and

(iii) an affidavit proving the payment of the compensation to the comptroller and the failure of the owner to execute the conveyance or instrument, and

(c) pays to the registrar the applicable fees under the *Land Title Act*.

Owner to give notice before interfering with works

29 Despite a right or title acquired or held under a statute or indefeasible or absolute title, an owner of land or other person who proposes to alter, move, fill in or otherwise interfere with works authorized under a licence must, before doing so, give the licensee 6 months' notice in writing of the act or thing proposed to be done.

Entry on land in case of urgency

30 (1) If the comptroller or regional water manager considers that a delay in beginning the construction of authorized works

(a) would not be in the public interest, or

(b) would cause a hardship on the licensee,

the comptroller or regional water manager may authorize the licensee to enter on, occupy and use any land for constructing the works if the licensee deposits with the comptroller or regional water manager security in the form and amount the comptroller or regional water manager considers adequate to indemnify the owner for any damage the owner might sustain by reason of the construction.

(2) On exercising an authority under subsection (1), the licensee must promptly take steps to appropriate the land required and must comply with the regulations relating to expropriation.

Repealed

31 and 32 [Repealed 2001-9-92.]

Joint use of works may be ordered

33 If satisfied that the joint use of works would conserve water or avoid duplication of works, the comptroller or regional water manager may order the joint use and set its terms.

Power to authorize extension of rights under a licence

34 (1) If the comptroller or regional water manager considers that no other supply is available at reasonable cost, the comptroller or regional water manager may authorize a licensee to use or supply water for use for other purposes or on other land than specified in the licence and may set the terms on which the water is to be used or supplied.

(2) An authorization under subsection (1) is subject to any jurisdiction in that respect of a commission, board, body or member of the Executive Council designated by the Lieutenant Governor in Council.

Appointment of water bailiffs

35 (1) If the comptroller or regional water manager considers that the engineer is unable, in person, to regulate the diversion and use of water from a stream, the comptroller or regional water manager may appoint one or more water bailiffs for that purpose.

(2) A water bailiff has the authority, subject to the supervision of the engineer, to enter on any land, to regulate and control the diversion and use of water from the streams with respect to which his or her appointment relates and to regulate and control all diversion works on them and, so far as is necessary for or useful in enforcing his or her orders, a water bailiff has all the powers of a police constable under the *Police Act*.

(3) A water bailiff must be compensated by the persons using water from the streams affected in the amounts and at the times the engineer directs, and the water bailiff may stop the diversion and use of water by a person who fails to pay that amount as directed.

(4) A sum payable to a water bailiff may be recovered as a debt due to the government by action at the suit of the Attorney General.

Repealed

36–40 [Repealed 2001-9-92.]

Repealed

41–41.2 [Repealed 2001-9-94.]

Right to use unrecorded water

42 (1) It is not an offence for a person to divert water from a stream for extinguishing a fire, but any flow so diverted must be promptly restored to its original channel when the fire is extinguished.

(2) It is not an offence for a person to divert unrecorded water for domestic purpose or for prospecting for mineral, but in a prosecution under this Act the person diverting the water must prove that the water is unrecorded.

Repealed

43 [Repealed 2003-66-74.]

Reservation of water

44 (1) If it appears to the Lieutenant Governor in Council to be advisable, in order to enable a person to investigate the suitability of a stream for any purpose, or in order to make provision for a water supply for a waterworks, irrigation or power system or project, or for the use of the Crown for any purpose, the Lieutenant Governor in Council may by order in council reserve all or part of the unrecorded water of the stream from being taken or used or acquired under this Act.

(2) A notice signed by the minister giving particulars of the reservation must be published in the Gazette and the reservation must be registered by the comptroller.

(3) A reservation made under this section applies to water that by reason of the abandonment or cancellation of a licence becomes unrecorded water during the existence of the reservation.

(4) The Lieutenant Governor in Council may in the order making the reservation or in a subsequent order provide that the water reserved may, despite the reservation, be acquired for the purpose for which it is reserved, or may be acquired for other purposes under licences subject to the reservation.

(5) The Lieutenant Governor in Council may at any time cancel a reservation of unrecorded water, and notice of the cancellation, giving the date on which it is to be effective, which date must not be earlier than one month after the date of publication of the notice of the cancellation in the Gazette, must be published in the Gazette, and within 30 days of the publication of the notice of cancellation in the Gazette must be published in a newspaper published in the water district in which the stream is located, and if there is no newspaper so published then in a newspaper circulating in that water district.

(6) Applications for the water reserved may be made during the publication of the notice of cancellation in the Gazette, but an application must not be given a priority earlier than the date on which the cancellation becomes effective.

(7) Licences may be issued authorizing the diversion and use of water for domestic purpose or land improvement purpose from a stream to which a reservation applies.

(8) An approval under section 8 may be issued authorizing the use of water for any purpose from a stream to which a reservation applies.

Nisga'a water reservation

44.1 (1) In this section, "**Nisga'a Final Agreement**" has the same meaning as in the *Nisga'a Final Agreement Act*.

(2) The Lieutenant Governor in Council may, by order, establish the water reservation, described in paragraph 122 of the Lands Chapter of the Nisga'a Final Agreement, in favour of the Nisga'a Nation.

(3) The water reservation established under subsection (2) is deemed

(a) to be a water reservation under section 44 subject to the following:

(i) the water reserved by that water reservation may only be acquired for the purposes and in the manner contemplated by paragraphs 122 to 126 of the Lands Chapter of the Nisga'a Final Agreement;

(ii) section 44 (5) and (6) does not apply to that water reservation;

(iii) section 44 (7) and (8) does not apply to the water reserved by that water reservation, and

(b) to have been made on March 22, 1996 for the purposes of paragraph 123 of the Lands Chapter of the Nisga'a Final Agreement.

Repealed

45 and 46 [Repealed 2001-9-94.]

Claims against improvement districts are to be arbitrated

47 (1) A claim against an improvement district arising out of the construction or maintenance of a dike, or out of the diversion of water for the reclamation or drainage of land in an improvement district must be determined by arbitration under the *Commercial Arbitration Act*, and no action in respect of the claim may be brought in a court of British Columbia.

(2) With the consent of the Attorney General, an appeal from an award made on arbitration lies to the Court of Appeal.

Repealed

48 and 49 [Repealed 2001-9-94.]

Issue of new licence

50 When a licence is acquired by an improvement district under section 749 of the *Local Government Act* or by a municipality under section 31 (2) [*expropriation of water licences and related works*] of the *Community Charter*, the comptroller may issue in its place a new licence of similar precedence but authorizing the diversion and use of or storage of water for any purpose required by the improvement district or municipality.

Incorporation of water users' communities

51 The comptroller may at any time issue to a group of 6 or more licensees a certificate of incorporation incorporating them into a water users' community with the name the comptroller considers advisable.

Power of water users' community

52 (1) A water users' community is a public corporate body and may

(a) acquire, hold and control property and licences,

(b) acquire, construct, hold, maintain, improve, replace and operate works, and

(c) levy assessments on its members and enforce payment of those assessments by suit in a court of competent jurisdiction.

(2) A water users' community has the exclusive control and operation of the works constructed or used under the licences mentioned in its certificate of incorporation, and may refuse the use or benefit of those works to a member who is in default in paying an assessment or complying with a rule of the manager.

Manager

53 (1) The business of a water users' community must be conducted by a manager, which includes a committee of management, who must, so far as is practicable, carry out the directions set out in resolutions passed at general meetings of the water users' community.

(2) The first manager must be appointed by the comptroller and all subsequent managers must be chosen by the members of the water users' community.

(3) A manager may be removed at any time at a meeting called for that purpose.

Interests of members defined

54 (1) The respective interests of the members of a water users' community, unless altered under subsection (2), are proportionate to the respective maximum quantities of water the members would be entitled to divert and use under the licences referred to in the certificate of incorporation if each member were making the greatest possible use of the rights granted under those licences.

(2) The members of a water users' community at any time at a general meeting, on the vote of a majority in interest as shown by the last confirmed assessment roll of the water users' community, or if no assessment roll has been confirmed, then as ascertained on the basis set out

in subsection (1), may determine that, after the determination, the interest of each member is in proportion to one or both of the following:

- (a) the area of the member's land irrigated by means of the works operated by the water users' community;
- (b) the amount of water delivered to the member's land for domestic or waterworks purposes.

Voting at meetings

55 All matters to be determined at a meeting of a water users' community must be determined by the majority in interest of the members voting on them.

Power of manager to assess members

56 (1) The manager of a water users' community may prepare an assessment roll showing

- (a) the sums of money estimated to be required by the water users' community
 - (i) for acquisition, construction, replacement and maintenance, repair and operation of works, and

- (ii) to pay the debts of the water users' community, and

- (b) the sum assessed against each of the members of the water users' community, which sum must be proportionate to the member's interest in the water users' community.

(2) The assessment roll must set out the time and place for payment of the assessments.

(3) The manager must deliver or send by registered mail to each member a copy of the assessment roll, or the manager must post it in a conspicuous public place and send an assessment notice to each member showing the amount assessed against the member and stating where the assessment roll is posted.

(4) A copy of the assessment roll must also be sent to the comptroller, together with proof of compliance with the requirements of this section.

(5) If there is an error in the assessment roll, the comptroller may order its amendment.

(6) If the assessment roll is amended under subsection (5), the manager must

- (a) provide each affected member with a copy of the amended assessment roll or an amended assessment notice in accordance with subsection (3), and

- (b) send a copy of the amended assessment roll to the comptroller.

Appeals from assessments

57 (1) A member may appeal from the assessment made against the member by filing with the comptroller, within 14 days after the mailing of the copy of the assessment roll or the assessment notice, as the case may be, a statement showing the grounds of the appeal.

(2) The comptroller, after the investigation the comptroller considers necessary, may confirm the assessment roll or order its amendment.

(3) If no appeal from any assessment made in an assessment roll is taken, the comptroller may confirm the assessment roll.

Assessments binding

58 An assessment roll confirmed under section 57 is binding on all persons affected by it, and a sum payable by a member under it is deemed to be in arrears 30 days after the date of payment specified, and after that bears interest at a prescribed rate.

Liability for assessments

59 (1) A member of a water users' community is liable for that part of the debts of the water users' community that is proportionate to the member's interest in the water users' community.

(2) On disposing of the land to which is appurtenant the licence on which his or her membership is based and notifying the manager, a member may limit his or her liability for the debts of the water users' community to those incurred before the notice was given.

(3) A purchaser of land to which water is conveyed through works controlled by a water users' community is liable for the assessments made and the debts of the water users' community incurred after his or her purchase of the land to the same extent as an original member, unless and until the purchaser notifies the manager that he or she does not wish to be a member of the water users' community.

Meetings of members

60 Any 3 members may at any time call a general meeting of the water users' community on giving 2 weeks' notice to all members who reside on land to which water is conveyed by means of the works controlled by the water users' community.

Amendment, recall or reissue of certificate or dissolution of water users' community

61 (1) The comptroller may at any time amend the certificate of incorporation of a water users' community in any respect or may recall the certificate and issue another in its place and, unless expressly provided in the amending or new certificate, the amendment, recall or reissue does not impair the assets, rights, claims and financial obligations of the water users' community.

(2) The comptroller may at any time cancel the certificate of incorporation of a water users' community and make the disposition of the assets of the water users' community that to the comptroller appears equitable, and unless an appeal is taken to the appeal board from the comptroller's order and the appeal is allowed, the water users' community is dissolved as soon as the time for appealing has expired.

Part 4 — Water Management Plans

Order designating area for planning process

62 (1) The minister may, by order, designate an area for the purpose of developing a water management plan if the minister considers that a plan will assist in addressing or preventing

- (a) conflicts between water users,
- (b) conflicts between water users and instream flow requirements, or
- (c) risks to water quality.

(2) Without limiting the reasons for which an order under subsection (1) may be made, the minister may consider concerns related to fish, fish habitat and other environmental matters.

(3) An order under subsection (1) must include the reasons for which it is made.

(4) An area designation under subsection (1) may be by any delineation of the area that adequately describes it including, for example, name, map, plan, legal description, reference to a stream, reference to an aquifer or other geological formation or part of one, depth or other dimension, or by any combination of methods.

Plan development process

63 (1) The minister may, by order, establish the process by which a proposed water management plan for a designated area is to be developed.

(2) Without limiting subsection (1), an order under that subsection may

- (a) establish who is to be responsible for preparing the proposed plan,
- (b) establish the terms of reference for the plan, or authorize the preparation of some or all of the terms of reference subject to approval by the minister, and
- (c) require the establishment of a technical advisory committee in relation to development of the plan.

(3) The terms of reference for a proposed water management plan must include

- (a) the purpose of the plan,
 - (b) the issues to be addressed in the plan,
 - (c) a process for public and stakeholder consultation, and
 - (d) a time limit for completing the plan.
- (4) Without limiting the terms of reference that may be established for a proposed water management plan, they may include considerations relating to water in a stream, ground water and surface water runoff not in a stream.
- (5) In preparing a proposed water management plan, consideration must be given to the results or progress of Provincial government or local government strategic, operational and land use or water use planning processes within the designated area.
- (6) A proposed water management plan may be prepared in conjunction with a proposed drinking water protection plan under the *Drinking Water Protection Act*.
- (7) The minister may, by order, extend the time for completing a proposed water management plan whether or not the time previously set has expired.
- (8) For the purposes of developing a proposed water management plan, the person responsible for preparing the plan may
- (a) order licensees to provide information that the person considers advisable,
 - (b) undertake investigations, tests and surveys that the person considers advisable, and
 - (c) authorize other persons to undertake investigations, tests and surveys referred to in paragraph (a).
- (9) For the purposes of this section, the minister may direct that section 83 applies to the person responsible for preparing a proposed water management plan and persons working under that person's direction, subject to any limits or conditions established by the minister.

Approval of water management plan

- 64** (1) After a proposed water management plan has been prepared, it must be submitted to the minister.
- (2) After reviewing the proposed plan, the minister must place the proposed plan and any comments of the minister before the Lieutenant Governor in Council, who may approve all or part of the proposed plan as a water management plan.

(3) If a water management plan is approved by the Lieutenant Governor in Council, the minister must arrange for the plan to be made public.

Implementing a plan: effect on statutory decisions

65 (1) For the purposes of implementing a water management plan, the Lieutenant Governor in Council may, by regulation applicable in relation to all or part of the designated area for the plan, do one or more of the following:

(a) require that persons making decisions or classes of decisions under a specified enactment must consider the plan in making those decisions;

(b) restrict the issuance or amendment of licences, approvals, permits or other authorizations under a specified enactment;

(c) restrict the exercise of a power under a specified enactment.

(2) As a limit on subsection (1) (b) and (c), a regulation under that subsection may not be made in relation to

(a) the *Forest Practices Code of British Columbia Act*, or

(b) the *Forest Act* or the *Range Act*, respecting an authorization or the exercise of a power under those Acts, if the *Forest Practices Code of British Columbia Act*, or the standards or regulations under that Act, apply in relation to the activity authorized or the power.

(3) Despite an enactment specified under subsection (1), a regulation under subsection (1) (b) may establish requirements that must be imposed in issuing or amending a licence, approval, permit or other authorization under an enactment.

(4) Requirements imposed under subsection (3) are deemed to be imposed under the enactment under which the authorization is issued or amended.

(5) The issuance or amendment of a licence, approval, permit or other authorization contrary to a regulation under subsection (1) (b), or the exercise of a power contrary to a regulation under subsection (1) (c), has no effect.

Implementing a plan: restrictions on well drilling

66 (1) For the purposes of implementing a water management plan, the Lieutenant Governor in Council may, by regulation applicable to all or part of the designated area for the plan, restrict or prohibit one or more of the following:

(a) the drilling of wells;

(b) the alteration of wells;

(c) the installation of well pumps;

(d) the conduct of flow tests.

(2) In relation to a regulation under subsection (1), the Lieutenant Governor in Council may, by regulation, do one or more of the following:

(a) prescribe exemptions from a requirement for a drilling authorization under section 81 [*drilling authorizations*];

(b) prescribe requirements for the giving of notice respecting an application for a drilling authorization;

(c) prescribe classes of persons who may appeal a decision respecting such an application under section 92 [*appeals to Environmental Appeal Board*].

Review and amendment of plans

67 The minister may, by order, direct that a current water management plan be reviewed to determine whether amendments should be made, and this Part applies to the review and to any amendment to the plan proposed by the review.

Part 5 — Wells and Ground Water Protection

Definitions

68 In this Part and Part 6:

"person responsible" means, with respect to constructing a well, installing a well pump, conducting a flow test or closing a well,

(a) if the activity is supervised by a qualified professional, that qualified professional,

(b) if paragraph (a) does not apply and the activity is supervised or performed by a qualified well driller or a qualified well pump installer, that qualified well driller or qualified well pump installer,

(c) if neither paragraph (a) nor (b) applies, a person who performs the activity in the ordinary course of that person's business, and

(d) if none of paragraphs (a), (b) or (c) applies, the person on whose behalf the activity is performed;

"qualified professional" means

(a) a professional engineer, or

(b) a professional geoscientist

who is registered or licensed under the *Engineers and Geoscientists Act*;

"qualified well driller" means a person who has the prescribed qualifications;

"qualified well pump installer" means a person who has the prescribed qualifications;

"well" includes any casing, screen, drive shoe, packer, riser pipe, cap, valve, grout, liner and seal relating to a well.

Restrictions on constructing wells, closing wells and related activities

69 (1) This section applies to a person who

- (a) constructs a well,
- (b) closes a well,
- (c) deactivates a well, or
- (d) disinfects a well.

(2) Subject to section 70 [*restrictions respecting well pumps and flow tests*], a person referred to in subsection (1) must

- (a) comply with the applicable regulations, and
- (b) either
 - (i) be a qualified well driller, or
 - (ii) act under the direct supervision of
 - (A) a qualified well driller, or
 - (B) a qualified professional who has competency in the field of hydrogeology or geotechnical engineering.

(3) Subsection (2) (b) does not apply in respect of the following:

- (a) a person
 - (i) excavating a well to a depth of not more than 15 m, or

(ii) performing an activity referred to in subsection (1) with respect to an excavated well that has a depth of not more than 15 m;

(b) a person deactivating or disinfecting a well owned by the person;

(c) a person constructing or closing a geotechnical well that is not a monitoring well, if the activity of constructing the well is not likely to disturb and does not disturb an aquifer;

(d) a prescribed

(i) class of person,

(ii) class of well,

(iii) activity or class of activity in relation to a prescribed work or class of works, or

(iv) activity including, without limitation, an activity prescribed by regulation as routine maintenance.

(4) A person performing an activity referred to in subsection (3) (c) or prescribed under subsection (3) (d) who disturbs an aquifer must stop performing that activity until he or she has complied with subsection (2) (b) and must take the steps recommended by the person described in that subsection.

Restrictions respecting well pumps and flow tests

70 (1) This section applies to a person who

(a) installs, maintains, repairs, or tests a well pump or a wellhead,

(b) conducts a flow test of a well, or

(c) disinfects a well or a well pump.

(2) A person referred to in subsection (1) must

(a) comply with the applicable regulations, and

(b) either

(i) be a qualified well pump installer or a qualified well driller, or

(ii) act under the direct supervision of

(A) a qualified well pump installer,

(B) a qualified well driller, or

(C) a qualified professional who has competency in the field of hydrogeology or geotechnical engineering.

(3) Subsection (2) (b) does not apply in respect of the following:

(a) a person installing a well pump in a monitoring well or a geotechnical well;

(b) a person disinfecting a well owned by the person;

(c) a prescribed

(i) class of person,

(ii) class of well or well pump,

(iii) activity or class of activity in relation to a prescribed work or class of works, or

(iv) activity including, without limitation, an activity prescribed by regulation as routine maintenance.

Qualified well drillers and qualified well pump installers

71 A person who is performing or directly supervising activities that under this Act must be performed or directly supervised by a qualified professional, a qualified well driller or a qualified well pump installer, must provide proof of their qualifications on the request of any of the following persons:

(a) the comptroller;

(b) the regional water manager;

(c) an engineer;

(d) an officer;

(e) a drinking water officer.

Well reports

72 (1) Subject to the regulations, a person responsible for

(a) constructing a well,

(b) installing a well pump,

- (c) conducting a flow test of a well, or
- (d) closing a well

must maintain a daily log containing the prescribed information and must complete a report in accordance with the regulations.

(2) The person referred to in subsection (1) must retain and produce at the request of an officer, an engineer or a drinking water officer the log and report required under subsection (1).

(3) A person who is required under subsection (1) to complete a report must submit a copy of the report in accordance with the regulations to

- (a) the comptroller,
- (b) the well owner, and
- (c) if requested by the regional water manager, an engineer or a drinking water officer, that official.

(4) Subsection (3) does not apply in respect of a monitoring well, a geotechnical well or a well made for the purpose of ground water remediation.

Water analyses for new or altered wells

73 (1) A person responsible for drilling a well or making prescribed alterations to a well must, in accordance with the regulations,

- (a) take or cause to be taken, and
- (b) cause to be analyzed

a sample of the ground water in the well.

(2) If the ground water in a well is to be used for "domestic purposes" within the meaning of the *Drinking Water Protection Act*, the sampling and the analyses of the ground water must also comply with the requirements of that Act and the regulations under that Act.

(3) A person who is required to comply with subsection (1) or (2) must submit a copy of the results of the analyses to

- (a) the comptroller,
- (b) the well owner, and

(c) if requested by the regional water manager, an engineer or a drinking water officer, that official.

(4) This section does not apply to a person responsible in respect of a monitoring well, a geotechnical well or a well made for the purpose of ground water remediation.

Well identification

74 (1) In this section "**owner**" and "**water supply system**" have the same meanings as in the *Drinking Water Protection Act*.

(2) The following persons must attach an identification plate to a well or wellhead in accordance with the regulations:

(a) a person responsible for drilling a well or making a prescribed alteration to a well;

(b) unless a plate is attached under paragraph (a), the owner of a water supply system of a prescribed class.

(3) Subsection (2) does not apply in respect of a monitoring well, a geotechnical well or a well made for the purpose of ground water remediation.

(4) A person who is required to attach an identification plate under this section must submit a report in accordance with the regulations to

(a) the comptroller, and

(b) if requested by the regional water manager or an engineer, that official.

(5) A person who closes a well in accordance with section 69 [*restrictions on constructing wells, closing wells and related activities*] must remove the identification plate referred to in subsection (2) and submit it to the comptroller with the report under section 72.

Closing or deactivating a well

75 (1) For the purposes of this section, a well is considered to be in service if

(a) the well is used regularly or on a periodic basis, or

(b) the well is kept active as a backup water supply.

(2) Despite subsection (1), a well is considered not in service

(a) if it is not used for a prescribed period, which may be different for different circumstances, or

(b) in prescribed circumstances.

(3) Subject to the regulations, if a well is not in service, the well owner must have the well deactivated or closed in accordance with section 69 [*restrictions on constructing wells, closing wells and related activities*].

(4) If a deactivated well is not in service for a prescribed period or if the owner does not intend to put a well in service or does not put a well in service for that prescribed period, the well owner must have the well closed in accordance with section 69 [*restrictions on constructing wells, closing wells and related activities*].

(5) If the owner of the land on which the well is located does not know who owns the well, the owner of the land must comply with subsections (3) and (4).

Well caps or well covers

76 (1) The following persons must secure a well cap or well cover on a well in accordance with the regulations:

(a) the person who drills a well or makes a prescribed alteration to a well;

(b) a person who owns a well that does not have a well cap or well cover secured on it.

(2) If the well owner does not comply with subsection (1) (b) and the owner of the land on which the well is located does not know who owns the well, the owner of the land must comply with subsection (1) (b).

(3) A person must not remove the well cap or well cover from a well except for the purpose of

(a) inspecting, developing, disinfecting, maintaining, repairing or altering the well or inspecting, maintaining, repairing, replacing or altering works associated with the well,

(b) installing, re-installing or testing a well pump,

(c) testing the flow of a well,

(d) taking a water sample, or

(e) undertaking similar activities that require temporary removal of the well cap or well cover.

(4) A person who temporarily removes a well cap or well cover as authorized under subsection (3) must replace that cap or cover as soon as practicable after completing the work for which it was removed.

(5) A person must not destroy, injure or tamper with a well cap or well cover.

Controlling artesian flow

77 (1) If a qualified well driller or a qualified professional encounters artesian conditions while constructing a well or supervising the construction of a well, that person must ensure that

(a) any artesian flow is stopped or brought under control, or

(b) if the artesian well is likely to flow periodically, steps are taken to ensure that that artesian flow will be stopped or controlled.

(2) Any person who, while constructing a well, encounters

(a) flowing artesian conditions, or

(b) artesian conditions that indicate the artesian well is likely to flow periodically,

must engage a qualified well driller or a qualified professional, who must comply with subsection (1).

(3) If a qualified person referred to in subsection (1) or (2) takes steps to stop or control the artesian flow, that person must notify the well owner.

(4) If a person referred to in subsection (1) or (2) fails to comply with those subsections, the well owner must comply.

(5) The owner of a flowing artesian well must engage a qualified professional or a qualified well driller to ensure that the flow of that well is stopped or brought under control.

(6) If the well owner does not comply with subsection (5) and the owner of the land on which a flowing artesian well is located does not know who owns the well, the owner of the land must comply with subsection (5).

(7) A person responsible for stopping or controlling artesian flow under this section must stop or control that artesian flow in accordance with the regulations and any directions of an engineer.

Well operation

78 (1) A person must operate a well in accordance with the regulations and any directions of an engineer in respect of it.

(2) A person must not operate a well in a manner that causes or is likely to cause

(a) the intrusion of salt water or contaminated water into

(i) an aquifer from which that well draws ground water, or

- (ii) any well that draws ground water from that aquifer, and
- (b) a significant adverse impact on
 - (i) the quality of the ground water in that aquifer, or
 - (ii) the existing uses made of the ground water from any well that draws from that aquifer.

(3) Subsection (2) does not apply

- (a) to a well made for the purpose of ground water remediation, or
- (b) with respect to a prescribed activity in relation to a prescribed class of well.

(4) For the purposes of a prosecution under section 93 (3) (k) [*general offences*], it is not necessary to prove that the salt water or contaminated water, if diluted subsequent to the intrusion, continued to cause or to be likely to cause a significant adverse impact on the quality of the ground water in the aquifer or the existing uses made of the ground water from any well that draws from that aquifer.

Prohibition on introducing foreign matter into a well

79 (1) A person must not introduce, allow to be introduced or cause to be introduced any of the following into a well:

- (a) refuse;
- (b) carcasses;
- (c) human or animal waste;
- (d) pesticides or fertilizers;
- (e) material, natural or otherwise, from construction or demolition;
- (f) any other prescribed matter or substance;
- (g) a contaminant, or a prescribed matter or substance, in such amounts or in such a manner as to cause or to be likely to cause a significant adverse impact on
 - (i) the quality of ground water in the well, or
 - (ii) the existing uses made of the ground water from the well.

(2) Subsection (1) does not apply with respect to

- (a) a well owner in the proper operation, disinfection, maintenance, repair, deactivating or closing of a well in accordance with the regulations,
- (b) a well made for the purpose of ground water remediation,
- (c) activities authorized or required under an enactment,
- (d) a prescribed activity undertaken in accordance with any conditions prescribed by regulation, or
- (e) a prescribed contaminant, matter or substance.

(3) For the purposes of prosecuting a contravention of subsection (1) (g), it is not necessary to prove that the contaminant, matter or substance, if diluted subsequent to the introduction into the well, continued to cause or to be likely to cause a significant adverse impact on the quality of the ground water in the well or the uses made of the ground water from the well.

(4) An engineer may order a person

- (a) to stop the introduction of,
- (b) to remove, or
- (c) to undertake measures, as directed by the engineer, to remediate or mitigate the effects of the introduction of

any thing, contaminant, matter or substance introduced into a well contrary to subsection (1).

(5) If the engineer cannot ascertain who contravened subsection (1), the engineer may make an order under subsection (4) against the well owner.

(6) If the engineer cannot ascertain who contravened subsection (1) or who owns the well, the engineer may make an order under subsection (4) against the owner of the land on which the well is located.

(7) If a person who is subject to an order under subsection (4), (5) or (6) fails to comply with that order and the comptroller or regional water manager considers that that failure may result in harm or damage to ground water in the aquifer, the comptroller or regional water manager may authorize the government or another person, at the expense of the person who is subject to the order, to take the actions necessary to comply with that order.

(8) If work is carried out under subsection (7), the costs to the government are a debt due to the government by the person who is subject to the order under subsection (4), (5) or (6).

(9) This section does not limit the authority under section 86 [*power of comptroller if disobeyed*] or 88 [*powers of engineers and officers*].

Wells on Crown land

80 (1) Sections 75 [*closing or deactivating a well*], 76 [*well caps or well covers*], 77 [*controlling artesian flow*] and 79 [*prohibition on introducing foreign matter into a well*] do not apply to the government as the owner of land on which a well is located unless

(a) the well was drilled by or on behalf of the government, or

(b) the well was purchased by the government.

(2) If a person

(a) on or after the date this provision comes into force, has a right to use or occupy Crown land on which a well is constructed or located, and

(b) fails to comply with section 75 [*closing or deactivating a well*], 76 [*well caps or well covers*], 77 [*controlling artesian flow*] or 79 [*prohibition on introducing foreign matter into a well*],

the government may enforce the applicable provision against that person as if that person were the owner of the land on which the well is located, despite any subsequent termination of the right to use or occupy the land.

Drilling authorizations

81 (1) If a regulation under section 66 of this Act or under section 36 of the *Drinking Water Protection Act* imposes restrictions for an area in respect of

(a) drilling a well,

(b) altering a well,

(c) installing well pumps, or

(d) conducting flow tests,

a person must not engage in that restricted activity in that area without a drilling authorization issued under this section.

(2) A person who requires a drilling authorization under subsection (1) must apply for the drilling authorization to the comptroller, the regional water manager or an engineer in accordance with the regulations.

(3) With respect to an application for a drilling authorization, the comptroller, the regional water manager or an engineer may do one or more of the following:

- (a) refuse the application;
 - (b) amend the application in any respect;
 - (c) grant all or part of the application;
 - (d) require additional plans or other information;
 - (e) require the applicant to give security for the purposes and in the amount and form the comptroller, the regional water manager or the engineer considers in the public interest;
 - (f) issue a drilling authorization with the conditions the comptroller, the regional water manager or the engineer considers advisable.
- (4) The comptroller, a regional water manager or an engineer, on the conditions that official considers advisable, may
- (a) amend a drilling authorization,
 - (b) suspend a drilling authorization, or
 - (c) cancel a drilling authorization.
- (5) If an amendment to a drilling authorization would substantially change the drilling authorization, the comptroller, a regional water manager or an engineer may issue in substitution for it another drilling authorization on the conditions that official considers advisable.
- (6) In considering an application under subsection (2), the comptroller, regional water manager or engineer must consider the water management plan or drinking water protection plan to which the regulation referred to in subsection (1) relates.
- (7) The comptroller, the regional water manager or an engineer must not issue a drilling authorization unless
- (a) the applicant is the owner of the land on which the well and any works related to the well are or will be located, or
 - (b) if the applicant is not the owner of the land on which the well or the works related to the well are or will be located, the applicant submits the prescribed evidence of the consent of the owner of the applicable land.
- (8) A person to whom a drilling authorization is issued under subsection (3) must comply with the conditions contained in it and any applicable requirements of
- (a) this Act and the regulations, or

(b) any other enactment.

(9) A drilling authorization may not be issued under this section for an activity that is prohibited by a regulation referred to in subsection (1).

Ground water advisory board

82 (1) The minister may establish a ground water advisory board to provide technical advice with respect to

(a) qualifications of qualified well drillers and qualified well pump installers,

(b) standards or codes in respect of

(i) constructing a well, siting a well or installing a well pump,

(ii) designing, testing, operating, disinfecting, floodproofing, capping or covering a well,

(iii) closing or deactivating a well,

(iv) removing works from a well,

(v) conducting a flow test of a well,

(vi) the design, construction, installation, testing, operation, alteration, maintenance, repair, disinfection or replacement of works relating to a well or ground water,

(vii) sampling and analyzing ground water for a new or altered well, or

(viii) stopping or controlling the flow of a flowing artesian well, and

(c) any matter related to ground water specified by the minister.

(2) The chair and members of the advisory board are to be appointed by the minister.

(3) A person appointed to the advisory board

(a) must be reimbursed in accordance with the directives of Treasury Board for reasonable travelling and out of pocket expenses necessarily incurred in discharging the person's duties under this Act, and

(b) may be paid remuneration in accordance with the directives of Treasury Board if the person is not an employee under the *Public Service Act*.

Part 6 — General

Right of access to land and premises by authorized persons

83 (1) The comptroller, a regional manager, an engineer, officer or water bailiff under this Act or an officer or employee of a municipality, improvement district, development district, water users' community, or a holder of a licence that authorizes the carriage or supply of water or electricity to the public has at all times a free right of entry and exit on, in and over any land and premises so far as is necessary in the discharge of the person's duties or in the exercise of the person's rights.

(2) This section also applies to a person working under the direction of the comptroller, the regional water manager or an engineer.

(3) The authority under subsection (1) must not be used to enter into a private dwelling except with the consent of the occupant or as authorized by a warrant issued under this or another Act.

Entry warrant

84 If satisfied by evidence on oath or affirmation that entry on or into land or premises is necessary for the purposes of this Act, a justice may issue a warrant authorizing any of the following persons to enter on or into that land or those premises:

(a) the comptroller, a regional water manager, an engineer or an officer;

(b) a person authorized by the comptroller or a regional water manager to carry out an order made under this Act;

(c) a person responsible for preparing a proposed water management plan.

Powers of comptroller and regional water manager

85 (1) In addition to the other powers given under this Act, the comptroller may at any time do any act or thing that a regional water manager, engineer or officer is empowered to do under this Act.

(2) In addition to the other powers given under this Act, a regional water manager may at any time do any act or thing that an engineer or officer is empowered to do under this Act.

Power of comptroller if disobeyed

86 (1) If a person to whom an order of the comptroller, a regional water manager or an engineer is directed fails to do the things ordered, the comptroller may authorize another person to do those things.

(2) Any expense incurred in the exercise of an authorization provided under subsection (1) may be recovered in any court from the person to whom the order was directed as money paid for, and at the request of, that person.

(3) In an action referred to in subsection (2), the comptroller's certificate as to the amount of the expense is conclusive evidence of it.

(4) If the comptroller considers that it is in the public interest to remove any works, the comptroller may authorize that they be removed at the expense of the government.

(5) Money required under subsection (4) must be paid out of the consolidated revenue fund.

(6) The government may collect money spent under subsection (4) as if the works had been removed under subsection (1).

(7) A person authorized by the comptroller under this section may enter onto land and premises at any reasonable time and may take with him or her any other persons or equipment as may be necessary for the purpose of doing the things that he or she is authorized to do.

(8) The authority under subsection (7) must not be used to enter into a private dwelling except with the consent of the occupant or as authorized by a warrant issued under this or another Act.

Power to amend or revoke order

87 (1) The comptroller, at any time on notice, may amend or revoke any order of the comptroller, a regional water manager, an engineer, an officer, the Water Board or the Board of Investigation.

(2) A regional water manager, at any time on notice, may amend or revoke any order of a regional water manager, an engineer, an officer, the Water Board or the Board of Investigation.

(3) An engineer, at any time on notice, may amend or revoke any order of an engineer or an officer.

Powers of engineers and officers

88 (1) In addition to all other powers given under this Act, an engineer may do one or more of the following:

(a) inspect, regulate, close or lock any works;

(b) inspect and regulate the construction of any works;

(c) determine what constitutes beneficial use of water;

(d) order the alteration, installation, replacement, repair, maintenance, improvement, sealing, closure or removal of, or the addition to, any works;

(e) order the restoration or remediation of any changes in and about a stream;

- (f) order the construction, installation and maintenance of any measuring or testing device;
 - (g) order the operation of, and provision of data from, a measuring or testing device;
 - (h) regulate, in person or through an officer or a water bailiff, and make orders with respect to the diversion, rate of diversion, time of diversion, storage, time of storage, carriage, distribution and use of water;
 - (i) determine the allowances of water to offset evaporation, seepage and other losses;
 - (j) order the release of stored or impounded water that the engineer considers a danger to life and property;
 - (k) order a person to cease putting or not to put any sawdust, timber, tailings, gravel, refuse, carcass or other thing or substance into a stream;
 - (l) order a person to remove from a stream any substance or thing that the person has put or permitted to get into the stream;
 - (m) install measuring or testing devices;
 - (n) take measurements of or test
 - (i) water in a stream or ground water,
 - (ii) the flow of water in a stream or ground water, or
 - (iii) works;
 - (o) order a change in the operation of a well that is being operated contrary to section 78 [*well operation*] and give directions respecting the operation of the well;
 - (p) if a well has been operated or used contrary to section 78 [*well operation*] or 79 [*prohibition on introducing foreign matter into a well*], order a person to remediate or mitigate the impact on an aquifer or ground water and give directions respecting the remediation;
 - (q) order a person to remediate or mitigate any impact on the aquifer or ground water that results because a well was sited, constructed or floodproofed in contravention of this Act or the regulations.
- (2) An order under subsection (1) may be made subject to any conditions the engineer considers advisable.
- (3) Subject to the direction of an engineer, an officer may do one or more of the following:
- (a) regulate, close or lock any works;

- (b) regulate the construction of any works;
- (c) regulate, in person or through a water bailiff, the diversion, rate of diversion, time of diversion, storage, time of storage, carriage, distribution and use of water;
- (d) install measuring or testing devices;
- (e) take measurements of or test
 - (i) water in a stream or ground water,
 - (ii) the flow of water in a stream or ground water, or
 - (iii) works.
- (4) An officer may inspect works, the construction of works, an existing or proposed water use, any activity or changes in and about a stream, and any records related to the works, construction, use, activity or changes.

Power to summon witnesses

89 (1) If it appears to the comptroller, a regional water manager or an engineer that the proper determination of a matter within his or her jurisdiction requires a public or other inquiry, he or she may hold that inquiry.

(2) For the purposes of an inquiry, the comptroller, regional water manager or engineer may make an order requiring a person to do either or both of the following:

(a) attend, in person or by electronic means, before the comptroller, regional water manager or engineer, as applicable, to answer questions on oath or affirmation, or in any other manner;

(b) produce for the comptroller, regional water manager or engineer, as applicable, a record or thing in the person's possession or control.

(3) The comptroller, regional water manager or engineer may apply to the Supreme Court for an order

(a) directing a person to comply with an order made under subsection (2), or

(b) directing any directors and officers of a person to cause the person to comply with an order made under subsection (2).

Maintenance of order at hearings

89.1 (1) At an oral hearing, the comptroller, regional water manager or engineer may make orders or give directions that he or she considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any order or direction, the comptroller, regional water manager or engineer, as applicable, may call on the assistance of any peace officer to enforce the order or direction.

(2) A peace officer called on under subsection (1) may take any action that is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose.

(3) Without limiting subsection (1), the comptroller, regional water manager or engineer, by order, may

- (a) impose restrictions on a person's continued participation in or attendance at a hearing, and
- (b) exclude a person from further participation in or attendance at a hearing until the comptroller, regional water manager or engineer, as applicable, orders otherwise.

Contempt proceeding for uncooperative person

89.2 (1) The failure or refusal of a person subject to an order under section 89 to do any of the following makes the person, on application to the Supreme Court by the comptroller, regional water manager or engineer who made the order, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court:

- (a) attend before the comptroller, regional water manager or engineer;
- (b) take an oath or make an affirmation;
- (c) answer questions;
- (d) produce records or things in the person's possession or control.

(2) The failure or refusal of a person subject to an order or direction under section 89.1 to comply with the order or direction makes the person, on application to the Supreme Court by the comptroller, regional water manager or engineer who made the order, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

(3) Subsections (1) and (2) do not limit the conduct for which a finding of contempt may be made by the Supreme Court.

Protection of officials

90 (1) No action for damages lies or may be brought against the comptroller or a regional water manager, engineer, officer, registrar, water recorder, water bailiff, arbitrator or person authorized under section 12.1 (6) for anything done or omitted

(a) in the performance or intended performance of any duty under this Act, or

(b) in the exercise or intended exercise of any power under this Act,

unless the person was acting in bad faith.

(2) Subsection (1) does not absolve the government from vicarious liability for an act or omission for which it would be vicariously liable if this section were not in force.

Restriction on proceedings respecting decisions under the Act

91 Except as otherwise provided in this Act, a hearing, investigation, proceeding or order of the Lieutenant Governor in Council, the comptroller, a regional water manager, a water recorder or an engineer must not be questioned, reviewed or restrained by injunction, a proceeding in the nature of prohibition or other process or proceeding in any court, or be removed by a proceeding in the nature of certiorari or otherwise into any court, except for excess or want of jurisdiction.

Appeals to Environmental Appeal Board

92 (1) Subject to subsections (2) and (3), an order of the comptroller, the regional water manager or an engineer may be appealed to the appeal board by

(a) the person who is subject to the order,

(b) an owner whose land is or is likely to be physically affected by the order, or

(c) a licensee, riparian owner or applicant for a licence who considers that their rights are or will be prejudiced by the order.

(1.1) Despite subsection (1), a licensee may not appeal an order of the comptroller or a regional water manager to cancel in whole or in part a licence and all rights under it under section 23 (2) (c) or (d).

(2) An order of the comptroller, the regional water manager or an engineer under Part 5 or 6 in relation to a well, works related to a well, ground water or an aquifer may be appealed to the appeal board by

(a) the person who is subject to the order,

(b) the well owner, or

(c) the owner of the land on which the well is located.

(3) An order of the comptroller, the regional water manager or an engineer under section 81 [drilling authorizations] may be appealed to the appeal board by

(a) the person who is subject to the order,

(b) the well owner,

(c) the owner of the land on which the well is located, or

(d) a person in a class prescribed in respect of the water management plan or drinking water protection plan for the applicable area.

(4) The time limit for commencing an appeal is 30 days after notice of the order being appealed is given

(a) to the person subject to the order, or

(b) in accordance with the regulations.

(5) For the purposes of an appeal, if a notice under this Act is sent by registered mail to the last known address of a person, the notice is conclusively deemed to be served on the person to whom it is addressed on

(a) the 14th day after the notice was deposited with Canada Post, or

(b) the date on which the notice was actually received by the person, whether by mail or otherwise,

whichever is earlier.

(6) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environmental Management Act*, and

(b) subject to this Act, must be conducted in accordance with the *Environmental Management Act* and the regulations under that Act.

(7) The appeal board may conduct an appeal by way of a new hearing.

(8) On an appeal, the appeal board may

(a) send the matter back to the comptroller, regional water manager or engineer, with directions,

(b) confirm, reverse or vary the order being appealed, or

(c) make any order that the person whose order is appealed could have made and that the board considers appropriate in the circumstances.

(9) An appeal does not act as a stay or suspend the operation of the order being appealed unless the appeal board orders otherwise.

General offences

93 (1) Sections 4 and 5 of the *Offence Act* do not apply to this Act or the regulations.

(2) A person who does any of the following commits an offence:

(a) willfully hinders, interrupts or causes or procures to be hindered or interrupted,

(i) a licensee,

(ii) a holder of a drilling authorization, or

(iii) the managers, contractors, servants, agents, or workers of a person referred to in subparagraph (i) or (ii),

in the lawful exercise of a right granted under this Act or under a licence, approval or drilling authorization;

(b) without lawful authority, willfully destroys, damages or interferes with the works of

(i) a licensee,

(ii) a person who has obtained an approval,

(iii) the holder of a drilling authorization, or

(iv) a person who has constructed the works in accordance with the regulations;

(c) opens or closes without authority a hydrant used for fire protection, or obstructs free access to or damages a hydrant stop cock or hydrant accessory;

(d) without authority from the comptroller, an engineer or the licensee,

(i) lays or causes to be laid a pipe, or

(ii) constructs or causes to be constructed a ditch or other conduit

to connect with the works of a licensee;

(e) destroys, injures or tampers with

(i) works, or

(ii) a gauge, weir, measuring device, structure, appliance, cable, boat, instrument or tool

belonging to or placed in position by an applicant, licensee or official of Canada or of British Columbia;

(f) engages in the business of operating works to carry water, other than ground water, for others without holding a licence or other authority issued in that regard under this or a former Act;

(g) willfully interferes with a headgate, ditch, controlling works or any other works that an engineer, officer or water bailiff has regulated;

(h) willfully destroys a notice posted by an applicant, engineer, officer or water bailiff;

(i) constructs, maintains, operates or uses works without authority;

(j) puts into a stream any sawdust, timber, tailings, gravel, refuse, carcass or other thing or substance after having been ordered by the engineer or water recorder not to do so;

(k) diverts water from a stream without authority;

(l) diverts more water from a stream than the person is lawfully entitled to divert;

(m) diverts water that the person does not use beneficially;

(n) uses water when the person is not lawfully entitled to do so;

(o) uses water or permits water to be used on the person's land during a time the person is ordered to cease the diversion of water or after the works of the person have been closed or ordered closed;

(p) fails to do an act or thing required to be done by the person under this Act or under an order of the comptroller, regional water manager, engineer or officer;

(q) makes changes in and about a stream without lawful authority;

(r) breaches the regulations or a term or condition of a licence, an approval, a permit or a drilling authorization, other than in relation to a condition established under section 5 or 6 of the *Fish Protection Act*;

(s) willfully makes a material misstatement or misrepresentation in a declaration under section 22.01;

(t) carries, supplies, conveys or transports water diverted from a stream without being authorized to divert, extract, use or store water from that stream, unless acting as agent for a person so authorized;

(u) contravenes section 4;

(v) fails to provide proof of qualifications as required under section 71 [*qualified well drillers and qualified well pump installers*];

(w) destroys, injures or tampers with any works related to ground water or a well or an identification plate for a well;

(x) constructs a well, closes a well or deactivates or disinfects a well without having qualifications as required under this Act;

(y) constructs a well, closes a well or deactivates or disinfects a well in contravention of any requirements of this Act or the regulations;

(z) willfully fails to stop constructing a well when required to do so under section 69 (4) [*restrictions on constructing wells, closing wells and related activities*].

(3) A person who does any of the following commits an offence:

(a) installs, maintains, repairs or tests a well pump or wellhead, or conducts a flow test of a well, without having qualifications as required under this Act;

(b) installs, maintains, repairs or tests a well pump or wellhead, or conducts a flow test of a well, in contravention of any requirements of this Act or the regulations;

(c) tampers with a ground water sample required under section 73 [*water analyses for new or altered wells*];

(d) fails to take or cause to be taken or analyzed a ground water sample, or fails to submit the results of the analyses, in accordance with the requirements of the Act or the regulations;

(e) sites or floodproofs a well in contravention of any requirements of this Act or the regulations;

(f) fails to attach a well identification plate or remove and return an identification plate in accordance with the Act or the regulations;

(g) fails to deactivate or close a well when required under section 75 [*closing or deactivating a well*];

(h) fails to secure a well cap or well cover in accordance with the requirements of the Act or the regulations or fails to replace a well cap or well cover when required to do so under section 76 [*well caps and well covers*];

(i) fails to stop or bring the flow of a flowing artesian well under control or fails to take steps to stop or control an artesian well that is likely to flow periodically;

(j) operates a well in contravention of any requirements of this Act or the regulations;

(k) operates a well contrary to section 78 [*well operation*];

(l) willfully

(i) submits a false or misleading log, record, report, form or return, or

(ii) records false or misleading information

required to be submitted or recorded under this Act;

(m) fails to submit, produce or retain a log, record, report, form or return required to be submitted, produced or retained under this Act;

(n) fails to obtain a drilling authorization when required to do so under section 81.

(4) A person who commits an offence under this section is liable on conviction to the following:

(a) in the case of an offence that is not a continuing offence, a fine of not more than \$200 000 or imprisonment for not longer than 6 months, or both;

(b) in the case of a continuing offence, a fine of not more than \$200 000 for each day the offence is continued or imprisonment for not longer than 6 months, or both.

High penalty offences

94 (1) A person who does any of the following commits an offence:

(a) constructs a bank to bank dam on a protected river contrary to section 4 (3) of the *Fish Protection Act*;

(b) [Not in Force.]

(c) breaches a term or condition of a licence, an approval or the regulations in relation to a condition established under section 5 or 6 of the *Fish Protection Act*;

(d) [Not in Force.]

(e) introduces, or causes or allows to be introduced, into a well anything contrary to section 79 [*prohibition on introducing foreign matter into a well*];

(f) molests, interferes with, delays, obstructs or otherwise impedes the comptroller, the regional water manager or an engineer, water bailiff or other officer in the discharge or performance of a duty or the exercise of an authority under this Act;

(g) places, maintains or makes use of an obstruction in the channel of a stream without authority;

(h) willfully contravenes this Act or an order of the comptroller, a regional water manager, an engineer or an officer;

(i) drills a well, makes a prescribed alteration to a well, installs a well pump or conducts a flow test of a well when prohibited.

(2) A person who commits an offence under this section is liable on conviction to the following:

(a) in the case of an offence that is not a continuing offence, a fine of not more than \$1 000 000 or imprisonment for not longer than 1 year, or both;

(b) in the case of a continuing offence, a fine of not more than \$1 000 000 for each day the offence is continued or imprisonment for not longer than 1 year, or both.

Creative sentencing

95 (1) If a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

(a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;

(b) directing the person to take any action the court considers appropriate to remedy or avoid any harm to the environment that resulted or may result from the commission of the offence;

(c) directing the person to pay the government an amount of money as compensation, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the government as a result of the commission of the offence;

(d) directing the person to perform community service;

(e) directing the person to pay an amount of money the court considers appropriate to the trustee under Part 3 of the *Wildlife Act* for inclusion in the trust property, as that term is defined in section 118 of that Act;

(f) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this section;

(g) directing the person to submit to the minister, on application by the minister within 3 years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances;

(h) directing the person to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;

(i) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under this Act.

(2) The person against whom an order under subsection (1) was made, or the Attorney General, may apply to the court that made the original order for a variation.

(3) Before hearing an application under subsection (2), the court may order the applicant to give notice of the application in accordance with the directions of the court.

(4) On an application under subsection (2), if the court considers variation appropriate because of a change in the circumstances, the court may make an order doing one or more of the following:

(a) changing the original order or any conditions specified in it;

(b) relieving the person against whom the order was made absolutely or partially from compliance with all or part of the original order;

(c) reducing the period for which the original order is to remain in effect;

(d) extending the period for which the original order is to remain in effect, subject to the limit that this extension must not be longer than one year.

(5) If an application under subsection (2) has been heard by a court, no other application may be made in respect of the original order, or the order as varied under subsection (2), except with leave of the court.

(6) If a person fails to comply with an order referred to in subsection (1) (h) directing the person to publish the facts relating to the commission of an offence, the minister may publish those facts and recover the costs of publication from the person.

(7) If

(a) an order under this section directs a person to pay an amount of money as compensation or for any other purpose, or

(b) the minister incurs publication costs under subsection (6),

the amount and any interest payable on that amount constitute a debt due to the government and may be recovered as such in any court of competent jurisdiction.

Breach of creative sentencing order

96 (1) A person who contravenes an order under section 95 [*creative sentencing*] commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction to the penalties provided for the offence in relation to which the order under section 95 was made.

Liability of individuals for offences committed by a corporation

97 If a corporation commits an offence under this Act, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence commits the offence whether or not the corporation is prosecuted for the offence.

Time limit for prosecutions

98 (1) The time limit for laying an information respecting an offence under this Act is 2 years after the facts on which the information is based first came to the knowledge of

(a) the minister, or

(b) a person designated, by name or title, by the minister for that purpose.

(2) A document purporting to have been issued by the minister or a person designated under subsection (1) (b), certifying the day on which he or she became aware of the facts on which an information is based,

(a) is admissible without proof of the signature or official character of the individual appearing to have signed the document, and

(b) in the absence of evidence to the contrary, is proof of the matter certified.

Other liabilities remain

99 A proceeding, conviction or penalty for an offence under this Act does not relieve a person from any other liability.

Fees, rentals and charges

100 (1) The Lieutenant Governor in Council may, by regulation, establish a tariff of the fees, rentals and charges payable

(a) in respect of applications, petitions, claims, complaints, proceedings, licences, approvals, permits, drilling authorizations and other things filed, applied for, taken or issued under this or any former Act, and

(b) in respect of water diverted or used from a stream, whether diverted under authority of a licence or under a special or private Act or without authority.

(2) Each of the following is liable to the government for the fees, rentals and charges in respect of the application, petition, claim, complaint, proceeding, licence, approval, permit, drilling authorization, thing or water:

(a) an applicant, petitioner, claimant, complainant and other person who files an application, petition, claim or complaint, or takes a proceeding under this Act;

(b) a person holding a licence, approval, permit or drilling authorization;

(c) a person who diverts or uses water from a stream.

(3) The fees, rentals and charges must be paid to the comptroller and may be recovered by the comptroller by suit in a court of competent jurisdiction.

(4) The tariff may set the times of payment of fees, rentals and charges and make them subject to the imposition of interest at a prescribed rate and specified percentage additions on or from specified dates, and a tariff or part of it may be made retrospective to the extent of making it applicable from the beginning of the year in which it is established.

(4.1) Despite subsection (4), the comptroller may establish the times of payment of fees, rentals and charges and make them subject to the imposition of interest at a prescribed rate and specified percentage additions on or from specified dates.

(4.2) The comptroller may, in writing, authorize any other official or class of officials employed by the government or a government corporation to exercise the functions, duties and powers of the comptroller in respect of

(a) the determination, collection and receipt of fees, rentals and charges, and

(b) the issuance of rental statements.

(5) The payment by a person or the acceptance by the comptroller of any rental in respect of a licence, approval or permit does not prevent or delay the cancellation of the licence, approval or permit on any ground except failure to pay rentals.

Power to make regulations

101 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) dividing British Columbia into water districts;

(b) prescribing the powers, duties and jurisdiction of officials administering this Act;

(c) prescribing the purposes or classes of artificial openings in the ground that are not included in the definition of "well";

(d) specifying how notice of a decision may be given for the purposes of section 92 (4) (b) [*appeals to Environmental Appeal Board*];

(e) defining words or phrases used but not defined in the Act;

(f) respecting any matter for which regulations are contemplated by the Act.

(3) Without limiting subsection (1) or (2), the Lieutenant Governor in Council may make regulations for the purposes of Part 2 or 3, subject to a regulation under section 1.1, in respect of the following:

(a) the issue of permits authorizing the occupation of Crown land and the terms of those permits;

(b) the procedure to be followed in expropriating land and easements, the method of determining the compensation to be paid for an expropriation and the powers and duties of arbitrators or a court with respect to expropriations under this Act;

(c) the use of a stream for floating timber and the construction, maintenance, operation, alteration and removal of booms and other installations in the stream, and the duties and obligations of persons who float timber in a stream with respect to the segregation and sorting of the timber;

(d) the use, construction, maintenance, operation, alteration, abandonment and removal of any works;

(e) the commencement, continuation or cessation of any activity that causes or allows to be caused any changes in and about a stream;

(f) the duties and obligations of persons who undertake any works or changes in and about a stream;

(g) the records that must be kept for the purpose of section 22;

(h) designating the uses of water for the purpose of the definition of "industrial purpose" in section 1;

(i) the requirements that must be met in relation to applications under this Act, which may be different for applications that may be accepted for filing under section 12.1 than for applications dealt with in accordance with otherwise applicable procedures under this Act;

(j) [Not in Force.]

(k) the commencement, continuation or cessation of the diversion or use of water for livestock watering;

(l) the duties and obligations of persons who divert or use water for livestock watering;

(m) the manner in which water may be diverted or used for livestock watering, which may be different for different streams, different parts of a stream and streams in different areas;

(n) the works that may be used to divert water for livestock watering, which may be different for different streams, different parts of a stream and streams in different areas;

(o) the maximum quantity of water that may be diverted or used for livestock watering, which may be different for different streams, different parts of a stream and streams in different areas;

(p) establishing conditions on the diversion or use of water for livestock watering;

(q) prescribing resource management plans that designate an area of British Columbia and restrict the issuance of water licences within that area.

(4) Without limiting subsection (1) or (2), the Lieutenant Governor in Council may make regulations for the purposes of Part 5 as follows:

(a) establishing the qualifications of qualified well drillers and qualified well pump installers;

(b) exempting from the requirements of section 69 (2) (b)

(i) a class of person,

(ii) a class of well,

(iii) an activity or class of activity in relation to a specified work or class of works, or

(iv) an activity or class of activity;

(c) exempting from the requirements of section 70 (2) (b)

(i) a class of person,

(ii) a class of well or well pump,

- (iii) an activity or class of activity in relation to a specified work or class of works, or
- (iv) an activity or class of activity;
- (d) establishing requirements, procedures, standards or codes in respect of any aspect of the following:
 - (i) siting wells;
 - (ii) constructing wells;
 - (iii) installing well pumps;
 - (iv) designing, testing, operating, disinfecting, floodproofing, capping or covering wells;
 - (v) closing or deactivating wells;
 - (vi) removing works from wells;
 - (vii) conducting flow tests of wells;
 - (viii) works, including the design, construction, installation, testing, operation, alteration, maintenance, repair, disinfection or replacement of works relating to the use, testing or monitoring of wells and ground water;
 - (ix) sampling and analyzing ground water for new or altered wells including, without limitation, specifying
 - (A) the class of the laboratory that may carry out the analyses,
 - (B) the nature of the analyses, and
 - (C) alterations to a well that require sampling and analyzing of ground water;
 - (x) stopping or controlling the flow of flowing artesian wells;
 - (xi) any other activities respecting wells for which the Lieutenant Governor in Council considers it necessary or advisable for purposes of the protection of an aquifer or ground water to establish requirements, procedures, standards or codes;
- (e) identifying wells, including, without limitation, specifying
 - (i) the form, content, placement and manner of attachment of identification plates,
 - (ii) alterations to a well that require that an identification plate be attached, and

- (iii) classes of water supply systems that must have an identification plate attached;
- (f) respecting well reports and logs, including, without limitation, specifying
 - (i) the information required,
 - (ii) the form of logs, records and reports,
 - (iii) the frequency and timing of reports,
 - (iv) activities in relation to a well that require that a well report be submitted, and
 - (v) the manner of delivering well reports to the comptroller;
- (g) specifying when and where logs, records and reports must be kept and produced;
- (h) respecting drilling authorizations, including, without limitation,
 - (i) specifying the form, content and manner of application,
 - (ii) specifying the evidence that may be accepted as proof of consent of a land owner, and
 - (iii) delegating to the comptroller, the regional water manager or an engineer the authority to set terms and conditions on a drilling authorization;
- (i) establishing the periods of time after which a well that is not being used
 - (i) is considered not to be in service, which may be different in specified circumstances, or
 - (ii) must be permanently closed;
- (j) specifying the circumstances in which a well is considered not to be in service;
- (k) establishing a register of qualified well drillers or qualified well pump installers, including, without limitation, specifying
 - (i) the person responsible for the registers,
 - (ii) the information that qualified well drillers or qualified well pump installers must provide to that person, and
 - (iii) that the registers are available to the public;
- (l) establishing requirements for the protection of an aquifer from activities that are capable of causing a significant adverse impact on

(i) the quality of ground water in an aquifer, water in a stream that is recharged by the aquifer or ground water in a well that draws from the aquifer, or

(ii) the existing uses made of ground water from any well that draws from that aquifer or water in a stream that is recharged by that aquifer;

(m) exempting specified activities in relation to specified classes of wells from the prohibition under section 78 (2) [*well operation*];

(n) prescribing matters or substances for the purposes of section 79 (1) (f) or (g) [*prohibition on introducing foreign matter into a well*];

(o) exempting activities, with or without conditions, contaminants, matters and substances from the prohibition under section 79 (1) [*prohibition on introducing foreign matter into a well*].

(5) A regulation under this Act may do one or more of the following:

(a) specify who is responsible for meeting the prescribed requirements;

(b) exempt any class of persons, including the Crown, any class of wells, works or activities, or any circumstances, times or periods from any requirements;

(c) provide different requirements for different activities or classes of activities in relation to ground water and for different classes of persons, wells or works;

(d) provide different requirements for different areas of British Columbia, which may be designated by any delineation of the area that adequately describes it including, for example, name, map, plan, legal description, reference to a stream, reference to an aquifer or other geological formation or part of one, depth or other dimension, or by any combination of methods.

(6) A regulation under subsection (4) (d) may provide authority for individual variations on application to a prescribed official.

(7) Regulations made under this section may

(a) adopt, in whole or in part, codes or standards published by a provincial, national or international standards association, including adoption of amendments to the codes or standards published before or after the making of the regulations,

(b) in adopting the codes or standards under paragraph (a), grant powers to and establish functions and duties of officials that the Lieutenant Governor in Council deems necessary for the official to administer the codes or standards adopted, and

(c) exempt persons or classes of persons from all or part of the codes or standards adopted.

(8) In making a regulation under this Act, the Lieutenant Governor in Council may delegate a matter to a person and confer a discretionary power on the comptroller, a regional water manager, an engineer or an officer.

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