

## WATER ACT

### [RSBC 1996] CHAPTER 483

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## Definitions

**1** In this Act:

**"appeal board"** means the Environmental Appeal Board established under the *Environment Management Act*;

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

**"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;

**"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;

**"conveying purpose"** means the carriage of water for licensees authorized to divert, extract, use or store that water;

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

**"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 by or under a statute 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 m<sup>2</sup> adjoining and occupied with a dwelling house;

**"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;

**"hydraulicking purpose"** means the use of the water under head to move earth, sand, gravel or rock, except when the moving is done or proposed to be done in order to get mineral from it;

**"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 the use of water for recovering mineral from the ground or from ore;

**"municipality"** includes a regional district incorporated under the *Local Government Act*;

**"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 *Environment 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;

**"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, ground water, 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;

**"toll"** means a fee, charge, rate or rental set, demanded or charged by a municipality, improvement district or development district for a service rendered or made available to any extent by means of works for storing, conveying or distributing water, electricity, garbage or sewage, or for extinguishing fire, and includes a charge for the use or benefit of works constructed under authority of a licence for river improvement purpose or for a service rendered or made available by the holder of that licence;

**"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;

**"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, or

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

(d) changes in and about a stream,

and includes access roads to any of them.

#### **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.

#### **Application of Act to ground water**

**3** The Lieutenant Governor in Council may, by regulation, fix a day on which this Act begins to apply to ground water in a part of British Columbia the Lieutenant Governor in Council designates.

#### **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 the Greater Nanaimo 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 exercise the authorities referred to in section 555 of the *Local Government Act*.

(2) A minister or other person or a municipality 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** A person who applies for a licence must

(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.

#### 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.

(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 or the regulations 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 by or 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.

#### **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 passes 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) A licensee, holder of an approval or person who makes a change in and about a stream in accordance with the regulations must

(a) exercise reasonable care to avoid damaging land, works, trees or other property, and

(b) make full compensation to the owners for damage or loss resulting from construction, maintenance, use, operation or failure of the works.

(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** A licensee, holder of an approval or person who makes a change in and about a stream in accordance with the regulations must

(a) keep the prescribed records and any other records that the comptroller, a regional water manager or an

engineer directs, and

(b) produce the records for inspection when required.

### **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) A person in possession of a copy of a licence that has been cancelled must deliver it to the comptroller or a regional water manager without delay.

(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 proper 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 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 may authorize the licensee to enter on, occupy and use any land for constructing the works if the licensee deposits with the comptroller security in the form and amount the comptroller 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 expropriate the land required and must comply with the regulations relating to expropriation.

#### **Power to summon witnesses**

**31** If it appears to the comptroller, deputy comptroller or engineer that the proper determination of a matter within his or her jurisdiction necessitates a public or other inquiry, he or she may hold that inquiry, and for that purpose has all the powers and jurisdiction of a justice under the *Offence Act*.

#### **Right of access to land and premises by authorized persons**

**32** (1) The comptroller, deputy comptroller and every engineer, officer and water bailiff, and every officer and employee of a municipality, improvement district, development district, water users' community or holder of a licence that authorizes the carriage or supply of water or electricity to the public has, so far as is necessary in the discharge of his or her duties or the exercise of his or her rights, at all times a free right of entry and exit on, in and over any land and premises.

(2) Subsection (1) also applies to a person working under the direction of the comptroller, the regional water manager or an engineer.

#### **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 may order the joint use and set its terms.

#### **Power to authorize extension of rights under a licence**

**34** (1) If the comptroller considers that no other supply is available at reasonable cost, the comptroller 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 considers that the engineer is unable, in person, to regulate the diversion and use of water from a stream, the comptroller 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.

#### **Powers of comptroller and regional water manager**

**36** (1) In addition to the other powers given under this Act and the regulations, 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 or the regulations.

(2) In addition to the other powers given under this Act and the regulations, 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 or the regulations.

#### **Power of comptroller if disobeyed**

**37** (1) If a person to whom an order of the comptroller or engineer is directed fails to do the things ordered, the comptroller may authorize another person to do those things, and any expense incurred in the exercise of that authorization 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, and the comptroller's certificate as to the amount of the expense is conclusive evidence of it.

(2) 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.

(3) Money required under subsection (2) must be paid out of the consolidated revenue fund.

(4) The government may collect money spent under subsection (2) as if the works had been removed under subsection (1).

(5) A person authorized by the comptroller under this section may enter onto land 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.

#### **Power to amend or revoke order**

**38** The comptroller may at any time on notice amend or revoke any order of the comptroller, the regional water manager, the Water Board or the Board of Investigation.

#### **Powers of engineers and officers**

**39** (1) In addition to all other powers given under this Act and the regulations, 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 repair, alteration, improvement, removal of or 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 device;
- (g) regulate, in person or through an officer or a water bailiff, and make orders with respect to the diversion, rate of diversion, storage, carriage, distribution and use of water;
- (h) determine the allowances of water to offset evaporation, seepage and other losses;
- (i) order the release of stored or impounded water that the engineer considers a danger to life and property;
- (j) 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;
- (k) order a person to remove from a stream any substance or thing that he or she has put or permitted to get into the stream.

(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

- (a) regulate, close or lock any works,
- (b) regulate the construction of any works, or
- (c) regulate, in person or through a water bailiff, the diversion, rate of diversion, storage, carriage, distribution and use of water.

(4) An officer may inspect works, the construction of works, an existing or proposed water use and any activity or

changes in and about a stream and any records related to the works, construction, use, activity or changes.

### Appeals to Environmental Appeal Board

**40** (1) An order of the comptroller, the regional water manager or an engineer may be appealed to the Environmental Appeal Board established under the *Environment Management Act* 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.

(2) 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.

(3) 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.

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

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

(6) 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.

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

### Offences

**41** (1) A person commits an offence if the person does any of the following:

- (a) willfully hinders, interrupts or causes or procures to be hindered or interrupted, a licensee or his or her managers, contractors, servants, agents, workers or any of them, in the lawful exercise of a right granted under this Act or the regulations or under a licence or approval;
- (b) without lawful authority, willfully destroys, damages or interferes with the works of a licensee, a person who has obtained an approval or 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 a hydrant stop cock or hydrant accessory, or damages a hydrant stop cock or hydrant accessory;
- (d) lays or causes to be laid a pipe, or constructs or causes to be constructed a ditch or other conduit to connect with the works of a licensee without authority from the comptroller, engineer or the licensee;
- (e) molests, interferes with, delays, obstructs or otherwise impedes the comptroller 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;
- (f) destroys, injures or tampers with
  - (i) works, or
  - (ii) a gauge, weir, measuring device, structure, appliance, cable, boat, instrument or toolbelonging to or placed in position by an applicant, licensee or official of Canada or of British Columbia;
- (g) places, maintains or makes use of an obstruction in the channel of a stream without authority;
- (h) engages in the business of operating works to carry water for others without holding a licence or other authority issued in that behalf under this or a former Act;
- (i) willfully interferes with a headgate, ditch or controlling works that an engineer, officer or water bailiff has regulated;
- (j) willfully destroys a notice posted by an applicant, engineer, officer or water bailiff;
- (k) constructs, maintains, operates or uses works without authority;
- (l) 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;
- (m) diverts water from a stream without authority;
- (n) diverts more water from a stream than the person is lawfully entitled to divert;
- (o) diverts water that the person does not use beneficially;
- (p) uses water when the person is not lawfully entitled to do so;
- (q) uses water or permits water to be used on the person's land during a time he or she is ordered to cease the diversion of water or after his or her works have been closed or ordered closed;
- (r) willfully contravenes this Act or an order of the comptroller or engineer, or neglects to do an act or thing required to be done by the person under this Act or under an order of the comptroller or engineer;

- (s) makes changes in and about a stream without lawful authority;
- (t) breaches a term or condition of a licence, an approval or the regulations;
- (t.1) willfully makes a material misstatement or misrepresentation in a declaration under section 22.01;
- (u) 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;
- (v) contravenes section 4;
- (w) [Not in force.]
- (x) contravenes section 4 (3) of the *Fish Protection Act*;
- (y) [Not in force.]
- (z) contravenes an order under section 41.1 or 41.2.

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

- (a) to a fine of not more than \$200 000, and
- (b) if the offence is a continuing one, to a fine of not more than \$200 000 for each day the offence is continued

or to imprisonment not exceeding 12 months, or to both a fine and imprisonment.

(2.1) A person who contravenes

- (a) and (b) [Not in force.]
- (c) subsection (1) (x), or
- (d) [Not in force.]

commits an offence and is liable on conviction to a fine of not more than \$1 000 000 or to imprisonment for not longer than 6 months, or to both a fine and imprisonment.

(3) 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 even though the corporation is convicted.

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

(5) A document purporting to have been issued by the minister, certifying the day on which he or she became aware of the facts on which an information is based, is admissible without proof of the signature or official character of the individual appearing to have signed the document and, in the absence of evidence to the contrary, is proof of the matter certified.

(6) A proceeding, conviction or penalty for an offence under this Act or the regulations does not relieve a person from any other liability.

**Creative sentencing**

**41.1** (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 the Habitat Conservation Trust Fund an amount of money the court considers appropriate;
- (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) 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.

(3) If

- (a) an order under this section or section 41.2 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 (2) of this section,

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.

**Variation of section 41.1 orders**

**41.2** (1) An application for variation of an order under section 41.1 may be made to the court that made the order by

(a) the Attorney General, or

(b) the person against whom the order under section 41.1 was made.

(2) Before hearing an application under subsection (1), the court may order the applicant to give notice of the application in accordance with the directions of the court.

(3) On an application under subsection (1), 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 referred to in subsection (1) (b) 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.

(4) If an application under subsection (1) has been heard by a court, no other application may be made in respect of the order under section 41.1 except with leave of the court.

#### **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.

#### **Setting tolls**

**43** (1) The holder of a licence for river improvement purpose who wishes to collect a toll from a person who floats, or proposes to float, timber in the stretch of the stream to which the licence relates may apply to the comptroller to have the toll set, and the comptroller, the chief forester and the Superintendent of Lands, or any 2 of them, may set the toll and determine by whom it must be paid and the date of payment.

(2) A person must not float timber in a stretch of a stream to which a licence for river improvement purpose relates unless the person pays to the holder of the licence any toll set under subsection (1).

#### **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.

### **Power to establish tariff of fees and rentals**

**45** (1) The Lieutenant Governor in Council may, by regulation, establish a tariff of the fees, rentals and charges payable in respect of applications, petitions, claims, complaints, proceedings, licences, approvals, permits and other things filed, applied for, taken or issued under this or any former Act, and 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) An applicant, petitioner, claimant, complainant and other person who files an application, petition, claim or complaint, or takes a proceeding under this Act, and a person holding a licence, approval or permit, and a person who diverts or uses water from a stream is liable to the government for the fees, rentals and charges in respect of

the application, petition, claim, complaint, proceeding, licence, approval, permit, thing or water.

(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.

(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**

**46** (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 in respect of the following:

- (a) the division of British Columbia into water districts;
- (b) the issue of permits authorizing the occupation of Crown land and their terms;
- (c) the procedure to be followed in expropriating land and easements, the method of determining the compensation to be paid for it and the powers and duties of arbitrators or the Expropriation Compensation Board with respect to it;
- (d) the powers, duties and jurisdiction of officers administering this Act;
- (e) 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;
- (f) the use, construction, maintenance, operation, alteration, abandonment and removal of any works;
- (g) the commencement, continuation or cessation of any activity that causes or allows to be caused any changes in and about a stream;
- (h) the duties and obligations of persons who undertake any works or changes in and about a stream;
- (i) the records that must be kept for the purpose of section 22;
- (j) designating the uses of water included under industrial purpose;
- (k) how notice of a decision may be given for the purposes of section 40 (2) (b);
- (l) [Not in force.]
- (m) 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.

**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.

**Protection of officers**

**48** An action may not 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 left undone by the person in good faith in the performance or intended performance of an authority conferred or duty imposed under this Act or the regulations.

**Restriction on proceedings**

**49** Except as otherwise provided in this Act, a hearing, investigation, proceeding or order of the Lieutenant Governor in Council, comptroller, water recorder or 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.

**Issue of new licence**

**50** When a licence is acquired by an improvement district under section 749 of the *Local Government Act* or a municipality under section 310 of the *Local Government Act*, 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 municipality or improvement district.

**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.

#### **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 minister 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.