

WATER SUSTAINABILITY ACT

[SBC 2014] CHAPTER 15

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Part 1 — Interpretation and Application

Definitions

- 1 (1) In this Act:

"agricultural land reserve" has the same meaning as in section 1 (1) [definitions] of the Agricultural Land Commission Act;

"alter", in relation to a well, means

- (a) undertake a structural change to a well related to the well's depth, diameter or screen assembly,
- (b) install a surface seal in a well that does not have one, or
- (c) hydrofracture a well to enhance groundwater supply from the well;

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

"applicant" means a person applying for

- (a) an authorization, an amendment to an authorization, a transfer of the appurtenancy of an authorization or an apportionment of the rights under a licence,
- (b) a change approval, an amendment to a change approval or the transfer of the appurtenancy of a change approval,
- (c) a drilling authorization, an amendment to a drilling authorization or the transfer of the appurtenancy of a drilling authorization,
- (d) the transfer of an application for an authorization, or
- (e) the abandonment of all or some of the person's rights under an authorization;

"aquatic ecosystem", in relation to a stream, means the natural environment of the stream, including

- (a) the stream channel, the vegetation in the stream and the water in the stream, and
- (b) fish, wildlife and other living organisms insofar as their life processes
 - (i) are carried out in the stream, and
 - (ii) depend on the natural environment of the stream;

"aquifer" means

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

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

"authorization", except in references to drilling authorization, means a licence or use approval;

"beneficial use",

(a) in relation to a use of water under an authorization, means using the water

(i) as efficiently as practicable,

(ii) in accordance with any applicable regulations, and

(iii) for the water use purposes, in the manner and in the period or at the times, authorized by the authorization, and

(b) in relation to a use of water other than under an authorization, means using the water for a water use purpose

(i) as efficiently as practicable,

(ii) in accordance with any applicable regulations, and

(iii) in accordance with the provisions of this Act or the regulations that apply in relation to the use of water without an authorization;

"beneficial use declaration" means a declaration described in section 30 (2) [beneficial use];

"change approval" means an approval, to make changes in and about a stream, issued under section 11 (1) [changes in and about a stream] or a similar approval issued under a former Act;

"changes in and about a stream" means

(a) any modification to the nature of a stream, including any modification to the land, vegetation and natural environment of a stream or the flow of water in a stream, or

(b) any activity or construction within a stream channel that has or may have an impact on a stream or a stream channel;

"compliance agreement" means an agreement described in section 102 (1), (2) and (3) [compliance agreements];

"comptroller" means the person designated as the Comptroller of Water Rights under section 114 (1) [administration];

"conditional licence" means a licence, issued under this or a former Act, that authorizes the licensee to construct works, or divert and use water, before the issue of a final licence;

"construct", in relation to a well, means

- (a) drill the well,
- (b) alter the well,
- (c) develop the well,
- (d) repair or maintain the well,
- (e) inject water or any other substance into the well, or
- (f) construct, install, replace, repair, alter or remove works that relate to groundwater or the well;

"critical environmental flow threshold", in relation to the flow of water in a stream, means the volume of water flow below which significant or irreversible harm to the aquatic ecosystem of the stream is likely to occur;

"Crown land" means land, whether or not it is covered by water, that is vested in the government;

"date of first use", in relation to a use of groundwater from an aquifer for a water use purpose, means the date from which the comptroller, a water manager or an engineer is satisfied in accordance with the regulations that groundwater from the aquifer has been used

- (a) regularly and beneficially on an ongoing basis,
- (b) for the water use purpose, and
- (c) on land, or for a mine or undertaking, to which, if the water use purpose were licensed, the licence would be appurtenant;

"deactivate", in relation to works, means take the works out of service temporarily;

"debris" means

- (a) clay, silt, rock or similar material, or
- (b) any material, natural or otherwise, from construction or demolition;

"decision maker", in relation to a decision under this Act, means

- (a) the person authorized to make the decision, and

(b) if more than one person is authorized to make that decision, the person who is making or has made that decision,

whether on application or on the person's own initiative;

"decommission", in relation to works, means take the works out of service permanently;

"dedicated agricultural water" means water that is dedicated under section 82 (1) [plan regulations — dedicated agricultural water] for qualifying agricultural use on qualifying agricultural land;

"development district" has the same meaning as "district" in section 58 [definitions] of the Drainage, Ditch and Dike Act;

"divert" means,

(a) in relation to water in a stream, cause the water to leave the stream channel, whether to cause the water to flow into another stream channel or a reservoir or otherwise, and

(b) in relation to water in an aquifer, cause the water to leave the aquifer,

and includes extract or impound water from a stream or an aquifer;

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

"drilling authorization" means an authorization issued under section 62 [drilling authorizations];

"drinking water officer" has the same meaning as in section 1 [definitions] of the Drinking Water Protection Act;

"engineer", except in the definition of "professional" in section 48 [definitions for Division 3 of Part 3], means a person designated as an engineer under section 114 (5) [administration];

"environmental flow needs", in relation to a stream, means the volume and timing of water flow required for the proper functioning of the aquatic ecosystem of the stream;

"farm use", subject to the regulations, has the same meaning as in section 1 (1) [definitions] of the Agricultural Land Commission Act;

"final licence" means a licence, issued under this or a former Act, that authorizes the diversion and use of water but does not authorize the construction of works;

"former Act" means any Act containing provisions respecting the diversion and use of water that came into force before the date this definition comes into force;

"geotechnical well" means a well, other than a monitoring well or a well that is used to divert groundwater, that is drilled for the purpose of obtaining geotechnical, hydrological, hydrochemical or stratigraphical information;

"government corporation" has the same meaning as in section 1 [definitions] of the Financial Administration Act;

"government water record" means information, respecting the quality or quantity of water in a stream or aquifer, a person's use of water from a stream or aquifer, or works, that is in the records of

- (a) the minister,
- (b) the provincial health officer appointed under the Public Health Act,
- (c) a regional health board designated under the Health Authorities Act,
- (d) a prescribed minister, or
- (e) a prescribed government corporation;

"groundwater" means water naturally occurring below the surface of the ground;

"improvement district" means, as the context requires,

- (a) the corporation into which the residents of an area are incorporated as an improvement district under the Local Government Act or a former Act, or
- (b) the geographic area of the improvement district corporation;

"licence" means a conditional licence or a final licence;

"local trust committee" has the same meaning as in section 1 [definitions] of the Islands Trust Act;

"mine" includes a placer or mineral claim or land held or occupied for the purpose of winning a mineral from the claim or land, whether held in fee simple or by virtue of a record, registration, lease or licence;

"mineral" means

(a) an ore of metal or a natural substance capable of being mined

(i) that is in the place or position in which the ore or substance was originally formed or deposited or is in talus rock, and includes

(A) rock and other materials from mine tailings, dumps and previously mined deposits of minerals, and

(B) dimension stone, or

(ii) that is either loose, or found in fragmentary or broken rock that is not talus rock and occurs in loose earth, gravel and sand, and includes rock or other materials from placer mine tailings, dumps and previously mined deposits of placer minerals, or

(b) coal,

but does not include petroleum or natural gas;

"monitoring well" means a well that

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

(i) the level, quantity or quality of groundwater, 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 diverting groundwater for a water use purpose, or

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

"natural boundary" has the same meaning as in section 1 [definitions] of the Land Act;

"officer" means

(a) a person designated as an officer under section 114 (6) [administration] of this Act, or

(b) a conservation officer as defined in section 1 (1) [definitions] of the Environmental Management Act;

"order" includes a decision or direction, whether or not the decision or direction is given in writing, but does not include a request;

"owner", in relation to land, a mine or an undertaking in British Columbia, means a person who

(a) is entitled to possession of the land, mine or undertaking, or

(b) has a substantial interest in the land, mine or undertaking;

"permit" means a permit issued under section 24 [permits over Crown land] or an authority, issued under a former Act, to flood, or to construct, maintain or operate works on, Crown land;

"personal information" has the same meaning as in Schedule 1 of the Freedom of Information and Protection of Privacy Act;

"plan area" means the area designated under section 65 [order designating area for planning process] for the development of a water sustainability plan;

"precedence", in relation to rights to divert and use water, means the precedence of those rights in accordance with section 22 [precedence of rights];

"private dwelling" means a structure, or a part of a structure, that is occupied as a private residence;

"production casing", in relation to a well, means the innermost pipe, tubing or other material installed in the well to support the sides of the well, but does not include a well liner or surface casing;

"prospecting for a mineral" means searching for a mineral

(a) using hand-held tools in a manner that does not involve mechanical disturbance of the surface, or

(b) in a prescribed manner;

"protected fish population", in relation to a sensitive stream, means the population of fish in relation to which the stream has been designated as a sensitive stream;

"public officer" includes a member of the executive council, a public service employee and any other person, other than a judicial officer, who, under an enactment, has authority to make a decision affecting the rights of another person;

"public personal information" means any of the following:

(a) the name, address, telephone number and other personal information of a subscriber that appears in a telephone directory, in either printed or electronic form, or is available through a directory assistance service, if

(i) the directory or the directory assistance service is available to the public, and

(ii) the subscriber is permitted to refuse to have his or her personal information included in the directory or made available by the directory assistance service;

(b) personal information that appears in a professional or business directory, listing or notice that is available to the public, if the individual is permitted to refuse to have his or her personal information included in the directory, listing or notice;

(c) personal information appearing in a registry to which the public has lawful access, if the personal information is collected under the authority of an enactment, the laws of the government of Canada or a province of Canada, or the bylaws of a municipality or other similar local authority in Canada;

(d) personal information that appears in a printed or electronic publication that is available to the public, including a magazine, book or newspaper in printed or electronic form, unless

(i) a court has prohibited the publication or continued publication of the personal information by the source, or

(ii) the Information and Privacy Commissioner has made an order stating that the information was published contrary to the Personal Information Protection Act;

"public service employee" has the same meaning as "employee" in section 1 [definitions] of the Public Service Act;

"qualifying agricultural land" means all or the part of a plan area, to which a regulation under section 82 (1) [plan regulations — dedicated agricultural water] applies, that is

(a) in an agricultural land reserve, or

(b) zoned to permit the use of the land for farm use under

(i) a municipal or regional district bylaw under Divisions 5 and 12 to 14 of Part 14 [Planning and Land Use Management] of the Local Government Act or Part XXVII [Planning and Development] of the Vancouver Charter, or

(ii) a bylaw made by a local trust committee under section 29 [land use and subdivision regulation] of the Islands Trust Act;

"qualifying agricultural use" means the use of water for

(a) an irrigation purpose,

(b) a prescribed industrial purpose, or

(c) a storage purpose associated with a purpose described in paragraph (a) or (b);

"recorded water" means water the right to the diversion or use of which is held under an authorization or another enactment;

"registrar", in relation to land, means the registrar appointed under the Land Title Act for the land title district in which the land is located;

"sensitive stream" means a stream designated by regulation as a sensitive stream;

"stream" means

(a) a natural watercourse, including a natural glacier course, or a natural body of water, whether or not the stream channel of the stream has been modified, or

(b) a natural source of water supply,

including, without limitation, a lake, pond, river, creek, spring, ravine, gulch, wetland or glacier, whether or not usually containing water, including ice, but does not include an aquifer;

"stream channel", in relation to a stream, means the bed of the stream and the banks of the stream, both above and below the natural boundary and whether or not the channel has been modified, and includes side channels of the stream;

"take action",

(a) in relation to water, includes allow, start, stop, restrict or prohibit the diversion, use, including storage, carriage or distribution of the water, and

(b) in relation to works, includes allow, start, stop, restrict, shut or prohibit their construction or operation;

"undertaking" means a project, including 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 for the project, for

(a) the diversion, carriage, use and sale of water, or

(b) the sale of power produced from water,

the water use purpose of which water is referred to in an application or authorization;

"unrecorded water" means water in a stream or an aquifer that is not recorded water;

"use approval" means an approval issued under section 10 [use approvals] or written approval, other than a licence, to divert and use water, given under a former Act;

"water district" means a water district prescribed by regulation;

"water manager" means a person designated under section 114 (3) [administration] as a water manager;

"water objective" means an objective established by regulation under section 43 [water objectives];

"water source well" has the same meaning as in section 1 [definitions] of the Petroleum and Natural Gas Act;

"water sustainability plan" means a water sustainability plan accepted under section 75 (1) or (3) [acceptance of plan];

"water use purpose" means a purpose defined in section 2 [water use purposes] or a subset of a purpose defined in section 2;

"water users' community" has the same meaning as in section 1 (1) [definitions] of the Water Users' Communities Act;

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

- (a) exploring for or diverting groundwater,
- (b) testing or measuring groundwater,
- (c) recharging or dewatering an aquifer,
- (d) groundwater remediation,
- (e) use as a monitoring well,
- (f) use as a closed-loop geoexchange well, or
- (g) use as a geotechnical well,

but does not include

- (h) an artificial opening, other than a water source well, to which the Geothermal Resources Act or the Oil and Gas Activities Act applies, or
- (i) an artificial opening of a prescribed class, made for a prescribed purpose or in prescribed circumstances;

"well cap" means a secure cap or lid that prevents vermin, contaminants, debris or other foreign objects or substances from entering the interior of the production casing, and includes a sanitary well seal;

"well cover" means a secure cover, lid or structure that prevents vermin, contaminants, debris or other foreign objects or substances from entering the well;

"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) diverting groundwater from a 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, well cover, adapter or device
 - (i) that is at the top of, or at the side and near the top of, a well, and

(ii) from or through which groundwater flows or is pumped from the well, and
(b) any casing, well cap, valve, grout, liner, seal, vent or drain relating to the well,
but does not include a well pump or a pump house;

"wetland" means a swamp, marsh, fen or prescribed feature;

"wildlife" means wildlife as defined in paragraph (a) of the definition of "wildlife" in section 1 (1) [definitions and interpretation] of the Wildlife Act;

"works" means

- (a) anything that can be or is used for
 - (i) diverting, storing, measuring, conserving, conveying, retarding the flow of, 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) or (f) (i), and
- (f) wells and works related to wells, including
 - (i) wellheads,
 - (ii) anything that can be or is used for injecting or otherwise adding water or any other substance to a well,
 - (iii) anything that can be or is used for constructing, deactivating or decommissioning a well,
 - (iv) anything that can be or is used for exploring for, testing, diverting or monitoring groundwater,
 - (v) anything that can be or is used for disinfecting a well,
 - (vi) an injection system attached to a work that is used for conveying, from a well, groundwater that will be used for applying fertilizers or pesticides, and
 - (vii) anything that can be or is used in relation to a monitoring well or a well made for the purpose of groundwater remediation.

(2) A reference in this Act to regulations or to anything as prescribed is a reference to regulations of the Lieutenant Governor in Council unless specifically provided otherwise in the applicable provision.

(3) An authorization, change approval, permit or drilling authorization issued in substitution for

(a) an original authorization, change approval, permit or drilling authorization, or

(b) an original authorization, change approval, permit or drilling authorization as modified,

is conclusively deemed to be the original authorization, change approval, permit or drilling authorization as modified.

(4) A reference in this Act

(a) to an aquifer includes part of an aquifer, and

(b) to a stream includes part of a stream.

Water use purposes

2 The following defined purposes are the purposes in respect of which water may be diverted from a stream or an aquifer:

"conservation purpose" means the diversion, retention or use of water for the purpose of conserving fish or wildlife and includes the construction of works for that purpose;

"domestic purpose" means the use of water for household purposes by the occupants of, subject to the regulations, one or more private dwellings, other than multi-family apartment buildings, including, without limitation, hotels and strata titled or cooperative buildings, located on a single parcel, including, without limitation, the following uses:

(a) drinking water, food preparation and sanitation;

(b) fire prevention;

(c) providing water to animals or poultry kept

(i) for household use, or

(ii) as pets;

(d) irrigation of a garden not exceeding 1 000 m² that is adjoining and occupied with a dwelling;

"industrial purpose" means a use of water designated by regulation as a use for an industrial purpose, but does not include the use of water for any other water use purpose;

"irrigation purpose" means the use of water on cultivated land or hay meadows to nourish crops or on pasture to nourish forage;

"land improvement purpose" means the diversion or impounding of water to

- (a) protect land,
- (b) facilitate the development of a recreational facility or of a park or other protected area,
- (c) facilitate the reclamation, drainage or other improvement of land, or
- (d) carry out a project of a nature similar to a project described in paragraph (b) or (c);

"mineralized water purpose" means

- (a) the bottling and commercial distribution of water so impregnated with mineral salts, elements or gases as to potentially give the water therapeutic properties, or
- (b) the use in commercial bathing pools of water that is
 - (i) impregnated with mineral salts, elements or gases, or
 - (ii) naturally at a temperature suitable for that use;

"mining purpose" means

- (a) the use of water, including the use of water under pressure, for recovering minerals from the ground or from ore, or
- (b) the use of water under pressure to move earth, sand, gravel or rock;

"oil and gas purpose" means the use of water in the development of petroleum or natural gas wells or the production of petroleum or natural gas resources;

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

"storage purpose" means the impounding and retention of water for subsequent use for a water use purpose;

"waterworks purpose" means the carriage or supply of water by one person or entity for the use in British Columbia of another person or entity.

Water Protection Act

3 Nothing in this Act authorizes a person to do anything prohibited by the Water Protection Act.

Geothermal resources

4 This Act does not apply to geothermal resources as defined in section 1 (1) [definitions] of the Geothermal Resources Act.

Part 2 — Licensing, Diversion and Use of Water

Vesting water in government

5 (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 insofar as private rights have been established under authorizations.

(2) The property in and the right to the use, percolation and flow of groundwater, wherever groundwater is found in British Columbia, are for all purposes vested in the government and are conclusively deemed to have always been vested in the government except insofar as private rights have been

(a) established under authorizations, or

(b) deemed under section 22 (8) [precedence of rights].

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

Use of water

6 (1) Subject to this section, a person must not divert water from a stream or an aquifer, or use water diverted from a stream or an aquifer by the person, unless

(a) the person holds an authorization authorizing the diversion or use, or

(b) the diversion or use is authorized under the regulations.

(2) A person is not prohibited from

(a) diverting or storing and beneficially using water from a stream or an aquifer for extinguishing a fire, but if flow is diverted from a stream channel for that use, the flow must promptly be restored to that stream channel when the fire is extinguished, or

(b) diverting water to test the quality or quantity of water or to conduct a flow test.

(3) Unless regulations under section 135 (5) [regulations closing or restricting access to water source] provide otherwise, a person is not prohibited from diverting, in accordance with any applicable regulations, and beneficially using unrecorded water

(a) from a stream for domestic purpose or for prospecting for a mineral, or

(b) from an aquifer for prospecting for a mineral.

(4) A person may, in accordance with the regulations, divert, and beneficially use, including store, groundwater from an aquifer for domestic purpose unless

(a) provided otherwise by regulations under section 135 (6), or

(b) this subsection does not apply to the applicable aquifer by regulations under section 136 [regulations requiring authorizations for domestic use of groundwater].

Rights acquired under authorizations

7 (1) A licence entitles its holder to do the following in a manner provided in the licence:

(a) divert and beneficially use the quantity of water specified in the licence;

(b) construct, maintain and operate the works authorized by the licence and related works necessarily required for the proper diversion or use of the water or the power produced from the water;

(c) make changes in and about a stream necessary for the construction, maintenance or operation of the works referred to in paragraph (b) or to otherwise facilitate the authorized diversion;

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

(2) A use approval entitles its holder to do anything described in subsection (1) for the period or at the times and in the manner specified in the use approval.

Rights and permissions subject to Act

8 (1) The exercise of a right held under an authorization is subject to this Act and the regulations, the terms and conditions of the authorization, the orders of the comptroller, a water manager or an engineer and the rights of all authorization holders whose rights have precedence.

(2) The exercise of permission given under a change approval is subject to this Act and the regulations, the terms and conditions of the change approval, the orders of the comptroller, a water manager or an engineer, the rights of authorization holders and the rights of holders of change approvals issued before the date of the change approval.

(3) The exercise of permission given under a permit is subject to this Act and the regulations, the terms and conditions of the permit and the orders of the comptroller, a water manager or an engineer.

(4) The exercise of permission given under a drilling authorization is subject to this Act and the regulations, the terms and conditions of the drilling authorization and the orders of the comptroller, a water manager or an engineer.

Licences

9 On application in accordance with section 12 [application and decision maker initiative procedures], the comptroller or a water manager may issue a licence, authorizing the diversion or use of water for one or more water use purposes, to any of the following:

- (a) an owner of land or a mine;
- (b) a holder of a certificate of public convenience and necessity issued under the Public Utilities Act, R.S.B.C. 1960, c. 323, the Utilities Commission Act or the Water Utility Act;
- (c) a municipality, regional district, improvement district, development district or water users' community;
- (d) the government of British Columbia or Canada;
- (e) a commission, board or person having charge of the administration of Crown land or a mine or an undertaking on Crown land, administered by British Columbia or Canada or controlled by a ministry, department, branch or other subdivision of the government of British Columbia or Canada;
- (f) the Greater Vancouver Water District or any other water district incorporated by an Act;
- (g) the British Columbia Hydro and Power Authority.

Use approvals

10 (1) On application in accordance with section 12 [application and decision maker initiative procedures], the comptroller or a water manager may issue an approval for one or more water use purposes authorizing any of the following to divert or use water from a stream or an aquifer for a term not exceeding 24 months:

- (a) the government of British Columbia or Canada;
 - (b) another person.
- (2) A use approval under this section must not authorize
- (a) the diversion or use of more than the prescribed quantity of water,
 - (b) the diversion or use of water for a prescribed water use purpose, or
 - (c) the construction, maintenance or use of prescribed works.
- (3) For certainty, a use approval may be issued authorizing a person to divert water from a source of water supply for a water use purpose in relation to an appurtenancy, if any, specified in the use approval, whether or not a use approval was previously issued authorizing the person to divert water from the same water source supply for the same water use purpose in relation to the same appurtenancy.

Changes in and about a stream

11 (1) On application in accordance with section 12, the comptroller, a water manager or an engineer may issue an approval authorizing any of the following persons to make changes in and about a stream:

- (a) the government of British Columbia or Canada;
 - (b) another person.
- (2) Changes in and about a stream may only be made in accordance with

- (a) the terms and conditions of a change approval,
- (b) the regulations,
- (c) the terms and conditions of an authorization, or
- (d) an order.

Application and decision maker initiative procedures

12 (1) An applicant may apply to a decision maker by

- (a) complying with any requirements prescribed in respect of the application, and
- (b) within the period, if any, prescribed by regulation,
- (i) complying with the decision maker's directions under section 13 (1) or (9), if any,
- (ii) paying the prescribed fees,
- (iii) providing in the form and manner specified by the decision maker any plans, specifications, reports of assessments and other information the decision maker requests, which information may include, but is not limited to, public personal information that is relevant to the application, respecting

(A) the applicant,

(B) existing water users, riparian owners, other applicants and other authorization holders, whose rights are likely to be detrimentally affected if the application is granted, and

(C) land owners whose land is likely to be physically affected if the application is granted, and

(iv) providing in the form and manner specified by the decision maker the consents that are necessary for the decision maker to verify personal information relating to the applicant that is provided under subparagraph (iii).

(2) For the purposes of subsection (1) (b) (iii), the decision maker may require that a specified assessment be performed, and a report of the assessment be prepared, by a person with the qualifications specified by the decision maker.

(3) For the purpose of making a decision on an application, the decision maker may

(a) collect contact information from the applicant, and collect public personal information and government water records, related to a person referred to in subsection (1) (b) (iii), and

(b) verify information collected under this subsection or provided under subsection (1) or (2), including, in relation to

(i) personal information of the applicant, by consent or by reference to public personal information or government water records, and

(ii) personal information of a person referred to in subsection (1) (b) (iii) (B) or (C), by direct contact with the person or by reference to public personal information or government water records.

(4) If works are required to be constructed in order for the applicant to obtain information required for the purposes of subsection (1) (b) (iii), the applicant may construct, in accordance with any applicable regulations, the works for that purpose, subject to any applicable requirement for a drilling authorization in relation to the works.

(5) The decision maker may

(a) shorten or extend the period prescribed for the purposes of subsection (1) (b), or

(b) if no period has been prescribed, set a period for compliance with a direction or request, if any, referred to in subsection (1) (b).

(6) A decision maker may exercise the powers under this section in relation to an initiative of the decision maker under section 21 [when final licence may be issued], 26 [amendment or substitution of authorization, change approval or permit], 28 [apportionment of rights under licences] or 62 [drilling authorizations].

Objections to applications and decision maker initiatives

13 (1) A decision maker must direct that an applicant for a licence, use approval or change approval, or for an amendment to any of them involving a change of works, give notice of the application in accordance with section 117 [delivery and publication of documents and information] or the regulations to

(a) any of the following whose rights the decision maker considers are likely to be detrimentally affected if the application is granted:

(i) an authorization holder;

(ii) a change approval holder;

(iii) an applicant for an authorization or change approval;

(iv) a riparian owner, and

(b) a land owner whose land is likely to be physically affected if the application is granted.

(2) A notice under subsection (1) must include the name of the decision maker and the address to which objections to the application may be delivered.

(3) A person who is given notice under subsection (1) may deliver to the decision maker identified in the notice within the prescribed period any objection the person has to the granting of the application.

(4) If an objection is delivered in accordance with subsection (3), the decision maker must decide whether or not the objection warrants a hearing.

(5) If the decision maker decides to hold a hearing, the decision maker must

(a) give notice to the applicant and to any person who delivered an objection under subsection (3) of

(i) the date, time and location of the hearing, or

(ii) the date by which written submissions must be received by the decision maker, and

(b) give the applicant and the objectors the opportunity to be heard in the hearing.

(6) The decision maker may hold a hearing in writing, electronically or in person or by any combination of written, electronic or in-person hearings and, if the hearing is held orally, either in person or electronically, sections 95 [inquiry powers], 96 [maintenance of order at hearings] and 97 [contempt proceeding for uncooperative person] apply.

(7) The decision maker must give notice of the decision maker's decision on an application to any person who delivered under subsection (3) an objection in relation to the application.

(8) For certainty, a decision maker need not give directions under subsection (1) if the decision maker is satisfied that, as a result of the decision maker's decision on an application referred to in that subsection,

(a) no authorization holder's rights, no change approval holder's rights and no riparian owner's rights will be detrimentally affected,

(b) no person's land will be physically affected, and

(c) no person's application for an authorization or a change approval will be detrimentally affected.

(9) A decision maker may direct that any applicant, and in the case of a transfer under section 27 [transfer of appurtenancy], the transferee, give notice in accordance with section 117 or the regulations,

(a) in the case of an apportionment under section 28 [apportionment of rights under licences], to the owner of each parcel affected by the apportionment,

(b) in the case of an abandonment of rights under section 31 [abandonment of rights under an authorization], to anyone who is jointly using works with the applicant and any person whose land is physically affected by the existing works, and

(c) in any case, to any person whose input into the decision the decision maker considers advisable.

(10) Subsections (2) to (7) apply if notice is given under subsection (9) (a) or (b).

(11) Despite subsection (10), if a decision maker gives, or requires to be given, notice under subsection (9), the decision maker may specify how, and the date by which, a person given notice may object to the application.

(12) A person given notice under subsection (9) (c) is not entitled to be heard in a hearing under this section.

(13) If a decision maker initiates the issuance of a final licence under section 21 [when final licence may be issued], a 30-year review under section 23, an amendment under section 26 [amendment or substitution of authorization, change approval or permit] or an apportionment under section 28, subsections (9) to (12) of this section apply unless the amendment requires a change of works, in which case subsections (1) to (8) and (14) of this section apply.

(14) Instead of requiring the applicant or a transferee to give a notice required under subsection (1) or (9), the decision maker may give the notice.

Powers respecting applications and decision maker initiatives

14 (1) Whether or not notice is given, or objections are delivered, under section 13 in relation to an application, the decision maker may, in accordance with this Act and the regulations,

- (a) refuse the application,
- (b) amend the application in any respect,
- (c) grant all or part of the application,
- (d) order the applicant to provide in the form and manner specified by the decision maker plans, specifications, reports of assessments or other information, which information may include, but is not limited to, public personal information that is relevant to the application, respecting
 - (i) the applicant,
 - (ii) existing water users, riparian owners, other applicants and other authorization holders, whose rights are likely to be detrimentally affected if the application is granted, and
 - (iii) land owners whose land is likely to be physically affected if the application is granted,
- (e) order the applicant to provide security to the decision maker in the amount the decision maker considers sufficient to ensure the performance of the applicant's obligations under this Act and the authorization, change approval or drilling authorization, as applicable, that is issued to the applicant, or
- (f) issue to the applicant, subject to prescribed terms and conditions and on the terms and conditions the decision maker considers advisable,
 - (i) one or more conditional licences or final licences, or
 - (ii) a use approval, a change approval or a drilling authorization, as applicable.
- (2) An applicant must comply with an order made under subsection (1) (d) or (e) within the period specified by the decision maker.
- (3) For the purposes of subsection (1) (d), the decision maker may require that a specified assessment be performed, and a report of the assessment be prepared, by a person with the qualifications specified by the decision maker.
- (4) If an application is for the purpose of diverting water from an aquifer, the decision maker must take into account the quantity of water persons to whom section 6 (4) [use of water — excluded groundwater users] applies are authorized to divert from the aquifer.
- (5) In considering an application for a new licence that relates to the region as defined by the Columbia Basin Trust Act, the decision maker must consider the current long term Columbia Basin Management Plan under section 15 [Columbia Basin Management Plan] of that Act.
- (6) Without limiting subsection (1), the decision maker may refuse an application, or reject an application without considering it, if
 - (a) the applicant fails to comply with
 - (i) section 12 (1) [application and decision maker initiative procedures],
 - (ii) a direction under section 13 (1) or (9),
 - (iii) an order under subsection (1) (d) or (e) of this section, or

(iv) an order or a direction referred to in this paragraph within the required period,

(b) in the case of an application for a use approval or change approval, the decision maker considers the proposed use of water or the proposed works would be more properly authorized by licence, or

(c) the application is incomplete.

(7) A decision maker must refuse to accept an application or a part of an application that would result in the issuance of an authorization to a person to whom section 6 (4) [use of water — excluded groundwater users] applies.

(8) A decision maker may not issue a licence authorizing the diversion or use of dedicated agricultural water unless the licence is for a qualifying agricultural use on qualifying agricultural land.

(9) Despite subsection (8), a licence may be issued authorizing the diversion or use of unrecorded dedicated agricultural water for domestic purpose or a land improvement purpose.

(10) A decision maker may exercise the powers under this section in relation to an initiative of the decision maker under section 21 [when final licence may be issued], 26 [amendment or substitution of authorization, change approval or permit], 28 [apportionment of rights under licences] or 62 [drilling authorizations].

(11) For certainty, a use approval may be issued authorizing the diversion or use of unrecorded dedicated agricultural water for any water use purpose on any land.

Environmental flow needs

15 (1) Except in relation to an application exempted under the regulations, the decision maker must consider the environmental flow needs of a stream in deciding an application in relation to the stream or an aquifer the decision maker considers is reasonably likely to be hydraulically connected to that stream.

(2) For an application in respect of which the decision maker must consider, or decides under subsection (4) to consider, the environmental flow needs of a stream,

(a) the applicant must provide to the decision maker the information and reports of assessments the decision maker directs for the purposes of paragraph (b) of this subsection, and

(b) the decision maker must determine, in accordance with any applicable regulations, the environmental flow needs of the applicable stream.

(3) For the purposes of subsection (2) (a), the decision maker may require that a specified assessment be performed, and a report of the assessment be prepared, by a person with the qualifications specified by the decision maker.

(4) Despite subsection (1), a decision maker may take into account the environmental flow needs of any stream the decision maker considers may be affected by granting the application.

Mitigation measures

16 (1) If the decision maker considers that the diversion and use of water, or changes in and about a stream, proposed by an application for an authorization, or the changes in and about a stream proposed to be made under a change approval, are likely to have a significant adverse impact on the water quality,

water quantity or aquatic ecosystem of a stream or aquifer, a stream channel or other uses of water from the stream or aquifer to which the application relates, the decision maker may

(a) require that the applicant submit a proposal for mitigation measures to address those effects, which mitigation measures must meet prescribed criteria, if any, and

(b) impose under section 14 (1) (f) [powers respecting applications and decision maker initiatives] terms and conditions requiring implementation of the proposed mitigation measures if those measures meet the prescribed criteria.

(2) If the decision maker considers that the effects described in subsection (1) cannot be addressed, or cannot be fully addressed, by mitigation measures proposed by the applicant but can be compensated for by other mitigation measures taken on a different part of the stream or aquifer than the part to which the proposal relates, the decision maker may impose under section 14 (1) (f) terms and conditions requiring the applicant to take compensatory mitigation measures that meet the prescribed criteria, in place of or supplemental to any mitigation measures proposed by the applicant, on a different part of the stream or aquifer to which the application relates.

(3) With the consent of the applicant, the terms and conditions of an authorization or change approval may require that the applicant take compensatory mitigation measures on a different stream or aquifer than the stream or aquifer in respect of which the application is made.

Sensitive streams mitigation

17 (1) If an application for an authorization or a change approval, or an amendment to an authorization or change approval, is in relation to a sensitive stream, the decision maker

(a) may require that the applicant provide the prescribed plans, specifications, reports of assessments or other information, in addition to the other information required under this Act in relation to the application, and

(b) must apply prescribed criteria, if any, in addition to the other criteria to be applied under this Act, in deciding whether to grant the application.

(2) An application described in subsection (1) must include mitigation measures that meet the prescribed criteria, if any, and that the applicant proposes to take to mitigate any adverse impact on a protected fish population resulting from granting the application in relation to the sensitive stream.

(3) The decision maker may grant an application described in subsection (1) only

(a) if satisfied that

(i) any adverse impact, resulting from granting the application, on the sustainability of any protected fish population of the sensitive stream is likely to be insignificant,

(ii) the mitigation measures proposed by the applicant, if carried out, would ensure that granting the application is not likely to cause a significant adverse impact on any protected fish population or the aquatic ecosystem of the sensitive stream, or

(iii) compensatory mitigation measures that meet any prescribed criteria, whether or not proposed by the applicant, if carried out, in place of or supplemental to the proposed mitigation measures, will enhance or enable the enhancement of an aquatic ecosystem elsewhere that will fully compensate for the significant adverse impact on that protected fish population or aquatic ecosystem resulting from granting the application, and

(b) if, in the circumstances described in paragraph (a) (ii), the decision maker imposes implementation of the mitigation measures, and in the circumstances described in paragraph (a) (iii), the decision maker imposes implementation of the compensatory mitigation measures, as terms and conditions of the authorization or change approval or amended authorization or change approval, as applicable.

(4) If the decision maker considers that there is a reasonable alternative source of water reasonably available to an applicant making an application referred to in subsection (1), the decision maker may refuse to grant the application.

Not in force

18 [Not in force.]

Licences for power purposes

19 (1) In this section:

"operational term" means the period beginning when

(a) the activities described in the definition of "project development term" are completed, or

(b) the period authorized for completion of those activities has ended,

whichever occurs earlier, during which power is, or is authorized to be, produced under a licence issued for a power purpose and during which a storage purpose authorized by a licence in relation to the power purpose may be exercised;

"project development term" means the period, following the issue of a licence for a power purpose but before the beginning of the operational term, during which activities required to prepare for power production under the licence are performed, including, without limitation, project design and engineering, securing construction and other contracts and constructing works.

(2) This section applies to

(a) a licence issued for a power purpose on or after October 23, 2003, unless the licence is being issued in substitution for a licence that did not specify the term of the licence and was issued for a power purpose before that date,

(b) a licence that is being amended, whether or not the licence is replaced, if

- (i) the licence was issued for a power purpose before October 23, 2003 and specified the term of licence, and
- (ii) the amendment is for the purpose of extending the term of the licence, or
- (c) a licence that is being amended, whether or not the licence is replaced, if
 - (i) the licence was issued for a purpose other than a power purpose, and
 - (ii) the amendment is for the purpose of authorizing the use of water for a power purpose.
- (3) The decision maker must not issue a licence to which this section applies that has an operational term longer than 40 years.
- (4) The decision maker may provide in a licence described in subsection (2) (a) or (c) for a project development term of up to 10 years.
- (5) The holder of a licence issued to authorize the use of water for a power purpose may apply to renew the licence before the expiry of the operational term of that licence.
- (6) Despite section 26 [amendment or substitution of authorization, change approval or permit], this Act and the regulations apply to the following applications as if the application were for a new licence:
 - (a) an application for an amendment referred to in subsection (2) (b) (ii);
 - (b) an application for an amendment referred to in subsection (2) (c) (ii);
 - (c) an application to extend the term of a licence to which this section applies.
- (7) The rights exercisable under a licence to which this section applies that is issued in substitution for or as a renewal of another licence have precedence from the same date as the rights under the licence that is replaced.
- (8) Despite subsection (3), if an application is made under subsection (5), the licence does not expire until the later of
 - (a) the date the decision maker decides on the application, and
 - (b) the expiry date of the operational term of the licence.
- (9) If a licensee fails to apply to renew a licence to which this section applies before the expiry of the operational term of the licence and the failure, in the opinion of the decision maker, is not the fault of the licensee, the decision maker may extend the expiry date for not more than 6 months from the original expiry date and, if the expiry date is extended, the licence is deemed to be and to have been continuously in force from the date of issue until the new expiry date.
- (10) Subsection (9) does not apply to a licence for which the expiry date has been extended under that subsection.
- (11) A decision under subsection (9) of this section to refuse to extend an expiry date is final and may not be appealed to the appeal board.

Purpose, precedence and appurtenancy

20 (1) A decision maker must ensure that a licence that the decision maker issues specifies as the appurtenancy of the licence an appurtenancy

(a) that, except in relation to a licence that is required to be registered under the Water Protection Act, is located entirely in British Columbia,

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

(c) that is adequately described in the licence.

(2) A decision maker who issues a use approval, change approval, permit or drilling authorization may specify an appurtenancy that meets the requirements of subsection (1) as the appurtenancy of the use approval, change approval, permit or drilling authorization, as applicable.

(3) The decision maker must ensure that every authorization that he or she issues

(a) specifies the date of precedence of the rights under the authorization,

(b) specifies the maximum quantity of water that may be diverted and used for each water use purpose authorized by the authorization, and

(c) is for the diversion of water for one or more water use purposes and those water use purposes are specified in the authorization.

When final licence may be issued

21 (1) On application under section 12 [application and decision maker initiative procedures], or on his or her own initiative, the comptroller or a water manager may issue to the holder of a conditional licence a final licence authorizing the diversion or use of the quantity of water that the decision maker determines to have been beneficially used for the water uses purposes authorized under, and during the term of, the conditional licence, when

(a) the licensee completes the works, or

(b) the period for completing the works expires and, if any works have not been completed, the decision maker determines that the works that have not been completed are not required.

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

Precedence of rights

22 (1) The rights exercisable under an authorization that authorizes the diversion of water from a stream have precedence in relation to the rights of other authorization holders who divert water from

(a) the stream,

(b) a tributary of the stream, or

(c) an aquifer the decision maker considers is reasonably likely to be hydraulically connected to that stream

according to the dates set out in the authorizations as the dates from which the rights take precedence.

(2) The rights exercisable under authorizations described in subsection (1) that have precedence from the same date have precedence in accordance with the ranking under subsection (7) of the water use purposes in respect of which the authorizations are issued.

(3) The rights exercisable under authorizations described in subsection (1) have equal precedence if the rights have precedence from the same date and are for the same water use purpose.

(4) The rights exercisable under an authorization that authorizes the diversion of water from an aquifer have precedence in relation to the rights of other authorization holders who divert water from the aquifer, or another aquifer the decision maker considers is reasonably likely to be hydraulically connected to that aquifer, according to the date set out in the authorization as the date from which the rights take precedence.

(5) The rights exercisable under authorizations described in subsection (4) that have precedence from the same date have precedence in accordance with the ranking under subsection (7) of the water use purposes in respect of which the authorizations are issued.

(6) The rights exercisable under authorizations described in subsection (4) have equal precedence if the rights have precedence from the same date and are for the same water use purpose.

(7) For the purposes of subsections (2) and (5), water use purposes are ranked, from highest to lowest as follows:

- (a) domestic;
- (b) waterworks;
- (c) irrigation;
- (d) mineralized water;
- (e) mining;
- (f) industrial;
- (g) oil and gas;
- (h) power;
- (i) storage;
- (j) conservation;
- (k) land improvement.

(8) Despite subsections (1) to (6), a person to whom section 6 (4) [use of water — excluded groundwater users] applies is deemed to have rights that have precedence under those subsections, as if the deemed rights were granted under an authorization that

(a) sets out as the date of precedence the date of first use of the water, and

(b) authorizes the use of the greater of

(i) 2 000 litres of water per day for each private dwelling on a parcel, or

(ii) the amount of water the engineer is satisfied the person has been using for domestic purposes.

(9) Despite subsections (1) to (8), if an order under section 86 (1) or (3) [declarations of significant water shortage] applies to a stream and the comptroller has determined the critical environmental flow threshold for the stream under section 87 (1) [critical environmental flow protections orders], the amount of that critical environmental flow threshold for the stream has precedence over the rights

(a) under any authorization issued in relation to the stream or a hydraulically connected aquifer referred to in subsection (1) of this section, or

(b) of a person described in subsection (8) of this section.

(10) Despite subsections (1) to (9), if an engineer is taking action to enforce the precedence of rights to divert or use water from a stream or aquifer, a person must not be prohibited from diverting water from the stream or aquifer for essential household use.

(11) For the purposes of this section, "essential household use" means the use by the occupants of one private dwelling of not more than 250 litres of water per day for

(a) drinking water, food preparation and sanitation, and

(b) providing water to animals or poultry that are kept

(i) for household use, or

(ii) as pets.

Thirty-year review of licence terms and conditions

23 (1) This section applies to a licence that

(a) was issued on or before the date this section comes into force for an unlimited period or that has, at that date, at least 30 years remaining in its term, or

(b) is issued after the date this section comes into force for an unlimited period or a term exceeding 30 years,

but does not apply to licences

(c) issued for a power purpose, or a storage purpose related to a power purpose, on or after October 23, 2003,

(d) issued under the Industrial Development Act, or

(e) issued following a review, or reviewed, under the Water Use Plan directives published by the government and dated December 1998.

(2) On the direction in writing of the comptroller or a water manager, a licensee who holds a licence to which this section applies must submit to a review of the terms and conditions of the licence,

(a) for a licence issued on or before the date this section comes into force, any time that is at least 30 years after that date, and any time that is at least 30 years after the immediately preceding review under this section, and

(b) for a licence issued after the date this section comes into force, any time after the licence has been in effect for 30 years after its issue and any time that is at least 30 years after the immediately preceding review under this section.

(3) A licensee who is given a direction under subsection (2) must, within the period specified in the direction, provide to the decision maker who gave the direction,

(a) the information, plans, specifications and reports of assessments, including a water conservation audit carried out in accordance with and meeting the requirements of the regulations, specified by the decision maker, and

(b) in the form and manner specified by the decision maker, the consents that are necessary for the decision maker to verify information provided under paragraph (a).

(4) The decision maker may require that a specified assessment be performed, and a report of the assessment be prepared, by a person with the qualifications specified by the decision maker.

(5) Section 12 (1) (b) (iii), (2) and (3) applies for the purpose of a review under this section.

(6) The decision maker may review the terms and conditions of a licence taking into account

(a) the best available technology in respect of water use efficiency and water conservation,

(b) best practices in respect of water use efficiency and water conservation,

(c) any increase in knowledge respecting actual stream flow or aquifer conditions,

(d) the effects of climate change,

(e) the licensee's beneficial use of the water,

(f) the use, operation or maintenance of works, and

(g) prescribed factors.

(7) On a review under this section, the decision maker may amend the terms and conditions of the licence to require the licensee, for the more efficient use or conservation of water, to

(a) reduce the maximum rate of diversion of water under the licence,

(b) alter the time of diversion or use, including storage, of water under the licence,

(c) construct, alter, install, replace, repair, maintain, improve, seal, deactivate, decommission or remove any works, or

(d) adopt a more efficient practice.

(8) If the decision maker considers that the changes under this section in terms and conditions of a licence would substantially change the licence, the decision maker may substitute a new licence and the rights under the licence issued in substitution have the same precedence as the rights had under the replaced licence.

(9) A direction given under subsection (2) is final and may not be appealed to the appeal board.

Permits over Crown land

24 (1) The comptroller or a water manager in the case of an authorization, or the comptroller, a water manager or an engineer in the case of a change approval or drilling authorization, may, on compliance by the holder of the authorization, change approval or drilling authorization with the regulations, issue to that holder one or more permits authorizing the flooding of Crown land or the construction, maintenance or operation on Crown land of works authorized under the authorization, change approval or drilling authorization.

(2) A person must not, for the purposes of exercising rights or performing duties under an authorization, change approval or drilling authorization, construct, maintain or operate works on, or flood, Crown land unless the person

(a) holds a permit under this section, or

(b) has authority to do so under another enactment.

Transfer of authorization, change approval or permit

25 (1) An authorization, change approval or permit that is made appurtenant to any land, mine or undertaking, and the rights granted and duties imposed under the authorization, change approval or permit, pass with a conveyance or other disposition of the land, mine or undertaking.

(2) An owner conveying or otherwise disposing of land, a mine or an undertaking, to which an authorization, change approval or permit is appurtenant, must give written notice of the conveyance or other disposition to the comptroller or a water manager before completing the disposition.

(3) In the case of a transmission or other disposition of land, a mine or an undertaking to which an authorization, change approval or permit is appurtenant to the personal representative or other person representing the owner of the land, mine or undertaking, the personal representative or other person must give to the comptroller or a water manager written notice

(a) as soon as practicable after the transmission or disposition to the personal representative or other person, and

(b) before completing a disposition by the personal representative or other person of the land, mine or undertaking to another person.

Amendment or substitution of authorization,

change approval or permit

26 (1) On application by the holder in accordance with section 12 [application and decision maker initiative procedures], or on his or her own initiative, the comptroller or a water manager may amend an authorization and a permit issued in relation to the authorization, and the comptroller, a water manager or an engineer may amend a change approval and a permit issued in relation to the change approval, to do any of the following:

(a) extend the time set for beginning construction of works;

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

(2) A decision maker who amends an authorization or a change approval, or a permit related to either, may substitute a new authorization, change approval or related permit, as applicable, with the same precedence as the original authorization, change approval or permit, or the original authorization, change approval or permit as modified, as applicable, subject to prescribed terms and conditions and on the terms and conditions that decision maker considers advisable.

(3) On application, the comptroller or a water manager may amend an authorization and a permit issued in relation to the authorization, and the comptroller, a water manager or an engineer may amend a change approval and a permit issued in relation to the change approval, to make an amendment not referred to in subsection (1), other than an amendment that would increase the quantity of water authorized to be diverted.

(4) The decision maker under subsection (3), with the written consent of the holder of the authorization, may substitute a new authorization or permit subject to prescribed terms and conditions and on the terms and conditions the decision maker considers advisable.

(5) Despite subsection (1) (g), a decision maker may not

(a) authorize a change in water use purpose for dedicated agricultural water except to another qualifying agricultural use, or

(b) issue a licence to a person to whom section 6 (4) [use of water — excluded groundwater users] applies.

(6) If an application is made under subsection (1) (h) to extend the term of an authorization, change approval or permit before the date the authorization, change approval or permit expires, the authorization or change approval, as applicable, and any permit issued in relation to either, does not expire until the later of

(a) the date the decision maker decides on the application, and

(b) the expiry date of the authorization, change approval or permit, as applicable.

(7) Despite subsection (1) (h), a decision maker may not amend a use approval to extend the term beyond 24 months from the date the use approval was issued.

Transfer of appurtenancy

27 (1) On application by the holder in accordance with section 12 [application and decision maker initiative procedures], the comptroller or a water manager in relation to an authorization and a permit issued in relation to the authorization, and the comptroller, a water manager or an engineer in relation to a change approval and a permit issued in relation to the change approval, subject to prescribed terms and conditions and on the terms and conditions the decision maker considers advisable, may issue one or more new authorizations or change approvals, as applicable, and related permits

(a) to a person who is the owner of land, a mine or an undertaking and to whom the holder is transferring some or all of the rights granted and duties imposed under the authorization or change approval and related permit, determining as the appurtenancy for the rights and duties transferred the land, mine or undertaking of the transferee, or

(b) to the holder, determining as the appurtenancy for some or all of the rights granted and duties imposed under the authorization or change approval and related permit land, a mine or an undertaking of that holder.

(2) An authorization, change approval or permit issued under subsection (1) (a) or (b) has the same precedence as the original authorization, change approval or permit, or the original authorization, change approval or permit, as modified, as applicable.

(3) Except in relation to a licence required to be registered under the Water Protection Act, a decision maker must not exercise his or her discretion under subsection (1) of this section to determine an appurtenancy that is not in British Columbia.

(4) If the land, mine or undertaking to which an authorization, change approval or permit is appurtenant is mortgaged, and a copy of the mortgage, or particulars of the mortgage, is filed with the comptroller or a water manager, a transfer of the appurtenancy of the authorization, change approval or permit, as applicable, is not effective without the written consent of the mortgagee.

(5) Despite subsection (1), the appurtenancy determined under subsection (1) for a licence issued in relation to dedicated agricultural water must be qualifying agricultural land.

Apportionment of rights under licences

28 (1) If the land to which a licence, or a permit issued in relation to the licence, is appurtenant consists of more than one parcel owned by different persons, on application by an owner of a parcel of that land in accordance with section 12 [application and decision maker initiative procedures], or on his or her own initiative, the comptroller or a water manager may apportion among the owners of the parcels the rights granted and duties imposed under the licence or permit.

(2) The decision maker may issue to an owner of land described in subsection (1), subject to prescribed terms and conditions and on the terms and conditions the decision maker considers advisable, one or more new licences and related permits in substitution for a licence or permit the rights and duties under which are apportioned under subsection (1).

(3) A licence or a permit issued under subsection (2) has the same precedence as the original licence or permit or the original licence or permit, as modified, as applicable.

Rights and responsibilities of applicants and holders

29 (1) The following persons must exercise reasonable care to avoid damaging land, works, trees or other property of another person:

- (a) an applicant for an authorization, change approval, drilling authorization or permit;
- (b) the holder of an authorization, change approval, drilling authorization or permit;
- (c) a person who, in accordance with the regulations or an order of the comptroller, a water manager or an engineer, makes changes in and about a stream or diverts or uses, including stores, water.

(2) A person referred to in subsection (1) (a), (b) or (c) must properly inspect, maintain and repair works constructed, operated or used by the person,

- (a) in accordance with any prescribed requirements,
- (b) in accordance with an order, and
- (c) in a manner that ensures that the works do not cause a significant risk of harm to public safety, the environment, land or other property.

(3) When an authorization, change approval or permit that authorizes the construction or use of works is abandoned, cancelled or expires, the holder or former holder, as applicable, of the authorization, change approval or permit must ensure that the works are deactivated or decommissioned in accordance with the regulations and orders.

(4) A person referred to in subsection (1) (a), (b) or (c) is liable to owners of land or premises for damage or loss resulting from the construction, maintenance, use, operation or failure of the person's works.

(5) Subject to subsections (1) to (4), a holder of a licence for a power purpose, a storage purpose, a waterworks purpose or an irrigation purpose may fell and remove any tree, and remove any rock or other thing, that endangers the holder's works.

Beneficial use

30 (1) A person who diverts water must make beneficial use of the water diverted.

(2) A licensee must submit to the comptroller, a water manager or an engineer, as applicable, a signed declaration that complies with subsection (3) at the time directed to do this by the comptroller, water manager or engineer.

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

- (a) state whether the licensee has, during the 3 years preceding the date of the declaration,
 - (i) made beneficial use of the quantity of water authorized to be diverted under the licence, and
 - (ii) complied with all other terms and conditions of the licence,

(b) include any other information, or consents required to verify the other information, required by the decision maker, and

(c) be in the form required by the decision maker.

(4) A direction under subsection (2) may require the licensee to provide with the beneficial use declaration the results of a water conservation audit carried out in accordance with and meeting the requirements of the regulations.

(5) On receipt of a beneficial use declaration and, if required by the decision maker, the results of a water conservation audit, the decision maker may order the licensee to take measures to meet the level of efficiency of water use and conservation of water specified in the order.

(6) On the direction of the comptroller, a water manager or an engineer, each of the following persons must provide information, or consents required to verify the information, in the time specified, respecting the quantity of water the person has beneficially used in the period specified by the comptroller, water manager or engineer, as applicable:

(a) the holder of a use approval;

(b) a person who diverts, stores or uses water under the regulations;

(c) a person who diverts, stores or uses water as described in section 6 (2) (b) [use of water — flow tests] or (3) [use of water — at sufferance] or as authorized by section 6 (4) [use of water — excluded groundwater users].

(7) For the purpose of inquiring into or confirming beneficial use of water, the decision maker may

(a) collect relevant public personal information or government water records related to a person referred to in subsection (2) or (6) or to the person's use of water, and

(b) verify information collected under this subsection or provided under subsection (3) or (6), including, in relation to personal information, by consent or by reference to public personal information or government water records.

(8) Subject to section 117 (4) [delivery and publication of documents and information], the comptroller may publish a beneficial use declaration or information provided under subsection (6).

(9) A direction given under subsection (2) or (6) is final and may not be appealed to the appeal board.

Abandonment of rights under an authorization

31 (1) On application in writing by the holder of an authorization, the comptroller or a water manager may approve the abandonment of all or part of the rights held under the authorization, subject to prescribed terms and conditions and on the terms and conditions the decision maker considers advisable, which terms and conditions may include, but are not limited to,

(a) requiring the repair, maintenance or removal of works or arrangements respecting responsibility for the repair, maintenance or removal of works with

(i) other authorization holders who jointly use or used the works,

(ii) previous authorization holders who jointly used the works, or

(iii) the owner of land on which the works are located, or

(b) requiring deactivation or decommissioning of the works or arrangements respecting responsibility for deactivation or decommissioning of the works with one or more persons referred to in paragraph (a).

(2) If there is more than one registered owner of the land, or more than one owner of a mine or undertaking, to which an authorization is appurtenant, an application under subsection (1) must have attached to it the written consent of all registered owners of the land or all owners of the mine or undertaking, as applicable, to the abandonment of rights.

(3) If the land, mine or undertaking to which an authorization is appurtenant is mortgaged, and a copy of the mortgage, or particulars of the mortgage, is filed with the comptroller or a water manager, an application under subsection (1) must have attached to it the written consent of the mortgagee to the abandonment of rights.

(4) If some of the rights held under an authorization are abandoned, the decision maker may issue to the holder a new authorization in substitution with the same precedence as the original authorization, or the original authorization as modified, subject to prescribed terms and conditions and on the terms and conditions the decision maker considers advisable but the authorization holder does not, by the issue of a modified authorization obtain or retain a right that was the subject of the abandonment.

Licensee's right to expropriate land

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

(2) In addition to the right under subsection (1), the holder of a licence that authorizes the diversion of water for domestic purpose or a waterworks purpose has the right to expropriate any land the control of which by the licensee would help prevent pollution of the water authorized to be diverted.

(3) In addition to the rights under subsections (1) and (2), with the consent of the Lieutenant Governor in Council, the holder of a licence that authorizes the construction or use of a dam has the right to expropriate any land that has been flooded by construction of the dam or that would be flooded if the dam were constructed and utilized to the maximum height authorized.

(4) An expropriation under this section must be made in accordance with the regulations and the licensee who expropriates the land must provide compensation to the owner of the land expropriated in the amount determined in accordance with the regulations.

(5) If expropriation proceedings have been commenced by a licensee in relation to land on or in which works authorized under the licence are located, a person, including an owner of the land, must not interfere with the works or prevent the licensee from maintaining, operating, using or improving those works so long as the licensee diligently prosecutes the expropriation proceedings.

Licensee's rights when owner refuses compensation

33 (1) If

(a) an award of compensation is made in relation to land expropriated under section 32,
(b) the amount of the award is tendered to the owner of the expropriated land, and
(c) that owner fails to execute and deliver to the licensee the required conveyance or other instrument,
the licensee is conclusively deemed to be the attorney of that owner for the purpose of executing the conveyance or instrument on that owner's behalf.

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

(a) pays the amount of compensation to the comptroller, or the part of that amount that is payable at the time, that has not been accepted by the owner,

(b) files with the registrar

(i) the executed conveyance or instrument,

(ii) a copy of the award, and

(iii) a signed statement confirming 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

34 Despite a right or title acquired or held under a statute or an indefeasible or absolute title held in relation to land, the owner of land or another person who proposes to alter, move, fill in, remove or otherwise interfere with works constructed or used under an authorization must, before doing so, give the holder of the authorization 180 days' written notice of the act or thing proposed to be done.

Entry on land in case of urgency

35 (1) If the comptroller or a water manager considers that a delay in beginning the construction of authorized works, or works necessarily required for the proper diversion or use of water under a licence,

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

(b) would cause a hardship on the licensee,

the decision maker may authorize the licensee to enter on, occupy and use any land for constructing the works.

(2) The decision maker under subsection (1) may require, as a condition of the authority given, that the licensee provide security to the decision maker in the amount the decision maker considers sufficient to indemnify the owner of the land for any damage that owner might sustain by reason of the construction.

(3) On exercising an authority under subsection (1), the licensee must promptly take steps under section 32 [licensee's right to expropriate land] to expropriate the land required.

(4) A person, including the owner of the land, must not interfere with the construction of the works so long as the licensee diligently prosecutes the expropriation proceedings.

Joint construction or use of works may be ordered

36 If satisfied that the joint use of works by 2 or more authorization holders would conserve water or avoid duplication of works, the comptroller or a water manager may order the joint construction or use by specified authorization holders of specified works and set the terms and conditions for the joint construction or use, including, without limitation, providing for construction, operation, maintenance, removal, replacement, deactivation or decommissioning of the works or compensation as among the users.

Power to authorize extension of rights under licence

37 (1) Despite any other provision of this Act, if the comptroller or a water manager considers that no other water supply is reasonably available, the decision maker may authorize a licensee to use or supply some or all of the water authorized under the licence for any water use purposes on land, or for a mine or an undertaking, other than the land, mine or undertaking to which the licence is appurtenant, and may set the terms and conditions on which the water is to be used or supplied.

(2) Terms and conditions under subsection (1) may include, but are not limited to, terms and conditions

(a) respecting the use of the water or works necessarily required to be used for that use,

(b) providing for compensation as between the licensee and a person who is receiving the benefit of the extension, or

(c) limiting the term of the extension.

Appointment of water bailiffs

38 (1) If the comptroller or a water manager considers that there is no engineer who is able, in person, to take action or measurements in relation to the diversion or use of water from a stream or an aquifer or the works related to the diversion or use, the decision maker may appoint in writing one or more water bailiffs for that purpose, set the terms and conditions of the appointments and give directions in respect of the water bailiffs' responsibilities.

(2) If an engineer reports to the comptroller or a water manager that works used by more than one person are not being adequately repaired or maintained, the decision maker may appoint in writing one or more water bailiffs, set the terms and conditions of the appointments and give directions to the water bailiffs, including, without limitation, directions to

(a) operate and inspect the operation of specified works, and

(b) perform routine repairs on and maintain specified works.

(3) A water bailiff, under the direction of an engineer, which direction must be consistent with the directions given under subsection (1) or (2) and may be given by the engineer in person or through an officer, may

(a) take action or measurements in respect of the diversion or use of water from the streams and aquifers specified in the water bailiff's appointment,

(b) take action in respect of works related to the diversion or use of the water, and

(c) inspect, operate, perform routine repairs on and maintain those works.

(4) A water bailiff who takes action or measurements under subsection (2) or (3) must keep records of anything the water bailiff does under this section, including, without limitation, actions and measurements taken, work performed, hours of work and expenses incurred, and provide the records to the engineer.

(5) Persons, whether or not those persons hold an authorization, who divert or use water from the streams or aquifers in respect of which a water bailiff exercises powers or performs duties under this section are liable to

(a) compensate the water bailiff in the amounts and at the times the engineer who directs the water bailiff orders, and

(b) reimburse the water bailiff as directed by the engineer for the amounts that the engineer considers were reasonably incurred by the water bailiff in maintaining, operating or repairing the works.

(6) A water bailiff may stop the diversion or use of water, and the operation of works, by or on behalf of a person who fails to pay amounts owing to the water bailiff under subsection (5).

(7) If a water bailiff assigns to the government all the water bailiff's right, title and interest in and to the indebtedness for amounts payable to the water bailiff under subsection (5), those amounts may be recovered under section 98 [recovery of amounts owing for work performed] as a debt of the persons liable under subsection (5) of this section that is due to the government.

Water reservations

39 (1) If the Lieutenant Governor in Council considers it advisable

(a) to enable a specified person to investigate the suitability of a stream or an aquifer for a specified water use purpose,

(b) to make provision for a water supply from a stream or an aquifer for a proposed waterworks, irrigation or power system or project of a specified person,

(c) to ensure water from a stream or an aquifer is available for the benefit of the Crown, or

(d) to retain the reserved water in a stream or an aquifer,

the Lieutenant Governor in Council may reserve all or part of the water that is in the stream or the aquifer, and that is unrecorded and unreserved and is not dedicated agricultural water, from being diverted or used under this Act except as provided by section 6 (2), (3) or (4) [use of water].

(2) The minister must publish a notice in the Gazette giving particulars of a reservation established or amended under subsection (1).

(3) A reservation under subsection (1) established

(a) in relation to all the unrecorded water in a stream or an aquifer applies to water, other than dedicated agricultural water, that by reason of the expiry, abandonment or cancellation of all or part of the rights under an authorization becomes unrecorded water in the stream or aquifer during the existence of the reservation, and

(b) in relation to a specified quantity of water in a stream or an aquifer applies to water that by reason of the expiry, abandonment or cancellation of all or part of the rights under an authorization issued under subsection (4) (c) for water that is subject to the reservation becomes unrecorded water during the existence of the reservation.

(4) The Lieutenant Governor in Council, in an order under subsection (1) or in a subsequent order, may provide that water reserved under subsection (1), despite the reservation, may be acquired under a licence,

(a) for a reservation under subsection (1) (a) or (b), by the specified person, or a person authorized by the specified person, for the water use purpose, or for the waterworks, irrigation or power system or project, as applicable, for which the water is reserved,

(b) for a reservation under subsection (1) (c), by the Crown or a person authorized by the Crown,

(c) for a reservation under subsection (1) (a), (b) or (c), by any person for another water use purpose, but the rights under a licence issued under this paragraph must be given a later date of precedence than rights under any licence referred to in paragraph (a) or (b) of this subsection in respect of the water reserved, whether the licence for the other water use purpose is issued before or after the licence referred to in paragraph (a) or (b), and

(d) for a reservation under subsection (1) (d), by a specified person for a water use purpose the Lieutenant Governor in Council considers is consistent with the purposes of the reservation.

(5) The Lieutenant Governor in Council may cancel a reservation established under subsection (1) effective on a specified date, which date must not be earlier than 30 days after the date of publication of the notice under subsection (6) (a).

(6) The minister must publish notice of a cancellation under subsection (5), specifying the date on which the cancellation is effective,

(a) in the Gazette, and

(b) within 30 days after the publication under paragraph (a), in a newspaper published in the water district in which the stream or the aquifer is located, and if there is no newspaper so published then in a newspaper that circulates in that water district.

(7) Applications for the water reserved under a reservation cancelled under subsection (5) may be accepted during the period between the date the notice of cancellation is published in the Gazette and the effective date of the cancellation, but an authorization issued in respect of the application must not be given a date of precedence that is earlier than the effective date of the cancellation.

(8) Despite subsection (1), a licence may be issued authorizing for domestic purpose or a land improvement purpose the diversion or use of water to which a reservation established under subsection (1) applies.

(9) Despite subsection (1), a use approval may be issued authorizing, for any water use purpose, the diversion and use of water to which a reservation established under subsection (1) applies.

Treaty first nation water reservations

40 (1) If the final agreement of a treaty first nation describes a water reservation for water use purposes specified in the agreement, other than a power purpose, that British Columbia is required by the final agreement to establish in favour of the treaty first nation, the Lieutenant Governor in Council may establish that water reservation for those purposes.

(2) A water reservation established in favour of a treaty first nation under subsection (1) is deemed to be a water reservation under section 39 subject to the following:

(a) the water reserved by the water reservation may only be acquired for the purposes, and in the manner, contemplated by the treaty first nation's final agreement;

(b) section 39 (5) to (7) does not apply to that water reservation;

(c) section 39 (8) and (9) does not apply to the water reserved by that water reservation.

(3) Despite anything to the contrary in this Act, a water reservation established under subsection (1) for purposes authorized by the final agreement

(a) is deemed to have been established on the date specified in the final agreement as the reference date for the priority of the water reservation, and

(b) has priority for those purposes over water licences issued after that date in relation to the same stream, except water licences given priority by that final agreement.

Nisga'a water reservation

41 (1) 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.

(2) The water reservation established under subsection (1) is deemed

(a) to be a water reservation under section 39 [water reservations] 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 39 (5) to (7) does not apply to that water reservation;

(iii) section 39 (8) and (9) 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.

Issue of new licence

42 If a licence is acquired by

(a) a regional district under section 289 (2) [expropriation of water licences and related works] of the Local Government Act,

(b) an improvement district under section 704 [power to expropriate water diversion licences and related works] of that Act, or

(c) a municipality under section 31 (2) [expropriation of water licences and related works] of the Community Charter,

the comptroller may issue in place of the acquired licence a new licence having the same precedence but authorizing the diversion or use of water for any water use purpose required by the regional district, improvement district or municipality, as applicable.

Part 3 — Protecting Water Resources

Division 1 — Water Objectives

Water objectives

43 (1) For the purposes of sustaining water quantity, water quality and aquatic ecosystems in and for British Columbia, the Lieutenant Governor in Council may make regulations

(a) establishing water objectives for a watershed, stream, aquifer or other specified area or environmental feature or matter in order to sustain

(i) water quality required for specified uses of water,

(ii) water quantity required for specified uses of water, and

(iii) water quality and water quantity required to sustain aquatic ecosystems

in relation to the watershed, stream, aquifer or other area, feature or matter,

(b) specifying factors and criteria to apply for evaluating the impacts of a land use or resource use proposal on objectives established under paragraph (a), and

(c) respecting measures to address impacts of such proposals on the objectives.

(2) A regulation under this section may

(a) require that a water objective be considered by a public officer making a specified decision under a specified enactment, if the decision is in relation to the watershed, stream, aquifer or other area or environmental feature or matter for which the water objective was prescribed, and

(b) authorize or require a person referred to in paragraph (a), in order to promote achievement of the water objective, to impose requirements, as terms and conditions, on any instrument the person issues.

(3) Terms and conditions authorized or required to be imposed by a regulation under subsection (2) are deemed to be imposed under the specified enactment.

(4) Despite any other enactment, a regulation under subsection (2) may provide that a specified water objective applies despite or subject to objectives, standards, requirements or plans established in relation to environmental matters under the specified enactment or another specified enactment.

(5) A regulation under this section may require that

(a) a regional district consider specified water objectives when developing, amending or adopting a regional growth strategy under Part 13 [Regional Growth Strategies] of the Local Government Act,

(b) a municipality consider specified water objectives when developing, amending or adopting an official community plan under Part 14 [Planning and Land Use Management] of the Local Government Act or Part XXVII [Planning and Development] of the Vancouver Charter,

(c) a local trust committee consider specified water objectives when developing, amending or adopting an official community plan under section 29 [land use and subdivision regulation] of the Islands Trust Act, and

(d) a prescribed person or entity consider specified water objectives when developing, amending or enacting plans or undertaking planning processes under prescribed enactments.

Division 2 — Stream Protection

Definitions

44 For the purposes of this Division:

"bank-to-bank dam" means

(a) a structure that is capable of impounding or storing water and that spans a stream from bank to bank, or

(b) structures that together are capable of impounding or storing water and that span a stream

(i) from one bank to a natural or other feature or structure in the stream, and

(ii) from the feature or structure to the other bank of the stream or, if applicable, between features or structures and to the other bank of the stream;

"construction of a bank-to-bank dam" includes the alteration of an existing structure so that it becomes a bank-to-bank dam but does not include the alteration of an existing bank-to-bank dam;

"protected river" means a river set out in the Schedule.

No new dams on protected rivers

45 (1) A person must not construct a bank-to-bank dam anywhere on a protected river.

(2) The comptroller or a water manager must not issue or amend an authorization, change approval or permit to authorize the construction of a bank-to-bank dam anywhere on a protected river.

(3) An authorization, change approval or permit issued or an amendment made contrary to subsection (2) has no effect.

(4) This section applies despite any other enactment.

(5) This section does not apply to a dam authorized by a licence, permit or approval issued under the Water Act before March 15, 1997.

Prohibition on introducing foreign matter into stream

46 (1) Unless authorized under this or another enactment or excepted under subsection (2), a person must not

(a) introduce debris, refuse, carcasses, human or animal waste, pesticides, fertilizers, contaminants or another matter or substance into a stream, a stream channel or an area adjacent to a stream, or

(b) cause or allow debris, refuse, carcasses, human or animal waste, pesticides, fertilizers, contaminants or another matter or substance to be introduced into a stream, a stream channel or an area adjacent to a stream

in such a quantity or in such a manner as to cause a significant adverse impact to

(c) the stream or stream channel,

(d) the existing uses of the water from the stream,

(e) the property of riparian owners on the stream,

(f) an aquifer that is hydraulically connected to the stream or the existing uses of the water from that aquifer, or

(g) the aquatic ecosystem of the stream.

(2) Subsection (1) does not apply in relation to

(a) a forest practice to which section 46 [protection of the environment] of the Forest and Range Practices Act applies, or

(b) a prescribed activity, practice or substance.

(3) In a prosecution under section 106 (4) (n) [general offences], it is not necessary to prove that the human or animal waste, pesticide, fertilizer, contaminant or other matter or substance, if diluted or its concentration reduced subsequent to the introduction into the stream, continued to cause or to be likely to

cause a significant adverse impact on the quality of water in the stream or in an aquifer that is hydraulically connected to the stream or the uses made of the water from the stream or aquifer that is hydraulically connected to the stream.

Remediation orders in relation to foreign matter in stream

47 (1) An engineer may order a person who contravenes section 46 (1) [prohibition on introducing foreign matter into stream] to

(a) stop the introduction of debris, refuse, carcasses, human or animal waste, pesticides, fertilizers, contaminants or other matter or substance into the stream, the stream channel or an area adjacent to the stream,

(b) remove the debris, refuse, carcasses, human or animal waste, pesticides, fertilizers, contaminants or other matter or substance from the stream, the stream channel, the area adjacent to the stream or an aquifer that is hydraulically connected to the stream and to which the matter or substance has migrated, and

(c) take measures, in accordance with the direction of the engineer, to remediate or mitigate the effects of the introduction.

(2) If the engineer considers that the effects of an introduction described in subsection (1) (a) cannot be remediated, or cannot be fully remediated, at the location of the introduction, that engineer may order the person referred to in subsection (1) to take compensatory mitigation measures, in place of or supplemental to other remediation measures, on a different part of the stream into which the introduction was made.

(3) The comptroller or a water manager may authorize the government or another person to take the actions necessary to comply with an order under subsection (1), and the person who contravened section 46 (1) is liable to the government or that other person, as applicable, for the costs of complying with the order if any of the following apply:

(a) the person who is subject to an order under subsection (1) fails to comply with the order within the time specified in the order;

(b) the person who contravened section 46 (1) cannot be identified or located after reasonable effort;

(c) the comptroller or the water manager considers that failure to remediate or mitigate the introduction immediately may result in harm or damage to anything referred to in section 46 (1) (c) to (g).

(4) Any expense reasonably incurred by a person in the exercise of authority provided under subsection (3), unless the person is acting on behalf of the government, may be recovered from the person to whom the order was directed as money paid for, and at the request of, that person.

(5) If work is carried out under subsection (3) by or on behalf of the government, the costs to the government are a debt due to the government by the person to whom the order was directed and may be recovered in accordance with section 98 [recovery of amounts owing for work performed].

(6) This section does not limit the authority under section 91 [power of comptroller to authorize actions] or 93 [powers of engineers and officers].

Division 3 — Wells and Groundwater Protection

Definitions

48 (1) For the purposes of this Division:

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

- (a) if the activity is supervised by a professional, that professional,
- (b) if paragraph (a) does not apply and the activity is supervised or performed by a well driller or well pump installer who is qualified to supervise or perform that activity, that well driller or 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;

"professional" means

- (a) a professional engineer, or a professional geoscientist, who is registered or licensed under the Engineers and Geoscientists Act, or
- (b) a holder of a limited licence under the Engineers and Geoscientists Act acting within the scope of the limited licence;

"qualified", in respect of an activity in relation to a well or well pump,

- (a) for a well driller, means a well driller who has the qualifications prescribed as required to perform or supervise the activity in relation to the well or well pump, and
- (b) for a well pump installer, means a well pump installer who has the qualifications prescribed as required to perform or supervise the activity in relation to the well or well pump;

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

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

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

(2) For the purposes of this Division, a person's actions are directly supervised by another person if that other person is responsible for the control and conduct of the person's actions.

Restrictions on constructing or decommissioning wells

and related activities

49 (1) Subject to section 50, this section applies to a person who

(a) constructs a well,

(b) decommissions a well,

(c) deactivates a well, or

(d) disinfects a well.

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

(a) comply with the applicable regulations,

(b) in the case of an activity referred to in subsection (1) (a), (b) or (c), either

(i) be a well driller who is qualified in respect of the activity in relation to the well, or

(ii) act under the direct supervision of

(A) a person described in subparagraph (i), or

(B) a professional who has competency in the field of hydrogeology or geotechnical engineering, and

(c) in the case of an activity referred to in subsection (1) (d), be a person described in paragraph (b) or a well pump installer described in section 50 (2) (b) (i), or act under the direct supervision of a person described in section 50 (2) (b) (ii).

(3) Unless provided otherwise by a regulation under section 83 [plan regulations — restrictions on groundwater activities] or 137 [minister's regulations restricting groundwater activities], subsection (2) (b) or (c) of this section 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 decommissioning a geotechnical well, if the activity of constructing or decommissioning the well is not likely to penetrate an aquifer;

(d) a person installing, replacing or repairing, on a well owned by the person,

(i) a flow meter, or

(ii) a well cap, well cover, valve or vent that is part of the wellhead and accessible at the surface of the ground;

(e) a prescribed

(i) person,

(ii) well,

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

(iv) activity.

(4) A person who, in performing an activity referred to in subsection (3) (c) or prescribed under subsection (3) (e), penetrates an aquifer must stop performing that activity until the person 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

50 (1) This section applies to a person who

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

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

(c) disinfects a well pump.

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

(a) comply with the applicable regulations, and

(b) either

(i) be a well pump installer or well driller who is qualified in respect of the activity in relation to the well, or

(ii) act under the direct supervision of

(A) a person described in subparagraph (i), or

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

(3) Despite subsection (2) (b) (i) and (ii) (A), if the regulations require that an activity described in subsection (1) be performed or directly supervised only by a professional who has competency in the field of hydrogeology or geotechnical engineering, that activity must be performed or directly supervised by a professional who is so qualified.

(4) Unless provided otherwise by a regulation under section 83 [plan regulations — restrictions on groundwater activities] or 137 [minister's regulations restricting groundwater activities], subsections (2) (b) and (3) do not apply in respect of the following:

(a) a person installing a well pump in a monitoring well, a geotechnical well or a closed-loop geoechange well;

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

- (c) a prescribed
- (i) person,
- (ii) well or well pump,
- (iii) activity in relation to a prescribed work, or
- (iv) activity.

Proof of qualifications and insurance

51 (1) On the direction of

- (a) the comptroller,
- (b) a water manager,
- (c) an engineer,
- (d) an officer, or
- (e) a drinking water officer,

a person who is performing or directly supervising an activity that under this Act must be performed or directly supervised by a professional with specified competencies, or by a well driller or well pump installer who is qualified in respect of the activity in relation to the well, must immediately provide proof that the person is qualified to perform or supervise the activity and, if the person is required under subsection (2) to carry insurance, proof of that insurance.

(2) If the regulations require that a professional or a well driller carry not less than the prescribed amount of liability insurance in the event of liability arising from the performance or supervision of activities under this Act, the professional or well driller, as applicable, must carry that amount.

(3) When asked to do so, a professional, a well driller or a well pump installer must provide to any person who engages the professional, well driller or well pump installer to perform or supervise activities under this Act

- (a) proof of insurance, if insurance is required under the regulations, and
- (b) proof of qualifications.

Controlling artesian flow during construction

52 (1) For the purposes of this section and section 53, artesian flow of a well is under control when

- (a) the artesian flow
- (i) is clear of sediment,
- (ii) is entirely conveyed through the well's production casing to the wellhead, if the well has a production casing,

- (iii) may be mechanically stopped for an indefinite period in a manner that prevents leakage onto the surface of the ground or into another aquifer penetrated by the well, and
- (iv) does not pose a threat to property, public safety or the environment, or
- (b) if the artesian flow cannot be controlled in accordance with paragraph (a), the well is decommissioned
 - (i) in accordance with the regulations,
 - (ii) by a person authorized under section 49 [restrictions on constructing or decommissioning wells], and
 - (iii) in a manner that allows no artesian flow at the surface of the ground or leakage into another aquifer penetrated by the well.
- (2) If a well driller or a professional encounters artesian conditions while constructing a well or supervising the construction of a well, the well driller or professional must ensure, as soon as practicable, 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 during those periods.
- (3) A person, other than a well driller or a professional, 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 notify the well owner of the encounter and the person and the well owner must ensure that a well driller who is qualified in respect of the activity or a professional is engaged, and that well driller or professional must comply with subsection (2) in relation to the artesian flow.
- (4) A well driller or professional who encounters or takes steps to stop or control artesian flow must notify the well owner and the land owner of the encounter and the steps taken.
- (5) If the well driller or professional described in subsection (2) or engaged under subsection (3) fails to comply with subsection (2), the well owner must ensure that a well driller who is qualified in respect of the activity or a professional complies with subsection (2).
- (6) If the comptroller or a water manager is satisfied, based on the report of a professional, that because of exceptional circumstances it is not practicable to bring artesian flow under control in accordance with subsection (1) (a) or (b) but the artesian flow can be managed in another manner without posing a threat to property, public safety or the environment, the artesian flow may be brought under control in accordance with the directions of the decision maker.
- (7) A person responsible for stopping or controlling artesian flow under this section must comply with any applicable regulations and any directions of an engineer in relation to stopping or controlling the flow.

Controlling flowing artesian well

53 (1) The owner of a flowing artesian well must engage a well driller who is qualified in respect of the activity or a professional and ensure that the well driller or professional, as applicable, stops the flow of that well or brings the flow of that well under control.

(2) If the owner of a flowing artesian well fails to comply with subsection (1) and the owner of the land on which the well is located does not know who owns the well, the owner of that land must comply with subsection (1).

(3) Section 52 (6) and (7) apply for the purposes of this section.

Well caps or well covers

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

(a) a person who drills a well or alters a well;

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

(2) If a 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 that 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, removing or testing a well pump,

(c) testing the flow of the well,

(d) measuring the water level in the well,

(e) taking a water sample from the well, or

(f) 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 the cap or cover in accordance with the regulations as soon as practicable after completing the work for which that cap or cover was removed.

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

Well identification

55 (1) In this section, "owner" and "water supply system" have the same meaning as in section 1 [definitions] of 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 altering a well that does not have an identification plate attached;

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

(3) Subsection (2) does not apply in respect of a monitoring well, a geotechnical well, a closed-loop geexchange well or a well made for the purpose of groundwater 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) a water manager, an engineer or an officer, if directed to do so by that official.

(5) A person who decommissions a well must remove and destroy the identification plate referred to in subsection (2).

Decommissioning or deactivating well

56 (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 to be not in service

(a) if the well is not used for the prescribed period, or

(b) in prescribed circumstances.

(3) If a well is, in accordance with subsection (2), not in service, the well owner must ensure that the well is deactivated or decommissioned as soon as practicable in accordance with the regulations and by a person authorized under section 49 [restrictions on constructing or decommissioning wells and related activities] of this Act.

(4) If a deactivated well is not in service for the prescribed period, the well owner must ensure that the well is decommissioned as soon as practicable in accordance with the regulations and by a person authorized under section 49 of this Act.

(5) Despite the period prescribed for the purposes of subsection (4), if the comptroller or a water manager is satisfied that a well is being properly maintained as a deactivated well for later use, the decision maker may extend that prescribed period.

(6) 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 reports

57 (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) decommissioning 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 direction 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 well owner,
- (b) in prescribed circumstances, for prescribed wells or if artesian flow is encountered in constructing the well, the comptroller, and
- (c) if directed to do so by the comptroller, a water manager, an engineer, an officer or a drinking water officer, that official.

(4) Despite section 117 (4) [delivery and publication of documents and information], the comptroller must publish reports received under subsection (3) (b) and may publish reports received under subsection (3) (c), whether or not a report includes personal information.

Well operation

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

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

- (a) the intrusion of saline groundwater, sea water or contaminated water into
 - (i) the aquifer from which that well diverts water,
 - (ii) another aquifer, or
 - (iii) a stream that is hydraulically connected to an aquifer referred to in subparagraph (i) or (ii), and
- (b) a significant adverse impact on
 - (i) the quality of water in
 - (A) the aquifer from which a well diverts water,
 - (B) another aquifer, or
 - (C) a stream that is hydraulically connected to an aquifer referred to in clause (A) or (B), or
 - (ii) the existing uses made of the water diverted from

- (A) a well that diverts water from the aquifer,
- (B) a well that diverts water from another aquifer, or
- (C) a stream that is hydraulically connected to an aquifer referred to in clause (A) or (B).
- (3) Subsection (2) does not apply
 - (a) to a well made for the purpose of groundwater remediation, or
 - (b) with respect to a prescribed activity in relation to a prescribed class of well.
- (4) In a prosecution under section 106 (5) (i) [general offences], it is not necessary to prove that the saline groundwater, sea water or contaminated water, as applicable, if diluted subsequent to the intrusion, continued to cause or to be likely to cause a significant adverse impact on, as applicable,
 - (a) the quality of water in
 - (i) the aquifer from which the well diverts water,
 - (ii) another aquifer, or
 - (iii) a stream that is hydraulically connected to an aquifer referred to in subparagraph (i) or (ii), or
 - (b) the existing uses made of the water
 - (i) from any well that diverts water from the aquifer,
 - (ii) from any well that diverts water from another aquifer, or
 - (iii) diverted from a stream that is hydraulically connected to an aquifer referred to in subparagraph (i) or (ii).

Prohibition on introducing foreign matter into well

59 (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 from construction or demolition;
- (f) a prescribed matter or substance;
- (g) another contaminant, clay, silt, rock or a similar material, or another 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 water in
 - (A) the well,

(B) another well that diverts water from the same aquifer,

(C) another aquifer, or

(D) a stream that is hydraulically connected to an aquifer referred to in clause (B) or (C), or

(ii) the existing uses made of the water from

(A) the well,

(B) another well that diverts water from the same aquifer,

(C) another aquifer, or

(D) a stream that is hydraulically connected to an aquifer referred to in clause (B) or (C).

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

(a) a well owner in the proper operation, disinfection, maintenance, repair, deactivating or decommissioning of a well in accordance with the regulations,

(b) a well made for the purpose of groundwater remediation,

(c) activities authorized or required under an enactment,

(d) a prescribed activity undertaken in accordance with any terms and conditions prescribed by regulation, or

(e) a prescribed contaminant, matter or substance.

(3) In a prosecution under section 106 (5) (k) [general offences], it is not necessary to prove that the contaminant, matter or substance, if diluted or its concentration is reduced subsequent to the introduction into the well, continued to cause or to be likely to cause a significant adverse impact on, as applicable,

(a) the quality of water in

(i) the well,

(ii) another well that diverts water from the same aquifer,

(iii) another aquifer, or

(iv) a stream that is hydraulically connected to an aquifer referred to in subparagraph (ii) or (iii), or

(b) the existing uses made of the water from

(i) the well,

(ii) another well that diverts water from the same aquifer,

(iii) another aquifer, or

(iv) a stream that is hydraulically connected to an aquifer referred to in subparagraph (ii) or (iii).

Remediation orders in relation to foreign matter in well

60 (1) An engineer may order a person who contravenes section 58 (2) or 59 (1)

- (a) to stop the introduction of,
 - (b) to remove, or
 - (c) to take 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 section 58 (2) or 59 (1).
- (2) If the engineer considers that the effects of an introduction described in subsection (1) cannot be remediated, or cannot be fully remediated, at the location of the introduction, that engineer may order the person referred to in subsection (1) to take compensatory mitigation measures, in place of or supplemental to other remediation measures, on a different part of the aquifer into which the introduction was made.
- (3) If the engineer cannot ascertain who contravened section 58 (2) or 59 (1), as applicable, the engineer may make an order under subsection (1) or (2) against the well owner.
- (4) If the engineer cannot ascertain who contravened section 58 (2) or 59 (1), as applicable, or who owns the well, the engineer may make an order under subsection (1) or (2) against the owner of the land on which the well is located.
- (5) The comptroller or a water manager may authorize the government or another person to take the actions necessary to comply with an order under subsection (1), and the person to whom the order was directed is liable for the costs to the government or that other person, as applicable, of complying with the order if
- (a) a person who is subject to an order under subsection (1), (2), (3) or (4) fails to comply with that order, and
 - (b) the comptroller or the water manager considers that the failure may result in harm or damage to water in the aquifer, in another aquifer or in a stream that is hydraulically connect to either aquifer.
- (6) Any expense reasonably incurred by the other person, unless that person is acting on behalf of the government, in the exercise of authority provided under subsection (5), may be recovered from the person liable as money paid for, and at the request of, that person.
- (7) If work is carried out under subsection (5) by or on behalf of the government, the costs to the government are a debt due to the government by the person liable and may be recovered in accordance with section 98 [recovery of amounts owing for work performed].
- (8) This section does not limit the authority under section 91 [power of comptroller to authorize actions] or 93 [powers of engineers and officers].

Wells on Crown land

61 (1) Sections 53 [controlling flowing artesian well], 54 [well caps or well covers], 56 [decommissioning or deactivating well] and 59 [prohibition on introducing foreign matter into 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, on or after November 1, 2004, a person

(a) has a right to use or occupy Crown land on which a well is constructed or located, and

(b) fails to comply with section 53, 54, 56 or 59,

the government may enforce the applicable provision against the 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

62 (1) If a regulation under section 83 [plan regulations — restrictions on groundwater activities] or 137 [minister's regulations restricting groundwater activities] of this Act or under section 36 [implementing a plan: restrictions on groundwater activities] of the Drinking Water Protection Act requires that a person hold a drilling authorization in order to

(a) drill a well,

(b) alter a well,

(c) install a well pump, or

(d) conduct a flow test,

the person must not engage in the restricted activity without holding a drilling authorization issued in accordance with this section.

(2) On application in accordance with section 12 [application and decision maker initiative procedures], the comptroller, a water manager or an engineer, subject to prescribed terms and conditions and on the terms and conditions the decision maker considers advisable, may issue a drilling authorization.

(3) In considering an application for a drilling authorization, the decision maker must consider, as applicable,

(a) the water sustainability plan in respect of which the regulation is made under section 83,

(b) the purpose identified in the minister's regulation under section 137, or

(c) the drinking water protection plan the regulations implement.

(4) The decision maker 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,

(b) the land on which the well and any works related to the well are or will be located is Crown land, or

(c) if neither paragraph (a) nor (b) applies, the applicant submits the prescribed evidence of the consent of the owner of the applicable land.

(5) A person to whom a drilling authorization is issued must comply with the terms and conditions of the drilling authorization and any applicable requirements of

(a) this Act and the regulations,

(b) orders of the comptroller, a water manager or an engineer, or

(c) any other enactment.

(6) If a regulation under section 83 of this Act or under section 36 of the Drinking Water Protection Act prohibits an activity referred to in subsection (1) of this section, an application for a drilling authorization authorizing the activity in the area to which the prohibition applies may not be considered.

(7) On application under section 12 or on his or her own initiative, the comptroller, a water manager or an engineer, subject to prescribed terms and conditions and on the terms and conditions the decision maker considers advisable, may amend a drilling authorization.

(8) If an amendment to a drilling authorization would substantially change the drilling authorization, the decision maker may issue in substitution another drilling authorization, subject to prescribed terms and conditions and on the terms and conditions that decision maker considers advisable.

Water analyses for new or altered wells

63 (1) If a well is drilled or prescribed alterations are made to a well, the person responsible for a prescribed activity in relation to the well, or another person in prescribed circumstances, must, in accordance with the regulations,

(a) take or cause to be taken a sample of the groundwater in the well, and

(b) cause the sample to be analyzed.

(2) If the groundwater in a well is to be used for domestic purposes as defined in section 1 [definitions] of the Drinking Water Protection Act, the sampling and the analyses of the groundwater required by regulations referred to in subsection (1) of this section must also comply with the requirements under that Act.

(3) A person who is required by regulations under subsection (1) to have groundwater samples analyzed must submit a copy of the results of the analyses, in the prescribed time and manner, to

(a) the comptroller,

(b) the well owner, and

(c) if directed to do so by a water manager, an engineer, an officer or a drinking water officer, that official.

(4) Subject to section 117 (4) [delivery and publication of documents and information], the comptroller must publish results received by the comptroller under subsection (3).

Division 4 — Water Sustainability Plans

Definitions

64 For the purposes of this Division:

"local authority" means

- (a) the council of a municipality,
- (b) the board of a regional district,
- (c) a local trust committee,
- (d) an improvement district or greater board, or
- (e) a body prescribed by regulation as a local authority for the purposes of a particular water sustainability plan;

"plan regulation" means a regulation under

- (a) section 76 [plan regulations — effect on statutory decisions],
- (b) section 77 [plan regulations — effect on approval by approving officer],
- (c) section 78 [plan regulations — restriction or prohibition on use of land or resources],
- (d) section 79 [plan regulations — reduction of water rights],
- (e) section 80 [plan regulations — directions regarding works or operations],
- (f) section 81 [plan regulations — relationship with other planning processes],
- (g) section 82 [plan regulations — dedicated agricultural water], and
- (h) section 83 [plan regulations — restrictions on groundwater activities];

"responsible person", in respect of a proposed water sustainability plan, means the person designated by the minister under section 66 (2) (a) [order establishing plan development process] as the person responsible for preparing the proposed plan;

"significant change" means a change in relation to a licence or a drilling authorization, whether the change is voluntary or involuntary, that is recommended by a proposed water sustainability plan and that, if implemented, would,

- (a) in the case of a licence,
 - (i) significantly reduce the quantity of water that the licensee is authorized to divert under the licence,
 - (ii) result in significantly different works than the works authorized under the licence,

- (iii) restrict the water use purposes for which water may be used under the licence, or
- (iv) cancel the licence, and
- (b) in the case of a drilling authorization, cancel the drilling authorization.

Order designating area for planning process

65 (1) The minister, on request or on the minister's own initiative, by order, may designate an area for the purpose of the development of a water sustainability plan

- (a) if the minister considers that a plan for the area will assist in
 - (i) preventing or addressing
 - (A) conflicts between water users,
 - (B) conflicts between the needs of water users and environmental flow needs,
 - (C) risks to water quality, or
 - (D) risks to aquatic ecosystem health, or
 - (ii) identifying restoration measures in relation to a damaged aquatic ecosystem, or
- (b) in other prescribed circumstances.

(2) A request to the minister referred to in subsection (1) must

- (a) be made in the prescribed manner, if any, and
- (b) include the prescribed information, if any.

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

(4) Section 124 (4) (d) [general regulation-making powers] applies to an area designation under subsection (1) of this section.

Order establishing plan development process

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

(2) Without limiting subsection (1), an order under that subsection may do one or more of the following:

- (a) designate the government or another person as the person responsible for preparing the proposed plan;
- (b) if the government is the responsible person,
 - (i) establish the terms of reference for the plan, and
 - (ii) establish one or more technical advisory committees in relation to development of the plan;
- (c) if a person other than the government is the responsible person,

(i) authorize the responsible person to prepare the terms of reference for the plan, subject to approval by the minister, and

(ii) require the responsible person to establish one or more technical advisory committees in relation to development of the plan;

(d) subject to subsection (3), do one or more of the following:

(i) provide whether remuneration will be paid to members or classes of members of the technical advisory committee and set the remuneration to be paid to a member or a class of member of a technical advisory committee;

(ii) require the responsible person or another person specified in the order to pay the remuneration referred to in subparagraph (i);

(iii) require the responsible person or another person specified in the order to reimburse a member of a technical advisory committee for reasonable travelling and out-of-pocket expenses necessarily incurred by the member in relation to the person's participation in the technical advisory committee.

(3) If an order under subsection (2) (d) requires the government to pay remuneration to or reimburse the expenses of a member of a technical advisory committee,

(a) no payment, other than as reimbursement under subsection (2) (d) (iii), may be made to a public service employee, and

(b) any payment or reimbursement under the order must be in accordance with the directives of Treasury Board.

Order limiting planning process or recommendations

67 (1) The minister, by order, may limit

(a) the issues to be considered in a water sustainability plan development process, or

(b) the recommendations that may be made in the plan for measures to address the issues considered.

(2) Without limiting subsection (1), an order under that subsection may provide that a proposed water sustainability plan may not contain a recommendation that

(a) a specified regulation or order under this or another specified Act be made, or

(b) any regulations or orders under this or another Act be made.

Content of plan terms of reference

68 (1) The terms of reference for a proposed water sustainability plan must include the following:

(a) the purpose of the proposed plan;

(b) the scope of the proposed plan;

(c) the issues to be addressed in the proposed plan;

- (d) a description of the organizational structure supporting the development of the proposed plan, which structure must meet any prescribed minimum requirements;
- (e) an estimate of the financial, human and other resources required for the plan development process and a description of the funding commitments and committed sources of other resources identified in the estimate;
- (f) a process for public and stakeholder communications and consultations, which process must meet any prescribed minimum requirements;
- (g) if the responsible person is a person other than the government, a process for consultations with the government throughout the plan development process;
- (h) a time limit for completing the proposed plan;
- (i) any other prescribed information.

(2) Without limiting the terms of reference that may be established for a proposed plan, the terms of reference may include

- (a) considerations relating to water in a stream, groundwater and surface water runoff not in a stream, and
- (b) uses of land or resources that affect the water referred to in paragraph (a).

(3) Subject to subsection (4), the terms of reference established for a proposed plan may be amended during the plan development process,

- (a) if the terms of reference were established by the minister under section 66 (2) (b) (i) [order establishing plan development process], by the minister, or
- (b) in any other case, by the person who prepared the terms of reference under section 66 (2) (c) (i), subject to the approval of the minister,

and subsections (1) and (2) of this section apply in relation to a proposed amendment.

(4) The minister, by order, may extend the time set out in the terms of reference for completing a proposed plan, whether or not the time previously set has expired.

Other planning processes

69 (1) In this section:

"band" has the same meaning as in the Indian Act (Canada);

"first nation government" means

- (a) a Nisga'a Government,
- (b) the governing body of a treaty first nation, and
- (c) the governing body of a band;

(2) In preparing a proposed water sustainability plan, consideration may be given to the results of other Provincial government, local authority and first nation government strategic, operational and land or water use planning processes in relation to land or water within or adjacent to the plan area.

(3) A proposed plan may be prepared in conjunction with the preparation of

(a) a proposed drinking water protection plan under the Drinking Water Protection Act, or

(b) a land use or water use plan prepared under a prescribed enactment.

Information to be considered

70 In preparing a proposed water sustainability plan, the responsible person must ensure that consideration is given to any prescribed information or prescribed records.

Notice to affected persons

71 (1) This section applies if the responsible person for a water sustainability plan becomes aware that the plan may contain recommendations that, if implemented, would likely

(a) detrimentally affect the rights of any of the following:

(i) an authorization holder;

(ii) a change approval holder;

(iii) a drilling authorization holder;

(iv) an applicant for an authorization, change approval or drilling authorization;

(v) a riparian owner;

(vi) a person holding a right in relation to the use of land or resources, or

(b) physically affect the land of a land owner.

(2) In the circumstances referred to in subsection (1), the responsible person must, as soon as reasonably possible after the circumstances arise, give notice, in accordance with section 117 [delivery and publication of documents and information] or the regulations, to the person whose rights or land would likely be affected that a water sustainability plan is proposed to be prepared, or is being prepared, as applicable, and that the person's rights may be detrimentally affected, or the person's land may be physically affected, as the case may be.

(3) A person who is given notice under subsection (2) may deliver to the responsible person within the period specified in the notice any concerns the person has with the proposed recommendations.

Powers for development of plan

72 (1) For the purposes of developing a proposed water sustainability plan, the minister, by order, may

(a) require a person who diverts or uses water from a stream or aquifer in the plan area, or who engages in a land or resource activity that may affect the sustainability of the quality or quantity of water in a stream or aquifer or an aquatic ecosystem in the plan area, to provide to the responsible person, or a specified representative of the responsible person, the information related to that diversion or use or land or resource activity that the responsible person or representative, as the case may be, considers advisable, and any consents required to verify that information, which information may include but is not limited to

(i) the person's contact information,

(ii) information respecting the person's diversion and use of water in the plan area, and

(iii) information respecting the person's activities that affect the quality or quantity of water in a stream or aquifer or an aquatic ecosystem in the plan area,

(b) authorize the responsible person or representative, as the case may be,

(i) to undertake investigations, tests and surveys that that responsible person or representative considers advisable, including, without limitation, authorizing the person to collect relevant public personal information, and

(ii) to authorize other persons to undertake investigations, tests and surveys, or collect the information, referred to in subparagraph (i),

(c) direct that, for the purposes of this section, section 89 [right of access to land and premises by authorized persons] applies to the responsible person or representative, as the case may be, and persons working under the direction of that responsible person or representative,

(d) establish limits or conditions on the authority, under the order, of the responsible person or representative, as the case may be, or a person working under the direction of that responsible person or representative, and

(e) authorize the government to collect from the responsible person or representative personal information collected by the responsible person or representative for the purposes of the water sustainability plan.

(2) The minister may provide a responsible person with relevant government water records.

(3) If the comptroller, a water manager or an engineer is specified as a representative of a responsible person in an order under subsection (1), an order of the comptroller, water manager or engineer, as the case may be, in exercising a discretion under the order under subsection (1) is final and may not be appealed to the appeal board.

Plan content

73 (1) A proposed water sustainability plan must include the following:

(a) a description of the plan area;

(b) a description of the issues considered in the planning process;

(c) a description of the public and stakeholder communications and consultations undertaken in the planning process;

(d) a description of any notifications provided to potentially affected persons as required by section 71 [notice to affected persons] and a summary of any concerns received under that section;

(e) the recommendations for measures to address the issues considered in the planning process and the rationale for the recommendations;

(f) a description of the implications of, and who is responsible for, implementing the plan recommendations;

(g) an estimate of the financial, human and other resources required for implementation of the plan and possible sources of the resources identified in the estimate, including funding commitments, if any;

(h) prescribed information.

(2) Without limiting subsection (1) (e), a proposed plan may recommend a process for the resolution of disputes between water users.

(3) A proposed plan may include, but is not limited to,

(a) a description of the relationship of the plan to other provincial plans,

(b) prescribed information, and

(c) a recommended timeline for review of the plan.

Submission of proposed plan to minister

74 (1) After a proposed water sustainability plan has been prepared, the responsible person may submit the proposed plan to the minister.

(2) If a proposed plan submitted to the minister under subsection (1) recommends a significant change in respect of a licence or a drilling authorization and the holder of the licence or drilling authorization has consented to the change, the proposed plan must be accompanied by

(a) a copy of the written consent of the holder of the licence or drilling authorization, and

(b) a detailed proposal assigning to each person or other entity who would benefit from implementation of the recommendation some or all of the responsibility for compensating the licensee or drilling authorization holder, consented to in writing by each such person.

(3) If a proposed plan submitted to the minister under subsection (1) recommends a significant change in respect of a licence or a drilling authorization and the holder of the licence or drilling authorization has not consented to the change, the proposed plan must be accompanied by

(a) a list of the affected licences and drilling authorizations,

(b) a statement of the public benefit from the significant change, and

(c) a statement of any available source of funding to pay compensation or for compensatory measures for the involuntary significant changes.

(4) If the minister considers that a proposed plan submitted under subsection (1)

(a) is incomplete,

- (b) does not comply with this Act or the regulations, or
- (c) is inconsistent with the terms of reference for the plan,

the minister may require that the deficiencies in the plan be addressed and the plan be resubmitted under subsection (1) before the minister considers the plan.

Acceptance of plan

75 (1) If a proposed water sustainability plan submitted to the minister under section 74 (1) does not contain a recommendation that a regulation or order under this or another Act be made in relation to the plan, the minister may accept all or part of the proposed plan as a water sustainability plan.

(2) If a proposed water sustainability plan submitted to the minister under section 74 (1) contains a recommendation that a regulation or order under this or another Act be made in relation to the plan, the minister may place the following before the Lieutenant Governor in Council:

- (a) the proposed plan;
 - (b) if the proposed plan recommends a significant change in respect of a licence or a drilling authorization, the details of any information provided to the minister in respect of the licence or drilling authorization under section 74 (2) or (3), as applicable;
 - (c) any comments of the minister in respect of the proposed plan.
- (3) The Lieutenant Governor in Council, by regulation, may accept as a water sustainability plan all or part of a proposed plan placed before the Lieutenant Governor in Council under subsection (2).
- (4) Subject to section 117 (4) [delivery and publication of documents and information], the minister must arrange for a water sustainability plan accepted under this section to be published.

Plan regulations — effect on statutory decisions

76 (1) In this section:

"issue" includes replace, amend, extend and renew;

"land or resource instrument" means an instrument that, under an enactment, authorizes the use of or disposes of Crown land or Crown natural resources.

(2) For the purposes of a water sustainability plan, the Lieutenant Governor in Council, by regulation applicable in relation to all or part of the plan area, may do one or more of the following:

- (a) require that the plan be considered by a public officer making a specified decision under a specified enactment;
- (b) require or restrict the issuance of specified land or resource instruments by a public officer under a specified enactment;

- (c) prohibit the issuance of specified land or resource instruments by a public officer under a specified enactment, unless the specified enactment requires that the land or resource instruments be issued;
 - (d) require or restrict the exercise by a public officer of a power under a specified enactment;
 - (e) prohibit the exercise by a public officer of a power under a specified enactment, unless the specified enactment requires that the power be exercised.
- (3) A regulation under subsection (2) (b) may establish requirements that must be imposed by the public officer as terms and conditions on a land or resource instrument under the specified enactment.
- (4) A regulation under subsection (2) (d) may establish requirements that must be imposed on a person by the public officer in exercising a power under the specified enactment.
- (5) Requirements imposed under subsection (3) or (4) are deemed to be imposed under the enactment under which the land or resource instrument is issued or the power is exercised, as the case may be.
- (6) The issuance of a land or resource instrument contrary to a regulation under subsection (2) (b) or (c), or the exercise of a power contrary to a regulation under subsection (2) (d) or (e), has no effect.

Plan regulations — effect on approval by approving officer

77 (1) In this section, "approving officer" has the same meaning as in section 1 of the Land Title Act.

(2) For the purposes of a water sustainability plan, the Lieutenant Governor in Council, by regulation applicable in relation to all or part of the plan area, may

- (a) restrict the issuance of an approval of a plan requiring the approval of an approving officer under a specified enactment, or
- (b) require an approving officer to reject a plan referred to in paragraph (a).

(3) A regulation under subsection (2) (a) may establish requirements that must be imposed as terms and conditions of an approval of a plan referred to in that subsection.

Plan regulations — restriction or prohibition

on use of land or resources

78 (1) For the purposes of a water sustainability plan, the Lieutenant Governor in Council, by regulation applicable in relation to all or part of the plan area, may restrict or prohibit

- (a) a specified use of land or natural resources,
- (b) a specified activity in relation to land or natural resources, or
- (c) use of specified works.

(2) A regulation under subsection (1) may be made applicable to any land or natural resources in British Columbia.

(3) A regulation under subsection (1) applies whether or not the specified use or activity, or the use of the specified works, is authorized under an enactment, unless otherwise provided in the regulation.

Plan regulations — reduction of water rights

79 (1) For the purposes of a water sustainability plan, the Lieutenant Governor in Council, by regulation applicable in relation to all or part of the plan area, may direct the comptroller or a water manager to

(a) amend the terms and conditions of licences identified in the regulation, regardless of the precedence of the rights under those licences, to reduce, in accordance with the regulation, the maximum quantity of water that may be diverted under the licences from a specified stream or aquifer, or

(b) cancel licences identified in the regulation.

(2) Without limiting subsection (1), a regulation under that subsection must

(a) identify the licences, specifically or by class, that are to be subject to the regulation, and

(b) set out the method for calculating the reduction in water quantity applicable to each of those licences.

(3) The precedence of the rights of the holder of a licence to the quantity of water the holder is authorized to divert after a reduction under subsection (1) is unaffected by the reduction in the quantity of water.

Plan regulations — directions regarding works or operations

80 (1) For the purposes of a water sustainability plan, the Lieutenant Governor in Council, by regulation applicable in relation to all or part of the plan area, may direct the comptroller or a water manager to amend the terms and conditions of a licence to require the licensee to, in accordance with the regulations,

(a) reduce the maximum rate of diversion of water that may be diverted under the licence,

(b) alter the timing of diversion, use, including storage, of water under the licence,

(c) construct, alter, install, replace, repair, maintain, improve, seal, deactivate, decommission or remove works, including for the more efficient use or conservation of water, under the licence,

(d) adopt a more efficient practice, or

(e) make other changes to works or operations of the licensee in relation to the licence, as set out in the regulation.

(2) The rights of the holder of a licence amended by the comptroller or a water manager to comply with a regulation under subsection (1), other than rights in relation to the terms and conditions amended as required by the regulation, are unaffected by the amendment.

Plan regulations — relationship with other planning processes

81 For the purposes of a water sustainability plan, the Lieutenant Governor in Council, by regulation, may do one or more of the following:

- (a) require that in other specified Provincial government or local authority strategic or operational planning processes, consideration be given to a specified part or all of the plan;
- (b) require that the results of specified Provincial government strategic or operational planning processes be consistent with a specified part or all of the plan;
- (c) provide that specified Provincial government strategic or operational plans do not have legal effect to the extent of any inconsistency with a specified part or all of the plan.

Plan regulations — dedicated agricultural water

82 (1) For the purposes of a water sustainability plan, the Lieutenant Governor in Council, by regulation applicable to all or part of the plan area, may dedicate, for qualifying agricultural use on qualifying agricultural land in the plan area or part, a specified quantity of water, in a stream or aquifer, that is

- (a) both unrecorded and unreserved, or
 - (b) held under a licence issued for a qualifying agricultural use on qualifying agricultural land in the plan area.
- (2) A dedication under this section applies to water that becomes unrecorded water by reason of the abandonment, cancellation or expiry of all or part of the rights under a licence
- (a) issued in respect of dedicated agricultural water described in subsection (1) (a), or
 - (b) described in subsection (1) (b).
- (3) A regulation amending or repealing a regulation under subsection (1) must specify the date on which the amendment or repeal is to come into force, which date must be at least 30 days after the amending or repealing regulation is published in the Gazette.
- (4) Applications for unrecorded water dedicated under a regulation repealed under subsection (3) may be accepted during the period between the date of publication in the Gazette and the effective date of the repeal, but an authorization issued in respect of the application must not be given a date of precedence that is earlier than the effective date of the repeal.

Plan regulations — restrictions on groundwater activities

83 (1) For the purpose of a water sustainability plan, the Lieutenant Governor in Council, by regulation applicable in relation to all or part of the plan area, may restrict or prohibit one or more of the following or may impose requirements on a person doing one or more of the following:

- (a) constructing a well;
- (b) installing well pumps;
- (c) conducting flow tests;
- (d) performing another activity in relation to a well or groundwater.

(2) Without limiting subsection (1), a restriction in a regulation under that subsection may include a requirement that a person hold a drilling authorization in order to carry out one or more of the activities referred to in section 62 (1) [drilling authorizations].

(3) Without limiting subsection (1), a regulation under that subsection may require that the comptroller or a water manager amend or cancel a drilling authorization.

General provisions in relation to plan regulations

84 (1) Subject to subsections (2) to (4), a plan regulation applies despite any other enactment.

(2) Subsection (1) does not apply in respect of a conflict between a plan regulation and any of the following enactments or regulations made under any of the following enactments:

- (a) the Creston Valley Wildlife Act;
- (b) the Drinking Water Protection Act;
- (c) the Ecological Reserve Act;
- (d) the Environment and Land Use Act;
- (e) section 9 of the Greater Vancouver Water District Act;
- (f) the Industrial Development Act;
- (g) the Muskwa-Kechika Management Area Act;
- (h) the Park Act;
- (i) the Significant Projects Streamlining Act;
- (j) the Water Protection Act;
- (k) section 4 of the Wildlife Act;
- (l) a prescribed enactment.

(3) A plan regulation does not apply to licences applied against a water reservation referred to in section 40 [treaty first nation water reservations] or 41 [Nisga'a water reservation].

(4) A plan regulation applies whether or not a right that is acquired, accrued or accruing, at any time before or after the regulation is made, is affected by the regulation.

(5) If the decision maker considers that the amendments made to a licence in accordance with regulations under section 79 [plan regulations — reduction of water rights] or 80 [plan regulations — directions regarding works or operations] would substantially change the licence, the decision maker may substitute a new licence.

Review and amendment of plans

85 (1) The minister, by order, may direct that a water sustainability plan be reviewed to determine whether the plan should be amended or cancelled.

(2) Except as provided by order of the minister, this Division applies to

- (a) a review under subsection (1), and
- (b) any amendment to a plan proposed by a review.

Division 5 — Temporary Protection Orders

Declarations of significant water shortage

86 (1) If the minister considers that one or more streams in an area have fallen or are at risk of falling below their critical environmental flow thresholds, the minister may make a temporary order declaring a significant water shortage in the area designated in the order.

(2) An order under subsection (1) must specify the term of the order, which term may not exceed 90 days.

(3) Whether or not a temporary order under subsection (1) has been made or expired, if the Lieutenant Governor in Council considers that one or more streams in an area have fallen or are at risk of falling below their critical environmental flow thresholds, the Lieutenant Governor in Council may make an order declaring a significant water shortage in the area designated in the order.

(4) When an order of the Lieutenant Governor in Council under subsection (3) comes into force, an order under subsection (1) in relation to the same designated area expires.

(5) Section 124 (4) (d) [general regulation-making powers] applies to an area designated in an order under subsection (1) or (3).

Critical environmental flow protection orders

87 (1) If an order under section 86 (1) or (3) is in force, the comptroller must, for the purposes of section 22 (9) [precedence of rights], by order, determine in accordance with any applicable regulations, the critical environmental flow threshold for each stream that meets all of the following criteria:

(a) the stream is in the area designated in the order and has a regionally significant aquatic ecosystem;

(b) water is being diverted from the stream under this Act or the stream is hydraulically connected to an aquifer from which water is being diverted under this Act;

(c) the comptroller considers that enforcing the precedence of the stream's critical environmental flow threshold under section 22 (9) will assist in preventing significant or irreversible harm to the aquatic ecosystem of the stream.

(2) If the comptroller considers that more than one stream in an area to which an order under section 86 (1) or (3) applies is described in subsection (1), the comptroller may determine the critical environmental flow thresholds for the streams based on the degree of benefit the comptroller considers the aquatic ecosystems of the streams would derive from enforcement of the precedence of their critical environmental flow thresholds, in descending order, beginning with the stream that would derive greatest benefit and stopping

(a) when the critical environmental flow threshold has been determined for all of the streams described in subsection (1), or

(b) if the order under section 86 (1) or (3) expires before paragraph (a) applies, upon that expiry.

(3) An order under subsection (1) is final and may not be appealed to the appeal board.

(4) An order under subsection (1) and the implementation, under this Act, of the precedence provided for in section 22 (9) apply

(a) despite the rights of any person who, under this Act, is diverting or using water from the stream or the aquifer hydraulically connected to the stream, as the case may be, and

(b) whether or not a right that is acquired, accrued or accruing under this Act at any time before or after the coming into force of this section is affected by the order.

Fish population protection orders

88 (1) If the minister considers that the flow of water in a specified stream is or is likely to become so low that the survival of a population of fish in the stream may be or may become threatened, the minister may make an order respecting the diversion, rate of diversion, time of diversion, or use, including storage and time of storage, of water from the specified stream, or a specified aquifer hydraulically connected to the stream, regardless of the precedence set out in section 22 [precedence of rights].

(2) The minister may make an order under subsection (1) only after giving due consideration to the needs of agricultural users.

(3) An order under subsection (1) must specify the term of the order.

(4) An order under subsection (1) applies

(a) despite the rights of any person who, under this Act, is diverting or using water from the specified stream or the specified aquifer, as the case may be, and

(b) whether or not a right that is acquired, accrued or accruing under this Act at any time before or after the coming into force of this section is affected by the order.

Part 4 — Enforcement

Division 1 — Powers

Right of access to land and premises by authorized persons

89 (1) The following persons may enter onto any land or premises for the purpose of exercising powers or performing duties under this Act or another enactment:

(a) the comptroller, a water manager or an engineer, or a person working under the direction of the comptroller, a water manager or an engineer;

- (b) an officer, a drinking water officer or a water bailiff;
 - (c) an employee or officer of a municipality, regional district, improvement district, development district or water users' community;
 - (d) a holder of a licence that authorizes the carriage or supply of water or electricity to the public.
- (2) The authority under this section 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.
- (3) A person authorized under this section or section 90 to enter onto land or premises may call on the assistance of a peace officer.
- (4) If requested to do so, a peace officer may accompany a person referred to in subsection (3) and do anything necessary to assist the person in the exercise of the powers or performance of the duties in respect of which the entry is made.

Entry warrant

90 If satisfied by evidence on oath or affirmation that entry onto land or premises, including premises occupied as a private dwelling, is necessary for the purposes of this Act, a justice may issue a warrant authorizing any of the following persons to enter onto that land or those premises for the purpose of exercising powers or performing duties under this Act:

- (a) the comptroller, a water manager, an engineer, a drinking water officer or an officer;
- (b) a person authorized by the comptroller or a water manager to carry out an order made under this Act;
- (c) a person responsible for preparing a proposed water sustainability plan if the minister has given direction under section 72 (1) (c) [powers for development of plan] applying section 89 to the person.

Power of comptroller to authorize actions

91 (1) If a person to whom an order of the comptroller, a water manager or an engineer is directed fails to do the things ordered, the comptroller may authorize the government or another person to do those things and the person to whom the order was directed is liable for the costs of the government or that other person, as applicable, of complying with the order.

(2) Any expense reasonably incurred by the other person in the exercise of authority provided under subsection (1), unless the person is acting on behalf of the government, may be recovered from the person liable as money paid for, and at the request of, the person liable.

(3) If work is carried out under subsection (1) by or on behalf of the government, the costs to the government are a debt due to the government by the person liable and may be recovered in accordance with section 98 [recovery of amounts owing for work performed].

(4) If the comptroller considers that it is in the public interest that things should be done to mitigate an imminent and significant risk or hazard to public safety, the environment, land or other property, the comptroller may authorize that things be done to reduce or eliminate the risk or hazard, including, without limitation, any of the following actions:

(a) construct, alter, install, replace, repair, maintain, improve, seal, deactivate, decommission or remove works;

(b) make changes in and about a stream;

(c) divert water whether or not for a water use purpose;

(d) engage the services of, or require a report of, a person authorized under the regulations in relation to the services or report;

(e) any action reasonably required for that purpose.

(5) If things done under subsection (4) were necessary because a person failed to carry out an order, the costs to the government are a debt due to the government of the person to whom the order was directed and may be recovered in accordance with section 98.

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

(7) The authority under subsection (6) 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

92 (1) The comptroller, at any time on notice to any person whose rights the comptroller considers are likely to be detrimentally affected, or whose land the comptroller considers is likely to be physically affected, may amend or revoke an order of the comptroller, a water manager, an engineer, an officer, the Water Board or the Board of Investigation.

(2) A water manager, at any time on notice to any person whose rights the water manager considers are likely to be detrimentally affected, or whose land the water manager considers is likely to be physically affected, may amend or revoke any order of a water manager, an engineer, an officer, the Water Board or the Board of Investigation.

(3) An engineer, at any time on notice to any person whose rights the engineer considers are likely to be detrimentally affected, or whose land the engineer considers is likely to be physically affected may amend or revoke any order of an engineer or an officer.

Powers of engineers and officers

93 (1) An order under this section may be directed to any person who has a right, permission or obligation under this Act, including, without limitation,

(a) in the case of works in respect of which an authorization, change approval, permit or drilling authorization is required, to a person who holds the authorization, change approval, permit or drilling authorization, as applicable, authorizing the construction or use of the works,

(b) in the case of works for which no authorization, change approval, permit or drilling authorization is required, to a person who constructs or installs the works, owns the works or is the owner of the land on which the works are located,

(c) in the case of the diversion or use of water under an authorization or change approval, to a person who holds the authorization or change approval,

(d) in the case of the diversion or use of water other than under an authorization or change approval, to the person who is diverting or using the water without an authorization or change approval, whether or not an authorization or change approval is required,

(e) in the case of works for which an authorization, change approval, permit or drilling authorization is required but has not been obtained, to the person who has constructed or is using the works,

(f) in relation to changes in and about a stream, to the person who made the changes in and about a stream or a person who derives a benefit from those changes in and about a stream, and

(g) in relation to a matter respecting groundwater or a well, to a person responsible within the meaning of section 48 [definitions for Division 3 of Part 3].

(2) In addition to the other powers given under this Act, for the purpose of enforcing the provisions of this Act, the regulations or the terms and conditions of an authorization, change approval, permit, drilling authorization or compliance agreement, or administering precedence of rights in relation to the diversion or use of water, an engineer may do one or more of the following:

(a) inspect, take action, close or lock works;

(b) inspect or take action in relation to the construction of works;

(c) determine whether water is being beneficially used;

(d) order the construction, alteration, installation, replacement, repair, maintenance, improvement, sealing, deactivation, decommissioning or removal of any works;

(e) order

(i) a person who makes changes in and about a stream or any person who derives a benefit from the changes in and about a stream to restore or remediate those changes, or

(ii) if the engineer considers that the impacts of changes in and about a stream made by that person cannot be remediated, or cannot be fully remediated, at the location of the changes in and about the stream, compensatory mitigation measures, in place of or supplemental to other remediation measures, on a different part of the stream in respect of which changes were made, or with the consent of the person, on another stream;

(f) order the construction, installation and maintenance of a measuring or testing device in addition to any construction, installation or maintenance of measuring or testing devices required under the regulations;

(g) order the operation of, and provision of data from, a measuring or testing device in addition to any operation or provision of data required under the regulations;

(h) order a person who is not subject to the regulations in relation to the measuring, testing or reporting under section 131 [regulations respecting measuring, testing and reporting] to comply with specified regulations or to otherwise measure, test and report in relation to water usage or works;

(i) in person or through an officer or a water bailiff, make orders and take action with respect to the diversion, rate of diversion, time of diversion, carriage, distribution and use, including storage and time of storage, of water;

(j) in accordance with directions of the comptroller or a water manager, give directions, in person or through an officer, to a water bailiff to

(i) take action respecting the diversion, rate of diversion, time of diversion, carriage, distribution or use, including storage and time of storage, of water from the streams and aquifers specified in the water bailiff's appointment,

(ii) take action respecting works related to the activities referred to in subparagraph (i), and

(iii) take measures to carry out the operation, routine repair or maintenance of works;

(k) order the release of stored or impounded water that the engineer considers to be a danger to public safety or property;

(l) order the owner of a flowing artesian well, or if the owner of the well is not known, the owner of the land on which the well is situated, to engage a well driller who is qualified in respect of the activity or a professional, as defined in section 48 [definitions for Division 3 of Part 3], to ensure that the artesian flow of that well is stopped or brought under control in accordance with section 53 [controlling flowing artesian well];

(m) order a change in the operation of a well that is being operated contrary to section 58 [well operation] and give directions respecting the operation of the well;

(n) order a person to remediate or mitigate any impact on an aquifer, groundwater or the existing uses of groundwater that results because a well was sited, constructed, floodproofed or operated other than in accordance with the requirements of this Act or the regulations;

(o) install measuring or testing devices;

(p) take measurements of or test

(i) water in a stream or aquifer,

(ii) the flow of water in a stream or aquifer, or

(iii) works;

(q) determine the allowances of water to offset evaporation, seepage and other losses.

(3) An order under subsection (2) may be made subject to any terms and conditions the engineer considers advisable.

(4) In accordance with directions of an engineer, an officer may do one or more of the following:

(a) take action, close or lock works;

(b) take action in relation to the construction of works;

(c) install measuring or testing devices;

(d) take measurements of or test

- (i) water in a stream or aquifer,
 - (ii) the flow of water in a stream or aquifer, or
 - (iii) works;
- (e) in person or through a water bailiff, take action with respect to the diversion, rate of diversion, time of diversion, carriage, distribution and use, including storage and time of storage, of water;
- (f) take action respecting works related to the activities referred to in paragraph (e), or direct a water bailiff to do so;
- (g) direct a water bailiff to take measures to carry out the operation, routine repair or maintenance of those works.
- (5) An officer may inspect
- (a) works,
 - (b) the construction, deactivation or decommissioning of works,
 - (c) an existing or proposed water use,
 - (d) an activity or changes in and about a stream, and
 - (e) records related to a matter referred to in paragraphs (a) to (d).
- (6) For the purposes of section 94 (8), an engineer or officer may examine the works authorized under an authorization, change approval, permit or drilling authorization or the place of use referred to in an authorization, change approval, permit or drilling authorization and make a finding referred to in that section.

Suspension and cancellation of rights and permissions

94 (1) Some or all of the rights of the holder under an authorization, or the permission granted to the holder under a change approval, permit or drilling authorization, may be suspended for any period, and an authorization, change approval, permit or drilling authorization and the rights or permissions under it may be cancelled in whole or in part, by the comptroller or a water manager, in any of the following circumstances:

- (a) the holder of the authorization, change approval, permit or drilling authorization fails to construct the works authorized, within the time specified, by the authorization, change approval, permit or drilling authorization;
- (b) the holder of the authorization, change approval, permit or drilling authorization fails to comply with this Act or the regulations;
- (c) the holder of the authorization, change approval, permit or drilling authorization fails to comply with a term or condition of the authorization, change approval, permit or drilling authorization;
- (d) the holder of the authorization, change approval, permit or drilling authorization fails to comply with an order of the comptroller, a water manager or an engineer, whether given directly or through an officer or water bailiff;

(e) the holder of the authorization, change approval, permit or drilling authorization makes a material misstatement or misrepresentation in the application or in information provided to the comptroller, a water manager or an engineer with respect to the authorization, change approval, permit, drilling authorization or application;

(f) the title of the holder of the authorization, change approval, permit or drilling authorization to the land, mine or undertaking to which the authorization, change approval, permit or drilling authorization is appurtenant, is cancelled or otherwise terminated, if the cancellation or termination results from the operation of a statute or the exercise of a statutory authority;

(g) in the case of a licence, the licensee fails to make beneficial use of the water for 3 successive years;

(h) in the case of a licence, the licensee makes a material misstatement or misrepresentation in a beneficial use declaration;

(i) in the case of a use approval, the holder makes a material misstatement or misrepresentation in information required to be provided under section 30 (6) [beneficial use];

(j) in the case of an authorization, the holder fails for 2 years after the due date to pay any amount due to the government in respect of the authorization;

(k) in the case of an authorization, the holder fails for 180 days after the due date to pay a water bailiff's fees or expenses payable by that authorization holder.

(2) If a decision maker proposes to suspend rights under an authorization or permissions under a change approval, permit or drilling authorization, the decision maker must deliver to the person exercising the rights, or to the person occupying the land to which the authorization, change approval, permit or drilling authorization is appurtenant, 3 days' written notice of the proposal and, if the decision maker considers the matter urgent, the rights or permissions may be suspended immediately on verbal notice and without a hearing.

(3) If the decision maker proposes to cancel an authorization, change approval, permit or drilling authorization that is appurtenant to land, the decision maker must give notice of the proposal to cancel the authorization, change approval, permit or drilling authorization as follows:

(a) unless paragraph (b) applies, in writing to every person who has notified the comptroller or a water manager that the person has an interest in the land;

(b) if the land comprises more than 6 parcels, by publication of at least one insertion each week for 3 consecutive weeks in a newspaper that circulates in the area in which the land is located.

(4) If the decision maker proposes to cancel an authorization, change approval, permit or drilling authorization that is not appurtenant to land, the decision maker must deliver to the holder of the authorization, change approval, permit or drilling authorization, and to every person who has notified the comptroller or a water manager that the person has an interest in the authorization, change approval, permit or drilling authorization, notice of the proposal to cancel the authorization, change approval, permit or drilling authorization, as applicable.

(5) If, within 30 days after delivering a notice under subsection (2), (3) (a) or (4), or the last publication of a notice under subsection (3) (b), as applicable, an objection to the proposed suspension or cancellation is filed with the decision maker by a person claiming a legal or beneficial interest in the authorization, change approval, permit or drilling authorization, the decision maker must decide whether the objection

warrants a hearing and if the decision maker decides to hold a hearing orally, either in person or electronically, sections 95 to 97 apply.

(6) The decision maker may hold a hearing in writing, electronically or in person or by any combination of written, electronic or in-person hearings.

(7) Whether or not the decision maker decides under subsection (5) to hold a hearing, the decision maker must

(a) determine whether the alleged grounds for suspension or cancellation are substantiated, and

(b) make the order the decision maker considers advisable.

(8) If a proposal to cancel or suspend an authorization, change approval, permit or drilling authorization is based on an engineer's or officer's report to the decision maker

(a) that the engineer or officer examined the works authorized under an authorization, change approval, permit or drilling authorization and found them unfit or unsuitable for use, or

(b) in the case of an authorization, that the engineer or officer examined the place of use referred to in the authorization and found no indication of recent beneficial use of water in accordance with the authorization,

the holder of the authorization, change approval, permit or drilling authorization, as applicable, must prove to the satisfaction of the decision maker that the holder of the authorization, change approval, permit or drilling authorization has complied with this Act, the regulations and the authorization, change approval, permit or drilling authorization.

(9) The rights, permissions and duties of the different holders under an authorization, change approval, permit or drilling authorization are separable, and fulfillment by one holder of the holder's duties under the authorization, change approval, permit or drilling authorization does not prevent or delay the suspension or cancellation of the rights or permissions of another holder of that authorization, change approval, permit or drilling authorization.

(10) If an authorization, change approval, permit or drilling authorization has been cancelled in part, the decision maker may issue in substitution to the holder of the authorization, change approval, permit or drilling authorization, subject to prescribed terms and conditions and on the terms and conditions the decision maker considers advisable but with the same precedence as the authorization, change approval, permit or drilling authorization under which the cancelled rights were granted,

(a) in the case of a licence, as applicable,

(i) a conditional licence or a modified conditional licence, or

(ii) a final licence or modified final licence, and

(b) in the case of a use approval, change approval or drilling authorization, a modified use approval, change approval or drilling authorization, as applicable,

but the holder of the authorization, change approval, permit or drilling authorization does not, by the issue of the new or modified authorization, change approval, permit or drilling authorization, obtain or retain any right that has been cancelled.

(11) An order of the decision maker to cancel in whole or in part an authorization and all rights under it under subsection (1) (j) or (k), is final and may not be appealed to the appeal board.

Inquiry powers

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

(2) A decision maker holding an inquiry or hearing under this section 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 decision maker to answer questions on oath or affirmation, or in another manner;

(b) produce for the decision maker a record or thing in the person's possession or control.

(3) A decision maker holding an inquiry under this section 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

96 (1) A decision maker holding an inquiry or hearing under section 95 may make orders or give directions that the decision maker considers necessary for the maintenance of order at the inquiry or hearing, and, if a person disobeys or fails to comply with an order or direction, the decision maker may call on the assistance of a peace officer to enforce the order or direction.

(2) A peace officer called on under subsection (1) may do anything 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), a decision maker holding an inquiry or hearing under this Act, by order, may

(a) impose restrictions on a person's continued participation in or attendance at the inquiry or hearing, and

(b) exclude a person from further participation in or attendance at the inquiry or hearing until that decision maker orders otherwise.

Contempt proceeding for uncooperative person

97 (1) The failure or refusal of a person who is subject to an order under section 95 to do any of the following makes the person, on application to the Supreme Court by the decision maker who made the order, liable to be committed for contempt as if the person were in breach of an order or judgment of the Supreme Court:

- (a) attend before the decision maker;
- (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 who is subject to an order or direction under section 96 to comply with the order or direction makes the person, on application to the Supreme Court by the decision maker who made the order or gave the direction, liable to be committed for contempt as if the person were 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.

Recovery of amounts owing for work performed

98 (1) If, under a provision of this Act, costs to the government in carrying out an order that was directed to a person who failed to comply with the order may be recovered in accordance with this section or amounts owed to a water bailiff are assigned to the government, the comptroller may recover the costs or amounts owing by

- (a) issuing a certificate that
 - (i) in the case of work performed by the government,
 - (A) sets out the reasonable costs the government incurred in complying with the order, and
 - (B) identifies the person to whom the order was directed,
 - (ii) in the case of amounts assigned by a water bailiff,
 - (A) sets out the reasonable costs of the work performed or expenses incurred by the water bailiff, and
 - (B) identifies the person as liable for those costs and expenses, and
 - (iii) specifies all or some of the amounts set out under subparagraph (i) (A) or (ii) (A) as payable by the person identified in the certificate,
 - (b) delivering notice of the certificate to the person identified in the certificate, and
 - (c) filing the certificate with a court that has jurisdiction.
- (2) If an order referred to in subsection (1) was directed at more than one person, or more than one person is liable for the costs and expenses of the water bailiff, the certificate under that subsection
- (a) may apportion the costs to be paid among the persons to whom the order was directed and specify the amount payable by each person, and
 - (b) may specify that 2 or more of the persons identified in the certificate are jointly and separately liable to pay all or a portion of the costs.

(3) A certificate that is filed in a court under this section has the same effect, and all proceedings may be taken on the certificate, as if it were a judgment of the court with which it is filed for the recovery of a debt of the person identified, in the amount stated, in the certificate.

Division 2 — Administrative Penalties

Administrative monetary penalties

99 (1) The comptroller may take the actions authorized under this Division in accordance with the regulations, if the comptroller is satisfied on a balance of probabilities that a person has

- (a) contravened a prescribed provision of this Act or the regulations,
- (b) failed to comply with an order under this Act, or
- (c) failed to comply with a term or condition of an authorization, change approval, permit or drilling authorization.

(2) In the circumstances referred to in subsection (1), the comptroller may deliver to the person an administrative monetary penalty notice

- (a) identifying the person's contravention or failure as determined by the comptroller,
- (b) imposing an administrative monetary penalty in an amount not greater than the prescribed amount, and
- (c) requiring the person to pay the administrative monetary penalty specified in the notice.

(3) In determining the amount of an administrative monetary penalty, the comptroller must consider the following:

- (a) previous contraventions or failures by, administrative penalties imposed on or orders issued to
 - (i) the person,
 - (ii) if the person is an individual, a corporation for which the individual is or was an officer, director or agent, and
 - (iii) if the person is a corporation, an individual who is or was an officer, director or agent of the corporation;
- (b) the gravity and magnitude of the contravention or failure;
- (c) the extent of adverse impacts to the environment or the rights of other persons resulting from the contravention or failure;
- (d) whether the contravention or failure was repeated or continuous;
- (e) whether the contravention or failure was deliberate;
- (f) any economic benefit derived by the person from the contravention or failure;
- (g) the person's efforts to prevent and correct the contravention or failure;

(h) prescribed matters.

(4) A person served with an administrative monetary penalty notice under subsection (2) is subject to an administrative monetary penalty as follows:

(a) if the person admits, in writing, the contravention or failure as determined by the comptroller, the penalty indicated in the notice is imposed at the time of that admission;

(b) if the time for appealing the determination of a contravention or failure under Division 3 [Appeals] has elapsed and no appeal has been commenced, the penalty indicated in the notice is imposed at the end of the time for appealing;

(c) if the determination of contravention or failure is appealed and, under the final determination of the appeal, the person is subject to an administrative monetary penalty, the penalty specified in the final determination is imposed at the time of that final determination.

(5) An administrative monetary penalty under this section must be paid to the government within the prescribed period after the penalty is imposed and in accordance with any other prescribed requirements.

Notice of intent to impose administrative monetary penalty

100 (1) Before delivering an administrative monetary penalty notice under section 99 (2), the comptroller must

(a) deliver to the person a notice of intent to impose an administrative monetary penalty, and

(b) provide the person with an opportunity to be heard.

(2) An opportunity to be heard for the purposes of this section may be provided, as the comptroller considers appropriate in the circumstances, in writing, electronically or in person or by any combination of written, electronic or in-person hearings and if the comptroller decides to hold a hearing orally, either in person or electronically, sections 95 [inquiry powers], 96 [maintenance of order at hearings] and 97 [contempt proceeding for uncooperative person] apply.

(3) A notice of intent to impose an administrative monetary penalty must set out

(a) the alleged contravention or failure, including the provision of this Act or the regulations, the term or condition of the order or the term or condition of the authorization, change approval, permit or drilling authorization the person is alleged to have contravened and the circumstances of that contravention,

(b) an estimate of the amount of the administrative monetary penalty to be imposed and the particulars under section 99 (3) on which the estimate is based, and

(c) the time, date, place and manner of the oral hearing or the due date for written submissions.

(4) A notice of intent to impose an administrative monetary penalty must be delivered to the person not less than 21 days before the date of a hearing or the due date of a submission under subsection (3) (c).

(5) On application, the comptroller may change a time, date, place or manner of hearing specified under subsection (3) (c).

Recovery of penalties

101 (1) An administrative monetary penalty imposed under this Division may be recovered as a debt due to the government.

(2) If a person fails to pay an administrative monetary penalty as required under this Act, the comptroller may file a certificate in a court that has jurisdiction and, on filing, the certificate has the same force and effect, and all proceedings may be taken on the certificate, as if it were a judgment of the court with which it is filed.

(3) A certificate under subsection (2) must be signed by the comptroller and must contain

(a) the name of the person who is liable for the penalty,

(b) particulars of the administrative monetary penalty, and

(c) the amount of the administrative monetary penalty.

Compliance agreements

102 (1) The comptroller, in accordance with any applicable regulations, may enter into an agreement with a person

(a) after the person has received a notice of intent to impose an administrative monetary penalty and made admissions in respect of one or more of the contraventions or failures in respect of which the notice was sent, or

(b) after the person has received an administrative monetary penalty notice and made admissions in respect of one or more of the contraventions or failures in respect of which the administrative monetary penalty was imposed, but before the date the administrative monetary penalty is due under section 99 (5) [administrative monetary penalties].

(2) An agreement under this section may provide, in accordance with the regulations, for the suspension of the notice of intent or for the reduction or suspension of the penalty, as applicable, subject to the terms and conditions the comptroller considers advisable, including, without limitation,

(a) requiring compliance with this Act, the regulations, an order or the terms and conditions of an authorization, change approval, permit or drilling authorization,

(b) requiring remediation of adverse impacts that resulted from the contravention or failure in respect of which the administrative monetary penalty is imposed, or

(c) if the comptroller considers the adverse impacts referred to in paragraph (b) cannot be remediated, or cannot be fully remediated, requiring compensatory mitigation measures, in place of or supplemental to the remediation of those adverse impacts, on a different part of the stream or aquifer in respect of which the contravention or failure occurred, or with the consent of the person, on a different stream or aquifer.

(3) An agreement under this section must specify the time for performing the terms and conditions, and if the person fails to perform those terms and conditions by the date specified,

(a) if the notice of intent to impose an administrative monetary penalty under section 100 was suspended, the comptroller may deliver an administrative monetary penalty notice under section 99 for the

contraventions or failures in respect of which an admission was made, and the penalty is due and payable upon delivery of the administrative monetary penalty notice, and

(b) if an administrative money penalty was reduced or suspended, the administrative monetary penalty specified in the administrative monetary penalty notice under section 99 for any contraventions or failures in respect of which an admission was made is restored and is due and payable immediately upon a breach of the agreement.

(4) The following decisions are final and may not be appealed to the appeal board:

(a) the comptroller's decision whether to enter into a compliance agreement;

(b) the comptroller's decision as to the terms and conditions of a compliance agreement.

Effect of imposing administrative monetary penalty

103 (1) If the comptroller issues a notice of intent to impose an administrative monetary penalty under section 100 [notice of intent to impose administrative monetary penalty] to a person in respect of a contravention or failure referred to in section 99 (1) [administrative monetary penalties], a prosecution for an offence under this Act in respect of the same contravention or failure may not be brought against the person.

(2) If a corporation

(a) contravenes a provision of this Act or the regulations prescribed under section 99 (1) (a), or

(b) fails to comply with an order or the terms and conditions of an authorization, change approval, permit or drilling authorization, as described under section 99 (1) (b) or (c), as applicable,

an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention or failure is also liable for an administrative monetary penalty whether or not an administrative monetary penalty is assessed against the corporation in relation to the contravention or failure.

Effect of charging offence

104 A person who has been charged with an offence under this Act, unless the charge was commenced by an information laid by a private individual and was later stayed by the Crown, may not be subject to an administrative monetary penalty in respect of the circumstances that gave rise to the charge.

Division 3 — Appeals

Appeals to appeal board

105 (1) Except as otherwise provided in this Act, an order resulting from an exercise of discretion of the comptroller, a water manager or an engineer may be appealed to the appeal board by any of the following:

- (a) the person who is subject to the order;
 - (b) subject to subsection (2), an owner whose land is or is likely to be physically affected by the order;
 - (c) the owner of the works that are the subject of the order;
 - (d) the holder of an authorization, a riparian owner or an applicant for an authorization who considers that his or her rights are or will be prejudiced by the order.
- (2) In the case of the issuance of a drilling authorization, a person whose consent has been given for the purposes of section 62 (4) (c) [drilling authorizations] has no right of appeal unless the order respecting the drilling authorization in respect of which the consent was given is inconsistent with that consent.
- (3) The time limit for a person to commence an appeal is 30 days after the date on which notice of the order being appealed is delivered to the person.
- (4) Subject to this Act, Division 1 of Part 8 of the Environmental Management Act applies to an appeal under this 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, with directions, to the comptroller, water manager or engineer who made the order being appealed,
 - (b) confirm, reverse or vary the order being appealed, or
 - (c) make any order that the person whose order is being appealed could have made and that the board considers appropriate in the circumstances.
- (7) [Repealed 2015-10-192.]

Division 4 — Offences

General offences

106 (1) Section 5 of the Offence Act does not apply to this Act or the regulations.

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

- (a) wilfully hinders or interrupts
 - (i) the holder of an authorization, change approval, permit or drilling authorization, or
 - (ii) a person acting on behalf of a person referred to in subparagraph (i)

in the lawful exercise of a right granted by this Act or the regulations or under an authorization, change approval, permit or drilling authorization;

- (b) without lawful authority,
 - (i) diverts water from a stream or aquifer,

(ii) makes changes in and about a stream,

(iii) wilfully destroys, damages or interferes with the works of an authorization holder, a change approval holder, a person who holds a drilling authorization or a person who is authorized to construct and has constructed works in accordance with the regulations,

(iv) for the purpose of connecting with the works of an authorization holder, lays or causes to be laid a pipe or constructs or causes to be constructed a ditch or other conduit,

(v) constructs, maintains, operates or uses works,

(vi) opens or closes a hydrant used for fire protection, or obstructs free access to or damages a fire hydrant stop cock or fire hydrant accessory, or

(vii) engages in the business of operating works to carry water for others;

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

(d) fails to do anything in accordance with applicable regulations that is required under this Act to be done in accordance with the regulations;

(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, authorization holder, change approval holder or a person acting on behalf of the government of British Columbia or Canada.

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

(a) diverts or uses water contrary to section 6 (1) [use of water] except under section 6 (2), (3) or (4) or an order;

(b) contravenes section 6 (2) (a) [use of water — firefighting] by failing to restore the stream flow to its stream channel;

(c) without holding an authorization to do so, diverts recorded water from an aquifer or a stream for prospecting for a mineral or from a stream for domestic purpose other than essential household use as defined in section 22 (11) [precedence of rights], unless the diversion is authorized by the regulations;

(d) diverts unrecorded water from an aquifer or a stream for prospecting for a mineral or from a stream for domestic purpose other than essential household use, as defined in section 22 (11), when prohibited by regulations under section 135 [regulations closing or restricting access to water source];

(e) diverts or stores water from an aquifer under section 6 (4) [use of water — excluded groundwater users] when that section does not apply to the person by regulation under section 135 or 136 [regulations requiring authorizations for domestic use of groundwater];

(f) diverts, stores or uses water under the regulations when prohibited by a regulation under section 135;

(g) diverts more water than the person is authorized to divert under a licence or use approval;

(h) diverts water for a water use purpose not specified in the person's licence or use approval;

- (i) diverts water when the person is prohibited by the person's authorization from diverting water;
 - (j) constructs, operates or uses works for diverting, storing or using water, which works
 - (i) are not authorized by the person's licence, use approval, change approval, permit or drilling authorization, or by another enactment, or
 - (ii) are not constructed, operated or used in accordance with any applicable regulations;
 - (k) fails to comply with a term or condition of an authorization, change approval, permit or drilling authorization other than an authorization, change approval, permit or drilling authorization in relation to a sensitive stream;
 - (l) fails to provide the information, plans, specifications or reports of assessments at the time directed for the purposes of a 30-year licence review under section 23;
 - (m) fails to provide the information, plans, specifications or reports of assessments directed under section 23 (3);
 - (n) floods Crown land or constructs, operates or maintains works on Crown land without holding a permit or permission under another enactment authorizing the flooding, construction, operation or maintenance;
 - (o) fails to give notice of a conveyance or other disposition of land, a mine or an undertaking as required under section 25 [transfer of authorization, change approval or permit];
 - (p) contravenes section 29 (2) [rights and responsibilities of applicants and holders] by failing to construct, operate, inspect, maintain or repair works as required by that section;
 - (q) fails to ensure that works are deactivated or decommissioned when or as required under section 29 (3);
 - (r) fails to make beneficial use of water diverted by the person.
- (4) A person who does any of the following commits an offence:
- (a) fails to submit a beneficial use declaration at the time directed to do so under section 30 (2) [beneficial use];
 - (b) fails to provide the information or results of a water conservation audit under section 30 (3) or (4);
 - (c) fails to take measures as and when required to do so under section 30 (5);
 - (d) fails to provide information as and when directed under section 30 (6);
 - (e) fails to provide the information or results of a water conservation audit at the time specified in the direction;
 - (f) fails to comply with the terms and conditions on which an abandonment of the person's rights under an authorization is approved under section 31 [abandonment of rights under an authorization];
 - (g) interferes with the works of a licensee, or prevents the licensee from maintaining, operating, using or improving works, located on land owned by the person after the licensee has commenced and is diligently prosecuting expropriation of that land, contrary to section 32 (5) [licensee's right to expropriate land];

- (h) fails to give notice in accordance with section 34 [owner to give notice before interfering with works] before altering, moving, filling in or otherwise interfering with works constructed or used under an authorization;
- (i) fails to take steps to expropriate land when required to do so under section 35 (3) [entry on land in case of urgency];
- (j) fails to jointly construct works or permit joint use of the person's works as required by an order under section 36 [joint construction or use of works may be ordered];
- (k) fails to comply with the terms and conditions of an order for joint use of works under section 36;
- (l) fails to comply with the terms and conditions under which an extension of rights has been authorized under section 37 [power to authorize extension of rights under licence];
- (m) fails to pay amounts owing under section 38 (4) [appointment of water bailiffs] by the person to a water bailiff in the amount or at the time specified under that section;
- (n) contravenes section 46 (1) [prohibition on introducing foreign matter into stream];
- (o) performs an activity in relation to a well, well pump or wellhead for which qualifications are required under this Act without holding the required qualifications;
- (p) fails to comply with section 49 (4) [restrictions on constructing or decommissioning wells and related activities] after penetrating an aquifer;
- (q) fails to comply with the applicable regulations in relation to
- (i) constructing, decommissioning, deactivating or disinfecting a well, or
- (ii) installing, maintaining, repairing, removing or testing a well pump or wellhead, conducting a flow test of a well or disinfecting a well or well pump;
- (r) fails to provide proof of qualifications as required under section 51 (1) or (3) [proof of qualifications and insurance];
- (s) fails to carry the amount of liability insurance required under section 51 (2);
- (t) fails to provide proof of liability insurance as required under section 51 (1) or (3).
- (5) A person who does any of the following commits an offence:
- (a) fails to stop or bring artesian flow under control, or give notice, as and when required under section 52 [controlling artesian flow during construction];
- (b) fails to comply with section 53 [controlling flowing artesian well] by failing to engage a well driller with the required qualifications or a professional, or by failing to ensure that the well driller or professional stops the flow of the artesian well or brings that flow under control;
- (c) fails to secure a well cap or well cover in accordance with section 54 [well caps or well covers] or removes a well cap or well cover other than for an activity referred to in section 54 (3);
- (d) fails to replace a well cap or well cover when required to do so under section 54 (4);

- (e) fails to attach an identification plate to a well or wellhead or to remove an identification plate from a well or wellhead when required to do so under section 55 [well identification];
 - (f) destroys, injures or tampers with an identification plate attached to a well or wellhead;
 - (g) fails to decommission or deactivate a well when required under section 56 [decommissioning or deactivating well];
 - (h) fails to maintain, retain, produce or submit a well report when required to do so under section 57 [well reports];
 - (i) operates a well contrary to section 58 [well operation];
 - (j) performs an activity for which a drilling authorization is required without holding a drilling authorization;
 - (k) contravenes section 59 (1) [prohibition on introducing foreign matter into well];
 - (l) fails to take and cause to be analyzed a groundwater sample when required to do so under section 63 [water analyses for new or altered wells];
 - (m) tampers with a groundwater sample required to be taken under section 63;
 - (n) fails to submit the results of an analysis of groundwater as and when required under section 63;
 - (o) contravenes, other than wilfully, an order of the comptroller, a water manager or an engineer whether given directly or through an officer or a water bailiff;
 - (p) fails to keep information or records required to be kept under section 116 (1) [records and reporting];
 - (q) fails to keep information or records for the prescribed period contrary to section 116 (1);
 - (r) fails to produce records when required under section 116 (2) (a);
 - (s) fails to provide records to a person to whom the records must be provided under section 116 (2) (b);
 - (t) fails to install works, prepare reports or submit reports contrary to section 116 (3);
 - (u) knowingly contravenes section 116 (5).
- (6) 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

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

- (a) fails to comply with a term or condition of an authorization, change approval or permit issued in relation to a sensitive stream or with a term or condition of a drilling authorization imposed for the protection of a sensitive stream;

- (b) constructs a bank-to-bank dam contrary to section 45 [no new dams on protected rivers];
- (c) fails to comply with an order under section 47 (1) or (2) [remediation orders in relation to foreign matter in stream];
- (d) fails to comply with an order under section 60 (1), (2) (3) or (4) [remediation orders in relation to foreign matter in well];
- (e) contravenes a fish population protection order under section 88 [fish population protection orders];
- (f) constructs, places, maintains or makes use of an obstruction in the channel of a stream without authority to do so under this or another enactment;
- (g) drills a well, makes an alteration to a well, installs a well pump or conducts a flow test of a well when the activity is prohibited under this Act;
- (h) interferes with, delays, obstructs or otherwise impedes the comptroller, a water manager, an engineer, an officer or a water bailiff in the performance of a duty or the exercise of a power under this Act;
- (i) wilfully contravenes an order of the comptroller, a water manager or an engineer, whether given directly or through an officer or a water bailiff;
- (j) wilfully interferes with any works in respect of which the comptroller, a water manager, an engineer, an officer or a water bailiff has taken action.

(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 one 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 one year, or both.

Penalty for monetary benefit

108 (1) If a person is convicted of an offence under this Act, the court may increase a fine imposed on the person by an amount equal to the court's estimation of the amount of the monetary benefit acquired by or that accrued to the person as a result of the commission of the offence.

(2) A fine increased under subsection (1)

- (a) applies despite any provision that provides for a maximum fine, and
- (b) is in addition to any other fine under this Act.

Creative sentencing

109 (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 [Habitat Conservation Trust] of the Wildlife Act for inclusion in the trust property as defined in section 118 [definitions] 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) is made, or the Attorney General, may apply for a variation to the court that made the original order.
- (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 a 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 the order;
 - (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 the 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 are a debt due to the government of the person directed to pay and may be recovered by filing a certificate in accordance with section 101 [recovery of penalties] as if the amount and interest were an administrative monetary penalty imposed under section 99 [administrative monetary penalties].

Breach of creative sentencing order

110 (1) A person who contravenes an order under section 109 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 109 was made.

Liability of individuals for offences committed

by a corporation

111 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 prosecuting offence

112 (1) The time limit for laying an information to commence a prosecution for an offence under this Act is as follows:

(a) 3 years after the date on which the act or omission that is alleged to constitute the offence occurred:

(b) if the minister completes a certificate described in subsection (2), 3 years after the date on which the minister learned of the act or omission referred to in paragraph (a).

(2) A certificate purporting to have been issued by the minister, certifying the date referred to in subsection (1) (b), is proof of that date.

Other liabilities remain

113 Subject to sections 103 [effect of imposing administrative penalty] and 104 [effect of charging offence], a proceeding, conviction or penalty for an offence under this Act does not relieve a person from any other liability.

Part 5 — General

Administration

114 (1) The minister may designate a public service employee as the Comptroller of Water Rights to exercise the powers and perform the duties of the Comptroller of Water Rights under this or another enactment.

(2) The minister may designate a public service employee or an employee of a government corporation as a Deputy Comptroller of Water Rights and authorize the employee to exercise the powers and perform the duties of the comptroller that are specified in the designation.

(3) The minister may designate

(a) a public service employee or an employee of a government corporation as a water manager, or

(b) a class of public service employee or a class of employee of a government corporation as water managers, the members of which class are

to exercise the powers and perform the duties of a water manager under this or another enactment.

(4) The minister may designate

(a) a public service employee or an employee of a government corporation as an assistant water manager, or

(b) a class of public service employee or a class of employee of a government corporation as assistant water managers

and authorize the employees or employees in the class to exercise the powers and perform the duties of a water manager as may be restricted in the designation.

(5) The comptroller may designate as an engineer for the purposes of this Act

(a) a public service employee, or

(b) an employee of a government corporation

who is a professional engineer, a professional geoscientist as defined in the Engineers and Geoscientists Act or a holder of limited licence under the Engineers and Geoscientists Act acting within the scope of the limited licence.

(6) The comptroller may designate for the purposes of this Act

(a) a public service employee or an employee of a government corporation as an officer, or

(b) a class of public service employee or a class of employee of a government corporation as officers the members of which class are

to exercise the powers and perform the duties of an officer.

(7) A designation under this section must be in writing.

(8) The comptroller may exercise any power or perform any duty given under this Act to a water manager, an engineer or an officer.

(9) A water manager may exercise any power or perform any duty given under this Act to an engineer or an officer.

Advisory boards

115 (1) The minister may establish advisory boards to provide advice in relation to

(a) establishing water objectives,

(b) methods for determining environmental flow needs or critical environmental flow thresholds,

(c) qualifications of well drillers and well pump installers, and competencies of professionals, as defined in section 48 [definitions for Division 3 of Part 3], generally and in relation to specific activities,

(d) standards and best practices in respect of the diversion and use of water,

(e) standards and best practices in respect of activities in relation to wells and groundwater protection,

(f) standards and best practices in respect of activities in relation to artesian flow,

(g) methods for estimating amounts of water diverted or used, or

(h) any other matter under this Act.

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

(3) A person appointed to an advisory board, may, as directed by the minister,

(a) 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) be paid remuneration in accordance with the directives of Treasury Board unless the person is a public service employee, in which case no remuneration may be paid.

Records and reporting

116 (1) A person must keep for the prescribed period

(a) any information or records required to be obtained, prepared or retained by the person under this Act,

(b) the prescribed information and records, and

(c) any other information or records that the comptroller, a water manager or an engineer directs.

(2) A person who is required under this Act to retain records must

(a) produce those records for inspection when required by the comptroller, a water manager, an engineer, an officer or a water bailiff, and

(b) if the person holds an authorization, change approval, permit or drilling authorization, provide the records referred to in subsection (1) in relation to the authorization, change approval, permit or drilling authorization to a person to whom

(i) the holder transfers, as described in section 25 [transfer of authorization, change approval or permit], the land, mine or undertaking to which the authorization, change approval, permit or drilling authorization is appurtenant, or

(ii) the appurtenancy of the authorization, change approval, permit or drilling authorization is transferred under section 27 [transfer of appurtenancy].

(3) The prescribed persons must, for the purposes of measuring water use, water quantity and water quality,

(a) install the prescribed works,

(b) prepare the prescribed reports, and

(c) submit those reports to the prescribed persons and at the times required by this Act or the regulations.

(4) The comptroller, a water manager or an engineer may collect public personal information and government water records for the purposes of verifying information provided by a person under this Act.

(5) A person must not record, retain or submit false or misleading information

(a) in a record the person is required under this Act to retain, or

(b) in an application, declaration, log or another record the person is required or authorized under this Act to submit to the comptroller, a water manager or an engineer.

Delivery and publication of documents and information

117 (1) Unless specifically provided otherwise, a notice or other document that under this Act must or may be given or delivered to a person may be given or delivered in any of the following manners:

(a) by leaving a copy with the person;

(b) by sending a copy by ordinary mail or registered mail to the address on file with the comptroller for the person or provided to the comptroller for that purpose;

(c) by leaving a copy at the person's residence with an adult who apparently resides with the person or, if the person is a business, by leaving a copy at the address at which the person carries on business with a person apparently employed in the business;

(d) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person carries on a business, for the address at which the person carries on business;

(e) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person carries on a business, at the address at which the person carries on the business;

(f) by fax to a number, or by email to an email address, provided by the person;

(g) by a prescribed means of delivery, subject to any prescribed conditions.

(2) A notice or other document is deemed to have been given or delivered, as applicable, to a person,

(a) if sent by ordinary or registered mail, on the earlier of

(i) the 14th day after the notice or document was deposited with Canada Post, and

(ii) the date on which the notice or document was actually received by the person,

(b) if left or attached as described in subsection (1) (c), (d) or (e), on the earlier of

(i) the 3rd day after the notice or document is left or attached, as applicable, and

(ii) the date on which the notice or document was actually received by the person,

(c) if faxed or emailed, on the earlier of

(i) the 3rd day after the notice or document is faxed or emailed, as applicable, and

(ii) the date on which the notice or document was actually received by the person,

(d) if given by publication in a newspaper, unless a contrary intention appears, the day after the date of the last publication of the notice or document, and

(e) if given by a prescribed means of delivery, at the prescribed time.

(3) Anything that under this Act may or must be published, unless a contrary intention appears in the provision authorizing or requiring publication, may be published inside and outside Canada by posting on a publicly available website or by any other manner that ensures accessibility to the public.

(4) Despite subsection (3), if anything authorized or required to be published under this Act contains personal information that was collected otherwise than directly from the person to whom the personal information relates, that personal information must not be published unless that person

(a) was given notice that the personal information was collected, and

(b) has consented to the publication.

Fees, rentals and charges

118 (1) The prescribed fees, rentals and charges

(a) must be paid to the comptroller by

(i) an applicant or other person who makes an application under this Act,

(ii) a person holding an authorization, change approval, permit or drilling authorization, and

(iii) a person who diverts or uses water from a stream or aquifer, and

(b) on and after the due date of the fee, rental or charge, and any interest or penalties imposed on the fee, rental or charge, may be recovered by the comptroller in accordance with section 101 [recovery of penalties] as if the fees, rentals and charges, and any interest or penalties imposed, were an administrative monetary penalty imposed under section 99 [administrative monetary penalties].

(2) A person who fails to pay a fee, rental or charge when due is liable to pay to the comptroller interest at the prescribed rate and any prescribed penalties on the outstanding amount.

(3) In accordance with any applicable regulations, the comptroller must establish the times of payment of fees, rentals and charges in respect of an authorization, change approval, permit or drilling authorization.

(4) The comptroller may authorize in writing a person or class of person employed by the government or a government corporation to perform the duties and exercise the powers of the comptroller in respect of

(a) the calculation, 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 fee, rental or charge in respect of an authorization, change approval or permit does not prevent or delay its cancellation on any ground except failure to pay the fees, rentals or charges.

Protection of officials

119 (1) Subject to subsection (2), no legal proceedings for damages lies or may be commenced or maintained against the comptroller, a water manager, an engineer, an officer, a registrar, a water bailiff or a person authorized under section 18 (7) [quick licensing procedures] for anything done or omitted

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

(b) in the exercise or intended exercise of any power under this or another enactment.

(2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by the person in bad faith.

(3) Subsection (1) does not absolve the government from vicarious liability arising out of anything done or omitted by a person referred to in that subsection for and for which the government would be vicariously liable if this section were not in force.

Restriction on proceedings respecting decisions under Act

120 Except as otherwise provided in this Act or on a question of law,

(a) a hearing, investigation or proceeding of the comptroller, a water manager, an engineer, an officer or a water bailiff must not be questioned, reviewed or restrained by any process or proceeding in any court, and

(b) an order of the Lieutenant Governor in Council, the minister, the comptroller, a water manager or an engineer is final and must not be questioned, reviewed or restrained by any process or proceeding in any court.

No compensation

121 (1) Except as otherwise provided in this Act or by regulation, no compensation is payable by, and no legal proceedings may be commenced or maintained against, the government or any other person for or in relation to loss or damages arising from an effect on

- (a) an application under this or another enactment,
- (b) rights under a licence or use approval,
- (c) permission given under a change approval, permit, drilling authorization or order,
- (d) permission given under another enactment,
- (e) resource rights conferred by Crown grant, or
- (f) rights and privileges in relation to land and resources

resulting under the provisions of this Act, the regulations or an order from any of the following:

- (g) a change in precedence of water rights;
 - (h) a restriction or prohibition on the exercise of rights or a permission provided under this Act or a former Act;
 - (i) a restriction or prohibition on an application, or the exercise of rights, under another enactment;
 - (j) a restriction or prohibition on the exercise of a private right or privilege in relation to land or resources;
 - (k) a restriction or prohibition on the transfer of an appurtenancy or the amendment of an authorization, change approval or permit;
 - (l) a change of or the imposition of new terms and conditions on an authorization, change approval, permit or drilling authorization.
- (2) For certainty, except as provided by regulation, no expropriation or injurious affection occurs as the result of this Act or a regulation or the exercise of a power or performance of a duty under this Act.

Liability of owner for damage remains

122 The abandonment, suspension, termination or cancellation of all or part of the rights held under an authorization or change approval, or all or part of the permission held under a change approval, permit or drilling authorization, does not relieve any of the following persons of liability for damage resulting from the works owned, operated or maintained by the person, or from a defect, insufficiency or failure of those works:

- (a) the owner of the land, mine or undertaking to which the authorization, change approval, permit or drilling authorization is or was appurtenant;
- (b) the holder or former holder, as applicable, of the authorization, change approval, permit or drilling authorization.

Authorization or permit as evidence

123 The production of an order, licence, use approval, change approval, permit or drilling authorization 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 order, licence, use approval, change approval, permit or drilling authorization.

Part 6 — Regulations

Division 1 — General Regulation-Making Powers

General regulation-making powers

124 (1) For the purpose of making regulations authorized under this Act to be made by the Lieutenant Governor in Council, the Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act.

(2) For the purposes of making regulations authorized under this Act to be made by the minister, the minister may make regulations referred to in section 41 of the Interpretation Act.

(3) The authority under another provision of this Act to make regulations does not limit subsection (1) or (2).

(4) A regulation of the Lieutenant Governor in Council or the minister under this Act may do one or more of the following:

(a) specify who is responsible for meeting a prescribed requirement;

(b) exempt from a requirement of this Act or the regulations, on specified terms and conditions, in specified circumstances or at specified times, a person, including the Crown, an entity, an activity, a stream, an aquifer, an area, a water sustainability plan, a water use purpose, an authorization, a change approval, a permit, a drilling authorization, a watershed, a natural resource, a work, a contaminant, a matter or a substance;

(c) make different regulations for different classes of water, persons, entities, activities, streams, aquifers, areas, water sustainability plans, water use purposes, circumstances, authorizations, change approvals, permits, drilling authorizations, appurtenances, times or periods of time, watersheds, natural resources, works, contaminants, matters or substances, and establish classes for that purpose;

(d) designate an area by any method that adequately describes the area, including, without limitation, by name, map, plan or legal description or by reference to a stream, watershed, aquifer or other geological formation, part of a geological formation or depth or other dimension of a geological formation, or by any combination of these methods;

(e) require a person to engage a person with prescribed qualifications to perform audits, studies and assessments and make reports required under this Act;

(f) establish criteria for audits, studies, assessments, including methods of assessment, and reports referred to in paragraph (e);

(g) confer a discretion or delegate a matter to the comptroller, a water manager, an engineer, an officer or a person in a class of official prescribed for the purposes of section 126 (1) (c) [regulations respecting administration and governance];

- (h) provide that the contravention of a regulation is an offence;
- (i) prescribe for a contravention of a regulation, as the Lieutenant Governor in Council or minister, as applicable, considers appropriate,
 - (i) a penalty not exceeding the penalty authorized under section 106 (6) [general offences], or
 - (ii) a penalty not exceeding the penalty authorized under section 107 (2) [high penalty offences].
- (5) The Lieutenant Governor in Council may make regulations
 - (a) defining words or phrases used but not defined in this Act, and
 - (b) respecting any matter for which regulations, other than regulations of the minister, are contemplated by this Act.
- (6) Regulations made under this Act 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 public officers that the Lieutenant Governor in Council considers necessary for the public officer to administer the codes or standards adopted, and
 - (c) exempt persons from all or part of the codes or standards adopted.

Division 2 — Lieutenant Governor in Council Regulations

Fees, rentals and charges

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

- (a) in respect of applications, authorizations, change approvals, permits, drilling authorizations and other things filed, applied for, taken or issued under this or a former Act,
 - (b) for services provided by the government in respect of matters listed in paragraph (a), and
 - (c) in respect of water diverted or used from a stream or an aquifer, whether diverted or used under authority of an authorization, a change approval, the regulations or a special or private Act, or without authority.
- (2) Regulations under this section may
- (a) establish the times of payment of fees, rentals and charges,
 - (b) make fees, rentals and charges that are not paid when due subject to the imposition of interest at prescribed rates, and

(c) establish penalties that must be applied in relation to a fee, rental or charge paid after the date the fee, rental or charge was due.

(3) Interest and penalties imposed on a fee, rental or charge are conclusively deemed to be part of the fee, rental or charge.

(4) A fee, rental or charge may be made retroactive to the extent of making the fee, rental or charge applicable from the beginning of the year in which the fee, rental or charge is established.

Regulations respecting administration and governance

126 The Lieutenant Governor in Council may make regulations as follows:

(a) dividing British Columbia into water districts;

(b) prescribing additional powers and duties of the comptroller, water managers, engineers and officers administering this Act;

(c) establishing other classes of officials for the purposes of this Act and

(i) providing members of a class of official established under this paragraph with powers, duties and immunities under this Act by specifying the provisions of this Act and the regulations that apply in relation to the class, and

(ii) prescribing additional powers and duties to members of a class established under this paragraph;

(d) providing specified powers and duties of the comptroller, a water manager, an engineer or an officer to another person or entity who is to exercise those powers and perform those duties instead of the comptroller, water manager, engineer or officer in relation to persons, areas or circumstances specified in the regulation, subject to the terms and conditions the Lieutenant Governor in Council considers advisable, including, without limitation, the following regulations:

(i) requiring the specified person or entity to exercise the specified powers and perform the specified duties in accordance with this Act and the regulations;

(ii) making the exercise of the specified powers and the performance of the specified duties subject to limitations and restrictions specified in the regulations and requiring that specified powers be exercised or specified duties be performed in accordance with prescribed procedures and following prescribed practices;

(iii) in relation to enforcement of this Act and the regulations and the terms and conditions of authorizations, change approvals, permits, drilling authorizations or orders, issued or made by the specified person or entity and authorizing both the specified person or entity and the public officers responsible for those powers and duties under this Act to take enforcement action in accordance with this Act;

(iv) requiring a person who makes a decision under a power provided by regulation under this paragraph to report the decision and the reasons for the decision to the comptroller and include the information respecting the decision the comptroller specifies;

(v) providing for appeals to the appeal board of orders made by a person authorized by regulations under this paragraph if the order would have been appealable had the order been made by the comptroller, a water manager or an engineer;

(e) subject to section 117 (4) [delivery and publication of documents and information], authorizing or requiring the comptroller to publish

(i) applications under section 12 [application and decision maker initiative procedures] and any information, audit or report provided or obtained for the purpose of the application,

(ii) authorizations, change approvals, permits and drilling authorizations,

(iii) orders and reasons for orders made under this Act, or

(iv) reports or summaries of reports received under this Act.

Regulations respecting licensing, diversion and use of water and related matters

127 (1) The Lieutenant Governor in Council may make regulations for the purposes of Part 2 [Licensing, Diversion and Use of Water] as follows:

(a) respecting the requirements that must be met in relation to applications under this Act, including, without limitation,

(i) the information that must be provided and the form and manner in which the information must be provided, and

(ii) prescribing methods, other than those specified in section 117 (1) [delivery and publication of documents and information], of giving notice of applications;

(b) respecting beneficial use of water, including, without limitation, prescribing requirements in respect of the best available technology for water use efficiency and water conservation;

(c) respecting water conservation audits, including, without limitation, practices, procedures and matters to be considered;

(d) respecting date of first use, including, without limitation, the evidence that must be provided to a decision maker for the purposes of determining a person's date of first use;

(e) respecting the diversion and use of recorded or unrecorded water for livestock watering, including, without limitation,

(i) governing when such diversion is permitted, including respecting beginning, continuing or stopping the diversion or use,

(ii) the duties of persons diverting or using water,

(iii) the manner in which water may be diverted or used,

(iv) the works that may be used to divert water,

(v) the maximum quantity of water that may be diverted or used, and

(vi) establishing terms and conditions of the diversion or use of water;

- (f) respecting the diversion and use of recorded or unrecorded water for extinguishing fires or for a specified water use purpose related to a fire or another emergency, including, without limitation,
 - (i) governing when such diversion is permitted, including respecting beginning, continuing or stopping the diversion or use,
 - (ii) the duties of persons diverting water,
 - (iii) the manner in which water may be diverted or used,
 - (iv) the works that may be used to divert water,
 - (v) the maximum quantity of water that may be diverted or used, and
 - (vi) establishing terms and conditions on the diversion or use of water;
- (g) authorizing the minister, if the minister is satisfied that an emergency is imminent, is occurring or has occurred, to make orders authorizing the diversion and use of water as the minister considers necessary or advisable for the purposes of addressing the emergency;
- (h) limiting the number of dwellings on a single parcel that may be provided with water for domestic purpose;
 - (i) respecting the diversion and use, including storage, of recorded or unrecorded water from an aquifer for domestic purpose, including, without limitation,
 - (i) governing when such diversion or use is permitted, including respecting beginning, continuing or stopping the diversion or use,
 - (ii) the duties of persons diverting water,
 - (iii) the manner in which water may be diverted or used,
 - (iv) the works that may be used to divert or use water,
 - (v) the maximum quantity of water that may be diverted or used, and
 - (vi) establishing terms and conditions on the diversion or use of water;
 - (j) excluding specified activities from the definition of "farm use" in section 1 (1) [definitions];
- (k) designating the uses of water for the purpose of the definition of "industrial purpose" in section 2 [water use purposes];
 - (l) respecting use approvals, including, without limitation,
 - (i) limiting the quantity of water that may be diverted under a use approval,
 - (ii) restricting the water use purposes for which a use approval may be issued,
 - (iii) restricting the works that may be constructed, operated or used under a use approval, and
 - (iv) imposing duties on persons who divert or use water under a use approval;
 - (m) respecting the starting, continuation or stopping under a change approval of any activity that causes or allows to be caused any changes in and about a stream;

(n) respecting the duties of persons who undertake any works or changes in and about a stream under an authorization or change approval;

(o) respecting environmental flow needs, including, without limitation, prescribing methods of determining the environmental flow needs of a stream;

(p) respecting critical environmental flow thresholds, including, without limitation, prescribing methods of determining the critical environmental flow threshold of a stream;

(q) respecting security, including, without limitation,

(i) the type of security that is acceptable or unacceptable,

(ii) the form and content of acceptable security,

(iii) the circumstances in which security may be realized, and

(iv) the payment of interest on security;

(r) respecting licences and issuance of licences;

(s) requiring that specified flow restriction devices be installed and used by a person diverting water from a stream or an aquifer and restricting the size and type of works that may be used for that purpose;

(t) respecting the issue of permits authorizing the occupation of Crown land and the terms and conditions of those permits;

(u) respecting the procedure to be followed in expropriating land, 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;

(v) for the purposes of section 6 (1) (b) [use of water under the regulations], authorizing the diversion or use of water, subject to prescribed terms and conditions, by persons who would otherwise require an authorization or permit for the diversion or use.

(2) The Lieutenant Governor in Council may make regulations authorizing a person or entity to divert or use, including store, unrecorded water for a period of up to 24 months without holding an authorization authorizing the diversion or use, including, without limitation, the following regulations:

(a) requiring notice to the comptroller or a water manager and specifying when notice must be given and the required content of the notice;

(b) respecting the duties of a person or entity that diverts or uses water;

(c) applying provisions of this Act or the regulations in relation to the diversion or use of water;

(d) prescribing the water use purposes for which water may be diverted or used;

(e) respecting the works that may be used to divert or use water;

(f) respecting the timing and circumstances in which the person or entity may start or continue, or must stop, diverting or using water;

(g) prescribing the maximum quantity of water that may be diverted or used;

(h) imposing terms and conditions on the diversion or use of water.

(3) The Lieutenant Governor in Council may make regulations authorizing a person to make changes in and about a stream without holding an authorization or change approval authorizing the changes in and about the stream, including, without limitation, the following regulations:

- (a) requiring notice to the comptroller or a water manager and specifying when notice must be given and the required content of the notice;
- (b) establishing requirements, procedures and standards applicable to persons who undertake any works or changes in and about a stream;
- (c) respecting the timing and circumstances in which the person or entity may start or continue, or must stop, any activity that causes, directly or indirectly, changes in and about a stream;
- (d) prescribing the maximum quantity of water that may be diverted or used, including stored, in making changes in and about a stream.

Regulations respecting sensitive streams

128 (1) The Lieutenant Governor in Council may make regulations respecting sensitive streams, including, without limitation, regulations

- (a) designating a stream, including specified tributaries and specified aquifers the Lieutenant Governor in Council considers are reasonably likely to be connected to the stream or a tributary of the stream, as a sensitive stream if the Lieutenant Governor in Council considers the designation will contribute to the protection of a fish population whose sustainability is at risk because of damage to the aquatic ecosystem of the stream,
- (b) prescribing the plans, specifications, reports of assessments or other information that must be provided by an applicant for an authorization, a change approval or an amendment to an authorization or change approval in relation to a sensitive stream,
- (c) establishing criteria that a decision maker must apply in making a decision on an application for an authorization, a change approval or an amendment to an authorization or change approval in relation to a sensitive stream, and
- (d) prescribing terms and conditions that apply to an authorization or change approval in relation to a sensitive stream, including, without limitation, terms and conditions respecting
 - (i) mitigation measures,
 - (ii) diversion and use of water, and
 - (iii) monitoring and reporting.

(2) A regulation designating a sensitive stream may be repealed only if the Lieutenant Governor in Council is satisfied that

- (a) the sustainability of the protected fish population is no longer at risk,
- (b) the implementation of a water sustainability plan will reduce the risk to the protected fish population so that the designation is no longer required, or

(c) removal of the designation is in the public interest.

Regulations respecting streams and stream protection

129 (1) The Lieutenant Governor in Council may make regulations

(a) amending the Schedule to designate a stream as a protected river,

(b) prescribing for the purposes of section 46 (2) [prohibition on introducing foreign matter into stream] other activities, practices or substances, including activities or practices to which this or another enactment applies,

(c) establishing requirements, procedures, standards or codes in respect of the use, construction, operation, maintenance, alteration, abandonment, deactivation, decommissioning or inspection of works, and

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

(2) A stream designated by regulation under subsection (1) remains a protected river until the Schedule is amended by an Act to delete the stream from the Schedule.

Regulations respecting groundwater and groundwater works

130 (1) The Lieutenant Governor in Council may make regulations for the purposes of Division 3 [Wells and Groundwater Protection] of Part 3 [Protecting Water Resources], including, without limitation, the following regulations:

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

(b) respecting well drillers, well pump installers and professionals, as defined in section 48 (1) [definitions], including, without limitation,

(i) establishing the qualifications that well drillers and well pump installers are required to have to perform or supervise specified activities, and

(ii) requiring well drillers, well pump installers or professionals to carry not less than a prescribed amount of liability insurance;

(c) 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) deactivating or decommissioning wells;

- (vi) conducting flow tests of wells;
- (vii) works, including the design, construction, installation, testing, operation, alteration, maintenance, repair, disinfection, removal or replacement of works relating to the use, testing or monitoring of wells and groundwater;
- (viii) stopping or controlling the flow of flowing artesian wells;
- (ix) 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 groundwater to establish requirements, procedures, standards or codes;
- (d) respecting the identification of 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;
- (e) 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 decommissioned;
- (f) specifying the circumstances in which a well is considered not to be in service;
- (g) establishing a register of well drillers or well pump installers who are qualified in respect of specified matters, including, without limitation,
 - (i) specifying the person responsible for the register,
 - (ii) specifying the information, which may include contact information, that well drillers or well pump installers must provide to that person, and
 - (iii) requiring that the register be published;
- (h) establishing requirements for the protection of aquifers from activities that are capable of causing a significant adverse impact on
 - (i) the quality of groundwater in an aquifer, water in a stream that is recharged by the aquifer or groundwater in a well that draws from the aquifer, or
 - (ii) the existing uses made of groundwater from any well that draws from that aquifer or water in a stream that is recharged by that aquifer;
- (i) prescribing matters or substances for the purposes of section 59 (1) (f) or [prohibition on introducing foreign matter into well];
- (j) authorizing individual variations on requirements, procedures, standards or codes established under paragraph (c) on application to a prescribed official;
- (k) respecting well reports and logs, including, without limitation, specifying
 - (i) the records 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;
- (1) specifying the circumstances in which logs, records and reports respecting wells must be kept and produced, and the period for which they must be retained.

(2) The Lieutenant Governor in Council may make regulations respecting sampling and analyzing groundwater for new or altered wells, including, without limitation, the following regulations:

- (a) specifying the class of laboratory that may carry out the analyses;
- (b) specifying the nature or the parameters of the analyses;
- (c) prescribing alterations, activities or circumstances for the purposes of section 63 (1) [water analyses for new or altered wells];
- (d) specifying requirements for the timing, collection, quality, storage, handling and transportation of groundwater samples;
- (e) specifying the purpose, timing and technical requirements for groundwater sample analyses;
- (f) specifying the content, frequency and timing of reports and the method and form used for reporting relating to groundwater sampling and analyses.

Regulations respecting measuring, testing and reporting

131 (1) The Lieutenant Governor in Council may make regulations requiring measurement and testing in relation to the diversion or use of water under this Act, including, without limitation, the following regulations:

- (a) requiring specified persons who are diverting or using water under this Act to install or use specified works for the purposes of measuring, monitoring and testing the quality or quantity of water diverted and the quality or quantity of water available for diversion and use;
- (b) requiring specified persons who are diverting or using water under this Act to calculate the quantity of water diverted or used in accordance with a prescribed formula;
- (c) respecting the installation, operation, maintenance or use of works described in paragraph (a);
- (d) requiring persons described in paragraph (a) to measure the quantities of water diverted or used for a water use purpose;
- (e) requiring persons described in paragraph (a) or (b) to test for specified parameters water in a stream or aquifer or water diverted or used from a stream or aquifer;
- (f) prescribing methods and standards for specified measurements, calculations or tests;
- (g) specifying the manner and frequency of testing or calculating.

(2) The Lieutenant Governor in Council may make regulations respecting records and reporting by persons who are diverting or using water under this Act, including, without limitation, the following regulations:

- (a) prescribing the records and the information the records must contain that must be retained by a person who is diverting or using water under this Act, and the period for which the records must be retained;
- (b) prescribing reports a person who is diverting or using water under this Act must prepare or have prepared;
- (c) prescribing the records, the information the records must contain and the reports that must be submitted, to whom the records and reports must be submitted and the manner and time of submission;
- (d) authorizing or requiring a person to whom a record or report must be submitted under the regulation to publish the record or report;
- (e) requiring that records be kept and submissions be made in a form approved by the comptroller.

Regulations respecting water sustainability plans

132 The Lieutenant Governor in Council may make regulations for the purposes of Division 4 [Water Sustainability Plans] of Part 3 [Protecting Water Resources] respecting the preparation of proposed water sustainability plans, as follows:

- (a) setting minimum requirements for the organizational structure supporting the development of a proposed plan, including, without limitation, steering committees, planning teams and technical advisory committees;
- (b) setting minimum requirements for public and stakeholder communications and consultations in relation to the development of a proposed plan;
- (c) setting requirements for notification of potentially affected persons under section 71 [notice to affected persons].

Regulations respecting administrative penalties

133 The Lieutenant Governor in Council may make regulations for the purposes of Division 2 [Administrative Penalties] of Part 4 [Enforcement] as follows:

- (a) prescribing provisions of this Act and the regulations in relation to the contravention of which an administrative monetary penalty may be imposed;
- (b) prescribing
 - (i) a schedule of administrative monetary penalties that may be imposed and any additional matters that must be considered by the comptroller in establishing the amount of an administrative monetary penalty, or
 - (ii) a maximum or minimum amount of an administrative monetary penalty that may be imposed generally, or for specified contraventions or failures, or the manner of calculating those amounts;

- (c) prescribing a limitation period for imposing an administrative monetary penalty and evidentiary matters in relation to that period;
- (d) prescribing procedures to be applied by the comptroller in making a determination of contravention or non-compliance;
- (e) authorizing administrative monetary penalties to be imposed on a daily basis for continuing contraventions or failures;
- (f) prohibiting the comptroller from serving an administrative monetary penalty notice on a person who has demonstrated to the satisfaction of the comptroller that the person exercised due diligence to prevent the specified contravention or failure;
- (g) respecting the time limit, manner and process for paying an administrative monetary penalty;
- (h) prescribing the consequences of failing to pay an administrative monetary penalty which may include, but are not limited to, imposing additional administrative monetary penalties;
- (i) authorizing or requiring the comptroller to publish compliance agreements;
- (j) respecting compliance agreements.

Regulations respecting compensation

134 The Lieutenant Governor in Council may make regulations for the purposes of section 121 [no compensation] respecting the payment of compensation by the government, including, without limitation,

- (a) respecting circumstances in which compensation may be payable or must not be paid to a person by the government,
- (b) providing for applications for compensation and prescribing the information that must be provided in an application for compensation, which may include, but is not limited to, information respecting and proof of loss or damage,
- (c) respecting the assessment of loss or damage and the matters in respect of which compensation may be paid,
- (d) respecting the calculation of compensation, including, without limitation, prescribing methods of evaluating loss or damage and maximum amounts of compensation that may be paid,
- (e) respecting the manner and timing of paying compensation,
- (f) requiring that disputes in respect of compensation be resolved in a prescribed manner or using a prescribed method, including by specifying a person or tribunal who may hear and decide disputes, and
- (g) providing that decisions in relation to the payment of compensation by the government or of specified persons or tribunals are final and prohibiting appeals in relation to such decisions.

Regulations closing or restricting access to water source

135 (1) In this section:

"eligible applicant",

(a) in respect of a water reservation under section 39 [water reservations], means a person authorized under section 39 (4) (a), (b) or (d) in relation to the water reserved,

(b) in respect of a water reservation under section 40 [treaty first nation water reservations], means a person authorized by the applicable treaty first nation to acquire rights to the water reserved, and

(c) in respect of a water reservation under section 41 [Nisga'a water reservation], means a person authorized by the Nisga'a Nation to acquire rights to the water reserved;

"new authorization" does not include

(a) an amendment of an existing authorization under section 26 [amendment or substitution of authorization, change approval or permit],

(b) a transfer of appurtenancy in relation to an existing authorization under section 27 [transfer of appurtenancy],

(c) an apportionment of rights under an existing licence under section 28 [apportionment of rights under licences], and

(d) a partial abandonment of rights under an existing authorization under section 31 [abandonment of rights under an authorization].

(2) Subject to subsection (3), if the Lieutenant Governor in Council considers that there is not sufficient unrecorded water in a specified stream or aquifer to warrant the issuance of any new authorizations in relation to the stream or aquifer, or if recommended in a water sustainability plan, the Lieutenant Governor in Council may make regulations

(a) prohibiting the comptroller and the water managers from accepting or considering applications for new authorizations in relation to the stream or aquifer, or

(b) restricting the applications that may be accepted or considered by the comptroller and the water managers in relation to the stream or aquifer.

(3) A regulation under subsection (2) may not prohibit the comptroller and the water managers from accepting or considering applications for new authorizations in relation to a specified aquifer from

(a) a person to whom a regulation under section 136 (2) applies in relation to the aquifer,

(b) a person to whom a regulation under section 140 (1) [transition — groundwater licensing] applies in relation to that aquifer,

(c) a person to whom section 25 (4) [transition — unlicensed registrants] of the Water Protection Act applies in relation to that aquifer, or

(d) a person who, at the time the regulation under subsection (2) comes into force, has drilled a well into that aquifer to divert water for domestic purpose but, at that time

(i) the well is not yet in use, and

(ii) the well owner is not yet required under section 56 [decommissioning or deactivating well] to decommission the well.

(4) A regulation under subsection (2) may not prohibit the comptroller and the water managers from accepting or considering applications for new authorizations

(a) from an eligible applicant for water reserved under section 39, 40 or 41, or

(b) for dedicated agricultural water for a qualifying agricultural use on qualifying agricultural land.

(5) A regulation under subsection (2) in relation to a specified stream may also do either or both of the following:

(a) prohibit or restrict the diversion or use of water from the stream under section 6 (1) (b) [use of water under the regulations];

(b) provide that section 6 (3) [use of water — at sufferance] applies only to a person who, before the date on which the regulation takes effect, has diverted water from the stream under that provision.

(6) A regulation under subsection (2) in relation to a specified aquifer may also do one or more of the following:

(a) prohibit or restrict the diversion or use of water from the aquifer under section 6 (1) (b);

(b) prohibit or restrict the drilling of wells for the purpose of diverting water from that aquifer;

(c) provide that section 6 (4) [use of water — excluded groundwater users] applies only to one or more of the following:

(i) a person who is diverting water from that aquifer under that section immediately before the date on which the regulation comes into force;

(ii) a person who, before the date on which the regulation comes into force, drilled a well for the purpose of diverting water from that aquifer for domestic purpose but on the date on which the regulations comes into force

(A) the well is not yet in use, and

(B) the well owner is not yet required under section 56 to decommission the well.

(7) A regulation under this section applies despite any other provision of this Act or the regulations.

Regulations requiring authorizations for domestic use of groundwater

136 (1) The Lieutenant Governor in Council may make regulations providing that section 6 (4) [use of water — excluded groundwater users] does not apply in relation to a specified aquifer or the aquifers in a specified area

(a) if the Lieutenant Governor in Council considers that the regulation is warranted to protect the specified aquifer, a specified stream the Lieutenant Governor in Council considers is reasonably likely to be hydraulically connected to the aquifer or the aquifers in the specified area, or

(b) if recommended in a water sustainability plan.

(2) A regulation under subsection (1) must contain transitional provisions in respect of persons who, on the date on which the regulation comes into force, are diverting, storing or using water from the specified aquifer or an aquifer in the specified area in the quantity and for the purposes described in section 6 (4), permitting those persons to continue to divert, store and use water from that aquifer in that quantity and for that purpose,

(a) subject to any requirements, restrictions and conditions set out in the regulation, and

(b) until,

(i) if the person applies for an authorization on or before the date that applies to the person by regulations under subsection (1), the date an authorization is issued to the person, and

(ii) if the person fails to apply for an authorization on or before the date that applies to the person by regulations under subsection (2), that date.

(3) Despite sections 12 [application and decision maker initiative procedures], 13 [objections to applications and decision maker initiatives], 14 [powers respecting applications and decision maker initiatives], 17 [sensitive stream mitigation] and 18 [quick licensing procedures], a regulation under subsection (1) of this subsection may

(a) establish application procedures and requirements for persons described in subsection (2),

(b) establish, for the purposes of section 22 [precedence of rights], the method for determining precedence of an authorization issued to a person described in subsection (2), and

(c) provide for the application of the provisions of Part 2 [Licensing, Diversion and Use of Water] to persons described in subsection (2) at different times for different areas or aquifers.

(4) Despite any effect on the precedence of the rights under authorizations in effect on the date a person is issued an authorization in accordance with regulations under this section, the method for determining the precedence date of an authorization for the purposes of subsection (3) may provide for the rights under the authorization to have precedence from the person's date of first use of water from the aquifer.

(5) On and after the date a regulation under subsection (1) provides that section 6 (4) does not apply in relation to an aquifer, a person diverting water under section 6 (4) from the aquifer is liable for the applicable fees, rentals or charges for the water diverted and used by the person as if an authorization were issued to the person on that date.

Division 3 — Minister's Regulations

Minister's regulations restricting groundwater activities

137 (1) The minister, by regulation applicable to an area designated in the regulation, may restrict one or more of the following or may impose requirements on a person doing one or more of the following:

(a) constructing wells;

(b) installing well pumps;

(c) conducting flow tests;

(d) another activity in relation to a well or groundwater.

(2) Without limiting subsection (1), a restriction in a regulation under that subsection may require that a person hold a drilling authorization in order to carry out one or more of the activities referred to in section 62 (1) [drilling authorizations].

(3) A regulation under subsection (1) must set out the purpose of the regulation.

Part 7 — Transitional Provisions

Transition — power purposes

138 (1) A person who, on the date section 19 [licences for power purposes] of this Act comes into force, holds a licence issued under section 12.2 [licences for power purposes] of the Water Act may apply to the comptroller or a water manager, within one year after that date, for an extension of the term of the licence of up to 10 years to account for any project development term, as defined in section 19, that occurred under the licence.

(2) Section 19 (6) does not apply in relation to an application authorized under subsection (1) of this section.

Transition — water use purposes

139 (1) On and after the date section 2 [water use purposes] comes into force, a reference in a licence issued under a former Act authorizing the use of water for an industrial — oil field injection purpose is conclusively deemed to be a reference to an oil and gas purpose.

(2) On and after the date section 2 comes into force, a reference in a licence issued under a former Act authorizing the use of water for a mineral trading purpose is conclusively deemed to be a reference to a mineralized water purpose.

(3) On and after the date section 2 comes into force, a reference in a licence issued under a former Act authorizing the use of water for a river improvement purpose is conclusively deemed to be a reference to the applicable industrial purpose established by regulations.

Transition — groundwater licensing

140 (1) Despite section 6 (1) [use of water], a person who, on the date section 6 comes into force, is diverting or using, including storing, water, other than as described in section 6 (4) [use of water — excluded groundwater users], from an aquifer for a water use purpose may continue to divert, store and use water from that aquifer for that purpose as follows:

(a) if the person applies for an authorization on or before the date that applies to the person by regulations under subsection (2) (c), until the date a decision is made on the application;

(b) if the person fails to apply for an authorization on or before the date that applies to the person by regulations under subsection (2) (c), until that date.

(2) Despite sections 12 [application and decision maker initiative procedures], 13 [objections to applications and decision maker initiatives], 14 [powers respecting applications and decision maker initiatives], 17 [sensitive stream mitigation], 18 [quick licensing procedures] and 22 [precedence of rights], the Lieutenant Governor in Council may make regulations

(a) establishing application procedures and requirements for persons described in subsection (1),

(b) establishing for the purposes of section 22 the method for determining the precedence date of an authorization issued to a person described in subsection (1) (a), and

(c) providing for the application of the provisions of Part 2 [Licensing, Diversion and Use of Water] to persons described in subsection (1) at different times for different areas, aquifers, water use purposes or quantities of water diverted.

(3) Despite any effect on the precedence of the rights under authorizations in effect on the date a person is issued an authorization in accordance with regulations under this section, the method for determining the precedence date of an authorization for the purposes of subsection (2) may provide for the rights under the authorization to have precedence from the person's date of first use for a specified water use purpose of a specified amount of water from the aquifer.

(4) On and after the date a regulation under subsection (2) (c) applies Part 2 to a person, the person is liable for the applicable fees, rentals or charges for the water diverted from the aquifer and used by the person as if an authorization were issued to the person on that date.

Transition — section 39 water reservations

141 For the purposes of section 39 (4) (a) and (b) [water reservations] of this Act, if a water reservation under section 44 [reservation of water] of the Water Act did not specify a person or organization for whose benefit a reservation for the purpose of allowing an investigation into the suitability of a stream or aquifer for any water use purpose or for the purpose of a proposed waterworks, irrigation or power system or project,

(a) the comptroller must specify the person for whose benefit the reservation was established, and

(b) on being specified by the comptroller under paragraph (a), the person is conclusively deemed to have been specified for the purpose of section 39 (1) (a) or (b), as applicable, of this Act in the order establishing the reservation.

Transition — water sustainability plans

142 (1) A water management plan approved under section 64 (3) [approval of water management plan] of the Water Act, as it read immediately before the coming into force of this section, is deemed to be a water sustainability plan for the purposes of this Act.

(2) Section 75 [acceptance of plan] of this Act applies to a proposed water management plan that, on the date this section comes into force, has been submitted to the minister, but has not been approved or

rejected by the minister, under section 64 of the Water Act, as it read immediately before the coming into force of this section, as if the proposed water management plan were a proposed water sustainability plan submitted to the minister under section 74 (1) [submission of proposed plan to minister] of this Act.

Part 8 — Consequential and Related Amendments

Consequential and Related Amendments

[Note: See Table of Legislative Changes for the status of sections 143 to 218.]

Section(s)	Affected Act
143	Agricultural Land Commission Act
144-146	Clean Energy Act
147-148	Community Charter
149-150	Creston Valley Wildlife Act
151-153	Drainage, Ditch and Dike Act
154-158	Drinking Water Protection Act
159	Ecological Reserve Act
160	Environmental Management Act
161	Expropriation Act
162-166	Fish Protection Act
167	Forest and Range Practices Act
168	Freedom of Information and Protection of Privacy Act
169	Geothermal Resources Act
170	Greater Vancouver Sewerage and Drainage District Act
171	Greater Vancouver Water District Act
172	Greenbelt Act
173	Hospital District Act
174	Hydro and Power Authority Act
175	Land Title Act
176-184	Local Government Act
185	Manufactured Home Act

186	Miscellaneous Statutes Amendment Act, 2010
187-190	Oil and Gas Activities Act
191	Ombudsperson Act
192	Property Transfer Tax Act
193	Resort Municipality of Whistler Act
194	Sustainable Resource Management Statutes Amendment Act, 2002
195	Sustainable Resource Management Statutes Amendment Act, 2003
196	Vancouver Charter
197-201	Water Act
202-214	Water Protection Act
215	Water Sustainability Act
216	Water Utility Act
217	Wildlife Amendment Act, 1999
218	Wildlife Amendment Act, 2004

Commencement

219 The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1	Column 2
	Provisions of Act	Column 2
Commencement		
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Sections 1 to 144, 146 to 175 and 177 to 214	By regulation of the Lieutenant Governor in Council
3	Section 215	On the date the Drainage, Ditch and Dike Act, R.S.B.C. 1996, c. 102, is repealed
4	Sections 216 to 218	By regulation of the Lieutenant Governor in Council

Schedule

(Section 44)

The main stem of the following, excluding their tributaries unless expressly included, are protected rivers:

Adams River

Alsek River

Babine River

Bell-Irving River

Clearwater River

Fraser River

Nass River

Skagit River

Skeena River

Stikine River

Stuart River

Taku River

Tatshenshini River

Thompson River, North Thompson River and South Thompson River

West Road River, commonly known as Blackwater River.

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