



Private Water Utilities in BC

Regulated Under the *Water Utility Act*
and *Utilities Commission Act*

Guide to Applying for a Certificate of Public Convenience and Necessity (CPCN)

November 2016

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http://www.env.gov.bc.ca/wsd/water_rights/water_utilities/utilities_application_index.html

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FOREWORD

This guide assists applicants in preparing the information required to support an application for a new Certificate of Public Convenience and Necessity (CPCN) or an amendment to an existing CPCN.

The guide is divided into four sections.

Section One provides a brief outline of the CPCN application and subdivision approval process for general understanding purposes and quick reference.

Section Two contains general information on water supply agencies in B.C. including water utilities, and the role of the Comptroller of Water Rights.

Section Three discusses the requirements of the CPCN application process in detail.

Section Four explains the post CPCN requirements for subdivision approval.

Although the guide provides substantial detail, it is not intended to explain the requirements for all circumstances specific to a particular utility proposal. It is important that applicants communicate with the engineering, financial and administrative staff of the Utility Regulation Section at an early stage in preparing an application and prior to construction of any related waterworks.

1 BRIEF OUTLINE OF CPCN AND SUBDIVISION APPROVAL PROCESS

What is a CPCN?

A *Certificate of Public Convenience and Necessity* (CPCN) is a document granted by the *Comptroller of Water Rights* (the Comptroller), *Water Utility Act and Utilities Commission Act*, that authorizes a private water utility in BC to construct and operate a water system to serve customers within a defined area. It describes the conditions under which the utility is established and under which it will operate. The CPCN is granted after a utility has secured a proven source of supply, provided an acceptable system design, and met the required administrative and financial conditions. A CPCN can be amended to include additional customers into the utility's service area.

The process of granting a CPCN is designed to coordinate with the subdivision approval process when a private water utility is involved. A CPCN (in the case of a new system) or an amendment to a CPCN (in the case of an extension to an existing utility) authorizes a utility to serve the specific subdivision that is to be approved for registration by the Provincial Approving Officer.

The Comptroller's office communicates with a number of other agencies while reviewing a CPCN application. It coordinates with regional districts to ensure compatibility with plans that may be in place for servicing a general area and with subdivision servicing by-laws.

Regional Health Authorities have a responsibility for community water systems under the *Drinking Water Protection Act*. System designs must be approved by the local public health engineer prior to construction via issuance of a Construction Permit. The Comptroller's technical staff work with the local public health engineer on matters related to the potability of the source and the proposed treatment works. **It is important to note that although a Construction Permit is a prerequisite for CPCN approval, it is the granting of a CPCN that authorizes the START of construction. Any construction of water works completed prior to CPCN approval is at the developer's financial risk.**

For water licences (ground and surface water) the corresponding Regional Operations Division office shall be contacted regarding water licence application requirements and approval. The address and phone number of each regional office can be found online via the following link: <http://www.env.gov.bc.ca/main/regions.html>.

CPCN and Subdivision Approval Process

Under *the Land Title Act*, the Provincial Approving Officer ensures that all requirements of agencies having jurisdiction over any aspect of a subdivision are satisfactorily completed prior to allowing registration of the subdivision at the Land Title Office. In rural areas the Ministry of Transportation and Infrastructure (MOT) performs the role of Provincial Approving Officer. There is a Provincial Approving Officer in each of the MOT offices.

Subdivision applications are received by the MOT office, who then refers the application to all agencies that may have an interest in the proposed development. Such agencies would include, but not be limited to: the BC Ministry of Forests, Lands and Natural Resource Operations (FLNRO), the Regional Health Authority and the Regional District. These agencies make their requirements known to the MOT office and, if they receive no objections, they send a report recommending preliminary approval to the Provincial Approving Officer. The Provincial Approving Officer lists the requirements in a document called a “Preliminary Layout Approval” (PLA).

Where a proposed subdivision is to be served by a water utility, the Preliminary Layout Approval will typically include in its list of requirements a statement such as “a Certificate of Public Convenience and Necessity and approved as-built drawings”.

The water system approval process begins with an application for a CPCN by the person and/or his/her agent who is creating the new subdivision and who intends to provide water service. The engineering drawings and other technical information are reviewed to ensure that the source of supply is adequate and that the proposed works are suitably designed. Administrative and financial information is reviewed to ensure that the utility will be a viable operation that can serve its customers in the long term. The CPCN is granted when all requirements have been met. It approves the source of supply and the system design, lists the conditions under which the utility will operate and authorizes the utility to proceed with construction of the waterworks.

For the legal registration of the proposed lots at the Land Title Office, the Provincial Approving Officer (as per PLA) requires the Comptroller of Water Rights to approve the completed construction of the water system. After the work has been completed, the utility’s engineer prepares as-built drawings of the system and certifies that the construction has been satisfactorily completed. Upon acceptance of the as-built drawings and completion of any other outstanding requirements, the Comptroller will notify the Provincial Approving Officer that, with respect to the Comptroller’s requirements, the registration of the subdivision is in order.

1.1 Application for a New CPCN

Who applies for a new CPCN?

Land developers or other entrepreneurs who plan to establish a private water utility to provide water service to 5 or more lots as required under the *Water Utility Act*.

What are the main criteria for granting a new CPCN?

1. Public Interest
The applicant is required to provide proof that existing local water purveyors or local government are unable or unwilling to provide water service to the proposed new service area.
2. Sufficient Source Capacity
The applicant is required to provide proof of sufficient source capacity for the proposed development in accordance with the publication entitled “Design Guidelines for Rural Residential Community Water Systems”.
3. Financial Viability of the Utility
The applicant is required to demonstrate how the proposed utility will be able to provide safe, adequate and reliable water service to its customers over the short and long term at fair, just and reasonable rates. This may require substantial contributions and subsidizations by the developer and an application for a Water Tariff (see Section 2.2.4 and 3.2 and Appendices 1 and 2 for details).
4. Technical Aspects
The applicant is required to prepare and submit an engineering design of the proposed water system in accordance with the “Design Guidelines for Rural Residential Community Water Systems”. The design must be signed and sealed by a qualified Professional Engineer registered in British Columbia and must provide documentation and proof of adequate water system capacity which includes pumping, distribution, treatment/disinfection and storage.

What are the Check List items for a Complete Application for a CPCN?

See Section 3.2.

1.2 Application for a CPCN Amendment

A utility that wishes to add additional lots to its service area or amend the customer type for an existing CPCN approved lot (i.e. the proposed construction of a building strata or a redesignation from residential to commercial or agricultural use) is required to submit a CPCN application to the Comptroller's office for approval of a CPCN Amendment that would authorize these changes to the utility's service area. The criteria for granting an amended CPCN is the same as a new CPCN as described in Section 1.1.

The check list items for a CPCN amendment are generally the same items as a new CPCN as described in Section 3.2, except for Items 1 and 2, which are not required. Some simplifications to Items 6 and 10 may apply depending on the complexity of the proposed expansion of the utility's service area.

1.3 CPCN Amendment to Reflect a Transfer of Ownership

Sections 52 and 53 of the Utilities Commission Act (UCA) do not permit the disposal, encumbrance, amalgamation or consolidation of a utility's property in whole or in part without obtaining the approval of the Comptroller of Water Rights (Comptroller). Section 54 requires the approval of the Comptroller for the sale or transfer of a reviewable interest in the shares of the utility company. An amended CPCN is required for the approval of the transfer of the assets of a water utility to another private entity.

In order to obtain approval, a copy of an executed transfer, amalgamation or consolidation agreement must be submitted together with a letter requesting approval with reasons. Before granting approval, the applicant will be required to show that the transfer, amalgamation or consolidation will not be detrimental to water service or adversely affect the rates charged to the utility's customers. Where the proposed transfer is to a local government; that is, a municipality, regional district or improvement district, the applicant will be required to show that the local government has completed its due process for acquiring the water system. Where the proposed transfer is going to be to the utility's customers it must be shown that the majority of users are in favour of the transfer and have created either a Society or Company whereby each property owner has a right to membership or shares in the new entity.

Provided that all required documentation has been properly completed, submitted and reviewed, the time to process a transfer of ownership by way of a sale of its assets or shares is approximately one week. In the case of approving a consolidation, amalgamation or merger, it is required that the Comptroller first receive the approval of the Lieutenant Governor in Council.

2 WATER SUPPLY AGENCIES

2.1 General Information

2.1.1 Types of Water Supply Agencies

There are approximately 1,000 community water supply systems in British Columbia, each providing water service to at least fifteen customers. About 200 of these systems serve more than 300 customers each. The 1,000 systems are owned by the following types of agencies:

- a) municipalities
- b) regional districts
- c) improvement districts
- d) water users' communities
- e) privately owned water utilities
- f) small unregulated agencies such as mobile home parks

The numbers mentioned above illustrate the diversity of community water supply in this province: most of the population is served by a few systems owned by the major cities, while most of the systems serve a small portion of the population in rural areas.

In addition to the 1,000 systems mentioned above, there are about 1,400 systems that serve between two and fifteen customers. Except for the smaller utilities, which may serve between five and fifteen lots, they are owned by small unregulated agencies.

2.1.2 Water Service in Rural Areas

Unlike urban areas where water service is provided by a municipality, there are a variety of ways in which service is provided in rural areas. Local service areas of regional districts, improvement districts and private water utilities serve most of the rural population. However, many homes have individual sources of supply, either wells or intakes in surface sources such as creeks, springs or lakes. There are also many small systems that are not regulated, other than for water quality by the Regional Health Authorities.

2.1.3 Provincial Goals for Rural Service Delivery

The provincial government encourages regional districts to become the primary service providers in rural areas. The goals of this expanded role is to improve linkages between land use and servicing decisions and to achieve efficiency in the provision of rural services by avoiding duplication and the proliferation of small, marginally-viable, independent systems. Local service areas are being created to acquire systems owned by utilities and improvement districts. In some cases, local service areas are being created to serve new land developments where no water authorities exist.

Applications for new utilities are referred to regional districts to ensure consistency with servicing plans for a particular area. Regional districts are consulted to determine whether there are alternatives to the creation of a utility and, if not, how the utility can be compatible with the regional district's plans for servicing the general area.

2.2 Private Water Utilities (Water Utilities)

A water utility can be an individual, partnership, strata corporation, society or a corporation; but not an agency such as a municipality, regional district, improvement district or water users' community. Briefly, a water utility is defined in the *Water Utility Act* as a person who owns or operates waterworks that serve five or more connections. Refer to the Act for a complete definition or for any question about the definition of a water utility.

Private water utilities are normally created to serve rural land development where community water service is required and no water service agencies exist. They are usually created by land developers who have no other option to obtain subdivision approval. There are approximately 120 private water utilities in the province that serve approximately 20,000 households.

Water utilities primarily serve fee simple subdivisions. They also serve strata developments and various other developments such as ski resorts.

2.2.1 Role of Comptroller of Water Rights

The Comptroller of Water Rights is responsible for the regulation of water utilities under the *Water Utility Act (WUA)* and the *Utilities Commission Act (UCA)*. The Utility Regulation Section delivers to the Comptroller all the necessary information, advice and recommendations required to support approvals, decisions and orders with respect to regulated utilities. Under the WUA, "Comptroller" includes a Deputy Comptroller. This regulatory responsibility falls into two major categories: 1) to ensure that water systems installed by land developers are properly designed and constructed, and 2) to ensure that the customers of utilities receive acceptable water service at reasonable rates.

The Comptroller is also responsible for approval of subdivisions under the regulations to the *Local Services Act*. Where a water utility serves a subdivision, the system or extension is approved by the Comptroller before the subdivision can be registered.

2.2.2 Forms of Organization

Because most utilities are created by land developers, the most common form of organization is a company incorporated under the *Company Act*. Other forms of organizations are:

1. an individual
2. a partnership registered with the Registrar of Companies in accordance with *the Partnership Act*
3. a society incorporated under the *Society Act*
4. a strata corporation incorporated under the *Strata Property Act*

2.2.3 Duties and Responsibilities

The *Utilities Commission Act* lists the duties, responsibilities and restraints imposed upon a water utility. Some of these include, but are not limited to, the following:

1. No person shall begin the construction or operation of any utility plant or equipment without first obtaining a Certificate of Public Convenience and Necessity. (Sec. 45)
2. A water utility shall furnish a service that is adequate, efficient, safe, just and reasonable. (Sec. 38)
3. No water utility shall cease operation without permission. (Sec. 41)
4. A water utility shall obey the orders of the Comptroller. (Sec. 42)
5. A water utility shall provide information and complete and return forms required by the Comptroller. (Sec. 43)
6. A water utility shall have an office in British Columbia in which all its accounts and records shall be kept. (Sec. 44)
7. A water utility shall not borrow, unless payable within one year, or guarantee payment of a loan, without first obtaining approval from the Comptroller. (Sec. 50)
8. A water utility shall not dispose of its property without first obtaining the approval of the Comptroller. (Sec. 52)
9. A water utility shall not consolidate, amalgamate or merge with another person (or corporation), or permit the transfer of its shares to another person without first obtaining approval. (Sec. 53 and 54)
10. The Comptroller may require a water utility to create and maintain a reserve fund. (Sec. 57)
11. A water utility must not charge rates that are unjust, unreasonable or with undue discrimination. (Sec. 59)
12. The only rates that can be charged by a utility are those approved by the Comptroller. (Sec. 61)

2.2.4 Financing and Viability

Prior to issuing a CPCN for the establishment of a private water utility, the proposed utility owner needs to provide evidence that the utility will be a viable business entity while providing safe, adequate and reliable water service to its customers at fair, just and reasonable rates. To accommodate operation, maintenance, administration and future replacement costs, a utility must generate adequate revenue from customer rates which are laid out in a water Tariff. A Tariff describes the terms and conditions under which a customer obtains service and the schedule of applicable rates. For details, refer to Section 3.2, item 10 and Appendices 1 and 2.

2.2.5 Reporting Requirements

Utilities must report annually to the Comptroller on their activities. The reports include such information as financial statements, revenue analysis, reserve fund activities, system operation and maintenance and number of customers. Annual report forms are sent to utilities after each fiscal year-end for completion and submission to the Utility Regulation Section.

2.2.6 Strata Developments

Strata corporations are governed under *the Strata Property Act*. In order to avoid legislative overlap with the *Utilities Commission Act*, a privately owned water system may be transferred to the strata corporation and then may be exempt from regulation under the *Water Utility Act* and *Utilities Commission Act*.

Strata developments may be granted exemption from regulation after the following conditions have been met:

1. Comptroller approves the transfer of the water system to the Strata Corporation;
2. Strata Council is in place with the owner/developer not owning a controlling interest of the strata lots; and
3. The water system serves properties within the strata only.

Concurrent with granting exemption from regulation to the strata corporation, the Comptroller may release any Revenue Deficit Reserve Funds to its beneficial owner. Utilities associated with strata developments (single phase or multi-phase) will continue to be regulated, both initially and ongoing, similar to any other private water utility, at least until all phases are completed, registered, 50% of the registered lots are sold and the water system is transferred to the strata corporation (for further details see Check List Section 3.2, item 10.12 below) and approved by the Comptroller.

3 DETAILS ON THE CPCN APPLICATION PROCESS

This section of the guide provides a detailed description of the documentation and other information required to support an application. The information generally pertains to all applications; however, other information may be required, depending on the circumstances of the particular application.

The CPCN application is reviewed to ensure that the water system proposed is suitably designed to provide adequate service and that the utility will be a viable business operation. The first consideration in reviewing an application for a new utility is determining whether it is in the public interest to approve the creation of a new water authority. This involves determining whether there are other local options (local governments or other water utilities) which can provide water service. Another important aspect in the review of an application for a new utility is the assessment of the financial requirements for a viable operation, including required contributions to various utility reserve funds.

Extensions to existing water utilities require a CPCN Amendment. Depending on the nature of the extension, the application requirements for a CPCN Amendment may be slightly reduced or altered (see check list items in Section 3.2). Applications for CPCN Amendments are reviewed primarily to determine the adequacy of the existing system capacity and works required to serve the new development without adversely affecting existing customers. For relatively small extensions, capital contributions may be collected from applicants and deposited into a Deferred Capacity Reserve Fund to allow utilities to construct increases in capacity at a future date. The required amounts are generally as set out in the Utility's filed Tariff "Contribution in Aid of Future Construction Charge" rate schedule.

It is highly recommended that during the early stage of making a CPCN application, the developer or his/her agent contact the Utility Regulation Section, to clarify the requirements for various scenarios.

A complete CPCN application is required and will facilitate timely CPCN and subdivision approvals.

3.1 Method of Application

The applicant is to submit one paper copy and one digital copy (.PDF format).

The application should include:

- a. Completed application form (See Appendix 4);
- b. Check list items (See Appendix 3);
- c. Cover letter;
- d. One complete set of supporting documents;
- e. One copy of ground water report;
- f. One set of sealed engineering drawings and specifications:

Mail to:

Attention: Secretary to the Comptroller of Water Rights
Ministry of Forests, Lands and Natural Resource Operations
Water Management Branch or by courier:
Water Utility Regulation Section 3rd Fl, 395 Waterfront Crescent
PO Box 9340 Stn Prov Govt Victoria BC V8T 5K7
Victoria BC V8W 9M1 Ph: (250) 387-6355

- g. Signature by an appropriate agent:
- h. The application form should be signed by an officer of the applicant or by its authorized agent who is empowered to act in all matters arising between the applicant and the Comptroller's office. Include a letter from the applicant showing the delegation of authority; and
- i. \$50 application fee: Cheque made payable to the Minister of Finance.

3.2 Check List Items

The items listed below are required in support of an application for a new CPCN. See Appendix 3 for a printable format of the complete check list, which should be included with the application with check marks for items provided with the application. Items 1 and 2 are not required for CPCN Amendments; however, a proof of contribution to a Deferred Capacity Reserve Fund may be required if stipulated in the utility's water Tariff.

1. Corporate Structure and Water Utility Organization Details
2. Certificate of Incorporation
3. Description of Proposed Development and Key Plan
4. Registerable Legal Survey Plan
5. Source of Supply
6. Design Brief
7. Engineering Specifications and Drawings
8. Engineering Supervision
9. Statutory Rights Of Way / Easements over Private Property and Permits over Crown Land
10. Financial Considerations
 - 10.1 Capital Cost Estimate
 - 10.2 Letter of Contribution
 - 10.3 Letter of Undertaking to Subsidize Operating Losses
 - 10.4 Projected Cash Flow Statements
 - 10.5 Water Tariff
 - 10.6 Revenue Deficit Reserve Fund (RDRF) Bank Confirmation and Irrevocable Letter of Authority (ILA)
 - 10.6.1 Rent Charge Reserve Fund (RCRF) Bank Confirmation and Irrevocable Letter of Authority (ILA)
 - 10.7 Deferred Capacity Reserve Fund (DCRF) Bank Confirmation and Irrevocable Letter of Authority (ILA)
 - 10.8 Construction Reserve Fund (CRF) Bank Confirmation and Irrevocable Letter of Authority (ILA)
 - 10.9 Replacement Reserve Fund (RRF) Bank Confirmation and Irrevocable Letter of Authority (ILA)
 - 10.10 Rent Charge Agreement
 - 10.11 Letter of Undertaking to Register Rent Charge Agreement at Land Title Office
 - 10.12 Strata Developments
 - 10.13 CPCN Amendments
11. Notice of Application
12. Approvals by or Agreements with other Authorities
13. Application Fee (\$50 – cheque payable to Minister of Finance)

Item 1. Corporate Structure and Water Utility Organization Details

An applicant for a CPCN should preferably be a company registered under the *Company Act* and have a registered office located in British Columbia. Accounts and affairs of the proposed utility are to be strictly segregated from other business endeavours and be separately recorded. In some circumstances, the Comptroller may require a separate water utility company to deal exclusively with the affairs of the water utility.

The utility (and/or its shareholders) retains ownership and control of the waterworks until the Comptroller is satisfied that the public interest will not be adversely affected by a transfer of ownership and/or control.

The CPCN Application should include a description of the utility organization, a list of owners, affiliates and operators, their contact information and copies of operator's certification.

Item 2. Certificate of Incorporation

Submit a copy of the Certificate and Articles of Incorporation of the company.

Item 3. Description of Proposed Development and Key Plan

Prepare and submit a text description of the proposed development to outline development schedule, parcel identifiers (PID), lot numbers, legal description, type of development (i.e. fee simple subdivision, strata), future phasing, land use type and lot size range. The applicant should also include a brief description of the area, area access, description of the surrounding area and site specific characteristics. The description should reference a key plan on a legal composite base featuring existing roads, lakes, streams, and the boundaries of any municipality in the vicinity. The plan should also include topographical contour lines and provide an outline of the anticipated ultimate development.

Item 4. Registerable Legal Survey Plan

Submit a copy of a registerable legal survey plan for the proposed development which includes a complete legal description.

Item 5. Source of Supply

Under the *Water Sustainability Act* the Crown owns all surface water in the province. All uses of surface water and all non-domestic uses of groundwater (including all utilities) require a water licence. CPCN Applicants must apply separately for a water licence for surface or groundwater use. For more information on this process, please review FrontCounter BC's website at <http://www.frontcounterbc.gov.bc.ca/> or call 1-877-855-3222.

The applicant must provide assurance that a water licence can be obtained. Since the water licensing process involves an investigation of the source and of existing water rights, an early application for a water licence is advisable to minimize delays. The applicant is required to provide confirmation by a professional hydrogeologist that sufficient surface water is available from the proposed source during drought conditions with a 25 year return period for surface water and that groundwater sources are capable of sustaining a defined well yield for a defined period of time. Where groundwater is to be the source of supply, the application should include a certified copy of the hydrogeologist’s groundwater report.

CPCN approval requires submission of copies of all existing water licenses and/or submission of a Water Licencing Officer’s “**Letter of Allowance**” confirming conditional approval of a water licence application and providing evidence that approved quantities are adequate to meet the customer demands for the proposed development. Where a development is planned to proceed in stages, consideration must be given to future availability of water as the water licence is granted for only one stage at a time.

All projects where groundwater diversion exceeds 75 L/s are subject to Environmental Assessment under the *Reviewable Projects Regulation* of the *Environmental Assessment Act*. If this threshold is exceeded, the application is required to obtain and submit a copy of the Environmental Assessment Certificate issued by the Environmental Assessment Office.

Table 1 below provides a summary of the current submission requirements for approval of source water in support of a CPCN application. Note that additional requirements may be stipulated by other agencies.

Table 1 - Submission Summary for Approval of Source Water

Surface Water Source	Ground Water Source
Water licence or “Letter of Allowance”	Water licence or “Letter of Allowance”
Copy of hydrogeologist’s report including confirmation of sufficient source during drought (25 year return)	Copy of hydrogeologist’s report (refer to Appendix 5 for detailed requirements) ¹
Source Approval from the local Health Authority ²	FLNRO Regional Groundwater Section’s review and confirmation of long-term well yield, impact on existing wells or surface water licences, and GUDI assessment.
	Source Approval from the local Health Authority (including copy of GARP assessment) ²

GUDI – Groundwater under the direct influence of surface water

GARP – Ground water at risk of containing pathogens

¹ Work is currently underway in the preparation of a Testing and Assessment in Support of Application document to assist Applicants in meeting the requirements of the Water Sustainability Act and Water Sustainability Regulations. This document is intended to replace Appendix 5 upon publication in 2016.

² This is in addition to the submission of the Construction Permit issued by the Local Health Authority, and should clearly indicate any requirements for treatment or other infrastructure which would be required by the Operating Permit of Conditions of Permit.

Item 6. Design Brief

Design and construction supervision must be carried out by a certified professional engineer or limited licensee experienced in the waterworks industry. The terms of reference under which the engineer is hired by the developer or utility should specify that this person is responsible for both the design and construction supervision of the system or extension.

A publication entitled “Design Guidelines for Rural Residential Community Water Systems” has been prepared by the Comptroller’s office and is available on the Water Utilities website. The guidelines present the minimum acceptable standards and are not intended to limit the engineer in designing to a higher standard. The guidelines booklet provides further information on the role of the engineer.

The applicant’s engineer should provide a brief that describes the proposed and designed water system. The design should be at a stage equivalent to an “Issue for Tender” submission. The Design Brief should be the source of information for a review of the design concept and the design calculations. Therefore, it should include demand calculations, sizing calculations for pumps, reservoirs/storage tanks, pressure tanks, level and pressure settings, hydraulic calculations, treatment system design calculations, etc. It should also include the relevant pump and system curves (pump curves for single pump operation, duplex, triplex, operation, etc.) indicating duty points, efficiency points, power ratings, comments or calculations for transient considerations, fire protection provisions, capacity and characteristics of the source, and a description of the control system and the overall system operation. It should also include all assumptions made to determine design parameters and explanations to support those assumptions. If the design deviates from the aforementioned design guidelines due to site specific circumstances, the engineer needs to provide explanations and justifications.

Item 7. Engineering Specification and Drawings

Submit one complete set of detailed design drawings of the proposed waterworks, signed and sealed by the engineer. The drawings should show plan views, elevations, sections and details, which together with the specifications that outline component specific data and requirements, provide the information necessary to construct the works. The system layout drawings should be on a legal composite base and show contours, elevations of key components, pressure zones and sizes of pipelines. The publication entitled “Design Guidelines for Rural Residential Community Water Systems” provides further information on the design of systems.

Drawings and Specifications should be at a stage equivalent to an “Issue for Tender” submission. List drawings and provide the names and companies of the engineers of record.

Submit one copy of a sealed geotechnical report for reservoir foundations.

Submit one copy of sealed electrical drawings for the system operation, including the control system.

Item 8. Engineering Supervision

The engineer should provide confirmation that they have been hired to design and inspect construction in a manner that is adequate to prepare as-built drawings and certify the satisfactory completion and operation of the works.

Item 9. Statutory Right-Of-Ways / Easements over Private Property and Permits over Crown Land

Registered statutory rights of way (SRW) / Easements are required where pipelines and other waterworks components will be located on private property. SRW / Easements must be registered with priority over any other charge on the land title. The Comptroller must be satisfactorily assured that the utility will be allowed to operate and maintain all waterworks. In the case of a CPCN application for a new subdivision, it is sufficient to provide draft copies of all SRW agreements and associated legal survey plans and a Letter of Undertaking by a lawyer or solicitor to register these agreements concurrent with subdivision registration.

Provide evidence that a permit has been (or will be) issued for the location of waterworks within public rights of way or over Crown Land.

Item 10. Financial Considerations

The CPCN applicant for a newly proposed private water utility is required to demonstrate how the proposed utility will be able to provide safe, adequate and reliable water service to its customers over the short and long term at fair, just and reasonable rates. A proposed Tariff and Financial Model that reflects all financial requirements for a private water utility (see “Financial Guidelines for CPCN Applications” – Appendix 1) must be submitted during the CPCN application stage. In accordance with those Financial Guidelines, the proposed Financial Model and Tariff must include provision for contributions to a Replacement Reserve Fund (RRF) to provide for full replacement of water system components. As part of Check List Item 10, a number of sub-items and forms are to be completed and submitted with the application.

10.1 Capital Cost Estimate

Provide a Capital Cost Estimate for the works to be constructed as per Appendix 6. The cost estimate should be a Class A cost estimate according to the *Public Works and Government Services Canada* guidelines and should also include engineering costs and contingency.

10.2 Letter of Contribution

Building a utility plant to serve an area having no customers initially and financing that plant to receive a return on investment is uneconomic. Construction may be feasible,

however, if the person or company who benefits from the construction is prepared to contribute (with no expectation of a return on and of investment) the entire cost of installing the necessary waterworks. For that reason, it is a widely accepted practice for real estate developers to contribute to the utility the cost of constructing the waterworks to serve the land they wish to market as serviced lots. A letter to that effect is required as part of the CPCN application process and before subdivision approval is granted” (see Appendix 7).

10.3 Letter of Undertaking to Subsidize Operating Losses

To achieve a minimum level of viability, developers are expected to subsidize operating losses (at least until build-out or when the Utility becomes self-sufficient) with deposits into the Utility’s Revenue Deficit Reserve Fund and provide a letter of undertaking to subsidize operating losses, including annual required deposits into the Utility’s Replacement Reserve Fund (see 10.6 below and Appendix 8).

10.4 Projected Cash Flow Statements

Provide the projected annual revenue and expenses of the utility in the form of Projected Cash Flow Statements as per Appendix 9.

10.5 Water Tariff

The Tariff is the utility’s document that describes the terms and conditions under which a customer obtains service and the schedule of applicable rates. A proposed Water Tariff must be submitted and accepted for filing by the Comptroller before a CPCN is granted. A sample Water Tariff booklet is provided in Appendix 2.

10.6 Revenue Deficit Reserve Fund (RDRF) Bank Confirmation (RF-D) and Irrevocable Letter of Authority (ILA)

The Revenue Deficit Reserve Fund (RDRF) is a required financial institution deposit in the name of the Utility by the developer with interest earnings used by the Utility to help offset revenue deficits (operating losses). This is generally in the \$250,000 to \$1,000,000 range. Any further operating losses must be funded by the developer and are not recoverable by the developer from utility customers or the Utility. See Sections 3 to 6 of Appendix 1 for further details on financing and viability including reserve fund requirements. An Irrevocable Letter of Authority (ILA) signed by the Utility and its bank is required to set up the RDRF. The ILA and RF-D forms (completed by bank) should be included in the CPCN application package (Appendix 10).

10.6.1 Rent Charge Reserve Fund (RCRF)

The RCRF is an additional revenue deficit type of fund that may be required in certain circumstances to ensure that a new Utility will be economically viable independent of the developer over the short term while lots are being marketed and during build-out. See Appendix 1, Section 6.1.1 of the CPCN Financial Guidelines for details.

10.7 Deferred Capacity Reserve Fund (DCRF) and Irrevocable Letter of Authority (ILA) for CPCN amendment applications

The DCRF accumulates the one-time aid to future construction charge from CPCN amendment applications for water service outside of a utility's authorized service area (including the subdivision of lots within the existing service area). These funds, including interest earned, are available to the utility to pay for future expansion of water system capacity only when authorized by the Comptroller. An Irrevocable Letter of Authority signed by the utility and its bank is required to initially set up the DCRF (Appendix 10). The amounts collected from the applicant shall be per the Tariff in effect at the time of the issuance of the CPCN amendment and shall be deposited into the DCRF upon receipt of the Order from the Comptroller to do so. If during the application process, an increase to the Aid to Future Construction Schedule is approved by the Comptroller, the applicant shall pay the increased amount prior to issuance of a CPCN amendment unless authorized by the Comptroller.

The utility shall notify the Comptroller's office immediately upon receipt of an aid to future construction payment by an applicant and provide both the amount, the applicant's name, the legal description of the lot(s) to be subdivided or serviced, and the number of new service connections applied for. If the applicant does not proceed with an application within one year of paying the DCRF to the utility, the utility shall refund the DCRF amount paid, plus interest, minus any expenses incurred by the utility on behalf of the applicant in the processing of the application for water service. The applicant will be required to begin the application process from the beginning.

The collection of aid to future construction charges by the utility does not provide the applicant with any guarantee, reserve of capacity, or right to water service from the utility.

10.8 Construction Reserve Fund (CRF) and Irrevocable Letter of Authority

CRFs are generally provided by land developers as a source of capital for a known, specific project. Authorized releases may be made upon evidence of project progress and completion. See Section 4.1 below for more details. An Irrevocable Letter of Authority (ILA) signed by the Utility and its bank and an RF-D Form is required to set up the CRF (Appendix 10).

10.9 Replacement Reserve Fund (RRF) and Irrevocable Letter of Authority

The RRF, with accumulated interest, provides funds generally collected from customers and/or developer or interest earnings from the RDRF to pay for replacement of water system components when required. An Irrevocable Letter of Authority (ILA) signed by the Utility and its bank with an initial deposit of \$100 is required to set up the RRF (Appendix 10).

10.10 Rent Charge Agreement

A registered Rent Charge Agreement (RCA) will ensure that the utility derives adequate revenue for making service available to unimproved lots. A Rent Charge Agreement is a

contract between the utility and the property owner for the purpose of ensuring the economic viability of the utility. It requires the approval of the Comptroller as a condition to granting a Certificate of Public Convenience and Necessity and must be registered at the Land Title Office. The sample form of document provided in Appendix 11 is *pro forma*; it is not a form with blanks to be filled in. This document should preferably be prepared by the land developer's solicitor and reviewed by the utility's solicitor before being presented to the Comptroller for approval.

A Rent Charge Agreement must be a first lien on the subject property as against any other financial charges. The charge abates when a lot owner becomes a rate paying water user, but the registered document is not extinguished thereby.

The terms and conditions of the agreement should ensure the collection of the charge, and not to provide a means for lot owners to finance their property at the expense of the utility. Therefore, interest rates stipulated by the agreement should be punitive, and the right of the utility to recover any default should not be lenient. At the same time the agreement should not provide an opportunity for the utility to take undue advantage of a default resulting from simple inadvertence.

In the case of a proposed subdivision, a RCA may need to be registered on the parent parcel. Upon registration of the subdivision, the RCA will appear on the title of each individual lot. For existing utilities, extensions to individual existing lots will require a RCA registered on each title.

Schedule G of the sample Tariff, Availability of Service Charges, is applicable to all vacant authorized lots eligible to have registered rent charges on title and those that are not currently connected and receiving water service. The charges are to commence the first of the month following issuance of a CPCN. (see sample Tariff in Appendix 2). It is usually set at 70% of user rates. Provide a draft Rent Charge Agreement and a letter of undertaking to register such with the CPCN application or, as an alternative, provide an executed Rent Charge Agreement registered on the parent parcel's land title.

10.11 Letter of Undertaking to Register Rent Charge Agreement

Provide a letter of undertaking by a solicitor/lawyer to register the Rent Charge Agreement as per Item 10.10 concurrent with subdivision registration at the Land Title Office (see sample letter in Appendix 12).

10.12 Strata Developments

For single and multi-phase strata developments:

- a) Water Tariffs are required (with full replacement provision via annual Replacement Reserve contributions) including Availability of Service (Rent) Charges payable on unconnected lots.
- b) Rent Charge Agreements are required.

- c) Statutory Right of Ways for works on Strata Corporation’s “common property” are not required. SRW’s are still required for works on all other properties.
- d) Revenue Deficit Reserve Funds (and possibly Rent Charge Reserve Funds) are required to ensure economic viability of the utility independent of the developer (as non-interest, no required terms of repayment loans to the Utility).
- e) Initial lump-sum deposits are required by the developers into a Replacement Reserve Fund to cover the first 10 years of required contributions (as a non-interest, no required terms of repayment loan to the Utility) for new utilities.

10.13 CPCN Amendments

The applying utility is required to provide proof of the financial contributions by the proposed new customers in accordance with the current Tariff such as Deferred Capacity Reserve Fund contributions and/or contributions of additional waterworks to be constructed. Note that CPCN amendments for minor extensions may not require completion of a Tariff when a change to the Utility’s existing Tariff is not expected.

In any case, it is important to contact engineering, financial and administrative staff of the Utility Regulation Section prior to and in the early stages of preparing a CPCN and Tariff Application.

Item 11. Notice of Application

Notice of a new CPCN application shall be provided by the Applicant (or by the Utility in the case of a CPCN amendment application). The Applicant / Utility shall advertise a notice of the application in at least one edition of a widely circulated newspaper in the area of the proposed or existing utility. A 30 day period shall commence to permit any objections or submissions to reach the Comptroller’s office. The Applicant / Utility shall submit a copy of the newspaper tear sheet to the Comptroller’s office to verify publication of the advertisement. A sample form of advertisement is attached as Appendix 15.

Item 12. Approvals by or Agreements with Other Authorities

a. Public Interest

Before granting a CPCN for the creation of a new utility, the Comptroller must be satisfied that it is necessary and in the public interest. One of the considerations is whether service can be provided by a nearby water purveyor or local government authority.

It is important in the review of the CPCN application that the position of any adjacent water purveyor (where applicable) and the local government authority with respect to the creation of a water utility are known. Submit letters from these potential water purveyors stating whether they have any intention of providing water service to the proposed development now or in the future and whether the Regional District supports the creation of a private water utility. These letters will be important in the review of the application.

Where a water utility intends to operate within the boundaries of a municipality or other public authority that provides water service, provide an agreement from that authority that establishes the conditions under which the utility will provide water service within its authorized service area, including any rezoning approvals. The agreement is subject to the approval of the Comptroller.

b. *Health Approval*

Provide a copy of all Construction Permits issued by the local public health engineer pursuant to *The Drinking Water Protection Act*. Typically, a Health Construction Permit is required: if more than one residential water service connection; or at least one commercial water service connection; or at least one strata complex with multiple units; or any service connection of 75 mm diameter or larger are involved. Consult the local Regional Health Authority for more details.

c. *Ministry of Transportation (MOT) Approval*

Provide a copy of the Preliminary Layout Approval (PLA) issued by the Provincial Approving Officer. Where pipelines or other works are located within a road, provide a copy of the application to occupy the road right of way.

d. *First Nations Interests*

The Crown has a duty to consult First Nations where a government decision may have an adverse impact on their aboriginal interests. While it is the Crown's responsibility to ensure that consultation with First Nations, where it is required, is carried out in a proper manner, the applicant may play a supportive role in the consultation process, such as by providing local First Nations early on with information about the CPCN, including a copy of the application, and related information about the proposed subdivision and to discuss with them any impact the CPCN may have on their aboriginal interests. A summary of such engagement and information sharing with local First Nations should be provided as part of the application.

Item 13. Application Fee

The application fee for a CPCN is set by Cabinet through Order-in-Council. The current application fee is \$50.00. Please make cheque payable to Minister of Finance and include with your application.

4 POST - CPCN REQUIREMENTS FOR SUBDIVISION APPROVAL

This section details the outstanding requirements for subdivision approval after the CPCN has been granted and the works have been constructed. It also details the requirements for submission of various registered documents to the Comptroller's office.

4.1 Acceptance of Constructed Waterworks

After completion and testing of the constructed waterworks, submit one copy of the as-built drawings to the Comptroller. The drawings shall bear the seal and signature of the engineer. They should be accompanied by a statement by the engineer to the effect that the works are correctly portrayed by the as-built drawings; are substantially the same as the design which was approved by the Comptroller; and the works have been tested and operate satisfactorily as designed.

Upon acceptance of the as-built drawings and the completion of all other requirements, the Comptroller will provide the Provincial Approving Officer with notification that all conditions for the designed and constructed water system have been met in order for registration of the subdivision to proceed.

Once the majority of the works have been substantially completed, the Comptroller may approve the subdivision registration before all works have been constructed if sufficient securities are provided to ensure construction completion of any deficiencies. Securities are normally established in the form of a Construction Reserve Fund in the amount of 200% of the estimated value of the outstanding work. To apply for early registration of a subdivision, the developer is required to submit the following items:

- 1) Detailed construction deficiency list and associated cost estimate including engineering and contingency prepared by the inspecting engineer;
- 2) Proposed schedule to complete construction and submit certified copies of all associated as-built drawings;
- 3) Irrevocable Letter of Authority (ILA) for the Construction Reserve Fund (CRF) (Appendix 10);
- 4) Bank confirmation of deposit of 200% of cost of deficient items. Submit the RF-D form completed by the bank (Appendix 10).

4.2 Registered Plans

Submit one copy of the registered subdivision plans to the Comptroller within 30 days of registration at the Land Title Office.

4.3 Registered Statutory Right-of-Ways / Easements

Submit one copy of all registered Statutory Right-of-Ways and/or Easements required for works located on private property to the Comptroller as soon as they are available.

4.4 Registered Rent Charge Agreement

Submit one copy of all registered Rent Charge Agreements to the Comptroller as soon as they are available.

4.5 Water Licence

Submit one copy of the issued Water Licence if a Letter of Allowance was submitted as part of the CPCN application package.

4.6 Single Phase Strata Developments

For single phase strata developments where the utility ownership is being transferred to the strata corporation at initial subdivision registration, submit a copy of the executed Transfer Agreement (see example in Appendix 13).

4.7 Waterworks Operator

Advise the Comptroller of the name, address and telephone number, and provide a copy of the Environmental Operators Certification Program (EOCP) classification of the water system and the certificate of the person(s) hired to be responsible for the operation and maintenance of the water system. The waterworks operator should be conversant with the operation and maintenance of water systems, and should be able to respond promptly to any malfunction of the system. It is the responsibility of the utility to advise the Comptroller of any change in appointment of the waterworks operator, address and contact telephone number(s).

4.8 Cost of Constructed Works

Submit a final capital cost form based on the previously submitted capital cost estimate to provide a breakdown of the actual cost of the constructed water system. This information is important for determining the replacement provision, for reserve fund requirements and for rate setting purposes.

