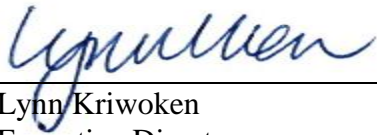




**Ministry of Environment and Climate Change Strategy
and
Ministry of Forests, Lands, Natural Resource
Operations and Rural Development**

NAME OF POLICY:	Apportioning of Water Rights - For Applicants
APPLICATION:	This policy provides guidance to government staff involved in decision-making on the apportioning of water rights under the <i>Water Sustainability Act</i> (WSA).
ISSUANCE:	Executive Director, Water Protection and Sustainability Branch, Ministry of Environment and Climate Change Strategy (ENV) Director, Water Management Branch, Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNR)
IMPLEMENTATION:	FLNR, ENV, FrontCounter BC (FCBC)
LEGISLATIVE REFERENCES:	<i>Water Sustainability Act</i> (Ch. 15, S.B.C 2014) [WSA] Water Sustainability Regulation (B.C. Reg. 36/2016) [WSR] Water Sustainability Fees, Rentals and Charges Tariff Regulation (B.C. Reg. 37/2016) [WSFRCTR]
RELATED POLICIES:	Beneficial Use Declaration Cancellation or Suspension Guidelines under the WSA Amendments under the WSA Application Referrals, First Nations Consultation and Notices Information on Completing a Joint Works Agreement
RELATIONSHIP TO PREVIOUS POLICIES:	Updates the former Apportioning of Water Rights (2003) policy to align with the WSA.
POLICY AMENDMENT PROCESS:	Requests for policy amendments are made in writing to the Executive Director, Water Protection and Sustainability Branch, Ministry of Environment and Climate Change Strategy (ENV) and Director, Water Management Branch, Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNR).



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September 13, 2019

September 26, 2019

APPROVED AMENDMENTS:

Effective date	Briefing Note /Approval	Summary of Changes:
November 5, 2003	November 5, 2003	Policy updated to provide better assistance to technical options for processing water licence apportionments.
October 27, 2019	Approved by PLC September 10, 2019	Policy updated to reflect legislative changes in the WSA, as well as provide updated information on fees and rentals, joint works and procedures.

Table of Contents

1.	POLICY STATEMENT	4
2.	DEFINITIONS.....	4
3.	REASON FOR POLICY	4
4.	LEGISLATION	5
5.	PROCEDURES.....	6
5.1	Initiation of apportionment and circumstances for applications.....	6
5.1.1	Applicant Driven.....	6
5.1.2	Statutory Decision-Maker Initiated.....	7
5.1.3	Application contents	8
5.2	Processing applications for apportionment.....	9
5.3	Suggested Methods to Determine Fair Apportionments.....	9
5.4	Additional Considerations for Apportionment	11
5.5	Decision-maker authorities regarding licences and associated permits.....	11
5.6	Date of Precedence	11
5.7	Notices and Consultation	12
5.8	Change of Purpose	12
5.9	Fees and Outstanding Rentals.....	13
5.10	Cancellations.....	13
5.11	Joint works	14
5.12	Refusal of an Application for Apportionment	14
5.13	Opportunities for input into a decision regarding apportioning of water rights	15
6.	TEMPLATES	15

1. POLICY STATEMENT

This guidance is intended to provide assistance to technical and processing staff with implementing the WSA involved in making decisions on the apportioning of water rights and other requirements of a licence. Apportioning of water rights concerns the fair and equitable dividing (apportioning) of water rights where an original tract of appurtenant land (can comprise numerous lots) is subdivided or otherwise split, with the associated rights and duties being divided among owners of the resulting parcels. This policy provides guidance and methodology under common circumstances of apportioning of water rights.

2. DEFINITIONS

Relevant terms defined under WSA [section 1](#) [definitions]: **applicant, authorization, beneficial use, decision maker, owner, use approval, undertaking, and works**

Relevant terms defined under WSR [section 1](#) [definitions]: **application**

Other relevant terms not formally defined:

Appurtenancy (noun): means the land, mine or undertaking to which water rights are assigned (i.e., beneficial use of the water under the licence is connected to the appurtenancy). Section 20(1) WSA requires the statutory decision maker to specify the appurtenancy for a licence that consists of land, a mine or undertaking for that licence. In the case of use approvals and change approvals, and any associated permits, and drilling authorizations, an appurtenancy may be specified, but is not required (see section 20(2) of the WSA)

Appurtenant (adj.): describes how the water right is assigned or attached to the land, mine or undertaking where the water is to be used

3. REASON FOR POLICY

If there are changes to the appurtenancy for a licence, such that additional or different land parcels are created from the original appurtenancy (such as through subdivision), one or more of the owners of parcels of land within the original appurtenancy can apply to, or the comptroller or a water manager may initiate, apportionment of the rights granted and duties imposed under the licence to the new individual land parcels. Under both circumstances, water rights and duties are to be apportioned (divided) in a fair and equitable manner among them.

During apportionment, an original or “parent” licence is divided and superseded by one or more subsequent or “child” licenses, as referred to in eLicensing.

4. LEGISLATION

The following lists the sections of the *Water Sustainability Act* (WSA) considered most directly relevant to the apportionment of water rights. This list should not be considered exhaustive, however, as special terms and conditions (included in licences or other applicable circumstances) may draw on other related sections of the legislation not already mentioned here.

[Section 12](#) of the WSA [*Application and decision maker initiative procedures*] describes the conditions an applicant is to meet when making application and empowers the decision maker to set directions for and conditions of application.

[Section 13](#) of the WSA [*Objections to applications and decision maker initiatives*] requires the decision maker to specify what notifications of the application the applicant must provide.

[Section 25](#) of the WSA [*Transfer of authorization, change approval or permit*] describes the rules that apply to the water rights and their passage with the conveyance or other disposition of land, a mine or undertaking by operation of law.

[Section 26](#) of the WSA [*Amendment or substitution of authorization, change approval or permit*] lists the changes that may be made through amendments, and how such amendments can be initiated.

[Section 28](#) of the WSA [*Apportionment of rights under licences*] outlines how water rights and duties under licences or permits may be apportioned (usually) when the land to which a licence was made appurtenant is subdivided into various parcels of land.

[Section 30](#) of the WSA [*Beneficial use*] requires that all persons who divert water must use it beneficially (as defined in WSA), and must not waste water, and describes beneficial use declarations (BUDs) and their requirements.

[Section 36](#) of the WSA [*Joint construction or use of works may be ordered*] describes how a decision maker may authorize or require joint works in order to conserve water or avoid duplication of works (e.g. to minimize the total footprint of works).

[Section 94](#) of the WSA [*Suspension and cancellation of rights and permissions*] identifies the reasons why an authorization or other rights can be suspended or cancelled, in whole or in part, including due to non-compliance.

[Section 3](#) of the Water Sustainability Regulation (WSR) [*Applications for licences and use approvals*] describes all the necessary requirements for an application for a licence or use approval.

Section [6](#) of the WSR [*Applications for amendments under sections 26 and 62 (7) of Act*] describes the application requirements under sections 26 [*amendment or substitution of authorization, change approval, or permit*] and section 62 (7) [*drilling authorizations*] of the WSA.

[Section 8](#) of the WSR [*Applications for Apportionment*] describes the necessary information that must be included with an application for apportionment under section 28 [*apportionment of rights under licences*] of the WSA.

[Section 12](#) of the WSR [*Consents regarding personal information*] outlines the written consent requirements for applications that contain personal information from an applicant, including the disclosure specifications, for applications submitted under section 8 [*apportionment*] of the WSR and other sections.

[Section 13](#) of the WSR [*Applications must be signed, filed and include consents*] outlines that applications for apportionment under section 28 [*apportionment of rights under licence*] of the WSA need to be signed by an applicant or the applicant's agent and filed with a decision-maker.

5. PROCEDURES

When land to which a licence is appurtenant has been subdivided or is otherwise newly split, it becomes necessary to consider the apportionment (division) of the existing water licence rights and duties in a manner that is legally compliant, fair and equitable among the owners of parcels resulting from subdivision. This process differs from a Transfer of Appurtenancy, in which an owner can transfer all of part of their water rights and duties to a different parcel of land. See the Transfer of Appurtenancy Policy for more information.

The following information provides considerations and options for approaches to apply to the apportionment process.

5.1 Initiation of apportionment and circumstances for applications

Water licence rights are made appurtenant (tied) to the land, mine or undertaking to which they relate. Under section 28 (1) WSA, there are two main ways that apportionments can be initiated:

- 1) Applicant Driven
- 2) Statutory Decision-Maker Initiated

5.1.1 Applicant Driven

If the appurtenancy for a water licence (and related permit) consists of more than one parcel owned by the same or different persons, then further to [section 28](#) of the WSA, the

owner(s) of the appurtenancy of the current water licence to be apportioned can apply to have the water rights and duties apportioned between the individual parcels.

Also, following subdivision or other division of land to which a water licence (and related permit) is appurtenant, one or more the owners of the resulting parcels can apply to have the water rights and duties apportioned among the owners of those parcels.

In either case, they may fill out the application on the [FrontCounter BC](#) site as an amendment to a water licence.

The applicant(s), as well as other owners of parcels created by the subdivision, will have an opportunity to assert their interests in the division of the water rights and duties.

5.1.2 Statutory Decision-Maker Initiated

In some circumstances, water licence holders take steps to subdivide or sell off portions of land to which water licences were appurtenant, *without* first notifying the Province, as per the requirement to do so under s. 25 (2) WSA. Through several methods, government officials are made aware of the changes after-the-fact, and then must follow-up to ensure that water rights information is up-to-date, such as Water Revenue staff, who may identify issues with billing; whether by word of mouth, where members of the public call in to notify staff of changes they have observed; or if staff notice changes between cross-referencing information in iMap, Google maps and/or the Land Title Office.

When information about parcel owners who may be entitled to a portion of the water rights and duties under a water licence can be determined, statutory decision makers may reach out to contact them and to provide them with an opportunity to express an interest in and to provide information to verify their claim to a portion of the water rights. Under these circumstances, the comptroller or a water manager (statutory decision makers) may request that those persons fill out and submit an application for apportionment.

Alternatively, on their own initiative, the comptroller or a water manager may also initiate an apportionment. Where a statutory decision-maker is made aware of changes but is not able to make determinations about ownership of land or how water is used on the land to which a licence was appurtenant (e.g. non-response to letters sent), or where the apportionment is mainly a matter of updating administrative information regarding a licence, they may use their discretion to initiate and carry out apportionment, by providing a notice of proposed apportionment to the affected parties and inviting comments, before making a decision.

In such a case, a statutory decision maker would not fill out an application for apportionment, but rather, would work with water authorizations staff and FrontCounter BC administratively to make a decision on apportionment. Before making a decision, a statutory decision maker must still send Notices (see section 5.4.2 below) to the affected parties, offering them the opportunity to respond to the proposal. If no response is

received then the decision maker may complete the apportionment as laid out in the notice of proposed apportionment. If responses are received, then the information provided to the decision maker should be considered as it may alter the final decision. If a party is unsatisfied with the final decision, they may appeal it.

In any of the above apportionment scenarios, staff must ensure they have all the information necessary for processing the initiated apportionments and applications for apportionment, and they may use discretion to seek additional information, including by requesting or directing submission of a Beneficial Use Declaration, such as through the issuance of a Beneficial Use Declaration order. Please see the “Direction to Submit Beneficial Use Declaration (Apportionments)” template letter.

For more information on the Beneficial Use Declaration order, please see the [Beneficial Use Declaration Policy](#).

5.1.3 Application contents

In circumstances where an applicant applies for the apportionment of water rights (scenario 1, above), or where owners of parcels within the subdivided appurtenancy are requested by a statutory decision maker to fill out and submit an application (scenario 2, above), then, as described in section 8 of the WSR, an application for an apportionment must contain:

1. The information referred to [section 6](#) (1) (a) and (b) [*Applications for amendments*] of the WSR in relation to the licence: the full name of the applicant(s) and a mailing address, a telephone number, and if, available, an email address at which the applicant or the applicant’s agent may be contacted, and the number assigned to the authorization, change approval or drilling authorization and any related permit, if any to which the application relates;
2. The reason for the apportionment application, including particulars of the proposed apportionment,
3. A drawing meeting the requirements of [section 3](#) (1) (p) of the WSR showing the parcels to which rights are to be apportioned under the application and the relevant boundaries and locations, including, locations for new works and works that are to be jointly used, and
4. For each parcel to which rights are proposed to be apportioned,
 - (i) a location description of the parcel,
 - (ii) the name and, if known, contact information of the person to whom rights are to be apportioned and the person's title to or other interest in the parcel, and
 - (iii) the water use purposes to be authorized under each licence and the quantity of water to be used for each purpose under each licence.

As noted above, staff may seek information necessary for processing a decision regarding apportionment, including by requesting or directing submission of a Beneficial Use Declaration (BUD).

5.2 Processing applications for apportionment

Apportionment involves the division of existing water licence rights and duties among the parcels created from the land to which a licence was made appurtenant. Through the apportionment process, the original, or “parent” licence becomes superseded, and subsequent “child” licences are created. The child licences may share works with each other, but this is not a requirement. New water licences created through apportionment should reflect the volume of water authorized for use on each new parcel of land and include a description of the associated water diversion and distribution works. Note that the total of the water volume among the child licences must not exceed the volume of water authorized by the original licence, however, it may total less than the original licensed amount.

Regardless of whether an application of apportionment is received or an apportionment initiated by the comptroller or a water manager, staff follow the same procedures to apportion the rights in a manner that is legally compliant, fair and reasonable. For suggested methods of apportionment and examples, please see Section 5.4 below.

Applications for apportionment are submitted and processed through [the FrontCounter BC site](#) as an amendment to a licence. An owner(s) of the appurtenancy for the licence may apply through the FrontCounterBC system, while water allocation staff can use eLicensing directly for statutory decision maker-initiated apportionments.

The division of existing water rights is entered into the “Suggested Distribution of Rights” section. When more than one “Portion” is added, the system generates a prompt for the “Requested Distribution of Rights/Obligations” form which must be downloaded and filled out by all the landowners of parcels created by the subdivision of the appurtenant land (e.g. licence appurtenancy). Each land parcel owner must provide their personal information, and will also need to sign, scan and upload the drawing depicting the applicant’s land parcel and the other parcels of land to which the licence is appurtenant, and the location of any works (used or proposed). For more details on the information required to be submitted with the application, see Section 5.3 below.

In circumstances where an application is submitted before the plans for a proposed subdivision are completed and approved, the subdivision can trigger the apportioning of existing water rights and may also lead to new applications for water licences.

5.3 Suggested Methods to Determine Fair Apportionments

There are a number of key ways staff might consider as recommended approaches to decision making on apportionments so as to fairly divide water rights among parcel owners of the newly subdivided land. With the exception of Method 1, which is best suited when

the apportionment is applicant driven (see section 5.1.1 above), these methods apply regardless of how the apportionment process was initially engaged (section 5.2 above).

1. Division of Rights According to Agreement(s) Among Licensees

In this circumstance, owners of the parcels within the appurtenant lands of the original water licence, have included in their application for apportionment a proposal that captures their interests in how to divide the water rights. With appropriate signatures and words to the effect that all owners are in agreement that the proposal is fair and after assessing whether the apportionment, as proposed, is appropriate, staff may proceed to apportion the water rights as indicated in the owners' proposal. Even in this circumstance, where the owners have agreement about the proposed apportionment, a statutory decision maker may still use their discretion to determine reasonableness. For example, the proposed apportionment may not be reasonable due to incompatibility of purpose (e.g., the parent licence purpose was for irrigation but the proposed child licence purposes are for waterworks or domestic use with subdivision, with the rights being divided 50/50 for each new purpose). A statutory decision maker may use their discretion when considering the proposed apportionment, including whether it should more appropriately reflect what is required for each purpose and so that there is better alignment with each purpose, even if this may involve cancellation of some of the rights. Please note that apportionment decisions are appealable.

2. Take into Account Evidence of Beneficial Use

A second method for determining how to fairly apportion the water rights is based on how/whether/extent/where water was beneficially used. A statutory decision maker may ask: How were the water rights used in the past? Is there evidence of historic or established use? Aerial imagery, photos, signed statements, receipts, file history and other sources may be considered. What are the land characteristics (e.g. irrigable or not)?

An additional consideration with this method is whether a licensee has fulfilled the beneficial use authorized by the water licence and/or whether there's information on which to consider cancelling an unused portion of water rights.

3. Prorate by Proportion of Land

A third method for approaching apportionment of water rights is simply to apportion in proportion to the percentage of ownership of appurtenant land. This is one of the simplest methods, but for its simplicity, may not always be the best method to choose due to other factors.

4. Consider Capability of the Land

The fourth method for approaching apportionment of water rights assesses the suitability of land for use of water for authorized purpose, given the type of authorization.

5.4 Additional Considerations for Apportionment

During the processing of an apportionment, staff are recommended to consider available information regarding water use on the appurtenancy, including on the following additional factors, and others that may be identified through the process:

- history of use, manner of use, extent of use; for example, any changes from what authorized?
- characteristics of appurtenant land, mine or undertaking, as well as characteristics of land parcels created by subdivision of the original appurtenancy; for example, any areas where water cannot be used due to those characteristics?
- whether land use changing, whether purpose and extent of use would be affected, whether works are changing or would need to change, etc.;
- plans or proposals for use, such as evidence of intention to use water within the next three years (related to section 5.3.2 above)
- where land use changing, the need for a change of purpose of some or all the water being apportioned,
- whether evidence suggests that cancellation proceedings with respect to all or part of the authorized water volume should be considered and/or initiated, such as based on evidence of lack of beneficial use or when water no longer needed on land parcels created through subdivision (e.g. such as where so indicated by Beneficial Use Declaration),
- whether apportionment would require establishment of new points of diversion, new works, or the continued use of existing joint works; for example, are other licence amendments required,
- the need for notification of anyone whose rights may be injuriously affected (e.g. owners of other land parcels within appurtenancy; potential objectors) (see section 5.4.3. below), and
- whether proposed changes might involve incremental impacts to First Nations' interests requiring First Nations consultation (see section 5.4.3. below).

5.5 Decision-maker authorities regarding licences and associated permits

Upon decision, the decision maker may issue to an owner of land described, subject to the terms and conditions the decision maker considers advisable, one or more new (child) licences and related permits in substitution of the original licence being apportioned.

For more information about the permits over Crown land, please see the [Occupation of Crown Land Related to Flooding and Works Policy](#).

5.6 Date of Precedence

Licences or permits issued in relation to an apportionment have the same date of precedence as the original licence being apportioned.

5.7 Notices and Consultation

It should be determined which persons own land parcels within the appurtenancy of the original water licence. Those persons should be sent notices of what apportionment is proposed with a request for comments within a specified time period in which to respond (e.g. possibly 30 days). Any information provided would be considered in the apportionment process prior to the decision maker making a decision on the apportionment and issuing child licences.

Under section 13 (9)(a) of the WSA, a decision-maker may direct any applicant or transferee under section 27 of the WSA, to give notice in the case of an apportionment under [section 28](#) of the WSA to the owner of each parcel affected by the apportionment. Alternatively, the decision maker may give notice of the proposed apportionment under section 13 (14) of the WSA. Notice may take a number of forms, including regular mail, newspaper advert, registered mail, and others.

Further guidance on identifying parties to receive notice, consultation or referrals can be found in the operational policy document “[Application Referrals, First Nations Consultation and Notices](#).” The apportionment report should contain a recommendation on whether or not notification is required.

First Nations Consultation

The Province’s duty to consult First Nations is triggered where it contemplates an action or decision that may have adverse impacts on Indigenous Interests (claimed or proven Indigenous or treaty rights). There may be circumstances where this arises during the apportioning of water rights such as where proposed changes might involve incremental impacts to Indigenous Interests. The “[Updated Procedures for Meeting Legal Obligations When Consulting First Nations](#)” document provides information on provincial policy for consulting with First Nations and related procedures.

Any required consultation should follow the provincial policy when making any water-related authorization decisions, unless there is an agreement with the First Nation that governs consultation on the type of decision at issue. Visit the “[Consulting with First Nations](#)” webpage for updated information and links.

5.8 Change of Purpose

Apportionments take an existing licence volume and distribute the volume among more than one land parcel within the original licence appurtenancy. It may be that the water use purpose of the original water licence may differ from the actual or intended use of water on the new land parcels. In such cases, the apportionment under [section 28](#) of the WSA may be accompanied by a change of purpose under [section 26](#) of the WSA. More information on procedures related to a change of purpose can be found in the operational policy document “Issuing of Water Licence Amendments.”

5.9 Fees and Outstanding Rentals

Apportionment of a licence carried out under [section 28](#) of the WSA is subject to fees. The fee details are set out in the [WSFRCTR](#). If there are any payments that have already been made (say, by the owner of the parent licence), they will be applied to the child licences as appropriate.

An amendment fees is charged to each recipient of a water licence (child licence) resulting from the apportionment, including the owner of the parent licence if the owner of the parent licence kept/received some of the water rights by receiving a child licence. This fee requirement applies regardless of whether the application was initiated by the licence holder or a statutory decision maker (s.3(2) of [WSFRCTR](#)).

Under section 25 of the WSA, it is the responsibility of the owner of the water rights to inform the comptroller of water rights or a water manager *before* an owner conveys or disposes of land, a mine or an undertaking. Even if notice by the owner does not happen, rentals continue to accrue on the water rights (see Outstanding Rentals below).

Any outstanding miscellaneous fees on the parent licence, such as application fees or late payments, are divided equally among the child licences issues, based on the number of licences issued. Water Revenue unit staff review each amendment and apportionment, then send a billing statement to each of the child licence owners.

Outstanding Rentals

If there are any outstanding rentals owing on a parent licence at the time of apportionment, the outstanding rentals are proportionately applied to the child licences based on the volume of water received by each child licence. While eLicensing automatically calculates those rates, Water Revenue staff review this prior to sending out the billing statements.

5.10 Cancellations

In processing an apportionment of water rights, a beneficial use declaration may indicate that less water is being beneficially used than the licensed amount to be apportioned. Under [section 94](#) of the WSA, a statutory decision maker may consider whether to exercise discretion to initiate cancellation proceedings in order to cancel the portion of the water rights no longer being exercised. Section 94 of the WSA describes the process to be followed in such cases.

Alternatively, land owners may be given the opportunity to establish beneficial use of water for that portion of the rights not being exercised. Further information on cancellations can be found in the operational policy document "[Cancellation or Suspension Guidelines under the Water Sustainability Act](#)".

5.11 Joint works

Should joint use of works already be in place, a statutory decision maker may consider whether the ongoing shared responsibility for the works should be carried over to the new licences created through the apportionment process. Before proceeding, inquiries should be made as to whether joint works arrangements are in place including for the new licences or whether notice should be given that a possible joint use of works order is under consideration with an opportunity to provide comments.

It should also be noted for applicants that should the joint works enable supply of drinking water to two or more users, the system meets the definition of a “water works system” and will be subject to the applicable provisions under the relevant sections of the [Drinking Water Protection Act](#), which include requirements for permitting, construction, monitoring and reporting.

A requirement for joint works may apply whether the works are for surface water infrastructure or groundwater (e.g. the POD is a groundwater well). A statutory decision maker may consider whether to require multiple licensees to enter into a joint works agreement to share a well, if appropriate.

Where works have not already been constructed and there is a compelling reason to require such or where a decision maker considers it advisable to consolidate multiple works, the decision maker may decide to require joint construction or use of works under [section 36](#) of the WSA. Before proceeding, Notice (see section 5.6 above) should be given that the decision maker is considering whether joint construction or use of works should be required, as well as an opportunity to provide comments, before any order is made.

More information for current or prospective holders of joint works can be found in the government document “[Information on Completing a Joint Works Agreement](#)” available to the public through the [Province’s water site](#).

5.12 Refusal of an Application for Apportionment

Statutory decision makers may need to consider whether an application for apportionment should be refused due to incompatibility of the original licence with the intended use or because beneficial use of water is no longer possible due to the characteristics of the appurtenancy (e.g. parcel not irrigable) or due to change in land use.

As this is not likely to address an applicant’s purpose for submitting an application for apportionment, the decision maker should also consider engaging with the applicant as to whether an amendment application is also possible, such as for a change of works or a change of purpose.

In circumstances where there is significant incompatibility of the original licence with the intended use of the apportioned licence(s) and other options are not feasible to address incompatibility, such as a change of works or a change of purpose, a decision maker may

need to also consider options within the WSA where available evidence suggests that apportioning is not appropriate.

5.13 Opportunities for input into a decision regarding apportioning of water rights

Due to the complexity of apportionments, there are usually several opportunities for an applicant or affected party (e.g. persons owning land parcels within the appurtenancy of the original water licence or others with objector standing) to provide input into a statutory decision maker's decision for apportioning of water rights, even if the apportionment was not initiated by an applicant:

1. When a statutory decision maker issues a beneficial use declaration order (typically 30 days provided for response);
2. When a statutory decision maker issues a notice of proposed apportionment (typically 30 days for response) or initiates contact due to consultation requirements; and
3. When a statutory decision maker issues a notice of a proposal to cancel some or all of the rights under a water licence on grounds described in s.94 of WSA.
4. When a statutory decision maker issues one or more child licences or cancels (a portion of) water rights (30 days to appeal the decision – Section 117 of WSA describes when notice of decision is given or delivered).

After the lapse of the 30-day appeal period of the statutory decision maker's decision to issue a licence, the decision is final and may not be appealed.

6. TEMPLATES

A letter template is provided to staff to solicit the required information through a Beneficial Use Declaration that will assist in determining how water rights may be apportioned. That is:

1. Direction to Submit Beneficial Use Declaration (BUD) (Apportionments)