



Ministry of Forests, Lands and Natural
Resource Operations
and
Ministry of Environment

NAME OF POLICY: Amendments of Unused Water Licences

APPLICATION: This policy applies to applications for the apportionment or the transfer of appurtenancy of water licences where beneficial use has not been established.

ISSUANCE: Director, Water Management Branch, Ministry of Forests Lands and Natural Resource Operations and Executive Director, Water Protection and Sustainability Branch, Ministry of Environment

IMPLEMENTATION: Ministry of Forests, Lands and Natural Resource Operations and the Ministry of Environment

REFERENCES: *Water Act* (Ch. 483, R.S.B.C 1996) and Water Regulation (B.C. Reg. 204/88)

RELATED POLICIES: Beneficial Use Declaration, Final Licences and Beneficial Use and Final Licences and Subdivided Land

RELATIONSHIP TO PREVIOUS POLICIES: Changes made are as a result of updating water policies. Replaces policy titled: "apportionment or transferring of rights for speculative purposes" dated January 8, 1996 (Section 2, subsection .03.02.04/.05).

POLICY AMENDMENT: To amend this policy a request must be made in writing to the Director, Water Management Branch, Ministry of Forests Lands and Natural Resource Operations

Glen Davidson
Director
Water Management Branch
Ministry of Forests Lands and
Natural Resource Operations

Date

13/11/26

Lynn Kriwoken
Executive Director
Water Protection and Sustainability Branch
Ministry of Environment

Date:

2013/11/27

EFFECTIVE DATE: June 1, 2009
AMENDMENT NO: 2 (December 1, 2013)

FILE: 76940-00

Amendments of Unused Water Licences

APPROVED AMENDMENTS:		
Effective date	Briefing Note /Approval	Summary of Changes:
June 1, 2009	BN 105976 May 19, 2009	Changes made are as a result of updating water policies. Updates include: reference to related legislation; an expansion of definitions; cross reference to the Water Licence Amendment Guides and related policies; and further guidance on the cancellation of unused water rights with the use of a Beneficial Use Declaration.
December 1, 2013	BN 198568 October 2, 2013	Policy amended in order to provide the current water management agencies of Ministry of Forests, Lands and Natural Resource Operations and the Ministry of Environment.

Table of Contents

1.	POLICY STATEMENT	1
2.	DEFINITIONS.....	1
3.	REASON FOR POLICY	1
4.	LEGISLATION	2
5.	PROCEDURES.....	2

1. POLICY STATEMENT

Applications for an apportionment or the transfer of appurtenancy of a water licence may be refused where the time has expired to construct works and make beneficial use, and the licensee cannot demonstrate beneficial use.

2. DEFINITIONS

Apportionment means the division of water rights within the appurtenancy of the licence, which is requested by an application.

Appurtenancy means the land, mine or undertaking to which water rights are assigned (made appurtenant to) with the issue of a water licence, water rights remain with the appurtenancy even when the land may be sold or subdivided.

Beneficial Use Declaration means a statutory declaration under section 22.01 of the *Water Act*, which confirms the extent to which a licensee has made beneficial use of water under the terms and conditions of a water licence.

Licensee is defined in the *Water Act* as an owner of any land, mine or undertaking with respect to which a licence is issued under the *Water Act* or a former Act.

Order is defined in the *Water Act* as includes a decision or direction, whether given in writing or otherwise.

Transfer of Appurtenancy means a transfer by the licensee of a water licence to another parcel of land, which is requested by an application.

3. REASON FOR POLICY

For various reasons, a licensee may continue to pay annual water licence rentals without making beneficial use of the water. On occasion, licensees may choose to hold onto licences because they feel that they may obtain a future financial benefit by doing so. This may occur through a transfer of rights to another property, or through an apportionment of the licence to facilitate the subdivision and sale of their property.

In the past new parties who have acquired an interest in the appurtenancy, or to whom the licensee applies to transfer all or a portion of the rights, may have generally been afforded the opportunity to divert and use the water, even though the licensee may have been subject to cancellation.

The practice of allowing a licensee to retain rights, when the rights may be subject to cancellation, may penalize applicants whose applications are refused on the basis of existing rights which have not have been exercised. In addition, on some sources, the sudden use of a previously unused licence may adversely impact instream flows or aggravate water shortages for existing licensees.

To ensure that the province's water resource is used in a beneficial manner British Columbia's *Water Act* requires that water rights must be exercised and in a manner which is prescribed under a water licence.

4. LEGISLATION

Section 23 of the *Water Act* provides for the cancellation or suspension of rights and water licences, for reasons which include the following:

- failure by the licensee for 3 successive years to make beneficial use of the water for the purpose and in the manner authorized under the licence
- failure by the licensee within the time specified to construct the works authorized under the licence;
- the licensee's failure to comply with the *Water Act* and associated regulations;
- the licensee's failure to comply with a term or condition of the licence; and
- the licensee's failure to comply with an order of the comptroller or a regional water manager or an engineer.

Section 22.01 of the *Water Act* requires a licensee to submit a signed declaration of beneficial use when directed to do so by the comptroller, regional water manager or engineer.

It is an offence under section 93 (2) (s) of the *Water Act*, for a person to willfully make a material misstatement or misrepresentation in a declaration under section 22.01.

5. PROCEDURES

When reviewing an application for an apportionment or transfer of appurtenancy, consideration should be given to cancelling the licence, in whole or in part, if beneficial use of the water has not been made.

When there is reason to suspect that the water rights may not of have been used beneficially, the licensee should be required to submit a signed Beneficial Use Declaration in support of the amendment request.

A request to submit a Beneficial Use Declaration is considered to be an Order under the *Water Act*. Failure by the licensee to submit the Declaration is sufficient grounds to consider cancellation of the water licence. It is also an offence under the *Water Act* to willfully make a material misstatement or misrepresentation in a declaration.

Refer to the [Water Licence Amendment Guides](#) and to related procedures for additional direction on how to proceed with a licence amendment. Also refer to the related policies on the front page of this policy.

Additional procedures will be developed as necessary.