



**Province of British Columbia**  
***A Water Licensee's Right to Expropriate Land***  
**Water Management Branch**

The Water Sustainability Act entitles the holder of a water licence with the right to:

- Expropriate any land reasonably required for the construction, maintenance, improvement or operation of the works authorized under a licence,
- Expropriate any land necessary to help prevent pollution of the diverted water if the licence authorizes the diversion and use of water for domestic or waterworks purposes, and
- Expropriate any land that that may be flooded by a dam, with the consent of the Lieutenant Governor in Council.

Negotiating agreements with the landowners is generally faster and less expensive than expropriation. Where agreements are made for access to land, they are commonly supported by easements to ensure their longevity. If the parties are unable to reach agreement, then the expropriating licensee may commence expropriation proceedings. A licensee must pay compensation for any land expropriated. **Expropriation can be a costly alternative to negotiated permission.**

The relevant portions of the Water Sustainability Act and Water Sustainability Regulation are summarized below, followed by extracts of these relevant sections. Included at the end of this document is a sample “Notice of Intent to Acquire an Interest in Land”.

[Section 32 \(1\) of the \*Water Sustainability Act\*](#) empowers a licensee with the right to expropriate any land reasonably required for the construction, maintenance, improvement or operation of works authorized under licence.

[Section 33 of the \*Water Sustainability Act\*](#) describes the procedure when compensation for the expropriated land is tendered and the owner fails to transfer the interest in land.

[Division 3 \(Sections 22 to 30\) of the Water Sustainability Regulation](#) sets out the procedures to expropriate land. Once these procedures have been completed the determination lies with the Supreme Court.

[Section 24 of the Water Sustainability Regulation](#) describes the documentation required to commence expropriation proceedings. This section requires the licensee to provide specific documents to the Comptroller of Water Rights, the registrar and the affected landowners. Those documents are a notice of intent to acquire the affected land, a plan showing the subject area, a draft of the legal instrument to transfer the interest in land, and a statement of compensation offered.

[Section 27 of the Water Sustainability Regulation](#) affords the owner of the affected land 30 days to respond to the offer described in Section 24 of the Water Sustainability Regulation.

[Section 28 of the Water Sustainability Regulation](#) enables either party to pursue a determination in court after the 30-day period in Section 27 expires.

Applications for expropriation matters should be directed to the Supreme Court. Please seek legal advice if you require assistance in this regard.

**Canadian Bar Association's Lawyer Referral Service:**

<https://www.accessprobono.ca/our-programs/lawyer-referral-service>

1-800-663-1919 or within the Lower Mainland 604 687-3221

**BC Association Appraisal Institute of Canada:**

<https://www.aicanada.ca/province-british-columbia/british-columbia/contact-us/>

604 266-8287

## **Extracts from the Water Sustainability Act**

### **Section 32 – Licensee's right to expropriate land**

- (1) A licensee has the right to expropriate any land reasonably required for the construction, maintenance, improvement or operation of works authorized or necessarily required under the licence.
- (2) In addition to the right under subsection (1), the holder of a licence that authorizes the diversion of water for domestic purpose or a waterworks purpose has the right to expropriate any land the control of which by the licensee would help prevent pollution of the water authorized to be diverted.
- (3) In addition to the rights under subsections (1) and (2), with the consent of the Lieutenant Governor in Council, the holder of a licence that authorizes the construction or use of a dam has the right to expropriate any land that has been flooded by construction of the dam or that would be flooded if the dam were constructed and utilized to the maximum height authorized.
- (4) An expropriation under this section must be made in accordance with the regulations and the licensee who expropriates the land must provide compensation to the owner of the land expropriated in the amount determined in accordance with the regulations.
- (5) If expropriation proceedings have been commenced by a licensee in relation to land on or in which works authorized under the licence are located, a person, including an owner of the land, must not interfere with the works or prevent the licensee from maintaining, operating, using or improving those works so long as the licensee diligently prosecutes the expropriation proceedings.

### **Section 33 – Licensee's rights when owner refuses compensation**

- (1) If
  - (a) an award of compensation is made in relation to land expropriated under section 32,

- (b) the amount of the award is tendered to the owner of the expropriated land, and
- (c) that owner fails to execute and deliver to the licensee the required conveyance or other instrument,

the licensee is conclusively deemed to be the attorney of that owner for the purpose of executing the conveyance or instrument on that owner's behalf.

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

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

- (b) files with the registrar

- i. the executed conveyance or instrument,

- ii. a copy of the award, and

- iii. a signed statement confirming the payment of the compensation to the comptroller and the failure of the owner to execute the conveyance or instrument, and

- (c) pays to the registrar the applicable fees under the [\*Land Title Act\*](#).

### **Section 34 – Owner to give notice before interfering with works**

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

## **Extracts from Water Sustainability Regulation**

### **Division 3 – Expropriation of Land by Licensees**

#### **Section 22 – Definitions**

(1) In this Division:

"**affected land**" means land expropriated or proposed to be expropriated under section 32 [*licensee's right to expropriate land*] of the Act;

"**benefiting land**" means the land, mine or undertaking to which a licence referred to in section 32 (1), (2) or (3) of the Act is appurtenant;

"**court**" means the Supreme Court.

(2) In sections 32 and 33 [*licensee's rights when owner refuses compensation*] of the Act, and in this Division, "land" includes an easement over land.

#### **Section 23 – Lieutenant Governor in Council consent to flood**

A licensee requiring consent for an expropriation under section 32 (3) of the Act may petition the Lieutenant Governor in Council by submitting to the minister a request that sets out, in a form acceptable to the minister,

- (a) details of the proposed expropriation,
- (b) the reason for the proposed expropriation,
- (c) the potential benefits of the expropriation to the licensee, and
- (d) an assessment of the potential impacts of the expropriation on the affected land.

#### **Section 24 – Commencement of expropriation proceedings**

(1) A licensee, including a licensee referred to in section 23, who has a right under section 32 of the Act to expropriate land, may commence expropriation proceedings if the licensee intends to exercise the right and is unable to reach agreement with the owners of the affected land as to

- a. the land reasonably required to be expropriated,
  - b. the amount of compensation, or
  - c. the terms of the required conveyance or other legal instrument.
- (2) A licensee may commence expropriation proceedings by filing with the comptroller and the registrar, and by personally serving on each owner of affected land, the following documents:
- a. a notice of intent to acquire the affected land;
  - b. a plan showing the area the licensee wishes to acquire;
  - c. a draft of the legal instrument necessary to vest in the licensee the title to or right over that land, which legal instrument includes
    - i. legal descriptions of the affected land and the benefiting land, and
    - ii. a description of the works to be constructed, maintained, improved or operated within the affected land;
  - d. a statement of the amount of compensation offered.

### **Section 25 – Substituted service**

If the comptroller is satisfied that an expropriating licensee has been unable, after reasonable efforts, to effect personal service on an owner of affected land, the comptroller may order substituted service of the documents referred to in section 24 (2) in accordance with the order.

### **Section 26 – Amendment of documents after commencement**

- (1) At any time before an application is made under section 28 [*applications to Supreme Court*], the expropriating licensee may amend the documents referred to in section 24 (2) [*commencement of expropriation proceedings*].

- (2) If an expropriating licensee makes an amendment under subsection (1), the expropriating licensee must refile and personally serve the amended documents in accordance with section 24 (2) or 25, as applicable.

**Section 27 – Owner may refuse or accept offer of compensation**

If an owner of affected land intends to accept the compensation offered and execute the legal instrument referred to in section 24 (2) (c), the owner must notify the expropriating licensee and the comptroller of that intention within 30 days after being served under section 24 (2) or 25, as applicable.

**Section 28 – Applications to Supreme Court**

When the 30-day period referred to in section 27 expires, the expropriating licensee or an owner of the affected land may commence an action in the court for a determination of any matter referred to in section 24 (1) (a), (b) or (c).

**Section 29 – Procedures on application and method and basis of compensation**

- (1) On application under section 28, the court must determine the matters referred to in that section and, for that purpose, subject to subsection (2), the court has all powers of the court under the [Expropriation Act](#).
- (2) Section 26 (1) (b), as it relates to section 19 (4), and sections 26 (1) (d), 27, 31 to 44 and 50 of the [Expropriation Act](#) apply in respect of a proceeding commenced under section 28 of this regulation, and, for that purpose, a reference in those sections to a term set out in Column 1 of the following table has the meaning set out opposite in Column 2:

<b>Column 1</b> <i>Expropriation Act</i>	<b>Column 2</b> <b>Water Sustainability Regulation</b>
date of expropriation	date the notice of intent referred to in section 24 (2) (a) is filed with the registrar

the expropriation notice under section 6 (1) (a) or order under section 5 (4) (a)	the notice of intent referred to in section 24 (2) (a)
expropriating authority	expropriating licensee

**Section 30 – Costs of expropriation proceedings**

- (1) Subject to subsections (3) to (5) and (8), the owner of affected land that is expropriated is entitled to be paid costs necessarily incurred by the owner for the purpose of asserting the owner's claim for compensation or damages.
- (2) If the court makes an order for compensation or damages to which a person is entitled, the court must also determine the reasonable costs of the expropriation proceedings in accordance with this section.
- (3) If the compensation awarded to the owner of affected land is greater than 115% of the amount of compensation, as set out in the statement referred to in section 24 (2) (d) [*commencement of expropriation proceedings*], offered by expropriating licensee, the court must award costs to the owner of the affected land and include the costs in the award of compensation.
- (4) If the compensation awarded to the owner of affected land is greater than 100% but not greater than 115% of the amount of compensation, as set out in the statement referred to in section 24 (2) (d), offered by the expropriating licensee, the court may award all or part of the owner's costs to the owner of the affected land and the court must, if it awards any costs to the owner, include the amount of the costs in the award of compensation.
- (5) If the compensation awarded to the owner of affected land is 100% or less of the amount of compensation offered to the owner, as set out in the statement referred to in section 24 (2) (d), the court may award costs to
  - a. the owner of the affected land and include the costs in the award of compensation, or



- b. the expropriating licensee.
- (6) If the court awards costs to the expropriating licensee under subsection (5), the court must deduct the amount of costs from the award of compensation.
- (7) The costs payable under subsection (3), (4) or (5) are the costs described in section 45 (7) (a) and (b) of the [\*Expropriation Act\*](#).
- (8) Section 45 (6) and (8) of the [\*Expropriation Act\*](#) applies for the purposes of this section.
- (9) In a determination of the amount of costs to be paid, the following considerations apply:
- a. the degree of success of the party, taking into account the determination of the issues;
  - b. the manner in which the case was prepared and conducted.



Province of British Columbia  
*Notice of Intent to Acquire an Interest in Land*

WHEREAS:

1. **[Names of licensees]** of **[city]**, B.C. are the holders of **[Conditional / Final]** Water Licence number(s): **[licence numbers]** which authorize(s) the **[diversion of water from / storage of water on] [stream/water source name]**.
2. In order to exercise the rights granted under the said water licence(s), it is necessary to **[construct, maintain, improve or operate works / control land to help prevent pollution of the water / flood land by the utilization of a dam]** within **[legal description of the lands]**.
3. **[name(s) of licensee(s)]** has(ve) been unable to reach agreement with the owners of the affected land, being of as to **[what land is reasonably required / the amount of compensation / the terms of the required conveyance]**, and
4. Section 32 of the *Water Sustainability Act* empowers a licensee to expropriate land for the purpose stated above,

TAKE NOTICE THAT

1. **[licensee(s)]** intend(s) to acquire an interest in land the form of **[form of interest]**.
2. The area of land intended to be acquired is as shown on the attached plan, marked "Appendix A".
3. A draft of the legal instrument considered necessary to **[convey the land / vest in the title to or right over that land]** is attached and marked "Appendix B".
4. A statement of the amount of compensation offered is attached and marked "Appendix C".
5. Pursuant to Section 27 of the Water Sustainability Regulation, the owner of the affected land may notify the licensee and the Comptroller of Water Rights, (PO Box 9340 Stn Prov Govt, Victoria, BC, V8W 9M1) within 30 days of service of these

*Notice of Intent to Acquire an Interest in Land*

documents as to whether or not the compensation offered is accepted and the instrument will be executed.

6. On expiration of the 30-day period, either the licensee or the owner of the affected land may commence action in the Supreme Court for a determination of the compensation payable, the nature and terms of the conveyance or agreement, or both.
7. Copies of these documents have been filed with the Comptroller of Water Rights and with the Registrar, Land Title Office, [city], B.C.

Dated the [day] day of [month], [year].

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**[Licensee / Solicitor for the Licensee]**