



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

NAME OF POLICY:	Permit requirements for Occupation of Crown land related to flooding and works associated with <i>Water Sustainability Act</i> authorizations and change approvals
APPLICATION:	This policy serves to guide in the adjudication of requests for Crown land permits related to water authorization, change approval and drilling authorization applications that involve works that are proposed to be located on or cross Crown land for an authorized purpose, as well as situations where Crown land is to be flooded for storage or another authorized purpose.
ISSUANCE:	Executive Director, Water Protection and Sustainability Branch, Ministry of Environment and Climate Change Strategy, and Director, Water Management Branch, Ministry of Forests, Lands, Natural Resource Operations and Rural Development
IMPLEMENTATION:	FLNRORD, ENV, OGC
LEGISLATIVE REFERENCES:	<i>Water Sustainability Act</i> (Ch. 15, S.B.C 2014) [WSA] Water Sustainability Regulation (B.C. Reg. 36/2016) [WSR] Dam Safety Regulation (B.C. Reg 40/2016) [DSR]
RELATED POLICIES:	Water Authorization Application Assessment and Processing for Applicants
RELATIONSHIP TO PREVIOUS POLICIES:	Updates and replaces Authorization Requirements for Locating Works or Flooding on Crown Land
POLICY AMENDMENT PROCESS:	To amend this policy a request must be made in writing to the Executive Director, Water Protection and Sustainability Branch, Ministry of Environment and Climate Change Strategy and the Director, Water Management Branch, Ministry of Forests, Lands, Natural Resource Operations and Rural Development.

Permit requirements for Occupation of Crown land related to flooding and works associated with *Water Sustainability Act* authorizations and change approvals



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



Ted White
Director
Water Management Branch
Ministry of Forests, Lands, Natural
Resource Operations and Rural Development

2019-04-10

Date

2019-04-17

Date

APPROVED AMENDMENTS:

Effective date	Approval date	Description/Summary of Changes:
October 21st, 2003	REF: 13135 October 21st, 2003	This is a new policy which was approved by Briefing Note REF 13135 on October 21st, 2003 However, the policy remained in draft form until June 1st, 2009
June 1st, 2009	BN 105976 May 19th, 2009	References to Crown land policies have been updated; additional definitions have been added; and Appendix 1 has been revised to more clearly indicate when a permit over Crown land is needed.
February 1st, 2010	BN 110782 (2) January 18th, 2010	The amendment to this policy specifies that flooding on Crown land associated with a headpond area will be authorized by a tenure issued under the Land Act. Where flooding of Crown land is associated with stored water, authorized by a water storage licence, a Permit over Crown Land, will be issued under the Water Act.
June 1st, 2011	BN 139797 May 16th, 2011	The amendment to this policy reduces the requirement to issue a PCL for water licence and approval pipelines into large water bodies (e.g., lakes and rivers). Section 5.3 has been added and Appendix 1 updated to provide direction on when a PCL for a pipeline will not be required for large water bodies.
February 15, 2013	DN 182725 January 21, 2013	The amendment to this policy incorporates new requirements for the applicant to request a Crown land authorization for proposed works when completing new electronic applications for water use. Appendix 1 (Authorization Matrix for Works on Crown land Supporting Water Use) has been updated.
May 18, 2019	March 12, 2019	Significant amendments to this policy to align the content with the provisions of the <i>Water Sustainability Act</i> and include new considerations for storage and PCLs.

Table of Contents

1.	POLICY STATEMENT	4
2.	DEFINITIONS.....	4
3.	REASON FOR POLICY	5
4.	LEGISLATION	5
5.	PROCEDURES.....	6
5.1	Application Requirements	6
5.1.1	“Major Works” or “Regulated Dams” or related works on Crown land.	6
5.1.2	Power Purpose Involving a Powerhouse on Crown Land	6
5.1.3	Power General Purpose or Power Commercial Involving a Transmission Line	6
5.1.4	Flooding Areas for Power or Storage	6
5.1.5	PCLs and Land Act Tenures	8
5.1.6	Water Diversion intakes into Large Water Bodies	8
5.2	Change Approvals and Crown Land Authorization.....	8
6.	LAND TENURE TYPE, TERM AND PRICING.....	9
7.	PERMITS OVER CROWN LAND AND SITE PLANS	9
8.	RELATIONSHIP TO OTHER PROCEDURES	10
9.	APPENDIX.....	10

1. POLICY STATEMENT

This policy applies to all requests for permits over Crown land related to water authorizations (water licences and use approvals), change approvals and drilling authorization applications that propose the use of Crown land for works and/or flooding. Depending on the nature of the proposed works or flooding, the applicant may include a request for a permit over Crown land under the *Water Sustainability Act* (WSA) or, where more suitable, the applicant may be asked to apply for a land tenure under the *Land Act*.

2. DEFINITIONS

Relevant terms defined under Section 1 [definitions] of the WSA: applicant, authorization, beneficial use, change approval, comptroller, Crown land, decision maker, engineer, permit (e.g. over Crown land), storage purpose, stream, water manager, works.

Relevant terms under Section 1 [definitions] of the Dam Safety Regulation (DSR): dam.

Terms defined for this policy:

Headpond Area means any land areas flooded at the intake to allow diversion of water for the project, but does not include a storage reservoir such as would be impounded behind a dam.

Headpond Water means the body of water that is used to create a head of water required to create pressure, generally to cause water to flow into a diversion structure for energy production. The reservoir water level in a headpond is static – normally at full supply level during energy production period – and stream flow is equal or greater than water being used for energy production.

Land Tenure: means a disposition of Crown land or granting of a right to occupy and use Crown land issued under the *Land Act*, such as in the form of a licence of occupation, lease, right of way or easement or Crown grant.

Minor Dam means a dam that meets the specifications listed under s. 2(1) DSR.

Major Works means works authorized by an authorization (water licence or use approval) for the conveyance of more than 0.01 m³/sec of water for waterworks purpose or industrial purpose, or works for conveyance of water for power (general or commercial) purpose.¹

Minor Works means all works authorized by a water authorization or a change approval that are not major works.

Regulated Dam means a dam that is not a minor dam.

¹ The rate of 0.01 m³/sec is the approximate flow of water that a 6 inch pipe carries at a velocity of 0.6 m/sec.

Storage Reservoir: means any land area or structure designated to impound and retain water for a storage purpose.

Stored Water means the water stored, such as in a reservoir, under a storage purpose authorization for future beneficial use. Reservoir elevation tends to fluctuate regularly, decreasing when daily beneficial use is greater than daily inflow and direct precipitation, and increasing when daily beneficial use is less than inflow and precipitation. This fluctuation generally occurs within the “live storage” of a reservoir, which is licensed as a storage use under the WSA. Live storage, for licensing purposes, is generally the volume of water between the spillway crest and the discharge pipe.

3. REASON FOR POLICY

The WSA allows for the granting of a Permit over Crown Land (PCL) when an authorization, change approval or drilling authorization is issued. A PCL provides minimal rights, permission for non-exclusive use of Crown land, to avoid trespass. In contrast, *Land Act* provides authorizations with greater rights in the form of permits, licences of occupation, easements or right-of-ways, leases, as well as the disposition of Crown land, known as a Crown Grant.

This policy provides guidance on determining the appropriate form of land tenure for flooding and works proposed to be located on Crown land and authorized under the WSA. The impact of works proposed on Crown land which support domestic and agricultural water use is generally small. For these purposes a PCL would provide the appropriate authorization in most cases.

In contrast, large industrial, waterpower or waterworks developments have a greater impact on Crown land. Large projects may also have higher consequences if works fail (e.g., a dam or a major water conveyance pipe). Therefore, a higher level of tenure security would be warranted along with the exclusive use of Crown land.

4. LEGISLATION

Section 24 of the WSA enables the comptroller or water manager in the case of an authorization, or the comptroller, a water manager or an engineer in the case of change approval or drilling authorization, to issue a permit over Crown land to allow for the construction, maintenance, and operation of works on Crown land, including flooding of Crown land, if those works are authorized under an authorization, change approval or drilling authorization.

The Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) administers the *Land Act* and is responsible for the disposition (e.g sale, lease and licence) of Crown lands throughout British Columbia. Tenures for the use of provincial Crown land, such as for highway operations and construction, including the disposition of Crown land by lease, licence of occupation, right-of-way and easement, is issued under the *Land Act*. Also to note that some permitting may occur under other enactments, such for provincial highway access or on highway right of way.

5. PROCEDURES

In the consideration of an application for a water authorization, change approval or drilling authorization under WSA that proposes flooding or works on Crown land, the decision maker may authorize the occupancy of Crown land through the issuance of a PCL. Alternatively, the appropriate form of tenure under the *Land Act* may be obtained. The Appendix provides guidance for determining the most appropriate tool for authorizing the occupancy of Crown land.

5.1 Application Requirements

FrontCounter BC reviews applications and deems them to meet the application criteria before accepting and transferring them to technical staff for processing. Applications proposing works on or the flooding of Crown land must also include proof of rights to use that land, a concurrently submitted application for use of that land or a request for a PCL. Unless otherwise specified in sections 5.1.1 to 5.1.6 of this policy, the complete application indicating the need of a PCL for an authorization, change approval or drilling authorization will generally be sufficient to meet this requirement.

5.1.1 “Major Works” or “Regulated Dams” or related works on Crown land.

Where works are proposed to be located on Crown land, an application for a water authorization involving a Regulated Dam, as defined above, will generally not be considered appropriate unless accompanied with a proof of a Crown land tenure or application for Crown land tenure under the *Land Act*, which may be required for the appurtenancy.

Likewise, applications involving Major Works will generally require a Crown land tenure, which should provide more certainty and robust rights.

A tenure under the *Land Act* will also likely be required for permanent access roads for non-waterpower applications.

5.1.2 Power Purpose Involving a Powerhouse on Crown Land

An application for a water licence involving a powerhouse on Crown land will generally not be considered appropriate unless accompanied with a proof of a Crown land tenure or application for Crown land tenure under the *Land Act*, which may be required for the appurtenancy.

5.1.3 Power General Purpose or Power Commercial Involving a Transmission Line

An application for a water licence for power general or commercial purpose involving a transmission line across Crown land will generally not be considered appropriate unless accompanied with a proof of a Crown land tenure or application for Crown land tenure under the *Land Act*, which may be required for the appurtenancy.

5.1.4 Flooding Areas for Power or Storage

Permit requirements for Occupation of Crown land related to flooding and works associated with *Water Sustainability Act* authorizations and change approvals

Power Purposes

For power general or commercial purpose applications, a tenure under the *Land Act* will generally be the most appropriate type of permission for most works on Crown land. This includes such works as transmission lines, power house sites, penstocks, intake diversion structures, dams, headraces, tailraces, switchyards, roadways, construction staging areas and headpond areas.

All storage

Water is often stored in Headpond Areas or Storage Reservoirs. Headpond Water level is static with little fluctuation in water level and primarily facilitates diversion for a project. Headpond Areas are commonly associated with run of the river power projects.

Land Tenures Branch will generally tenure a Headpond Area as part of works on Crown land using a Licence of Occupation, which may be followed by a Lease. (Refer to the definitions for a Headpond Area and for Headpond Water)

In contrast to the static flooded area for Headpond Water, the level of water contained in a storage reservoir typically fluctuates and is referred to as “live” stored water. Given the potential for large areas to be flooded within a reservoir, a PCL is generally considered appropriate for authorizing occupancy of Crown land, although a client may apply for a more robust form of land tenure if exclusive rights to occupy Crown land are desired, such as under a Lease. This concept can be applied to storage reservoirs and authorized storage use(s) that support waterpower applications. For further details regarding waterpower projects and Crown land tenure refer to [the Land Use Operational Policy Waterpower](#).

Where water is stored in a completely artificial reservoir where no natural water source existed previously—for example, a dugout—a PCL will be required for the entire area of the storage reservoir (Case 1 in Figure 1). When storage is achieved by augmenting an existing water source, a PCL is typically only required for the area covering the change in elevation between the natural boundary of the source prior to storage and the natural boundary created by full retention of the authorized storage volume (Case 2 in figure 1). Where the change in elevation is negligible, the water manager may determine that it is not necessary to issue a PCL. If a flooded area changes the natural boundary of a stream, the written PCL should distinguish the elevation of the original natural boundary or other information that could guide the re-naturalization of the stream if the associated rights are terminated through an abandonment or cancellation.

When an authorization for storage is issued on an existing source where one or more authorizations for storage already exist, it is recommended that the PCL cover the additional flooded area and the areas of all preceding PCLs for storage on the source, as, hydrologically, the authorizations share the same flooded area (Licensee B’s PCL would cover area A and B in case 3, in Figure 1). The following illustration provides recommendations in regards to storing water, and does not restrict the decision maker’s discretion.

Authorized changes under Part 3 of the WSR generally do not require additional authority to occupy Crown land unless those changes involve placement of permanent or semi-permanent works in the stream or stream channel that will remain in place for the longer term. This information might be included in responses to notifications of approved changes under Part 3.

6. LAND TENURE TYPE, TERM AND PRICING

All PCLs issued in conjunction with an authorization, change approval or drilling authorization should specify a term equivalent to the term, if any, of the water authorization, change approval or drilling authorization, that is so long as the authorization, change approval or drilling authorization remains valid. Similarly, as the occupation of Crown land is for authorized works, including related flooding, cancellation or termination of the related water authorization, change approval or drilling authorization will result in the cancellation or termination of the associated PCL. It might be made clear that the PCL is effective only so long as the authorization, change approval or drilling authorization remains valid.

Application fees and annual rentals shall be in accordance with [Schedule 1 \(Table 3\) and Schedule 2 \(Table 3\) of the Water Sustainability Fees, Rentals and Charges Tariff Regulation](#).

Where a water authorization, change approval or drilling authorization is granted, and the authorization or change approval holder seeks to obtain tenure under the *Land Act*, the tenure type, application fee, term and pricing will be in accordance with policies found on the [Crown Land –Fees](#) and [Crown Land Policies webpages](#). The [Form of Crown Land Allocation policy](#) provides a summary of Crown land tenure types.

7. PERMITS OVER CROWN LAND AND SITE PLANS (PLATS)

When a PCL is issued as part of the adjudication of a water licence application, the area to which a PCL covers should be illustrated on the site plan issued with the licence.

The following list provides guidance for considering PCLs on site drawings:

- If works are located on Crown land and occupation is authorized by a PCL, the PCL area(s) should be illustrated on the site plan.
- If the flooded area is contained in an entirely artificial reservoir (e.g., dugout) the whole reservoir area should be covered by a PCL and illustrated on the site plan.
- If the flooded area covers an area significantly larger than the original area of the stream, the entire area of the reservoir, including the area of the original stream within the flooded area, may be illustrated as the area under a PCL on the site plan; although the area and elevation of the original stream should be described in the written PCL (to support re-naturalization efforts if water rights are cancelled or terminated). For clarity, this means that although the area would appear continuous on the site plan, the written PCL would not include the area of the stream within the total PCL area.
- If the flooded area augments an existing source of appreciable size, such as a pond or lake, the site plan may illustrate the PCL as the change in elevation between the natural

Permit requirements for Occupation of Crown land related to flooding and works associated with *Water Sustainability Act* authorizations and change approvals

boundary of the source prior to storage, and the boundary created by full retention of the authorized storage volume, as described in the written PCL.

8. RELATIONSHIP TO OTHER PROCEDURES

The procedures for applying for a water authorization, change approval, drilling authorization or PCL under the *Water Sustainability Act* are not affected by this policy. Similarly, the procedures to apply for an interest in Crown land under the *Land Act* are not affected.

9. APPENDIX

Appendix A: Occupancy Authorities for Authorized Works on Crown Land

***Note: an authorization holder must obtain a PCL to occupy Crown land with authorized works or, alternatively, some form of Crown land tenure authorizing that occupation of Crown land, unless exempted by legislation.**

Works Authorized	Permit over Crown Land (WSA)	Crown Land Tenure (<i>Land Act</i>)
All authorized works for authorizations or change approvals	Minimum	Alternative
Minor works	Minimum	Alternative
Major Works	Minimum	Strongly Recommended
Minor dam	Minimum	Alternative
Regulated Dam	Minimum	Strongly recommended
Transmission lines – residential power purpose (self-supplied by the homeowner)	Minimum	Strongly recommended
Access roads temporary	Minimum	Strongly recommended
Flooded land (stored water contained in a reservoir)	Minimum	Alternative
Water diversion pipelines, into large water bodies, not more than 15 metres (50 feet) in length, into a large water body	Minimum	Alternative