



Ministry of Environment and Climate Change Strategy

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

NAME OF POLICY:	Refusal of Applications on Over-subscribed Sources – For Applicants
APPLICATION:	Regional Operations, FLNRORD: This policy applies to applications received for new water licences on fully recorded or over-subscribed sources, where a determination has been made that there is no unrecorded water available.
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, FCBC
LEGISLATIVE REFERENCES:	<i>Water Sustainability Act</i> (S.B.C 2014, c. 15) [WSA] Water Sustainability Regulation (B.C. Reg. 36/2016) [WSR] <i>Drinking Water Protection Act</i> (S.B.C. 2001, c. 9) [DWPR]
RELATED POLICIES:	Water Authorization Application Assessment and Processing Guide for Applicants Considering Hydraulic Connection in Allocation Decisions When to Conduct Site Inspections Fee Refunds for Applications Application of Water Allocation Notations to Water Authorizations Considering Environmental Flow Needs in the Review of Water Authorization Applications: Guidance to Water Program Staff
RELATIONSHIP TO PREVIOUS POLICIES:	This policy has been updated to reflect the updated legislation of the <i>Water Sustainability Act</i> , to expand guidance related to the refusal of applications, and to help avoid instances of persons drilling wells and subsequently being refused a groundwater licence.
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.



Ted Zimmerman
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

July 15, 2021
Date

July 15, 2021
Date

APPROVED AMENDMENTS:

Effective date	Approval date	Description/Summary of Changes:
June 1, 2009	BN 105976 May 19, 2009	Minor housekeeping changes to previous version.
December 1, 2013	BN 198568 October 2, 2013	Policy amended to reflect current water management agencies of Ministry of Forests, Lands and Natural Resource Operations and the Ministry of Environment.
August 12, 2021	July 15, 2021	Policy amended to align with the <i>Water Sustainability Act</i> , provide additional guidance to staff on application review and refusal, assist applicants in conducting pre-application studies and locating supporting information and help applicants in lowering their risk of drilling wells and being subsequently being refused a groundwater licence.

Table of Contents

1.	POLICY STATEMENT	4
2.	REASON FOR POLICY	4
3.	DEFINITIONS.....	4
4.	LEGISLATION	5
5.	PROCEDURES.....	7
5.1	Information for Applicants	7
5.1.1	Information Publicly Available to Applicants	7
5.1.2	Groundwater Notations Information for Applicants.....	8
5.2	Water Staff Recommendations for Refusal of Applications.....	8
5.3	Rejection versus Refusal of Applications	9
5.4	Fees and Refunds	9
5.5	Refusal Decisions are Subject to Appeal	10
6.	ADDITIONAL CONSIDERATIONS	10
6.1	Existing Use Groundwater Applications	10
6.2	Use by Prescription is No Guarantee of Application Approval.....	10
6.3	Impacts to Existing Water Rights Holders.....	10

1. POLICY STATEMENT

This policy describes:

- where to find information on fully recorded or oversubscribed sources,
- procedures for staff to follow when identifying and communicating notations for fully recorded or over-subscribed sources, and,
- circumstances where an authorization application may be refused.

2. REASON FOR POLICY

This policy supports proactive information identification, access, and communication to applicants and provides guidance to staff in making decisions in circumstances when a water authorization application relates to a fully recorded and/or over-subscribed source.

A decision maker may refuse an application for a water authorization under *Water Sustainability Act* (WSA) s.14(1)(a). Government is committed to providing public access to information regarding fully recorded and/or over-subscribed sources, including aquifers known to be hydraulically connected to such sources. This information is intended to assist the public in anticipating the risk of their application being refused by the decision maker and to inform decisions on investment in drilling new groundwater wells which may not be authorized due to limited water availability.

3. DEFINITIONS

Relevant terms defined under [WSA s.1](#) [definitions]: **applicant, aquifer, authorization, divert, environmental flow needs, government water record, groundwater, licence, permit, recorded water, and unrecorded water.**

Relevant terms under the [Water Sustainability Regulation](#) (WSR): **application, deep groundwater, and point of diversion.**

Relevant terms from the [Application of Water Allocation Notations in Water Authorizations](#) policy include Water Allocation Notations:

- **Application Refused (AR)** (previously Refused No Water or RNW) indicates that a previous application for an authorization was refused because there was insufficient water to grant that application. While refusal is often specific to a particular application, the extent of insufficiency may affect future applications on the source.
- **Possible Water Shortage (PWS)** indicates that there appears to be limited unrecorded water in the stream or aquifer available for any additional authorizations (e.g. source is nearing Fully Recorded stage or insufficient water at critical periods). Additional allocation may result in time or areas of insufficient water availability, but additional evidence may be needed to confirm. If insufficiency is likely or the degree, extent and duration of the insufficiency is considerable, the FR or FR-EXC may be warranted.

- **Fully Recorded Except (FR-EXC)** indicates there is limited unrecorded water in the stream or aquifer for additional authorizations. Exceptions may be allowed for some use purposes (e.g. domestic), small volumes or works (e.g. domestic or small irrigation), or where impact is mitigated (e.g. by sufficient off-stream storage).
- **Fully Recorded (FR)** indicates there is insufficient unrecorded water in the stream or aquifer for any additional authorizations. Note that a Fully Recorded notation, if established for an aquifer, does not apply to domestic groundwater use from an aquifer unless there are regulations under WSA s.135 [regulations closing or restricting access to water source] or WSA s.136 [regulations requiring authorizations for domestic use of groundwater]. Existing use groundwater users would also be subject to transitioning provisions under such a regulation.
- **Reserve (OR)** indicates that an Office Reserve is established by a temporary notation that preserves unrecorded water in a stream or aquifer pending negotiations or decisions. An OR may be superseded in time by a water reservation under WSA s.39 or s.40. Contact the Comptroller of Water Rights office for additional information on the specific notation.

Relevant terms established for this policy:

- **Over-subscribed source** means a water source that is fully recorded for all purposes and has a history of frequent water shortages and/or water allocation notations.

4. LEGISLATION

The following information from the WSA applies and the implications of each section summarized. Please refer to the Act or regulation for the specific wording of a section.

[WSA s.5](#) [*Vesting water in government*] establishes that stream and groundwater are vested in the government of British Columbia.

[WSA s.6](#) [*Use of water*] prohibits a person from diverting or using water from a stream or an aquifer unless the person holds an authorization for the diversion or use, or the diversion or use is authorized under regulations.

[WSA s.12](#) [*Application and decision maker initiative procedures*] describes application procedures, including amendment applications by instrument holders or required by the relevant decision-maker.

[WSA s.13](#) [*Objections to applications and decision maker initiatives*] details the circumstances when a decision maker must or may provide notice, receive objections and consider hearings for applications, including amendment applications, particularly for a change of works when notice is required.

[WSA s.14](#) [*Powers respecting applications and decision maker initiatives*] details the decision maker's authority to respond to an application, such as refusing, amending, or

granting the application in-whole or in-part; issuing instruments on terms and conditions; or ordering the applicant to provide security or additional information.

[WSA s.15](#) [*Environmental flow needs*] requires a decision maker to consider the environmental flow needs of a stream when authorizing water use, including water use from an aquifer that the decision maker considers is reasonably likely to be hydraulically connected to that stream.

[WSA s.62](#) [*Drilling authorizations*] states that if required by regulation, a person must hold a drilling authorization issued in accordance with this section in order to construct or alter a well, or to conduct a flow test.

[WSA s.105](#) [*Appeals to appeal board*] details the processes for appealing a decision to the Environmental Appeal Board for decisions under the WSA made by the comptroller, a water manager, or an engineer.

[WSA s.135](#) [*Regulations closing or restricting access to water source*] enables the Lieutenant Governor in Council to make regulations when there is insufficient unrecorded water in a specified source to warrant new authorizations, or to prohibit acceptance or consideration of new authorizations.

The following sections from the Water Sustainability Regulation (WSR) are applicable:

[WSR s.3](#) [*Applications for licences and use approvals*] describes authorization requirements.

[WSR s.5](#) [*Applications for drilling authorizations*] requires that an application for a drilling authorization include certain information including the official name of the aquifer to be drilled, or if there is no official name, a location description of the aquifer, among other requirements.

[WSR s.6](#) [*Applications for amendments under sections 26 and 62 (7) of the Act*] describes requirements for applications for amendments and drilling authorizations.

[WSR s.16](#) [*Environmental flow needs – exemptions*] outlines several circumstances when a decision maker need not consider the EFN of a stream or hydraulically connected aquifer for making a decision about an application.

[WSR s.18](#) [*Applications respecting sensitive streams*] enables a decision maker to require an applicant to provide certain information including the contribution to the sensitive stream of water from a tributary or aquifer, and any specific water conservation measures that the applicant will use to minimize the amount of water used, among other requirements.

[WSR s.19](#) [*Mitigation requirements*], [WSR s.20](#) [*Mitigation measures*] and [WSR s.21](#) [*Compensatory mitigation measures*] address mitigation which could affect the amount of

available unrecorded water from a sensitive stream and subsequently the decision to approve an application.

[WSR s.52](#) [*Conditions on diversion and use of deep groundwater*] indicates when a person may divert from a water source well and use deep groundwater without holding an authorization.

[WSR s.53](#) [*When diversion and use must stop*] allows a water manager to stop a person operating under WSR s.52 from diverting and using deep groundwater if the diversion is having or there is a significant and imminent risk that the continued diversion will have an adverse impact on the rights of a person who is lawfully diverting and using water from the same aquifer, another aquifer or a stream.

The following sections from the *Drinking Water Protection Act* (DWPA) are applicable:

[DWPA s.7](#) [*Construction permits and requirements for water supply systems*] describes the requirements before a person can construct, install, alter, or extend a water supply system or related works.

[DWPA s.8](#) [*Operating permits and requirements for water supply systems*] describes the requirements for operating a water supply system.

5. PROCEDURES

5.1 Information for Applicants

The following provides guidance on where to find information on water availability.

5.1.1 Information Publicly Available to Applicants

Applicants and/or their consultants/contractors are strongly encouraged to conduct advance research on the water source of interest, especially to understand any water supply constraints. This may help to avoid investing time and expenses for applications with a high likelihood of refusal due to insufficient water availability.

Applicants can access online information at [Water Licence - New](#) and read the “What you need to apply” section.

A common reason for a water licence application refusal in water-stressed areas is the presence of hydraulic connection between a groundwater point of diversion (e.g., a well) and a stream that is sensitive to streamflow depletion within the period of interest. Applicants should make a preliminary assessment for such a connection. This may help to understand the risk of licence application refusal before investment is made in expensive testing or initial drilling. If the water source of interest is constrained, applicants may wish to consider applying for alternative water sources to increase the likelihood of a water licence application being approved.

Information sources include:

- Current [Water Allocation Notations](#) including the definitions for [notations](#).
- [Groundwater wells and aquifers](#)
- [GWELLS](#) – map-based tool to search information on existing wells and aquifers
- Information specific for [transitioning existing groundwater users](#)
- [Understanding aquifers](#)
- [Environmental Flow Needs \(EFN\)](#)
- [Provincial Groundwater Observation Well Network](#) – access to data for over 200 developed aquifers in the Province

Reports from the [Water Science Series](#) may also be relevant, including:

- [“Determining the Likelihood of Hydraulic Connection”](#)
- [“Guidance for Technical Assessment Requirements in Support of an Application for Groundwater Use in British Columbia \(Version 2\)”](#) which:
 - recommends applicants in higher population areas complete field-based testing, in addition to desktop technical assessment, and
 - encourages completion of an initial screening (pre-application resource and/or pre-drilling assessment work) to assess likelihood of an approval.
- [“Hydrogeology and Environmental Flow Needs Assessment of a Groundwater Licence Application near Lumby, B.C.”](#) which summarizes technical information relevant for understanding refusals of a new groundwater use licence application.

Reviewing [“Before You Drill”](#) is recommended before well construction activities.

5.1.2 Groundwater Notations Information for Applicants

Applicants seeking information on groundwater notations may phone FrontCounter BC and request to talk to a local water officer or contact their Regional District Office to connect with a water officer to discuss an application. Water officers and technical staff can access the eLicensing system, which may be more current than publicly available information, to provide supplemental information.

Staff may have information on relevant groundwater notations for an application, such as current water allocation notations, such as sources with Application Refused, Fully Recorded, Fully Recorded Exception or Possible Water Shortage.

A decision is not made until the application is submitted and accepted for review.

5.2 Water Staff Recommendations for Refusal of Applications

FrontCounter BC staff screen applications for completeness before accepting an application for further processing by provincial water staff. Once an application is submitted and the application fees are paid, there is no further opportunity to proactively notify an applicant that their application may be refused because the source is fully recorded (over-subscribed). Section 5.4 describes application refunds.

A decision maker has authority from WSA s.14 (1)(a) to refuse an application made under WSA s.12. When an application has been accepted as complete by FrontCounter BC, but may be refused, water decision support staff may conduct a preliminary technical analysis (such as reviewing existing notations on a source) and make a recommendation to the decision maker based on their findings. The decision to refuse an application is communicated to the applicant.

5.3 Rejection versus Refusal of Applications

Rejection means the application is not accepted or assessed because the application did not meet the prescribed criteria set out in the regulation.

Refusal means the application is accepted as complete, is considered, and then the decision is made to refuse the requested authorization.

Application rejections typically occur in two circumstances:

1. FrontCounterBC staff may reject an application without further assessment or consideration by water staff if key details are missing or sections are incomplete according the requirements set out in WSR s.3 and s.6, or other prescribed requirements (e.g. WSA s.62 drilling authorization).
2. An area-based regulation to close or restrict a water source (both stream and groundwater) under the authority of WSA s.135, is grounds for rejecting an application. Such a regulation is made through an Order in Council by the Lieutenant Governor in Council (LCIC) if the LGIC considers that there is insufficient unrecorded water in a specified stream or aquifer for any new authorizations, or if recommended as part of a water sustainability plan. The regulation may prohibit acceptance of new applications or restrict the types of application that may be submitted. All applications can be rejected if the water source is closed. Without an area-based regulation under WSA s.135, complete applications must be accepted, assessed, and considered.

Other circumstances may warrant refusal. Under WSA s.14(7), a decision maker **must refuse to accept** an application or a part of an application that would result in an authorization to a person to whom WSA s.6(4) [*use of water – excluded groundwater users*] applies.

Rejection or refusal of an application is communicated to the applicant.

5.4 Fees and Refunds

Applicants pay the application fee before it is assessed. The “[Refunds for Applications](#)” policy describes circumstances when a refund may apply. In general, once an application is accepted by FrontCounter BC, application fees of less than \$250 will not be refunded if the authorization is refused by a statutory decision maker.

5.5 Refusal Decisions are Subject to Appeal

A decision to refuse an application under WSA s.14 (1)(a) can be appealed under WSA s.105. An appeal is heard by the Environmental Appeal Board (EAB).

6. ADDITIONAL CONSIDERATIONS

6.1 Existing Use Groundwater Applications

Existing use groundwater applications must be accepted for consideration during the [transition period](#), including for fully recorded or over-subscribed sources. The *Water Act* did not enable groundwater authorizations; use of groundwater was implicitly allowed. The *Water Sustainability Act* (WSA) enables groundwater users to apply for a licence to secure rights for water use.

6.2 Use by Prescription is No Guarantee of Application Approval

WSA s.5 establishes that stream water and groundwater are vested in the government of British Columbia. No right to divert or use water may be acquired by prescription, meaning that prior use does not confer a right or guarantee approval of an application. A statutory decision maker may refuse the application for a fully recorded or over-subscribed source unless there is an exemption under regulation. For example, during the [transition period for existing use groundwater](#), applications can be made for an authorization that recognizes an applicant's prior use of water (see Section 6.1).

6.3 Impacts to Existing Water Rights Holders

A person is allowed under [WSR Part 5](#) to divert water from a water source well and to use deep groundwater (a defined term) without holding an authorization. However, a decision maker may order a person authorized under WSR s.52 to stop water use and diversion if it may affect an existing rights holder, such as in an area where ground and stream water sources are over-subscribed.