

**NAME OF GUIDELINE:** APPORTIONING OF WATER RIGHTS

**APPLICATION:** To provide assistance to technical and processing staff involved with water licence apportionments

**ISSUANCE:** Director, Policy and Economic Development Branch

**IMPLEMENTATION:** Service Centres and Field offices  
Land and Water Management Division

**REFERENCES:** Water Programs – Policy and Procedures Manual

**RELATIONSHIP TO PREVIOUS GUIDELINE:** Replaces Section 2, Subsection 03.02.03 Appendix B (May 14, 1987) in Water Programs Policy and Procedure Manual

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### **Background**

When appurtenant land has been subdivided it becomes necessary to amend the existing water rights and apportion those rights in a manner that is both fair and equitable. Licensees are assessed a fee for apportionments which are carried out under Section 20 of the *Water Act*. Apportionments can be categorized into two types; those cases which involve distributing water rights on subdivided land for irrigation or storage purposes and those cases where the diversion and use of water is tied to a structure or specific location on a property.

Although each case involving an apportionment should be assessed and decided based on its own merits, there are efficiency measures which can be utilized in order to expedite decisions. For instance, in those cases where the licensed diversion and use of water is tied to a structure or specific site on a property, (ie. domestic, mining, power, and some industrial purposes) the licensed quantity will be limited to that property where the structure or specific site is located. Unless there are over-riding reasons not to, water rights associated with irrigation licences shall be apportioned on the basis of current (ie. last 3 years) beneficial use.

### **Apportioning water rights for Conditional Water Licences**

There are four options to be considered when apportioning water rights for irrigation purpose.

Option #1:

Complete a final licence survey under Section 14 of the *Water Act* and apportion the water rights on the basis of established use under the authorized purpose

Determine the location and area of current (ie. last 3 years) beneficial use either by conducting a final licence survey or requiring the land owner to provide a plan along with a signed Declaration of Use form. The water rights are then apportioned based on location and area of current beneficial use. This option is preferred when the established use is less than the licensed quantity and the total licensed quantity is being reduced.

Option #2:

Apportion the water rights on the basis of established use plus potentially irrigable land

This option takes into consideration the total irrigated land area as well as potential irrigable areas. The area of the original lot containing both the area of historic use and potential use of irrigable land is calculated and water rights are then allocated proportionately to the newly created lots.

Option #3:

Apportion the water rights on the basis of the total irrigable land area

The total irrigable land area of the original lot is measured and each of the new lots are apportioned a share of the water rights equal to its share of the irrigable land contained within its boundaries. This is the appropriate choice when a portion of the original lot is unsuitable for farming and is not irrigable, ie. a rock outcrop at the edge of a field. If this non-irrigable land is subdivided off for housing, it would not be appropriate to assign a portion of the irrigation rights to these lots.

Option #4:

Apportion the water rights in proportion to the subdivided lot sizes

A fairly straight forward process where the water rights, from an existing licence, are simply divided proportionally amongst the subdivided lots based on the area of the new lots, ie. a 100 ha parcel is subdivided into four 25 ha parcels, therefore, each of the parcels receive a 25/100<sup>th</sup> share or 25% of the existing water rights.

**Apportioning water rights for Final Water Licences**

Option #1:

Apportion the water rights directly to the irrigated land described in the Final Licence

Where the latest final licence survey reflects current irrigation conditions, the water rights should be allocated to the same area of land shown on the final licence.

Options 2 to 4 deal with appurtenant land where the current use of water has changed from that found at the time of the final licence survey where the area being irrigated is now located differently and/or is less than that previously authorized.

Option #2:

Apportion the water rights according to the current existing use

Where the current existing use is different than that described on the final licence, allocate the water rights based on the current use. Consider whether a change of purpose and change of works are required as well.

Option #3:

Apportion the water rights on the basis of the total irrigable land area

The total irrigable land area of the original lot is measured and each of the new lots are apportioned a share of the water rights equal to its share of the irrigable land contained within its boundaries.

Option #4:

Apportioning water rights where the existing use of water is less than that described on the final water licence

Recommend cancellation, under Section 23 of the *Water Act*, of that portion of the water rights no longer being exercised. Alternatively, land owners may be given the opportunity to establish beneficial use of water for that portion of the rights not being exercised. The final water licence may then be apportioned according to either option #2 or option #3.

**Applying Options**

Although 4 options for apportioning water rights for both conditional and final water licences have been given, there may be exceptions where other methods can be used. For example, in cases where an application to apportion water rights on subdivided land includes a copy of an agreement signed by the owner(s) of the affected land, this agreement may form the basis of the apportionment decision.

It should be determined which persons hold a valid interest in lands within the appurtenancy of the original water licence, and those individuals should be sent notices with a 30-day time period in which to respond. Notification may not be necessary in those cases where the nature of the existing land use is such that it would not be possible to use water on that portion of the land for the purpose or in the manner specified in the licence. The apportionment report should contain a recommendation on whether or not notification is required.

The approach to investigation of apportionments should have regard for:

- the source's history of regulation problems;
- whether or not the source has possible water shortages;
- any outstanding applications on the source;
- the impact of the diversion on fish populations;
- advising the interested parties of any outstanding fees which may be accumulating; and
- notification to anyone whose rights may be injuriously affected.

SECTION  
02

WATER PROGRAM  
POLICY AND  
PROCEDURES MANUAL

SUBSECTION  
.03.02.03 B

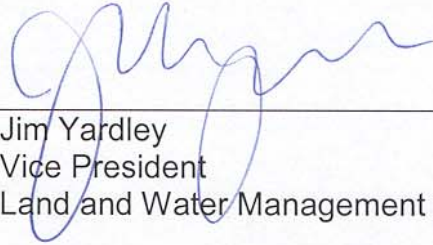
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November 5, 2003  
Date



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Jim Yardley  
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Nov. 6/03  
Date