

A WATER LICENSEE’S RIGHT TO EXPROPRIATE LAND

(Updated: February 19, 2015)

A water licence entitles its holder the right to:

- Expropriate any privately owned land reasonably required for the construction, maintenance, improvement or operation of the works authorized under a licence or for flooding.
- Expropriate any land necessary to help prevent pollution of the diverted water if the licence authorizes the use and diversion of water for domestic or waterworks purposes.

However, negotiation with private landowners generally takes less time than expropriation and is often less expensive. A licensee must pay compensation for any land expropriated. **Expropriation can be a costly alternative to negotiated permission.**

Copies of the relevant portions of the *Water Act* and *Water Regulations*, and a sample “Notice of Intent to Acquire an Interest in Land” are included for your information.

Section 27(2) of the *Water Act* empowers every licensee with the right to expropriate any land reasonably required for the construction, maintenance, improvement or operation of works authorized under licence.

Part 5 of the *Water Regulations* sets out the procedures to be followed in expropriating land.

Section 26 of the *Water Regulations* describes the documentation required to commence an expropriation proceeding and stipulates to whom copies of the documents are to be provided.

Please refer to the following pages for more information on Expropriation of Land related to the *Water Act* and Regulations and also a sample of “Notice of Intent to Acquire an Interest in Land”.

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

Lawyer Referral Service:
(800) 663-1919 or within Vancouver (604) 687-3221

BC Association Appraisal Institute of Canada:
(604) 266-8287

THE WATER ACT

LICENSEE'S RIGHT TO EXPROPRIATE LAND

Section 27

- (1) In this section and in sections 28 to 30, "**land**" includes an estate or interest in or easement over land.
- (2) A licensee has the right to expropriate any land reasonably required for the construction, maintenance, improvement or operation of works authorized under his or her licence.
- (3) In addition to the right under subsection (2), the holder of a licence that authorizes the diversion of water for domestic purpose or waterworks purpose has the right to expropriate any land the control of which by the licensee would help to prevent pollution of the water authorized to be diverted.
- (4) In addition to the rights under subsections (2) and (3) and with the consent of the Lieutenant Governor in Council, the holder of a licence that authorizes the construction of a dam has the right to expropriate any land that would be flooded if the dam were constructed and utilized to the maximum height authorized.
- (5) The owner of land expropriated under this section must be compensated for it by the licensee, and the procedure to be followed in expropriating land and the method of determining the compensation is the prescribed procedure and method.
- (6) If expropriation proceedings relate to land on or in which there are works authorized under a licence, an owner or other person must not interfere with the works or prevent the licensee from maintaining, operating, using or improving them so long as the licensee diligently prosecutes the expropriation proceedings.

LICENSEE'S RIGHTS WHEN OWNER REFUSES COMPENSATION

Section 28

- (1) If an award of compensation is made and the amount is tendered to the owner and the owner fails to execute and deliver to the licensee the required conveyance or other instrument, the licensee is then constituted the attorney of the owner for the purpose of executing the conveyance or instrument on the owner's behalf.
- (2) The registrar must register the licensee as owner of the land affected or holder of a charge on it as indicated in the award if the licensee
 - a) pays the amount of compensation to the comptroller, or the part of it that is payable at the time,
 - b) files with the registrar
 - i. the executed conveyance or instrument,
 - ii. a copy of the award, and
 - iii. an affidavit proving 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*.

OWNER TO GIVE NOTICE BEFORE INTERFERING WITH WORKS
Section 29

Despite a right or title acquired or held under a statute or indefeasible or absolute title, an owner of land or other person who proposes to alter, move, fill in or otherwise interfere with works authorized under a licence must, before doing so, give the licensee 6 months' notice in writing of the act or thing proposed to be done.

WATER REGULATIONS – PART 5
INTERPRETATION

24. In this Part:
“**court**” means the Supreme Court;
“**land**” includes an estate or interest in or easement over land.

CONSENT UNDER SECTION 27 (4) OF THE ACT, RESPECTING DAMS

25. Where the holder of a licence that authorizes the construction of a dam intends to expropriate land that would be flooded if the dam were constructed and utilized, he may, by means of a petition to the Lieutenant Governor in Council, seek the consent that is required under section 27 (4) of the Act for such an expropriation.

COMMENCEMENT OF EXPROPRIATION PROCEEDINGS

26. Where any licensee, including the holder of a licence referred to in section 25, has a right under section 27 of the Act to expropriate land, intends to exercise that right and is unable to reach agreement with the owners of the affected land as to
- a) what land is reasonably required,
 - b) the amount of compensation, or
 - c) the terms of the required conveyance or other instrument, the licensee may commence expropriation proceedings by filing with the comptroller and the registrar, and by serving on each owner of the affected land, the following documents:
 - d) notice of intent to acquire the land;
 - e) a plan showing the area the licensee wishes to acquire;
 - f) a draft of the instrument in the form of a conveyance or other instrument considered necessary to vest in the licensee the title to or right over that land in which
 - i. the land affected shall be legally described,
 - ii. the land benefiting from the easement shall be legally described, and
 - iii. the character of the works to be constructed and maintained within the easement shall be stated;
 - g) a statement of the amount of compensation offered.

SUBSTITUTE SERVICE

27. Where the comptroller is satisfied that an expropriating licensee has been unable, after reasonable efforts, to effect service on an owner pursuant to section 26, the comptroller may direct substituted service of the documents referred to in section 26 (d) to (g).

AMENDMENT OF DOCUMENTS AFTER COMMENCEMENT

28. (1) At any time before an application is made under section 30, the expropriating licensee may amend the documents referred to in section 26 (d) to (g). (2) Where he makes an amendment under subsection (1), the expropriating licensee shall refile and serve the amended documents in accordance with section 26.

OWNER MAY REFUSE OR ACCEPT OFFER OF COMPENSATION

29. Each owner of affected land may, within 30 days after service on him under section 26, notify the expropriating licensee and the comptroller whether or not that owner will accept the compensation offered and execute the instrument described in section 26 (f).

APPLICATIONS TO THE SUPREME COURT

30. After expiration of the 30 day period referred to in section 29, the expropriating licensee or an owner of the affected land may commence an action in court for a determination of the following matters:
- a) the amount of compensation to be paid for the affected land;
 - b) the nature and terms of the conveyance or instrument required to give effect to the expropriating licensee's right under section 27 of the Act to expropriate the land reasonably required in accordance with that section.

PROCEDURES ON APPLICATION, AND METHOD AND BASIS OF COMPENSATION

31. (1) Sections 26 (1) (d), 27, 31 to 44 and 50 of the *Expropriation Act* apply in respect of a determination under section 30 (a), except that, for the purposes of this regulation,
- a) “**date of expropriation**” in any of those provisions means the date notice of intent referred to in section 26 (d) of this regulation, is filed with the registrar,
 - b) the references to “the expropriation notice under section 6 (1) (a) or order under section 5 (4) (a)” in sections 33 (c), 35 (2) and 38 (1) (b) of that Act shall be read as references to the notice of intent referred to in section 26 (d) of this regulation, and
 - c) a reference to the “expropriating authority” in any of those provisions shall be read as a reference to an expropriating licensee under the *Water Act*.
- (1) It is the duty of the court to determine the matters referred to in section 30 (b) of this regulation and the court has the powers necessary to determine those matters.
- (2) Without limiting the generality of this section, the powers of the court under the *Expropriation Act* apply in respect of the determination of an application under section 30.

COSTS OF EXPROPRIATION PROCEEDINGS

32. (1) Where the court makes a determination under section 26 (1) (c) or (d) of the *Expropriation Act* as adopted by section 31, it shall also determine the reasonable costs of the expropriation proceedings as necessary for the purposes of subsections (2) to (7).
- (2) Where the compensation awarded to an owner is greater than 115% of the amount of compensation offered to the owner, as set out in the statement referred to in section 26 (g), the court shall award the owner his costs and include the costs in the award of compensation.
- (3) Where the compensation awarded to an owner is 115% or less of the amount of compensation offered to the owner, as set out in the statement referred to in section 26 (g), the court has a discretion to award the owner all or part of his costs and the court shall, if it awards any costs to the owner, include the amount of the costs in the award of compensation.
- (4) Where the compensation awarded to an owner is 100% or less of the amount of compensation offered to the owner, as set out in the statement referred to in section 26 (g), the court may, in its discretion,
- a) award costs to the owner and include the costs in the award of compensation, or
 - b) award costs to the licensee.
- (5) On a claim under section 41 (3) of the *Expropriation Act* as adopted by section 31, the court may award, in its discretion, costs to the owner or the licensee.
- (6) Where the court awards costs to the licensee under subsection (4) or (5), it shall deduct the amount of costs from the award of compensation.
- (7) Section 45 (3), (7) to (9) and (10) (b) (i) and (c) of the *Expropriation Act* applies for the purposes of this section.
-

NOTICE OF INTENT TO ACQUIRE AN INTEREST IN LAND (SAMPLE)

WHEREAS: _____ of _____, BC are the registered owners of and the holders of (Conditional /Final Water Licence) No: _____ which authorizes (the storage of water on/diversion of water from) _____ and _____

WHEREAS, in order to exercise the rights granted under this water licence, 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 _____ and _____

WHEREAS, _____ have 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

WHEREAS, Section 27 of the Water Act empowers every licensee to expropriate land for the purpose(s) stated above,

TAKE NOTICE that _____ intend to acquire an interest in form of an easement registered against the title of the affected land.

The area of land intended to be acquired is as shown on the attached plan, marked Appendix "A".

The instrument considered necessary to (convey the land/vest in the licensee the right over the land) is attached and marked Appendix "B".

A statement of the amount of compensation offered is attached and marked Appendix "C".

Pursuant to Section 29 of the Water 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 thirty days of service of these documents whether or not the compensation offered is accepted and the instrument will be executed.

On expiration of the thirty day period, either the licensee or the owner of the affected land may apply to the Supreme Court for a determination of the compensation payable, the nature and terms of the conveyance or agreement, or both.

Copies of these documents have been filed with the Comptroller of Water Rights and with the Registrar, Land Title Office, _____, BC.

Dated the _____ day of _____, 20____.

(Licensee/Solicitor for Licensee)