

# Information Sheet: Rights and Obligations of a Water Authorization Holder

(Updated Sept 2016)

Ministry of Forests, Lands and Natural Resource Operations

## What authority does a water authorization provide?

A water authorization (i.e., licence or use approval) issued under the *Water Sustainability Act* authorizes an authorization holder to, subject to the restrictions in the *Water Sustainability Act* and regulations:

- divert and beneficially use the quantity of water specified in the authorization for the specified purpose and during the specified time;
- store water in accordance with the authorization;
- construct, maintain and operate the works authorized by the authorization that are required for the proper diversion or use of the water or the power produced from the water, which may include, depending on the terms of the authorization:
  - making changes in and about a stream necessary for the construction, maintenance or operation of the authorized works or that are otherwise required to facilitate the authorized diversion; or
  - constructing fences, screens and fish or game guards across streams for the purpose of conserving fish or wildlife.

## What rights do I have as a water authorization holder?

The *Water Sustainability Act* also establishes additional entitlements for a water authorization holder which include the right to:

- receive notice from anyone making an application for a water licence or other authorization if there is reason to believe that the authorization holder's rights may be detrimentally affected;
- file an objection if they feel their rights would be affected by granting of an application;
- receive notice of any decision on an application if the authorization holder filed an objection in relation to an application; and
- pursue the expropriation of any privately-owned land reasonably required for the construction, maintenance, improvement and operation of the works or for flooding as authorized under a water licence.

## What if works or flooding under a water authorization involves Crown land?

Permits over Crown land (PCL) are typically issued under the *Water Sustainability Act* together with a water authorization. A PCL prevents works (e.g., a water pipeline across Crown land) from being in trespass, but does not provide for the exclusive use of the Crown land.

A water authorization may also be supported by a form of tenure under the [Land Act](#), which can provide for the exclusive use of the Crown land.

### **What is the significance of the date of precedence?**

An important condition of a water authorization is the availability of the water and the priority of water rights based on their date of precedence, which is sometimes known as the priority date. The date of precedence establishes who is allowed their full allocation of water first during times of water scarcity or drought. [Section 22](#) of the *Water Sustainability Act* provides the authority to order the reduction or restriction of water diversion and use from a stream (and any hydraulically connected aquifer) or an aquifer (and any other hydraulically connected aquifer) based on the date of precedence.

When more than one authorization has been issued for the same stream or aquifer, the authorization with the earliest priority has first right to available supply. The authorization with the second earliest priority date has second right, and so on. For example, an authorization with a date of precedence of April 15, 1978 has a prior right to water over an authorization with a September 15, 1983 date of precedence.

[Section 22](#) of the *Water Sustainability Act* also establishes a priority of water rights when two authorizations on the same water source have the same date of precedence, with domestic being the highest priority followed by waterworks and irrigation.

### **How are my rights protected?**

The *Water Sustainability Act* establishes several offences related to water protection and water use. Some important offences associated with use include the following:

- willfully hinder or interrupt a holder of an authorization or other permission in the lawful exercise of a right granted under the *Water Sustainability Act* or the authorization or permission;
- willfully destroy, injure or interfere with the works of the holder of an authorization or other permission without lawful authority;
- connect to the works of an authorization holder without authority;
- makes changes in and about a stream without authority;
- diverts water from a stream or aquifer without authority; or
- constructs, maintains, operates or uses works without authority.

### **How are water use and land use activities managed?**

Land management and resource use activities that may have an impact on water users, water quantity or quality, or structures located in or near streams should be brought to the attention of specialists with the Ministry of Forests, Lands and Natural Resource Operations for review.

Staff will identify where there may be conflicts with existing and proposed uses of water and identify authorization holders whose rights may be affected.

### **What are my obligations to maintain my water authorization in good standing?**

Under the *Water Sustainability Act*, a water authorization is subject to cancellation or suspension for reasons, which include the following:

- in the case of a water licence, non-beneficial use of water for 3 successive years for the purposes and in the manner authorized under the water licence;
- failure to pay water rentals for 2 years that are due to the government;
- failure to pay a water bailiff's fees or expenses that are payable for 180 days after the due date;
- failure to comply with a term or a condition that is prescribed in a water authorization;
- failure to construct the authorized works within the time specified in a water authorization;
- making a material misstatement or misrepresentation in an application or in information required to be provided to the comptroller, a water manager or an engineer;
- making a material misstatement or misrepresentation in a beneficial use declaration;
- non-compliance with an order to the comptroller of water rights, a water manager or an engineer;
- cancellation or the termination of the authorization holder's title to the land, mine or undertaking on which the water is authorized to be used; and
- non-compliance with the *Water Sustainability Act* or its accompanying regulations.

An authorization holder is also responsible for damage resulting from works constructed, operated or maintained from a defect, insufficiency or failure of the works, whether the authorization is in good standing, abandoned, suspended or cancelled.

When directed by the water manager or the comptroller of water rights, an authorization holder must keep records of the diversion and use of water. Records must be produced for inspection when required.

Any licensee may also be requested to complete a beneficial use declaration including information required by the decision maker.

### **Are there any other responsibilities that I have as an authorization holder?**

Under the *Water Sustainability Act*, a water authorization holder is required to:

- make beneficial use of the water diverted. In the context of a water licence, “beneficial use” means using the water as efficiently as practicable, in accordance with any applicable regulations, and as specified in the terms and conditions of your licence;
- exercise reasonable care to avoid damaging land, works, trees or other property of another person during construction or operation of any works;
- undertake proper inspection, maintenance and repair of your works and ensure that your works do not cause a significant risk of harm to public safety, the environment, land or other property;
- if you abandon your authorization or the authorization is cancelled or expires, you are required to ensure that any works associated with the authorization are deactivated or decommissioned in accordance with the regulations and orders. Note that as an authorization holder you remain liable for any damage or loss resulting from the construction, maintenance, use, operation or failure of your works.

You are also required to notify the water manager or the comptroller of water rights if:

- any change of mailing address is made;
- the land, mine or undertaking where the water to be used is sold, planned to be subdivided, or subdivided;
- the works authorized under the authorization are to be altered; or
- water is being used for a purpose other than specified under the authorization.

### **Are there other considerations?**

An authorization holder should also be aware of the following:

- A water authorization will not prevent resource extraction activities such as logging, mining or oil and gas extraction in an authorization holder’s watershed.
- A water authorization does not assure that the water is or will remain suitable for the authorized water purpose. For potable water uses, the Ministry of Health recommends that all surface water be treated by filtration, disinfection or both.
- A water authorization does not assure that water will always be available. The authorization allows for the diversion and use of a specified quantity of water if it is available.
- Early priority licences are not always the highest (furthest upstream) intakes on the stream or in a particular location on an aquifer. In many situations licences with early priority dates have their water intakes lower down a stream, in valley bottoms, which historically have been developed first.
- If satisfied that the joint use of works by two or more authorization holders would conserve water or avoid duplication of works, the comptroller or a water manager may order the joint construction or use of works and set the terms and conditions for the joint construction or use.

- A water authorization does not allow the licensee to trespass on private land to construct, maintain or operate works. Permission must be obtained from landowners, preferably in writing, for the construction of works on private lands. The landowner can withdraw this permission anytime.
- The *Water Sustainability Act* provides for the expropriation of land reasonably required for the construction, maintenance, improvement or operation of works authorized or necessarily required under a licence. The expropriation process includes arbitration where the affected landowner(s) are entitled to receive compensation. If the land is sold, any written agreement providing for access could be nullified. It is recommended that a registered easement or statutory right-of-way be obtained for works on private lands.
- A conditional water licence is not inferior to a final water licence. A conditional water licence authorizes the construction of works. A final water licence may be issued after the works have been surveyed, the actual quantity of water used has been determined, and the location of water use has been verified; however, generally a conditional licence is adequate and a final licence does not need to be issued.