



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

NAME OF POLICY:	Transfer of Appurtenancy Applications
APPLICATION:	To assist government staff in applying the <i>Water Sustainability Act</i> (WSA) in the transfer of appurtenancies.
ISSUANCE:	Executive Director, Water Protection and Sustainability Branch, Ministry of Environment and Climate Change Strategy (ENV), and Director, Water Management Branch, Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD)
IMPLEMENTATION:	FrontCounter BC, Ministry of Forests, Lands, Natural Resource Operations and Rural Development, Oil and Gas Commission (OGC)
LEGISLATIVE REFERENCES:	<i>Water Sustainability Act</i> (Ch. 15, S.B.C 2014) [WSA] Water Sustainability Regulation (B.C. Reg. 36/2016) [WSR]
RELATED POLICIES:	Apportioning of Water Rights Amendments under the Water Sustainability Act
RELATIONSHIP TO PREVIOUS POLICIES:	This guidance updates and replaces the Guideline Transfer of Appurtenance Applications 2003.
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 (ENV).

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January 23, 2019

Date



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APPROVED AMENDMENTS:

Effective date	Briefing Note /Approval	Summary of Changes:
February 22, 2018	December 17, 2018	Updated to align the policy with the WSA and its regulations.

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1. POLICY STATEMENT

This policy is intended to provide water program staff with guidance regarding applications for the transfer of appurtenancies related to:

- authorizations (licences and use approvals),
- permits issued in relation to an authorization,
- change approvals, and
- permits issued in relation to a change approval.

Water licences must specify and adequately describe an appurtenancy (e.g. land, mine or undertaking) within British Columbia subject to exceptions in respect of registered licences under the *Water Protection Act*. Use approvals, change approvals and permits may similarly specify such an appurtenancy ([s. 20 WSA](#)).

Where made appurtenant to land, a mine or undertaking, water rights and duties pass with the conveyance or other disposition of the land, mine or undertaking (as set out in [s. 25 WSA](#)). In making a decision to grant an application for the transfer of an appurtenancy, water rights and duties, in part or in whole, are transferred from an existing appurtenancy to new land, a mine or undertaking, either belonging to the same existing owner, or a different one. The transfer of appurtenancy application must also address requirements for new and existing works.

2. DEFINITIONS

Relevant terms defined under [s.1 WSA](#) [definitions]: **Authorization, applicant, change approval, decision maker, dedicated agricultural water, drilling authorization, engineer, licence, mine, order, permit, qualifying agricultural land, qualifying agricultural use, undertaking, use approval, water manager, and works.**

Other relevant terms defined for the purpose of this policy:

Appurtenancy (noun): means the land, mine or undertaking to which rights (water licences, use approvals, change approvals and permits) are made appurtenant or assigned (i.e., for example, beneficial use of the water under a licence is connected to the appurtenancy). Section 20(1) WSA requires the statutory decision maker to specify the appurtenancy for a licence that consists of land, a mine or undertaking (within British Columbia) for that licence. In the case of use approvals and change approvals, and any associated permits and drilling authorizations, an appurtenancy may be specified, but is not required (see s. 20(2) WSA).

Appurtenant (adj.): describes the assignment of rights to land, a mine or undertaking.

Holder: in relation to this policy, refers to the holder of a licence, use approval, change approval or permit over Crown land issued under the WSA.

Instrument: in relation to this policy refers to a licence, use approval, change approval or permit over Crown land issued or applied for under the WSA.

3. REASON FOR POLICY

On deciding an application by an existing holder to transfer rights and duties under an instrument to a new appurtenancy, the WSA enables the decision maker to issue a new authorization, change approval or permit, in whole or in part, to a different appurtenancy than that of the existing authorization, change approval or permit, where warranted in the circumstances on terms and conditions considered advisable. This policy provides guidance for processing a transfer of appurtenancy application.

4. LEGISLATION

The following lists the WSA sections considered most directly relevant to the transfer of appurtenancy applications. This list should not be considered exhaustive, however, as special terms and conditions (included in licences, use approvals, change approvals or permits, or other applicable circumstances) may draw on other related sections of the legislation not mentioned here.

[Section 9](#) of the WSA [*Licences*] establishes who may acquire a water licence in British Columbia.

[Section 12](#) of the WSA [*Application and decision maker initiative procedures*] describes the requirements an applicant is to meet when making application and empowers the decision maker to give directions and to require information in respect of an application.

[Section 13](#) of the WSA [*Objections to applications and decision maker initiatives*] requires the decision maker to specify what notifications of the application the applicant must provide. In the case of a transfer of appurtenancy, such directions may extend to the transferee.

[Section 14](#) of the WSA [*Powers respecting applications and decision maker initiatives*] empowers the decision maker to refuse, amend, grant all or part of an application, order additional information to be provided by the applicant, require security, set terms and conditions, issue an instrument, and refuse or reject an application that does not meet specified requirements. Section 14 also provides the decision maker direction regarding consideration of the Columbia Basin Management Plan. Also there are related requirements to refuse to accept an application where issuance of an authorization is not permitted by law [sections 6 (4) and 14(7) *use of water – excluding groundwater users*], as well as restricting what can be done with authorizations for dedicated agricultural water [sections 14(8) and 27(5)].

[Section 20](#) of the WSA [*Purpose, precedence and appurtenancy*] requires the statutory decision maker to specify an appurtenancy located entirely within British Columbia for every licence. Appurtenancies may be specified for use approvals, change approvals,

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permits and drilling authorizations. For authorizations (licences and use approvals), the decision maker must also specify the date of precedence, maximum quantity of water and purpose.

[Section 25](#) of the WSA [*Transfer of authorization, change approval or permit*] describes the rules that apply on transfer of the land, a mine or undertaking to which licences, use approvals, change approvals and permits are appurtenant and provides for their passage by operation of law with the conveyance or other disposition of that land, mine or undertaking.

[Section 26](#) of the WSA [*Amendment or substitution of authorization, change approval or permit*] provides a detailed list of what amendments can be made to an authorization, change approval and/or associated permit(s) and authority to carry out other amendments on application but not including the authority to increase the volume of water.

[Section 27](#) of the WSA [*Transfer of appurtenancy*] allows applications to be made to request a transfer of appurtenancy, as well as describing the decision maker's authority when deciding on applications for transfer of appurtenancy.

[Section 7](#) of the Water Sustainability Regulation (WSR) [*Applications for transfer of appurtenancy*] describes the minimum information requirements to be included by an applicant in an application for transfer of appurtenancy, including requirements related to location description and title details; transferee and mortgagee written consent, as required; and the drawing standard.

5. PROCEDURES

5.1 Processing an application for transfer of appurtenancy

The holder of an authorization and any associated permit, or of a change approval and any associated permit, must apply for a transfer of appurtenancy (and if the appurtenancy is mortgaged, the mortgagee's written consent may be required if the mortgage is on file). An applicant will initiate the application through the "Water Licence Amendments/Abandonment" form from FrontCounter BC.

If application for a transfer of appurtenancy is approved, the transfer is undertaken, in a case where the holder of the instrument remains the same, by reissuing an existing authorization, change approval or associated permit with the appurtenancy assigned to that instrument changed to specify other land, a mine or undertaking owned by that same holder and to which rights and duties under the instrument are being transferred, whether in whole or in part. In a case where the rights and duties under the instrument are being transferred, in whole or in part, by its holder to another person's land, mine or undertaking, a new authorization, change approval or associated permit issues to the transferee with the new appurtenant land, mine or undertaking specified in the new instrument.

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A change to the legal description of an appurtenancy resulting from a land survey or a change in the place of use of the water to another property are common prompts for requests for transfer of appurtenancy; however, staff should verify that the application for a transfer of appurtenancy is not actually an amendment under [s. 26\(1\)\(e\) WSA](#), such as to correct an error in the authorization, change approval or permit, indicated in the “reason for application” section (see the [Amendments under the Water Sustainability Act Policy](#) for more information).

Also, should staff believe there has been a change in the use of the water by the holder from one location to another that is outside the authorized appurtenancy, the holder should be required to apply to transfer the appurtenancy. The use of water is only authorized under the terms of conditions of the authorization, change approval or associated permit, on the applicable appurtenancy.

5.2 The decision maker

[Section 27 \(1\)](#) WSA specifies that:

- the Comptroller or water manager may approve an application for transfer of appurtenancy for an authorization, permit issued in relation to an authorization, change approval or permit issued in relation to a change approval;
- an engineer may approve an application for transfer of appurtenancy related to a change approval or permit issued in relation to a change approval.

A note of caution: [s. 27 \(3\)](#) WSA prohibits decision-makers from exercising their discretion under subsection (1) of this section to determine any appurtenancy that is not in British Columbia, except in relation to a licence registered under the [Water Protection Act](#).

5.3 Application requirements

FrontCounter BC provides the public portal for receipt of applications for transfers of appurtenancy and communicates to the applicant(s) the minimum application submission requirements, as established under [s. 7 WSR](#). Upon receipt of the application, the decision maker can make requests for additional information, specify deadlines for submission of that information, and require notifications by the applicant to potentially affected parties (including First Nations) further to [sections 12-14](#) WSA.

Also required is written approval of registered owners and persons having a substantial interest in the appurtenant land, mine or undertaking to which the current authorization, change approval or associated permit(s) is attached (including the written consent of the mortgagee if the appurtenancy is mortgaged and the mortgage is on file) and similarly for the proposed new appurtenancy (i.e. written approval of landowners registered on title, prospective owners who have option to purchase, etc.) ([s. 7 WSR](#), [s. 27\(4\) WSA](#)). An approval form with the appropriate details is generated for the applicant via

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FrontCounter BC's online application system. Approval can be provided in writing by signing the form or electronically by e-mail.

The application requirements for a Transfer of Appurtenancy are described in [s. 7 WSR](#), which should be consulted for exact details. However, in general, an application for a transfer of appurtenancy must typically provide the following information:

- The full name of the applicant and a mailing address, phone number, and if available, an email address at which the applicant or the applicant's agent may be contacted;
- The number assigned to the authorization, change approval, or drilling authorization, and related permit, if any, to which the application relates;
- The reason for the application;
- If applicable, the application must disclose whether an amendment is also being requested in order to extend the time set for beginning construction of works, to extend the time set for the completion of works or to extend the time set for making beneficial use of water, or to extend the term of the authorization, change approval or related permit ([s. 26 \(1\) \(a-c\), or \(h\) WSA](#)) and, if so, must state the reason for and the period of the requested extension;
- Description of the land, mine or undertaking to which the authorization, change approval or permit is being transferred (legal description, PID, or description if the land is unsurveyed);
- If the new appurtenancy is not owned by the applicant, details of the transferee's interest in the new appurtenancy and written consent of the transferee(s) to the transfer (see above). A form from the FrontCounter BC application will prompt an applicant for the information of the transferee(s) if they are different from the applicant;
- If the transfer of appurtenancy is only for part of the authorization, change approval and/or associated permit(s) for a given appurtenancy, details of which portions of rights and duties are being transferred and to which appurtenancy, including a description of the water use purpose and water quantity for the transferred portion is required;
- A map or drawing that meets the requirements outlined in the [Water Application Drawing Standards](#);
- Written consent of a mortgagee, if applicable (see below for further information);and,
- Description of the effect of the transfer of appurtenancy on any works associated with the licence. When an applicant indicates changes to the works during the FrontCounter BC online application process, including any new works, the form will prompt the requirement for the addition of a "Change of Works" section to the application.

5.4 Further considerations in the transfer of an appurtenancy

<i>Appurtenancy for dedicated agricultural water</i>	Applications for changes to the appurtenancy for a licence for dedicated agricultural water must be for qualifying agricultural land (Note: Dedication must be by regulation implementing a water sustainability plan) (s. 27 (5) WSA).
<i>Appurtenancy under mortgage</i>	If the land, mine or undertaking to which the authorization, change approval and/or associated permit(s) is appurtenant is mortgaged, and a copy of or particulars of the mortgage has been filed with the comptroller or water manager, then the application must include the written consent of the mortgagee for the transfer (s. 27 (4) WSA).
<i>Confirmation of land ownership</i>	Once an application for a transfer of appurtenancy has been submitted, one of the first determinations will be whether the proposed holder of the new instrument qualifies as a transferee (e.g. holds a valid interest in the proposed “new” appurtenant land, mine or undertaking). This holder could be the same as the original holder or another person. In the case of fee simple ownership in private land, verification of the holder’s ownership in the new appurtenant land can be done by checking the BC Land Titles and Survey Authority database.
<i>Date of precedence</i>	If application for transfer to a new appurtenancy is approved, new authorizations, change approvals and/or associated permits issued under s. 27 WSA for the new appurtenancy maintain the same date of precedence as the original authorization, change approval or associated permit(s) under consideration (s. 27(2) WSA).
<i>Decommissioning of Existing Works</i>	<p>In considering applications for transfer of appurtenancy which involve change of works or new works (and related amendment application), questions may arise regarding the decommissioning of existing works if they will no longer be used.</p> <p>Under the WSA, decision makers have discretion to set terms and conditions considered advisable when deciding on applications for transfer of appurtenancy. These might include requirements for decommissioning of some or all existing licensed works associated with the transfer of an appurtenancy if no longer to be used. Decision makers may set a date by which time decommissioning of the identified works must take place, taking into account the times of year when works are best undertaken (e.g. fish timing windows, freshet, etc.). The decommissioning of works is typically subject to the usual requirements associated with working in and about a stream.</p>

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<i>Transferee</i>	<p>A new authorization(s), change approval(s) and/or related permits may be issued to a person who is owner of the new appurtenant land, or mine or an undertaking. That person may be another person to whom the original holder is transferring some or all of the rights granted and related duties. Alternatively, the original holder may want to change the appurtenancy to another location owned by the holder.</p>
<i>New works</i>	<p>Should a transfer of appurtenancy require new works (e.g. change of works amendment also required), it should be determined whether any other person's land may be affected by the proposed new works and whether such an amendment triggers further requirements for notification to potentially affected parties. A decision-maker may use their discretion to set requirements for the applicant to accommodate new works, which may include requiring an application under section 26 of WSA for an amendment to specify new works and potentially involves issuance of a new authorization, change approval or permit in substitution for the original with new works identified.</p>
<i>Notification in cases of possible impacts to rights</i>	<p>Where a person's rights may be detrimentally affected by the granting of a transfer of appurtenancy, the decision maker should consider requiring the applicant (which may include the transferee) to give notification of the application (s. 13(9) WSA). This may also involve considering whether First Nations require notification and/ or consultation if their interests may be affected.</p>
<i>Suitability of new appurtenancy</i>	<p>Consideration should be given to whether the new proposed appurtenant land, mine or undertaking is suitable for and consistent with the water use purpose of the current authorization and/or associated permit, or with the rights and obligations under a change approval and/or associated permit; otherwise, amendment for change of purpose may also be required.</p>
<i>Volume</i>	<p>The transfer of appurtenancy for an authorization can result in transfer of the whole or part of the amount of water authorized to the new appurtenancy. If the holder desires any increase in the total volume of water authorized (for example, due to an enlargement of the appurtenancy) an application for an authorization for the additional volume of water is required. Also, if the holder remains the same, it may be useful to confirm that the original appurtenancy would no longer benefit from rights transferred to a new appurtenancy.</p>