

THE PEIGAN BAND OF INDIANS

SOR/94-227

By-Law No. 1

Being a By-Law respecting Water and Watercourses

WHEREAS section 81 (f), (l), (o) (r), of the Indian Act empowers a Council of a Band of Indians to make By-Laws with respect to water- courses, and matter ancillary thereto, and the imposition of a penalty for the violation thereof;

NOW THEREFORE the Council of the Peigan Band enacts as a By-Law thereof as follows:

1. Short Title: This By-Law may be cited as the Water By-Law No. 1

2. Definitions:

"Band"

means the Peigan Indian Band;

"Band community purpose"

means:

- (a) household or sanitary purposes;
- (b) the watering of animals;
- (c) the watering of streets, walks, paths, boulevards, lawns and gardens;
- (d) fire protection;
- (e) the flushing of sewers
- (f) the use of water for the construction of buildings and Band works or undertakings; or
- (g) other purposes usually served by water within a community;

if such activities are conducted at the direction of Band Council.

"Band Council Resolution"

means a motion passed on and recorded at a duly convened meeting of Band Council, and includes a written instrument containing any such motion signed by a quorum of Band Council at such meeting.

"Band member"

means a person whose name appears on a Band list or who is entitled to have his name appear on a Band list and is of the full age of 21 years, and is not disqualified from voting at Band elections.

"Chief and Band Council" or
"Band Council"

means the Chief and Council of the
Peigan Indian Band elected pursuant to
Peigan Band custom.

"Comptroller"

means the Comptroller of water rights
appointed by Chief and Council pursuant
to this By-Law.

"conversation purpose"

means the use and storage of water or
the construction of works in and about
streams for the purpose of conserving
fish or wildlife.

"divert"

means taking water from a stream, and
includes causing water to leave the
channel of a stream and making a change
in or about the channel that permits
water to leave it.

"domestic purpose"

means the use of water for household
requirements, sanitation and fire pre-
vention, the watering of domestic
animals and poultry, and the irrigation
of a garden not exceeding one acre
adjoining and occupied with a dwelling
house.

"fluming purpose"

means the use of water for the fluming
timber or timber products.

"ground water"

means water below the surface of the
ground.

"hydraulicking purpose"

means the operation of railways,
factories, stores or warehouses.

"industrial purpose"

means the use of water for a purpose
other than the purposes else where
defined in this section.

"mine"

includes a placer or mineral claim or
land held or occupied for the purpose of
winning a mineral from it.

"mineral"

includes a precious or base metal and
coal.

"mining purpose"

means the use of water for recovering
mineral from the ground or from ore.

"Peigan Indian Reserve" or
"Reserve"

means that parcel or tract of land,
the legal title to which is vested in
Her Majesty the Queen, which has been
set aside for the use and benefit of the
Band.

"permit"

means a permit issued under this By-
Law.

"permittee" or "holder of
a permit"

means a holder of any land, mine or
undertaking with respect to which a
permit is issued under this By-Law.

"person"

includes a firm, association or syn-
dicate.

"power purpose"

means the use of water in the product-
ion of electricity or other power.

"regulate"

includes allow, commence, stop, limit,
open, shut and prohibit.

"store"

when used with reference to water,
means collect, impound and conserve.

"storage" or "storage purpose"

means the collection, impounding and
conservation of water.

"stream" or "water"

includes a watercourse or source of
water supply, whether usually con-
taining water or not, ground water,
and a lake, river, creek, spring,
ravine, swamp, and gulch.

"undertaking"

means an undertaking required or pro-
posed to be established or carried on
pursuant to this By-Law in the develop-
ment, transportation, transmission,
distribution or utilization of water or
water-power for any of the purposes
included in this By-Law, and without
restricting the generality of the fore-
going includes in so far as authorized
or required in any case,

- (i) the storage, pondage, penning
back, regulation, augmentation,
carriage, diversion and use of
water or the flow thereof,

- (ii) the surveying, laying out, constructing, maintaining and operating of works, including dams, canals, ditches, headgates, divide gates, flumes, penstocks, chutes, drops, power stations, transmission lines, terminal stations, substations, telephone lines and similar works,
- (iii) the surveying of land, carrying on investigations and collecting data,
- (iv) the administration and management of the required land, works and properties and the business connected therewith,
- (v) the generation of energy by any means at a plant that is used as an auxiliary of, or incidental to, or in conjunction with, a water power system of a licensee, and

when used in relation to any property therein or to any right in respect thereof or to the diversion or usage thereof, means any water in any river, reservoir, stream, water course, lake, spring, ravine, canyon, lagoon, marsh, or other body of water in the Reserve.

"works"

means:

- (i) any structure, device or contrivance, and
- (ii) any electric generating plant, whether hydro, thermal, nuclear or otherwise, coal, gas, or other mineral deposits used or useful for the purpose of, or as auxiliary to, or in conjunction with, a water-power system of a licensee,

and without restricting the generality of the foregoing, includes any dykes, dams, wiers, flood-gates, breakwaters, drains, ditches, basins, reservoirs, canals, tunnels, bridges, culverts, cribs, embankments, headworks, flumes, aqueducts, pipes, pumps, measuring weirs, any contrivance for carrying or

conducting water, and other works that are authorized to be construed under this By-Law.

3. Band Council shall by Band Council Resolution, appoint a person to act as Comptroller to perform duties under this By-Law and at the direction of Band Council.

4.1 No person shall:

- (a) divert or use any water;
- (b) construct or cause to be constructed any works for the diversion of water or which are or may be or may become capable of diverting water;
- (c) operate or use any works for the diversion of water;
- (d) lay, place, build or erect in, over, under, on or adjacent to any water any structure, device, contrivance or thing, or any earth, sand, gravel, or other material which interferes with or is capable of interfering with the present or future development, conservation of water; or
- (e) disturb any earth, sand, or other material forming part of the bed, shore or banks of any water, if the disturbance interferes with or is capable with interfering with the present or future development, conservation or management of water;

except under the authority of this By-Law or a permit issued under this By-Law.

4.2 A person who contravenes sub-section (1) is guilty of an offense.

4.3 (a) This section shall not apply to the diversion of water by the Band Council for Band community purposes.

(b) This section shall not apply to the diversion of water by a Band member for domestic purposes.

5.1 On application being made as provided in this By-Law, a person may acquire:

- (a) A permit to divert and use water for any or all of the following purposes:
 - (i) domestic purposes;
 - (ii) irrigation and other agricultural purposes;

- (iii) industrial purposes;
- (iv) water power purposes;
- (v) hydraulicking purposes;
- (vi) fluming purposes.
- (vii) mining purposes.

(b) a permit to impound water for the purpose of water management, flood, control, erosion control, flow regulation, conservation, recreation or the propagation of fish or wildlife or for any like purpose;

(c) a permit to use water in its natural state for the purpose of conservation, recreation or the propagation of fish or wildlife or for any like purpose;

(d) a permit to divert water, otherwise than by impoundment or storage, for the purpose of water management, flood control, drainage, erosion control or channel re-alignment or for any like purposes;

(e) a permit:

- (i) to lay, place, build or erect in, over, under, on or adjacent to any water any structure, device, contrivance or thing, or any earth, sand gravel or other material, which will interfere with or will be capable of interfering with the present or future development, conservation or management of that water; or
- (ii) disturb any earth, sand, gravel or other material forming part of the bed, store or banks of any water, where the disturbance will interfere with or will be capable of interfering with the present or future development, conservation or management of water.

5.2 Applications for permits under subsection (1) have priority as between themselves according to the dates of their filing with the Comptroller, and they shall be numbered consecutively in the order in which they are filed.

5.3 When two or more applications for permits under subsection (1) for water from a common source are filed on the same date, they shall be assigned priority as between themselves in accordance with the purpose applied for and subject to the order of priority set out in subsection (1) (a).

5.4 A permittee of water for irrigation purposes is entitled to use the water for domestic purposes.

5.5 No applicant shall acquire under this section the right to divert and use any water until he has complied with the provisions of this By-Law respecting the procedure to be followed in obtaining permits.

6.1 A person making an application for a permit pursuant to Section 5 shall file with the Comptroller an application in writing containing the following information:

- (a) Applicants name and address;
 - (b) Description of the source of supply of water;
 - (c) The location of the point of diversion;
 - (d) The quality of water proposed to be diverted;
 - (e) The purpose for which water is to be used;
 - (f) A description of the land or premises where the water is to be used;
 - (g) A proposed schedule of construction, if any;
 - (h) A statement of the environmental impact of the diversion;
 - (i) A statement that objections may be filed within 30 days of the posting of the application at the Peigan Band office;
- 6.2 Upon receipt of the application the Comptroller shall mark on a copy of the application the day and time of the receipt of the application.
- 6.3 The Comptroller shall forthwith post a copy of the application in a conspicuous place in the Peigan Indian Band Office, which shall remain posted for a period of 30 days.
- 6.4 The Comptroller may require the applicant to publish notice of the application in a news bulletin or newspaper at least once a week for 2 consecutive weeks, which notice shall contain a statement of the nature of the rights applied for and of the general character and location of the proposed works.
- 6.5 Any person who objects to the granting of the application, may, within a period of 30 days from the date of first publication of the notice in a newspaper or the date of the posting of the notices in accordance with subsection (3) or (4) file with the Comptroller a statement of his reasons for objecting.
- 6.6 If any proposed channel, ditch, reservoir or other works that is to be constructed on, along, across or under any reserve land held under certificate of possession, the applicant shall file permission in writing from the holder of the certificate of possession.
- 7.1 The Comptroller shall refer each application made pursuant to section (1) to the Chief and Council within 30 days of the receipt thereof.
- 7.2 Chief and Council must consider the application in light of the criteria outlined in Section 5 and if the application meets the criteria and if the application will not unreasonably disturb the ecology of the Peigan Indian Reserve, and if there is water available for the applied use, Chief and Council shall direct the Comptroller to issue a permit.
- 8.1 The applicant may, immediately upon receipt of the permit, proceed with the construction of the works authorized in accordance with the terms of the permit.
- 8.2 The construction of any works authorized under any permit shall be commenced not later than 2 months after the date of the permit, or such other time may be specified within the permit.

- 8.3 Any works authorized under this By-Law shall be subject to inspection by any person named by the Comptroller.
- 8.4 (a) If it appears to the comptroller that the holder of a permit has failed to comply with any term of the permit or to keep his works in a proper or safe condition, the comptroller shall refer the question to the Chief and Council who shall cause an investigation to be made.
- (b) If the Chief and Council are satisfied from an investigation of the permittees failure to comply with his permit or to keep his works in a proper or safe condition the Chief and Council may order the permittee to take immediate action to remedy the failure to comply or to restore his works to a proper and safe condition.
- (c) If the permittee does not comply with an order under subsection (2), the Chief and Council may suspend the permit for any period or cancel the permit.
9. Notwithstanding anything in this By-Law or any permit issued under this By-Law, the Chief and Council may, under any conditions declared by them to constitute an emergency, and for any period of time that they may specify, by order, suspend the operation of any permit issued under this By-Law or, designate the purposes for which, and the quantities in which water may be used.
- 10.1 An applicant for a permit shall file an application fee of \$ 50.00.
- 10.2 In the event that a permit is issued to an applicant the applicant shall forthwith pay the fees prescribed by Band By-Law.
11. Every person guilty of an offence against this By-Law shall be liable on summary conviction to a fine not exceeding \$ 100.00 or to imprisonment not exceeding 3 months or to both fine and imprisonment.
12. Nothing in this By-Law shall be construed as altered, restricting or impairing any right, remedy or cause of action with which the Peigan Indian Band Council may have, acting on behalf of the Peigan Indian Band, or any member of the Band may have by virtue of their reparian rights or otherwise.

Considered and passed by the Peigan Band Council on the 23rd day of
January, 1984.

Peter Yellowhorn
Chief

Leonard Bastien

William Little Moustache

Nelbert Little Moustache

Joe Pard

Jerry Potts, Sr.

Edward Yellowhorn

Faron Strikes With A Gun

Jesse Scott

Floyd Provost

Lionel Crow Shoe

Charles B. Grier