



WATER (QAYε) MANAGEMENT AND PROTECTION LAW

TNL 19/2016

Enacted on April 5, 2016



Hegus [SIGNATURE]

CLINT WILLIAMS

Hegus [NAME]

DEPOSITED IN THE TLA'AMIN
REGISTRY

ON 12/04/16
(day/month/year)



Signature of Law Clerk

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PREAMBLE

- A. Since the beginning of time, Tla'amin people have lived on the lands that the Creator provided for our ancestors and all future generations of Tla'amin people;
- B. Our ancestors lived by a traditional system of governance grounded in our *Ta'ow* (teachings) and *Ee ah ju thum* (language), which were our unwritten constitution that influenced all forms of environmental stewardship matters, social and political relations. It is this system that has sustained our way of life and *Tums gijeh* (lands) and resources;
- C. Our vision of self-government and of a healthy, self-sufficient Tla'amin Nation began long ago with our ancestors and our leadership of the past. Many of those who were involved in shaping and advancing our vision have since passed on and we acknowledge their contributions and sacrifice. They put in place the foundation that we have built upon today. Those respected ones have cleared the path so that we, the Tla'amin Nation, could achieve our vision of "one heart, one mind, one Nation". It is on this basis that we accept the obligations and responsibilities inherent in governing and work to blend our traditional and modern-day governing approaches, including the development of governance laws;
- D. Our vision of self-government and of a healthy, self-sufficient Tla'amin Nation began long ago with our Ancestors and our leadership of the past. Many of those who were involved in shaping and advancing our vision have passed on and we acknowledge their contributions and sacrifice. They put in place the foundation that we have built upon today. Those respected ones have cleared the path so that we, the Tla'amin Nation, could achieve our vision;
- E. The Tla'amin Constitution includes fundamental values that are relevant to water including ensuring the responsible and sustainable stewardship of lands, waters, air and other resources;
- F. Tla'amin's *Ta'ow* includes the principle of "*Tlo metsxw otl ma tuxw*" which includes the concepts of sustainability and only taking enough to satisfy present needs while leaving sufficient resources for future generations;
- G. Tla'amin is committed to continuing traditional, cultural and spiritual uses and protection of water (*QAYe*);
- H. Under chapter 7, section 18 of the *Tla'amin Final Agreement*, the Tla'amin Nation has the authority to make laws in relation to
 - (a) the consent of the Tla'amin Nation for applications by Tla'amin Public Institutions, Tla'amin Corporations, and Tla'amin Citizens to British Columbia for Water Licences for volumes of flow to be applied against the Tla'amin Nation's water reservation; and
 - (b) the supply and use of water from a Water Licence issued against the Tla'amin Nation's water reservation; and
- I. Under chapter 13, section 9(b) of the *Tla'amin Final Agreement*, the Tla'amin Nation has the authority to make laws in relation to environmental management relating to the

protection, preservation and conservation of the Environment, including the protection of water quality by preventing the escape of pollution and other material from Tla'amin Lands; and

- J. The Tla'amin Nation wishes to establish a comprehensive, effective system for managing access to, use of, and flow from the Tla'amin Water Reservation, within a watershed-based approach to water management that implements the provisions of the *Tla'amin Final Agreement*, and for developing and implementing water and watershed management plans and policies that focus on the entire water cycle and respects traditional teachings and principles and aims to protect both Tla'amin Citizens, water quality and the environment.

NOW THEREFORE the Tla'amin Legislative Assembly enacts as follows:

PART 1 – APPLICATION AND DEFINITIONS

Citation

1. This Law may be cited as the *Water (QAYε) Management and Protection Law*.

Application of Final Agreement Definitions

2. The terms “Annual Fishing Plan”, “Available Flow”, “Enhancement Initiative”, “Groundwater”, “Heritage Site”, “Migratory Birds”, “Public Planning Process”, “Stewardship Activities”, “Tla'amin Public Institution” and “Water Licence” have the meanings given to them in the Final Agreement.

Definitions

3. In this Law:

“Agreement” means an agreement made under any of chapters 3, 7, 8, 9, 10, 11, 12, 13, 15 or 16 of the Final Agreement, including agreements between the Tla'amin Nation and other aboriginal groups, British Columbia or Canada;

“Applicant” means any of the Tla'amin Nation, a Tla'amin Public Institution, a Tla'amin Corporation, a Tla'amin Citizen, or other classes of persons prescribed by a Tla'amin Regulation from time to time;

“Application for Consent” means an application submitted to the Water Manager under section 14;

“Director” means the Director of Lands and Resources for the Tla'amin Nation;

“Plan” includes any plan established by the Tla'amin Nation pursuant to a Law or the Final Agreement, including a Tla'amin land use plan, a Tla'amin Annual Fishing Plan, a

gathering plan, a commercial recreation plan, an Enhancement Initiative and Stewardship Activities;

“Tla’amin Water Reservation” means the water reservation established by British Columbia under the *Water Act* (British Columbia) as required by chapter 7, section 5 of the Final Agreement; and

“Water Manager” means the Water Manager appointed under section 8.

Application

4. This Law applies to all Tla’amin Lands.

Interpretation Law

5. (1) In addition to the terms defined in this Law, terms used in this Law may be defined in the Interpretation Law.

(2) Only those defined terms that are capitalized in section **Error! Reference source not found.** or in the Interpretation Law are presented capitalized in the text of the Law, and all other defined terms are presented in lower case.

Severability

6. The provisions of this Law are severable, and where any provision of this Law is for any reason held to be invalid by a decision of a court of competent jurisdiction, the invalid portion must be severed from the remainder of this Law and the decision that it is invalid must not affect the validity of the remaining portions of this Law.

Validity

7. Nothing under this Law must be rendered void or invalid by
 - (a) an error or omission in a notice, form, permit or other document given or authorized under this Law; or
 - (b) a failure of the Tla’amin Nation or a Tla’amin Official to do something within the required time.

PART 2 – WATER MANAGER

Appointment of Water Manager

8. (1) The Executive Council must appoint a Water Manager to exercise the powers, duties and functions of the Water Manager under this Law.

(2) Despite subsection (1), the Executive Council may appoint a committee comprised of one or more individuals to exercise the powers, duties and functions of the Water Manager under this Law.

(3) If at any time a Water Manager is not appointed under subsection (1) or (2), or a person or committee appointed is not able to act, the Director must act as the Water Manager and perform the powers, duties, and functions of the Water Manager under this Law, until such time as a Water Manager is appointed or able to act.

Delegation

9. (1) The Executive Council and Director may delegate their powers, duties and functions under this Law in accordance with Tla'amin delegation laws and policies.

(2) Despite subsection (1) the Executive Council must not delegate the power to make, amend or repeal regulations made under this Law.

Duties and Responsibilities of Water Manager

10. The Duties and Responsibilities of the Water Manager include the following:

- (a) perform the powers, duties and functions of the Water Manager set out in this Law;
- (b) seek to ensure that the Available Flow from the Tla'amin Water Reservation is allocated in a fair and transparent manner;
- (c) protect water quality and quantity for present and future generations of Tla'amin Citizens;
- (d) promote partnerships with local governments and other water users in order to coordinate water use and watershed planning;
- (e) promote partnerships with local governments and other water users in order to provide for environmental protection and stewardship; and
- (f) promote sustainable water and watershed management plans and policies that focus on the entire water cycle.

Functions and Powers

11. In carrying out his or her mandate, the Water Manager may

- (a) develop or recommend water management plans and watershed management plans for adoption and implementation by the Executive Council by order or regulation;
- (b) recommend regulations to the Executive Council to further the purposes of this Law;

- (c) negotiate, coordinate or recommend to Executive Council appropriate service agreements with local governments for the supply of water;
- (d) recommend to the Executive Council that a community organization be established to apply for water licences for conservation or other purposes;
- (e) recommend to the Executive Council that a Tla'amin Public Institution be established to act as a Water Users Community under the *Water Act* (British Columbia);
- (f) recommend the establishment of watershed protection areas;
- (g) establish best practices related to water or watershed management;
- (h) participate in Public Planning Processes or make recommendations to the Tla'amin Nation with respect to Public Planning Processes as they relate to matters within the Water Manager's mandate; and
- (i) advise on or participate in the development and implementation of Plans and Agreements, including the Theodosia shared decision-making agreement.

12. The Water Manager is responsible for performing the following duties and functions:

- (a) receiving and processing Applications for Consent;
- (b) making recommendations to the Executive Council on whether to give consent to any dispositions by British Columbia in relation to Sliammon Lake, Little Sliammon Lake, or Submerged Lands within Tla'amin Lands, as set out in chapter 3, section 42 of the Final Agreement;
- (c) advising the Tla'amin Government and Tla'amin Public Institutions respecting the creation or replacement of interests in land associated with Water Licences, including those referenced in chapter 3, sections 51 and 55 of the Final Agreement;
- (d) advising the Tla'amin Government and Tla'amin Public Institutions respecting the granting of access rights or interests in accordance with chapter 7, section 15 of the Final Agreement;
- (e) making recommendations to the Executive Council on whether to give consent to access Tla'amin Lands for the purposes of extracting Groundwater under those lands, as set out in chapter 7, section 24 of the Final Agreement;
- (f) working with Tla'amin Public Works and Tla'amin Fisheries to explore and coordinate applications for hydro and storage water licenses as set out in chapter 7, section 25 of the Final Agreement;
- (g) monitoring Water License applications and existing Water Licenses granted by the Province in relation to Tla'amin Lands;
- (h) communicating with Tla'amin Public Institutions and Tla'amin advisory bodies in respect of matters of mutual interest or related mandates; and

- (i) performing such other duties and functions related to the Water Manager's mandate as directed by the Executive Council or the Chief Administrative Officer.

Standards and Procedures

13. The Water Manager may recommend to the Director or the Executive Council for approval any rules, standards, forms and procedures, consistent with Tla'amin Law, that he or she considers necessary to carry out the Water Manager's powers, duties and functions under this Law, including rules, standards, forms and procedures respecting
- (a) information to be submitted with an Application for Consent; and
 - (b) consultation and public input requirements in respect of an Application for Consent.

PART 3 –APPLICATIONS FOR CONSENT TO WATER LICENCE

Application for Consent to Water Licence

14. (1) An Applicant who wishes to apply to British Columbia for a Water Licence for a volume of flow to be applied against the Tla'amin Water Reservation must first apply for and obtain consent for making that application in accordance with this Part.
- (2) An Applicant must apply for consent for a Water License application by submitting to the Water Manager an Application for Consent in the prescribed form and accompanied by the prescribed fee.

Referral of Application by Water Manager

15. On receiving an Application for Consent the Water Manager must
- (a) refer the Application to Tla'amin Public Works, the Tla'amin Fish Hatchery, the Lands Manager, and any other individual or entity as directed by the Executive Council or as otherwise prescribed, for review and comment;
 - (b) confirm that the proposed use of the volume of flow and associated activities comply with Tla'amin Laws and policies, including respecting zoning and land use; and
 - (c) confirm that the proposed use or activity is consistent with water conservation measures that have been approved or implemented by Tla'amin law or by the Executive Council.

Water Manager may Request Additional Information

16. (1) The Water Manager may request from an Applicant, or from any other person, such additional plans, reports, or other relevant material or information that the Water Manager considers is reasonably required in order to review or evaluate an Application for Consent.

(2) An Applicant must, as soon as reasonably practicable after receiving a request under subsection (1), provide the requested materials or information to the Water Manager.

No Referral where Contrary to Tla'amin Law

17. (1) The Water Manager must not refer an Application for Consent to the Executive Council for consideration if, in exercising rights under the proposed Water Licence, the Applicant would violate Tla'amin Law, including in

- (a) diverting and using water;
- (b) storing water;
- (c) constructing, maintaining and operating a work or works; or
- (d) altering or improving a stream or other watercourse.

(2) Where, in accordance with subsection (1), the Water Manager does not refer an Application to the Executive Council, the Water Manager must notify the Applicant, in writing, that the Application for Consent will not be forwarded to the Executive Council for consideration, the reasons for the decision.

(3) Where the Water Manager notifies an Applicant under subsection (2), the Applicant may, within twenty-one (21) days of receiving the notice, modify the Application in order to address the issues identified by the Water Manager, and where all issues are addressed the Water Manager must proceed with processing the Application.

Referral to the Executive Council

18. Where the Water Manager has

- (a) received a completed Application for Consent in the prescribed form,
- (b) received the prescribed fee in respect of the Application,
- (c) received such additional materials or information requested under 16, and
- (d) completed the requirements under section 15 and received any input from the persons referenced in section 12.

the Water Manager must, subject to section 17, refer the Application to the Executive Council.

Executive Council Required Considerations

19. In determining whether to approve an Application for Consent, the Executive Council must consider

- (a) whether the Application is consistent with the following goals of the Tla'amin Nation:
 - (i) promoting sustainability and water conservation,

- (ii) promoting a healthy and safe community with clean air, water, land, forest and marine resources for present and future generations, and
- (iii) promoting land and resources decision-making based in the best of traditional and technical knowledge;
- (b) whether the Applicant has the ability or has made arrangements for suitable infrastructure to safely and effectively deliver water; and
- (c) whether the issuance of a Water Licence will have an adverse effect on
 - (i) natural stream flow regimes and characteristics,
 - (ii) a community watershed,
 - (iii) traditional and cultural uses of community watersheds,
 - (iv) a protected stream,
 - (v) fish stocks,
 - (vi) fish and fish-related habitat,
 - (vii) an allocated fish species,
 - (viii) a designated migratory bird population,
 - (ix) potable water,
 - (x) an area identified as unsuitable for lands and resources development due to cultural or other reasons,
 - (xi) a Heritage Site,
 - (xii) a designated Tla'amin cultural reserve area,
 - (xiii) a designated enhanced riparian reserve,
 - (xiv) traditional harvesting practices, and
 - (xv) other designated protected areas.

No Approval in Certain Circumstances

20. The Executive Council must not approve an Application for Consent if issuance of the Water Licence would be inconsistent with a Plan, Agreement, or Tla'amin policy or guideline, including respecting:

- (a) fishing;
- (b) Migratory Birds;
- (c) habitat restoration;
- (d) restoring flow in the Theodosia Watershed and Inlet;
- (e) restoring stream channels that have been impacted by landslides;

- (f) extending salmon enhancement work to Theodosia Inlet in a salmonid rearing facility;
or
- (g) undertaking salmon enhancement and habitat restoration.

Decision by the Executive Council

- 21.** (1) The Executive Council must, as soon as practicable after receiving an Application for Consent from the Water Manager
- (a) review the Application, taking into consideration the matters required under this Law and any other factors considered appropriate by the Executive Council; and
 - (b) decide whether to approve the Application.
- (2) Without limiting its general authority, the Executive Council may approve an Application subject to specified terms and conditions, including those set out in regulations established pursuant to this Law.

Fees

- 22.** The Executive Council may, in approving an Application, direct that fees be paid in accordance with a prescribed fee schedule.

Notice of Decision

- 23.** (1) The Executive Council must, as soon as practicable after making a decision, notify the Applicant, in writing, of the decision and provide reasons where the Application is refused.
- (2) Where, in accordance with section 20, the Executive Council does not approve an Application for Consent, the Executive Council may approve an Application that is modified and re-submitted by the Applicant, where the modified Application addresses the inconsistencies with the matters set out in section 20.

PART 4 – REGULATIONS

Executive Council may make Regulations

- 24.** The Executive Council may make regulations respecting
- (a) consent criteria for applications to access the quick licencing procedures under the *Water Act* (British Columbia);
 - (b) consent criteria, in addition to those criteria set out in this Law, including criteria applicable to licences for specific purposes defined under the *Water Act* (British Columbia);
 - (c) the form and content of the Application for Consent;

- (d) the fee payable for an Application for Consent;
- (e) fees payable for water use;
- (f) watershed protection;
- (g) drinking water protection;
- (h) pesticide use (in relation to water quality protection);
- (i) water source protection;
- (j) water restrictions or seasonal bans or restrictions;
- (k) outdoor water use; and
- (l) such matters as are necessary or desirable for carrying out the purposes and provisions of this Law.

PART 5 – COMING INTO FORCE

Coming Into Force

25. This Law comes into force on the date of its enactment by the Legislative Assembly.

THIS LAW IS HEREBY DULY ENACTED by the Tla'amin Legislative Assembly on the 5th day of April, 2016, at Powell River, in the Province of British Columbia.



ORDER OF THE LEGISLATIVE ASSEMBLY OF THE TLA'AMIN NATION

Legislative Assembly Order No.: TNO-LA 21 /2016

Approved and Ordered: April 5, 2016

Order

The Legislative Assembly hereby enacts the *Water (QAYε) Management and Protection Law* to take effect on the Effective Date.

Authority

This Legislative Assembly Order is made under the authority of the Final Agreement and the Constitution and in accordance with the *Order of the Legislative Assembly of the Tla'amin Nation* TNO-LA 01/2016 (respecting the Tla'amin Nation Effective Date Period Procedures).

*Signed by the Hegus on behalf of the
Legislative Assembly of the Tla'amin Nation*

(Note: This portion is for administrative purposes only and is not part of the Order)

Authority under which the Order is made:

Law: *Constitution*

Other (please specify): Final Agreement and the *Order of the Legislative Assembly of the Tla'amin Nation* TNO-LA 01/2016 (respecting the Tla'amin Nation Effective Date Period Procedures).

DEPOSITED IN THE TLA'AMIN
REGISTRY

ON 12/04/16
(day/month/year)

Jedith King
Signature of Law Clerk