

Bylaw 132

QUALICUM FIRST NATION WATER SERVICES AGREEMENT BYLAW – a bylaw to authorize the execution of an agreement with the Qualicum First Nation with respect to the provision of water services to Qualicum First Nation Reserve Lands from the waterworks system of the Qualicum Bay – Horne Lake Waterworks District. Repeals Bylaw #107 Adopted: January 20, 2010

1. That Gordon Lundine, Chairperson of the Trustees, and Leigh Campbell, Officer of the Trustees, are hereby authorized to execute on behalf of the District an agreement with the Qualicum First Nation relating to the provision of water services in terms of the agreement hereto attached.

2. That Gordon Lundine, Chairperson of the Trustees, and Leigh Campbell, Officer of the Trustees, are hereby authorized to execute on behalf of the District all necessary instruments to give effect to said agreement.

3. This bylaw may be cited as the “Qualicum First Nation Water Services Agreement Bylaw, 2010”

4. This bylaw repeals Bylaw #107 “Qualicum First Nation Water Services Agreement Bylaw”.

INTRODUCED and given first reading by the Trustees on December 16, 2009.

RECONSIDERED and finally passed by the Trustees on January 20, 2010.

THIS AGREEMENT made the 20 day of January, 2010.

BETWEEN:

QUALICUM BAY – HORNE LAKE WATERWORKS DISTRICT
(the “District”)
234 Lions Way
Qualicum Beach, BC
V9K 2E2

OF THE FIRST PART

AND:

QUALICUM FIRST NATION
(the “Nation”)
5850 River Road
Qualicum Beach, BC
V9K 1Z5

OF THE SECOND PART

WHEREAS

The District continues to supply potable water to the lands comprising the Qualicum First Nation Reserve (hereinafter referred to as the “Reserve Lands”) for the use and consumption by residents, in accordance with District Bylaws, and to provide adequate fire flows;

The Nation has upgraded the size of the pipeline carrying water onto the Nation’s Reserve Lands and to the individual users within the Nation, at the Nation’s expense;

The District and the Nation have agreed that the provision of water by the District to the Nation should be governed by this Agreement;

The District has enacted as Bylaws of the Qualicum Bay – Horne Lake Waterworks District Bylaws No. 129, 64, 76, 104 and 125 (the “Bylaws”) more particularly described in Schedule “A” to this Agreement, and it is intended that these Bylaws should apply to the use of water supplied by the District for use upon Reserve Lands.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants and agreements hereinafter contained and subject to the terms and conditions herein set out, the parties agree as follows:

1. **BYLAWS**

The District will provide and maintain a supply of potable water to the Reserve Lands subject to the terms and conditions of the Bylaws.

The Nation shall comply with each of the Bylaws during the term of this Agreement in accordance with their terms and in particular:

- a) shall pay to the District all sums which would be payable to the District under the terms of the Bylaws in any area within the jurisdiction of the District with the exception of the parcel tax. Reserve Lands are exempt from this tax.
- b) shall cause all works upon Reserve Lands to be constructed, maintained and operated in accordance with the provisions of the District and shall not permit the use of any such works contrary to the provisions of the Bylaws.

2. PURITY TESTING

The Nation shall, at its own expense, cause water purity tests to be conducted by a certified laboratory upon samples drawn from water provided by the District upon Reserve Lands monthly and shall provide copies of the results of these tests to the Board within seven days of their receipt.

3. FIRE HYDRANTS

Fire hydrants upon Reserve Lands shall be used for firefighting and the flushing of water lines only and shall not be used for any other purpose.

4. FURTHER ASSURANCES

Both parties hereto shall execute and do all such further deeds, acts, things, and assurances as may be reasonably required to carry out the intent of this Agreement.

5. COSTS OF AGREEMENT

Each party hereto shall pay their own costs and expenses of, and incidental to, the preparation of this Agreement.

6. MODIFICATION

No changes of this Agreement shall be valid unless it is in writing and signed by each party.

7. NOTICES

Any and all written notices to be given or which may be given under this Agreement shall be delivered personally by prepaid registered mail to the parties hereafter may advise in writing. Personal delivery on the Office Administrator of the District shall be effectual personal delivery on the District. Personal delivery on the Office Administrator, Chief Councillor or Councillor of the Nation shall be effectual personal delivery on the Nation. Any notice personally delivered and any notices sent by mail as aforesaid shall be deemed to have been given and received on the second business day following the date on which the notice was delivered to a post office in British Columbia for mailing, provided that in the event of a labour dispute or other disruption affecting postal service, all notices hereunder shall be personally delivered.

8. ENTIRE AGREEMENT

The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants, and agreements whether verbal or written between the parties with respect to the subject matter thereof.

9. CAPTIONS

The captions appearing in this Agreement have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope of the meaning of this Agreement or any provision hereof.

10. INTERPRETATION

Wherever the singular or masculine or neuter is used in this Agreement, it shall be construed as meaning the plural, feminine or body corporate where the context of or the parties hereto so require.

11. TERM

This Agreement shall be for a period of one year commencing on the 20th of January, 2010 and continues until midnight of the date of its anniversary.

12. RENEWAL

This Agreement is renewed automatically for further one-year terms unless one party notifies the other party in the manner provided herein prior to the anniversary date of their intention to either terminate or make changes to this Agreement.

13. INDEMNITY

The Nation shall indemnify and save harmless the District from and against all claims, demands, loses, costs, damages, actions, suits or other proceedings by whomever may, arising out of, related to, occasioned by, or attributable to the making and operation of this Agreement except where it is proven that the District was negligent.

14. INTERRUPTION OF SERVICE

The District is not liable for interruptions in service or supply, caused by circumstances beyond the District's control, although where such interruptions originate outside of the Nation's Reserve Lands, the District will remedy such interruptions as expeditiously as is reasonable in the circumstances.

The terms of this Agreement commence the 20th day of January, 2010, notwithstanding the actual date of execution of this Agreement.

SCHEDULE "A"

SCHEDULE OF BYLAWS OF
QUALICUM BAY – HORNE LAKE WATERWORKS DISTRICT

Bylaw No. 129

A Bylaw for fixing the connection charge payable to the District and the time of payment thereof.

Bylaw No. 64

A Bylaw to fix a charge for Capital Expenditures on:

1. New parcels of land within the District created by a subdivision from this day forward.
2. Each and every separate unit of Domestic, Commercial or Public accommodation which forms part of an Apartment Building, or a Condominium Building, or a Shopping Centre or an Office Building complex or any other type of building constructed so as to provide separate units of accommodation for Domestic, Commercial or Public use.
3. Each and every space built or provided for the accommodation of Mobile Homes, Camper Trucks, Trailers, and/or any type of articulated vehicle in Mobile Home Parks, or in Trailer Courts or in any other type of construction or provision.

Bylaw No. 76

A Bylaw respecting multiple occupancy developments on land in the area comprising the District.

Bylaw No. 104

A Bylaw for regulating the distribution and use of water and prescribing penalties for non-compliance with these regulations.

Bylaw No. 125

A Bylaw for fixing tolls and other charges payable to the District and the terms of payment thereof, and providing for a penalty to encourage prompt payment thereof.

SIGNED, SEALED and DELIVERED in the presence of:

Signature of Witness

Name

Address

Occupation

QUALICUM BAY – HORNE LAKE WATERWORKS DISTRICT by its authorized signatories:

Chairperson

Secretary

SIGNED, SEALED and DELIVERED in the presence of:

Signature of Witness

Name

Address

Occupation

QUALICUM FIRST NATION by its authorized signatories:

Chief Councillor

Councillor