

PIIKANI NATION

Water and Watercourses By-law, 2022

(a by-law to provide for the protection of Piikani Nation water resources)

WHEREAS:

- A. We, the Piikani Nation have and maintain our Treaty and Indigenous title, rights and interests to our lands and resources within our Territory;
- B. We have an inherent right to self-government which emanates from our people, culture and land, and which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- C. As Council for the Piikani Nation, we also have authority pursuant to section 81(1) of the *Indian Act (Canada)* to enact by-laws to provide for:
 - (i) the health of residents on the reserve;
 - (ii) the observance of law and order;
 - (iii) the construction and maintenance of watercourses;
 - (iv) the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies;
 - (v) the preservation, protection and management of fish on Piikani Lands;
 - (vi) any matter arising out of or ancillary to the exercise of such powers; and
 - (vii) the imposition on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law enacted by Council;
- D. The Piikani Lands have been set aside for the use and benefit of the Piikani Nation;
- E. The Piikani Nation enacted By-Law No. 1, being a bylaw respecting water and watercourses, on January 23, 1984 ("By-Law No. 1");
- F. Council wishes to amend and update By-Law No. 1; and
- G. As Council, we have the authority and obligation to provide for the well-being of our community, including the water resources, and the life that depends thereon, located on, under, within and that crosses through Piikani Lands,

NOW THEREFORE BE IT RESOLVED THAT this *Piikani Nation Water and Watercourses By-law, 2022* (the "By-law") is hereby enacted as a by-law of the Piikani Nation.

PART 1 – NAME

- 1.1 Short Name. This By-law may be cited as the Piikani Water By-law.

PART 2 – PURPOSE AND APPLICATION

- 2.1 **Purpose.** The purpose of this By-law is to protect the water resources on, under, within and crossing through Piikani Lands, and the life that relies thereon, and to promote community well-being.
- 2.2 **Application.** This By-law applies to all Piikani Lands.
- 2.3 **Authority.**
 - 2.3.1 The Lands Department is responsible for implementing this By-law and will have all powers necessary to give effect to this By-law.
 - 2.3.2 From time to time, the Lands Department may contract, or may direct the Piikani Nation to contract, with enforcement services to enforce this By-law. The Lands Department may also delegate any part of its authority under this By-law to other persons.
 - 2.3.3 The Lands Department may, from time to time, refer to Council for guidance and advice on the implementation of this By-law.
- 2.4 **Non-Derogation.** No provision of this By-law, or any communication, negotiations or engagements carried out pursuant to it, does, or may be deemed to, prejudice, limit, abrogate or derogate from any of the Piikani Nation's Treaty or Indigenous title, rights or interests.

PART 3 – INTERPRETATION

- 3.1 **Definitions.** For the purpose of this By-law, the following definitions apply:

"Aquatic Ecosystem", in relation to a Stream, means the natural environment of the stream, including:

- (a) the Stream Channel, the vegetation in the Stream, and the water in the Stream; and
- (b) fish, wildlife and other living organisms insofar as their life processes:
 - (i) are carried out in the Stream; and
 - (ii) depend on the natural environment of the Stream;

"Aquifer" means:

- (a) a geological formation;
- (b) a group of geological formations; or
- (c) a part of one or more geological formations,

that is Groundwater bearing, capable of storing, transmitting and yielding Groundwater, and located in whole or in part within or under Piikani Lands;

"Band Council Resolution" means a resolution in writing of Council, passed by the majority of the Councillors present at a meeting at which a quorum is constituted;

"Beneficial Use" means using water from a Stream or Aquifer, as applicable, as efficiently as practicable, and in the manner and in the period or at the times authorized by the applicable Permit (if any);

"Comptroller" means the comptroller of water rights appointed by Council pursuant to Part 4;

"Council" means the duly elected Chief and Council of the Piikani Nation;

"Divert" means:

- (a) in relation to water in a Stream, taking water from a Stream or causing the water to leave the Stream Channel, whether to cause the water to flow into another Stream Channel or a reservoir or otherwise, and includes making a change in or about the Stream Channel that permits water to leave it; and
- (b) in relation to water in an Aquifer, causing the water to leave the Aquifer;

"Environmental Flow Needs", in relation to a Stream, means the volume and timing of water flow required for the proper functioning of the aquatic ecosystem of the Stream;

"Groundwater" means water below the surface of the ground;

"Lands Department" means the Lands Department of the Piikani Nation;

"Member" means a registered member of the Piikani Nation;

"Mineral" means ore of metal or a natural substance capable of being mined, or coal;

"Officer" means any peace officer or other person charged with the duty to preserve and maintain the public peace, a by-law enforcement officer, or any other person appointed by Council for the purpose of maintaining law and order on Piikani Lands;

"Permit" means a permit issued under Part 6;

"Permittee" means a holder a Permit;

"Person" includes an individual, society, corporation and partnership, whether acting by themselves or by an agent or employee, and the successors, permitted assigns and personal or other legal representatives of such person to whom the context legally applies;

"Piikani Lands" means all reserves of the Piikani Nation, any land held for the use and benefit of the Piikani Nation pursuant to section 36 of the *Indian Act*, and any future reserve set aside by Her Majesty for the use and benefit of the Piikani Nation;

"Recommendation Report" means the recommendation report prepared by the Comptroller for Council pursuant to Section 6.11;

"Storage" means the impounding and retention of water from a Stream or Aquifer for subsequent use for a Water Use Purpose permitted under this By-Law;

"Stream" means:

- (a) a natural watercourse, including a natural glacier course, or a natural body of water, whether or not the Stream Channel of the stream has been modified; or
- (b) a natural source of water supply,

on, within or flowing through Piikani Lands, including, without limitation, a lake, pond, river, reservoir, watercourse, creek, spring, ravine, gulch, swamp, canyon, lagoon, marsh, wetland or glacier, whether or not usually containing water, including ice, but does not include an Aquifer;

"Stream Channel", in relation to a Stream, means the bed of the Stream and the banks of the Stream, both above and below the natural boundary, and whether or not the channel has been modified, and includes side channels and the shores of the Stream;

"Water Use Purpose" means one of the water use purposes listed in Schedule A; and

"Works" means any structure, device or contrivance, including all land and other property acquired or to be acquired in connection with such structure, device or contrivance, including any dykes, dams, weirs, 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 from a Stream or Aquifer, and other works that are authorized to be construed under this By-law.

3.2 General Interpretation.

- 3.2.1 Unless otherwise expressly provided, the structures, organizations, bodies, principles and procedures established or used in this By-law will be guided, interpreted and carried out in accordance with the law, culture, traditions and customs of the Piikani Nation.
- 3.2.2 A reference to a Section, Part or Schedule in this By-law refers to a Section, Part or Schedule of this By-law, unless otherwise provided.
- 3.2.3 The headings of Sections, Parts and Schedules of this By-law have been inserted as a matter of convenience and for reference only, and in no way define or limit any of its provisions.
- 3.2.4 A word in the singular form may be read in the plural form if the context allows it and a word in the plural form may be read in the singular form if the context allows it. All genders are included in any gender expressed.
- 3.2.5 The words "include", "includes" and "including" are to be read as if they are followed by the phrase "without limitation".
- 3.2.6 Any reference to a statute means that statute, and any regulations made under it, all as may be amended, consolidated and/or replaced from time to time, and any successor statute thereto.

3.3 Schedules. The following Schedules form part of and are integral to this By-law:

- 3.3.1 Schedule "A" – Water Use Purposes; and
- 3.3.2 Schedule "B" – Permit Fees.

3.4 Miscellaneous.

- 3.4.1 If a court determines that a provision of this By-law is invalid for any reason, then the provision shall be severed from this By-law and the validity of the rest of this By-law shall not be affected.
- 3.4.2 Where any federal or provincial laws or other Piikani Nation by-laws apply to any matter covered by this By-law, compliance with this By-law will not relieve the person from also complying with the provisions of any other such laws or by-laws.

3.4.3 Nothing in this By-law shall be construed as altering, restricting or impairing any right, remedy or cause of action which Council may have, acting on behalf of the Piikani Nation or any Member by virtue of their riparian rights or otherwise.

3.4.4 No right to divert or use water on, under, within or flowing through Piikani Lands may be acquired by any Person by prescription.

PART 4 – COMPTROLLER

- 4.1 Appointment. Council may, by Band Council Resolution, designate a Person as the Comptroller to exercise the powers and perform the duties of the Comptroller under this By-Law.
- 4.2 Replacement. Council may, from time to time, replace the Comptroller appointed pursuant to this By-law.
- 4.3 Right to Collect Information. The Comptroller may collect public personal information and water records for the purposes of verifying information provided by a Person under this By-law.
- 4.4 Authorization of Others. The Comptroller may authorize in writing a Person or class of Persons employed or contracted by the Piikani Nation, or any of its businesses, to perform the duties and exercise the powers of the Comptroller in respect of the calculation, collection and receipt of fees, rentals and charges.

PART 5 – GENERAL

- 5.1 General Prohibitions. Subject to Section 5.1, no person shall:
 - 5.1.1 Divert, use, Store, or contaminate any water from a Stream or Aquifer;
 - 5.1.2 construct or cause to be constructed any Works for Diverting water or which are or may be or may become capable of Diverting water;
 - 5.1.3 operate or use any Works to Divert water;
 - 5.1.4 lay, place, build or erect in, over, under, on or adjacent to any Stream 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, or management of water;
 - 5.1.5 disturb any earth, sand, or other material forming part of a Stream or Stream Channel, if the disturbance interferes with or is capable with interfering with the present or future development, conservation or management of water;
 - 5.1.6 modify the nature of a Stream, including any modification to the land, vegetation and natural environment of a Stream, the flow of water in a Stream or a Stream Channel; or
 - 5.1.7 carry out, or permit the carrying out, of any activity or construction within a Stream Channel that has or may have an impact on a Stream or a Stream Channel;

except under the authority of a Permit.

5.2 Non-Application. Section 5.1 does not apply to:

- 5.2.1 the Diversion, Storage or Beneficial Use of water by a Member, Council, Piikani Nation or a corporate entity owned or controlled by Piikani Nation for Domestic Purposes, Community Purposes, Conservation Purposes or Irrigation Purposes; or
- 5.2.2 the Diversion, Storage, or Beneficial Use of water for the purposes of extinguishing a fire, but if flow is Diverted from a Stream Channel for such use, the flow must be restored to that Stream Channel by the Person Diverting the flow as soon as possible after the fire is extinguished.

5.3 Database. The Comptroller may request information from Persons diverting, storing or using water pursuant to Section 5.2 to incorporate into a database of water uses within Piikani Lands.

PART 6 – PERMITS

6.1 Purposes. On an application being submitted in accordance with this By-Law, a Person may acquire a Permit to:

- 6.1.1 Divert, Store and/or Beneficial Use water for any Water Use Purpose;
- 6.1.2 impound water from a Stream or Aquifer for the purpose of water management, flood, control, erosion control, flow regulation or conservation;
- 6.1.3 Beneficially Use water from a Stream or Aquifer in its natural state for the purpose of water management, flood, control, erosion control, flow regulation or conservation;
- 6.1.4 Divert water, otherwise than by impoundment or Storage, for the purpose of water management, flood control, drainage, erosion control, channel re-alignment, or for any like purposes;
- 6.1.5 lay, place, build or erect in, over, under, on or adjacent to, or remove from, any water within a Stream or Aquifer any Works, 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
- 6.1.6 disturb any existing Works or any earth, sand, gravel or other material forming part of a Stream or Stream Channel, where such disturbance will interfere with or will be capable of interfering with the present or future development, conservation or management of water.

6.2 Rights and Permissions. The exercise of a right held under a Permit is subject to:

- 6.2.1 this By-law;
- 6.2.2 other Piikani Nation by-laws;
- 6.2.3 the terms and conditions attached to the subject Permit;
- 6.2.4 any orders of the Comptroller and/or Council issued to the Permittee; and
- 6.2.5 the rights of all Permit and rights holders whose rights have precedence over the subject Permit.

6.3 Precedence.

6.3.1 Applications for Permits have precedence 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.

6.3.2 When two or more applications for Permits for water from a common source are filed on the same date, they shall be assigned precedence as between themselves in accordance with the following order of precedence for Water Use Purposes:

- (a) Domestic Purpose;
- (b) Community Purpose;
- (c) Conservation Purpose;
- (d) Irrigation Purpose;
- (e) Industrial Purpose; and
- (f) Mining Purpose.

6.4 Irrigation Purpose Ancillary Rights. A Permittee for Irrigation Purposes is also entitled to Beneficial Use the water allocated under such Permit for Domestic Purposes.

6.5 Emergencies. Notwithstanding any other provision of this By-law or any terms and conditions of any Permit, Council may in its sole discretion, under any conditions declared by it to constitute an emergency, and for any of time that it specifies, by order suspend the operation of any Permit and designate the purposes for which, and the quantities in which, water may be used.

Permit Application

6.6 Applicant Rights. No applicant shall acquire any right to Divert and/or use any water from a Stream or Aquifer until such applicant has complied with the provisions of this By-law respecting the procedure to be followed to obtain Permits, and has been granted a Permit.

6.7 Application Content. To acquire a Permit, an applicant must first file with the Comptroller an application in writing containing the following information:

- 6.7.1 applicant's name and address;
- 6.7.2 description of the proposed supply of water;
- 6.7.3 the proposed Water Use Purpose;
- 6.7.4 a description of the proposed Works;
- 6.7.5 the location of the proposed point of diversion, and any alternatives thereto;
- 6.7.6 the quality of water proposed to be Diverted, and any possible impacts or changes thereto as a result of the proposed use of water;

- 6.7.7 a description of the land or premises where the water is to be used;
- 6.7.8 a proposed schedule of construction, if any;
- 6.7.9 an assessment of the Environmental Flow Needs of the Stream, or an Aquifer that is reasonably likely to be hydraulically connected to that Stream, as applicable;
- 6.7.10 a statement of the environmental, socio-economical and cultural impacts of the use and/or diversion, and proposed mitigation measures to avoid and minimize unavoidable impacts, including means to Beneficial Use such water;
- 6.7.11 if any Works are proposed on, along, across or under any Piikani Lands held under certificate of possession, the applicant shall file permission in writing from the holder(s) of the applicable certificate(s) of possession; and
- 6.7.12 a statement that objections may be filed within 30 days of the posting of the application at the Piikani Nation administration office.

6.8 Public Notice. 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, the general character and location of the proposed Works, and any proposed mitigation measures to avoid and minimize unavoidable impacts associated with the exercise of rights applied for.

6.9 Application Receipt and Posting. Upon receipt of an application that contains all the requirements set out in Section 6.7, the Comptroller shall:

- 6.9.1 mark on a copy of such application the day and time of receipt thereof; and
- 6.9.2 forthwith post a copy of such application in a conspicuous place in the Piikani Nation administration office, and ensure such application remains posted for 30 calendar days.

6.10 Application Review. The Controller shall review applications that contain all the requirements set out in Section 6.7, taking into account:

- 6.10.1 existing uses (and quantities thereof) of the Stream or Aquifer from which water is applied to be withdrawn, Diverted, Stored or used, including such known uses for which no Permit is required pursuant to Section 5.2;
- 6.10.2 any limits on water use or water rights provided under any agreements between the Piikani Nation and third parties, including other governments;
- 6.10.3 the Environmental Flow Needs of a Stream in deciding an application in relation to the Stream or an Aquifer that the Comptroller considers is reasonably likely to be hydraulically connected to that Stream;
- 6.10.4 water quality, water quantity and any sensitivities of the Aquatic Ecosystem of the applicable Stream and Stream Channel or Aquifer;
- 6.10.5 best available technology and best practices in respect of water use efficiency and water conservation;

6.10.6 possible environmental, socio-economical and cultural impacts of the proposed diversion, use and/or storage, and the proposed mitigation measures to avoid and minimize unavoidable impacts, including means to Beneficial Use such water; and

6.10.7 such other matters that the Comptroller considers relevant to the subject application.

6.11 **Priority**. In the event that a Member or Council submits an application for a Permit for an Industrial Purpose or Mining Purpose, the Comptroller shall:

6.11.1 prioritize the review of such application over other applications currently undergoing review and those that are subsequently submitted to the Comptroller; and

6.11.2 consider the benefits to the Piikani Nation and Members of the proposed diversion, use and/or storage in developing its Recommendation Report.

6.12 **Recommendation Report**. Following the review of the application in accordance with Section 6.10, the Comptroller shall prepare a report for Council on the application, which report will provide a plain-language summary of the application, recommendations on the application, and recommendations on terms and conditions to be attached to the Permit, if granted (the "Recommendation Report").

6.13 **Objections**. Any Member who objects to the granting of the application, may, within a period of 30 calendar days from the date of first posting of the application pursuant to Section 6.9.2, file with the Comptroller a written statement of reasons for objecting to such application.

Council Decision

6.14 **Referral to Council**. On finalizing the Recommendation Report, the Comptroller shall refer such application to Council, along with the following materials:

6.14.1 a full copy of the application;

6.14.2 the Recommendation Report; and

6.14.3 copies of any objections filed pursuant to Section 6.13.

6.15 **Council Consideration**. On receipt of an application referral from the Comptroller pursuant to Section 6.14, Council shall consider:

6.15.1 the matters outlined in Section 6.10;

6.15.2 the Recommendation Report;

6.15.3 the extent to which the applied for authorization may disturb the ecology of the Piikani Lands;

6.15.4 the quantity of water available for the applied use;

6.15.5 any objections submitted with respect to the application; and

6.15.6 any other matter that Council considers relevant to the subject application.

6.16 Council Decision. Following Council consideration of a Permit application in accordance with Section 6.15, Council may, in accordance with the By-law and in consideration of any other applicable Piikani Nation by-law:

- 6.16.1 refuse to issue the Permit;
- 6.16.2 grant a Permit with all or part of the rights applied for and attaching thereto applicable standard terms and conditions (as set out in Section 6.17 below), and such other terms and conditions that Council considers appropriate in the circumstances; or
- 6.16.3 require the applicant to provide, in the form and manner specified by Council, including by a person with the qualifications specified by Council, plans, specifications, reports of assessments or other information, which information may include, but is not limited to, information that is relevant to the application respecting:
 - (a) the applicant;
 - (b) existing water users, riparian owners, other applicants and other Permit holders, whose rights may be detrimentally affected if the application is granted; and
 - (c) holders of interests and/or rights to land that is likely to be affected if the application is granted.

6.17 Standard Terms and Conditions. The following standard terms and conditions will be applied to all permits issued pursuant to this By-law, unless specifically exempt by Council:

- 6.17.1 the Permittee must abide to all applicable laws, including this By-law and other Piikani Nation by-laws, at all times;
- 6.17.2 the Permittee must maintain all Works in a proper and safe condition at all times;
- 6.17.3 each year, the Permittee must submit a declaration to the Comptroller indicating whether the Permittee has, during the three years preceding the date of the declaration, made Beneficial Use of the quantity of water authorized under the Permit, and has complied with all other terms and conditions of the Permit (and if not, which terms and conditions the Permittee has been in breach of and what actions it has taken or plans to take to promptly return to compliance);
- 6.17.4 the Permittee must promptly notify the Comptroller of any emergency situation pertaining to the implementation of rights and/or obligations under the Permit;
- 6.17.5 the Permittee must provide security to Council in such amount that Council considers sufficient and appropriate to ensure the performance of the Permittee's obligations under the Permit, this By-law and other Piikani Nation by-laws;
- 6.17.6 a prohibition on the transfer of the Permit without the prior written consent of Council, which consent may be withheld at Council's sole discretion; and
- 6.17.7 an acknowledgment that Council may review the Permit at least every five (5) years and amend any terms and conditions attached thereto as Council deems appropriate for the protection of Streams, Stream Channels, Aquifers, Groundwater and Aquatic Ecosystems within Piikani Lands.

6.18 **Right to Proceed**. On receipt of a Permit, a Permittee may proceed with the Works authorized in such Permit in accordance with the terms and conditions attached thereto, including any timing conditions on when work may commence and be completed by.

Permit Amendments

6.19 **Amendment Application**. A Permittee may apply for an amendment to a Permit by submitting an amendment application to the Comptroller with the relevant information listed in Section 6.7 regarding the proposed amendment.

6.20 **Review Process**. The Comptroller shall:

6.20.1 consider the scope of the proposed amendment;

6.20.2 determine whether a truncated review process, with shorter timelines and/or reduced application review steps for Sections 6.7 to 6.13, may be appropriate based on the significance of potential adverse effects associated with the proposed amendment; and

6.20.3 notify the Permittee of the applicable review process for the amendment application.

6.21 **Amendment Decision**. Council shall make a decision on the Permit amendment application in the manner outlined in Sections 6.14 to 6.16.

PART 7 – INSPECTIONS

7.1 **General**. Any activities authorized under this By-law, including a Permit issued hereunder, shall be subject to inspection by any Person named by the Comptroller.

7.2 **Investigations**.

7.2.1 If it appears to the Comptroller that the Permittee has failed to comply with any term or condition of its Permit, the Comptroller shall refer the matter to Council who may designate the Land Department or a Person to carry out an investigation.

7.2.2 If Council is satisfied from an investigation carried out pursuant to Section 7.2.1 that the Permittee has failed to comply with any term or condition of its Permit, Council may order such Permittee to take immediate action to remedy such failure and to remedy any impacts arising, directly or indirectly, from such failure.

7.2.3 If the Permittee does not diligently comply with an order issued pursuant to Section 7.2.2, Council may suspend the Permit for any period of time, or cancel the Permit.

PART 8 – FEES

8.1 **Application Fee**. An applicant for a Permit shall file an application fee as set out in Schedule "B".

8.2 **Permit Fees**. On receipt of a Permit, the Permittee shall forthwith pay such fees described therein in accordance with any terms and conditions set out therein.

PART 9 – SPILL REPORTING AND RESPONSE

9.1 **Immediate Notice**. If a spill enters, or is likely to enter, a body of water, a Person responsible for such spill must ensure that the actual or potential spill is immediately reported to the Piikani Nation by calling and promptly providing the following information to the Comptroller:

- 9.1.1 the contact information for the individual making the report, the responsible person in relation to the spill, and the owner of the substance spilled;
- 9.1.2 the date and time of the spill;
- 9.1.3 the location of the spill site;
- 9.1.4 a description of the spill site and the surrounding area;
- 9.1.5 a description of the source of the spill;
- 9.1.6 the type and quantity of the substance spilled;
- 9.1.7 a description of the circumstances, cause and adverse effects of the spill;
- 9.1.8 details of any immediate spill response actions taken; and
- 9.1.9 the names of government agencies advised about the spill.

9.2 Spill Recovery Plan. The Person responsible for the spill must prepare and provide to the Comptroller for review and comment a recovery plan in relation to the spill that includes all of the following information:

- 9.2.1 a description of the substance(s) and amount(s) spilled;
- 9.2.2 a description of the properties of the substance(s) spilled that are relevant to its potential to cause adverse effects to the environment, human health and/or infrastructure;
- 9.2.3 an assessment of the potential impacts on the environment of the spill and the spill response actions carried out in relation to the spill;
- 9.2.4 an assessment of the actual impacts on the environment of the spill and the spill response actions carried out in relation to the spill;
- 9.2.5 a description of the environment in the area affected by the spill, as that environment was before the spill;
- 9.2.6 a description of the environment in the area affected by the spill, as that environment will be after the recovery plan is implemented;
- 9.2.7 a description of the recovery actions proposed to recover those areas of the environment affected by the spill;
- 9.2.8 a summary of engagement with Piikani Nation and other Persons affected by the spill, including actions taken to address concerns raised by the Piikani Nation and such other Persons; and
- 9.2.9 a schedule for the implementation of the plan.

9.3 Approval of Spill Recovery Plan. The Comptroller shall review, comment on, and approve a final version of the spill recovery plan.

9.4 Implementation of Spill Recovery Plan. On approval of the spill recovery plan, the Person responsible for the spill shall diligently carry out the plan, promptly report any deviations

therefrom to the Comptroller, and abide by any instructions provided by the Comptroller from time to time.

9.5 Report on Final Recovery. The Person responsible for the spill must submit a report to the Comptroller at the conclusion of the spill recovery process that includes:

- 9.5.1 a declaration that the recovery plan has been carried out;
- 9.5.2 the date on which carrying out of the recovery plan was completed;
- 9.5.3 a description of the recovery actions carried out;
- 9.5.4 a description of the environment at the conclusion of the recovery process;
- 9.5.5 a record of sampling, testing, monitoring and assessing carried out, the data generated that demonstrates that the recovery plan has been carried out and a summary of that data; and
- 9.5.6 any other information that the Comptroller considers relevant to the spill and response measures thereto.

PART 10 – IMMUNITY

10.1 General. No action for damages lies or may be instituted against present or past Council, an Officer, or members, employees, representatives or agents of either Piikani Nation or Council:

- 10.1.1 for anything said or done or omitted to be said or done by that person in the actual or required performance of the person's duty or exercise of their authority; or
- 10.1.2 for any alleged neglect or default in the actual or required performance of the person's duty or exercise of their authority.

9.2 No Defence. Section 10.1 does not provide a defence if:

- 10.1.1 the person in relation to the conduct that is the subject matter of the action, has been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
- 10.1.2 the cause of action is libel or slander.

9.3 No Liability. None of Piikani Nation, present or past Council, or members, employees, representatives or agents of any of Piikani Nation or Council are liable for any damages or other loss, including economic loss, sustained by any Person, or to the property of any Person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this By-law or any other Piikani Nation by-law, or from the neglect or failure, for any reason or in any manner, to enforce this By-law or any other Piikani Nation by-law.

9.4 Limitation Period. Any actions against Piikani Nation (including Council, and each of their members, employees, representatives or agents) for the unlawful doing of anything that:

- 10.1.3 is purported to have been done under the powers conferred by this By-law or any Piikani Nation by-law; and
- 10.1.4 might have been lawfully done if acting in the manner established by law,

must be commenced within six (6) months after the cause of action first arose.

PART 11 – ENFORCEMENT

- 11.1 **Enforcement of Orders.** Where a person who is the subject of an order made pursuant to any of Sections 6.5 or 7.2.2 fails or refuses to comply with such an order, including within the period specified in such order, an Officer may take such reasonable measures as are necessary to enforce that order.
- 11.2 **Fines and Imprisonment.** A Person who:
 - 11.2.1 breaches Section 5.1;
 - 11.2.2 fails or refuses to comply with an order made under Sections 6.5 or 7.2.2; or
 - 11.2.3 resists or interferes with an Officer acting under Section 11.1,is guilty of an offence and liable on summary conviction to a fine not exceeding one (1) thousand dollars or to imprisonment for a term not exceeding thirty (30) days or to both.

PART 12 – AMENDMENT

- 12.1 **General.** Subject to Sections 12.3 and 12.4, this By-law may only be amended at a duly convened meeting of Council.
- 12.2 **Regular Reviews.** The Piikani Nation will review and, if appropriate, amend this By-law in accordance with Section 12.1 every five (5) years, or whenever Council determines, in its sole discretion, that this By-law should be reviewed and, if appropriate, amended.
- 12.3 **Schedule Amendments.** The Lands Department may, from time to time, propose an amendment to a schedule to this By-law, which amendment will become effective on approval by Council.
- 12.4 **Minor Amendments.** Council may, from time to time, pass a resolution authorizing minor amendments to this By-law for any of the following purposes:
 - 12.4.1 to correct typographical errors;
 - 12.4.2 to reference other relevant, new or amended Piikani Nation by-law(s);
 - 12.4.3 to change the applicable entity(ies) having authority over the implementation of this By-law;
 - 12.4.4 to align with an order by a court;
 - 12.4.5 to update a schedule to this By-law following receipt of a proposal provided pursuant to Section 12.3; and
 - 12.4.6 to clarify this By-law where there is no reasonable dispute about the intention underlying the original provision.

PART 13 – ENACTMENT

- 13.1 **Enactment.** This By-law is hereby enacted by the Council at a duly convened meeting held on September 13, 2022.

13.2 Coming into Force. This By-law comes into force and is effective as of September 13, 2022.

13.3 Replacement. On the coming into force of this By-law, this By-law will replace By-Law No. 1, and By-Law No. 1 will be deemed of no further force or legal effect.

BE IT KNOWN that this By-law is entitled the *Pikani Nation Water and Watercourses By-law, 2022* is hereby enacted by a quorum of Council of the Pikani Nation held on September 13, 2022.



Quorum consists of Council members.

SCHEDULE A

WATER USE PURPOSES

"Conservation Purpose" means the Diversion, Beneficial Use and/or Storage of water for the purpose of conserving aquatic life, wildlife or their habitat, and includes the construction of Works for that purpose.

"Community Purpose" means the Diversion or Beneficial Use of water from a Stream or Aquifer:

- (a) household or sanitary purposes;
- (b) the watering of animals;
- (c) the watering of streets, walks, paths, boulevards, lawns, gardens and greenhouses;
- (d) fire protection;
- (e) the flushing of sewers;
- (f) the Beneficial Use of water from a Stream or Aquifer for the construction of buildings, Works or any undertakings; and/or
- (g) other purposes usually served by water within a community,

if such activities are conducted at the direction of Council.

"Domestic Purpose" means the Diversion, Storage and/or Beneficial Use of water from a Stream or Aquifer for household purposes by the occupants of one or more private dwellings located on a single parcel, for any of the following:

- (a) drinking water, food preparation and sanitation;
- (b) fire prevention;
- (c) watering of domestic animals and poultry;
- (d) for household use; and
- (e) irrigation of a garden for personal purposes.

"Industrial Purpose" means the Diversion and/or Beneficial Use of water from a Stream or Aquifer for any of the following industrial purposes:

- (a) operation of a church, community hall, school, hospital or other public institution;
- (b) operation of public facilities such as drinking fountains, washrooms or public water parks;
- (c) operation of public exhibition grounds, residential camps for workers or recreational camps;
- (d) operation of apartment buildings, hotels, motels, restaurants, service stations, mobile home, trailer or manufactured home parks, public campgrounds (including campgrounds in public parks), and commercial campgrounds;

- (e) food and beverage processing plants;
- (f) cooling purposes in any manufacturing, processing or industrial operation;
- (g) to clean or wash crops, to prevent crops from reaching maturity or to delay maturation of crops, to protect crops or seedlings from frost, to harvest crops by flooding or in agricultural vegetative waste composting operations;
- (h) bottling, for commercial distribution, of fresh water, including the bottling of carbonated water and water fortified with vitamins;
- (i) in a facility for the indoor propagation of fruits, vegetables or other plants, or at a facility for the propagation of trees, plants or turf;
- (j) in industrial and commercial operations to extract or dissipate heat by passing water through an open loop system;
- (k) for commercial production of ice or for making snow or ice for a recreation facility or area;
- (l) for watering a golf course, sports field, park or similar property, a commercial lawn, or a commercial ornamental garden;
- (m) for drinking water and sanitation requirements in the operation or maintenance of a kennel, an animal shelter or boarding facility, a ranch or feedlot operation, or a game farm, dairy farm, pig farm or poultry farm, or a similar enterprise for rearing livestock;
- (n) to dewater a construction site, mine or similar excavation;
- (o) driving, booming and storing logs or other timber products;
- (p) fluming timber or timber products;
- (q) use of a Stream Channel for overburden disposal;
- (r) clearing or excavation of a Stream Channel, including for river improvement;
- (s) operation of a sawmill, shipyard, factory or other manufacturing facility;
- (t) development of petroleum or natural gas wells or the production of petroleum or natural gas resources;
- (u) in the production of electricity or other power;
- (v) in the production of pulp and paper products or in the operation and maintenance of a pulp mill;
- (w) operation of railways, factories, stores or warehouses;
- (x) operation and maintenance of a public or private swimming pool;
- (y) to wash trucks, other vehicles or equipment, operate equipment to explore for, take samples of or quarry rock, or to cool the brakes on logging trucks or other vehicles;

- (z) for diluting or treating effluent and sewage, for the operation of a landfill or industrial composting facility or for the washing and cleaning of water intake screens; and
- (aa) such other purposes that Council may determine, in its sole discretion, from time to time, is an Industrial Purpose for the purposes of this By-Law.

"Irrigation Purpose" means the Beneficial Use of water on, or for the purposes of use on, cultivated land or hay meadows to nourish crops or on pasture to nourish forage for the purposes of livestock grazing.

"Mining Purpose" means the Beneficial Use of water under pressure from a Stream or Aquifer for recovering Minerals from the ground or from ore, or to move earth, sand, gravel or rock.

SCHEDULE B
PERMIT FEES

Permit Application Fees:

| Water Use Purpose | Detail | New Authorization Application Fee | Amendment Application Fee |
|--------------------------|------------------------------------------------------------------|------------------------------------------|----------------------------------|
| Conservation Purpose | general | \$150 | \$100 |
| Irrigation Purpose | < 250 000 m ³ /year | \$250 | \$150 |
| | 250 000 to < 1,000,000 m ³ /year | \$500 | \$250 |
| | ≥ 1,000,000 m ³ /year | \$1,000 | \$250 |
| Industrial Purpose | camps, public institutions, public facilities | \$250 | \$150 |
| | crop harvesting, protection, composting | \$250 | \$150 |
| | greenhouses, nurseries | \$250 | \$150 |
| | lawn, fairway and garden | \$250 | \$150 |
| | livestock and animal | \$250 | \$150 |
| | swimming pool | \$250 | \$150 |
| | ice and snow making | \$1,000 | \$500 |
| | commercial enterprises | \$1,000 | \$500 |
| | cooling purposes, heat exchange | \$1,000 | \$500 |
| | processing and manufacturing | \$1,000 | \$500 |
| | waste management | \$1,000 | \$500 |
| | logging, timber activities | \$1,000 | \$500 |
| | fresh water bottling < 100,000 m ³ /year | \$1,000 | \$500 |
| | fresh water bottling 100,000 to < 5,000,000 m ³ /year | \$5,000 | \$1,000 |
| | fresh water bottling ≥ 5,000,000 m ³ /year | \$10,000 | \$5,000 |
| | heavy industrial | \$10,000 | \$5,000 |
| | power production | \$10,000 | \$5,000 |
| Mining Purpose | general | \$10,000 | \$5,000 |

Permit Rental Fees:

| Water Use Purpose | Detail | Minimum Annual Rent | Quantity Based Rental (\$/1,000 m ³ unless otherwise specified) |
|----------------------|-----------------------------------------------|---------------------|----------------------------------------------------------------------------|
| Conservation Purpose | general | \$25.00 | N/A |
| Irrigation Purpose | general | \$50.00 | \$0.85 |
| Industrial Purpose | camps, public institutions, public facilities | \$50.00 | \$2.25 |
| | crop harvesting, protection, composting | \$50.00 | \$0.85 |
| | greenhouses, nurseries | \$50.00 | \$0.85 |
| | lawn, fairway and garden | \$50.00 | \$0.85 |
| | livestock and animal | \$50.00 | \$0.85 |
| | swimming pool | \$50.00 | N/A |
| | ice and snow making | \$200.00 | \$2.25 |
| | commercial enterprises | \$200.00 | \$2.25 |
| | cooling purposes, heat exchange | \$200.00 | \$2.00 |
| | processing and manufacturing | \$200.00 | \$2.25 |
| | waste management | \$200.00 | \$2.25 |
| | logging, timber activities | \$200.00 | \$1.50 |
| Mining Purpose | fresh water bottling | \$200.00 | \$2.25 |
| | heavy industrial | \$200.00 | \$2.25 |
| Mining Purpose | power production | \$100.00 | To be determined by Council based on capacity |
| | general | \$200.00 | \$1.50 |