

#15 (PA)

Province of British Columbia
Ministry of Environment, Lands and Parks
Water Rights Branch

**TREPANIER CREEK
INVESTIGATION REPORT**

by

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Victoria, British Columbia - April 1992

File 8000892

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| 1.0 INTRODUCTION | 1 |
| 2.0 SCOPE OF INVESTIGATION & REPORT | 1 |
| 2.1 Sinclair Appeal | 2 |
| 2.2 Fishery of Trepanier Creek - Application for Reserve .. | 3 |
| 2.3 Municipality of Peachland | 3 |
| 2.4 Trepanier Ditch Water Users' Community's Members' Licences | 4 |
| 2.5 Trepanier Ditch Water Users' Community and Wally Dietrich | 4 |
| 3.0 DISCUSSION OF ISSUES AND RECOMMENDATIONS | 5 |
| 3.1 Sinclair Appeal | 6 |
| 3.1.1 The Regional Water Manager's Decision | 6 |
| 3.1.2 Grounds for Appeal | 7 |
| 3.1.3 Hearing of the Appeal | 8 |
| 3.1.4 Resolution of Appeal | 10 |
| 3.2 Fishery of Trepanier Creek | 11 |
| 3.2.1 Flow Requirements and Timing | 12 |
| 3.2.2 Historic Protection of Instream Flow | 14 |
| 3.2.3 Conservation Purpose Application | 15 |
| 3.2.4 Application for Reserve - Section 44 | 16 |
| 3.3 Licences Held by Municipality of Peachland | 20 |
| 3.3.1 Current Water Use | 21 |
| 3.3.2 Future Water Use | 22 |
| 3.3.3 Effect on Other Users | 25 |

Table of Contents continued

| | | |
|-------|---|----|
| 3.4 | TDWUC - Licence Amendments Required | 27 |
| 3.4.1 | Application for Change of Works | 27 |
| 3.4.2 | Unused Water Licences within TDWUC | 29 |
| 3.4.3 | Application for Extension of Time | 39 |
| 3.4.4 | Certificate of Incorporation | 39 |
| 3.5 | Resolution of Dispute between Dietrich & TDWUC | 40 |
| 4.0 | SUMMARY | 44 |

TABLES

- No. 1 Low Flow Estimates
- No. 2 Summary of Licensed Demand
- No. 3 Summary of Application Demand

FIGURES

- No. 1 Trepanier Creek Watershed sketch
- No. 2 Trepanier Creek Flow/Demand Comparison
- No. 3 Weekly Diversion Rate vs. Licensed Quantity-Peachland-1988
- No. 4 Weekly Diversion Rate vs. Licensed Quantity-Peachland-1990
- No. 5 Monthly Diversion Rate vs. Licensed Quantity-Peachland-1988
- No. 6 Monthly Diversion Rate vs. Licensed Quantity-Peachland-1990
- No. 7 Trepanier Ditch Water Users' Community Works & Properties

APPENDIX

- A List of Reports considered
- B Settlement Agreement - TDWUC/Highways Dietrich

1.0 INTRODUCTION

Investigation of the water supply from Trepanier Creek and of the uses that are made of that supply has been completed. The information in this report will be used as a basis for adjudicating the appeal by Mr. T. Sinclair from the Regional Water Manager's decision to refuse his application for an irrigation water licence, as well as other water management matters on Trepanier Creek.

Initial investigation of the Sinclair appeal indicated that the availability of water in Trepanier Creek should be reviewed. A report entitled *Trepanier Creek Water Supply Analysis* was prepared in December of 1989. Copies of the report were forwarded to all the parties to the appeal, for examination and comments. The comments were reviewed and a further site inspection was undertaken.

The information obtained from investigation of Trepanier Creek is summarized in this report, and recommendations for the Deputy Comptroller's consideration are also presented. Comments with respect to the monitoring and management of Trepanier Creek are also presented.

The Trepanier Creek watershed is shown on Figure 1.

2.0 SCOPE OF INVESTIGATION & REPORT

The hearing of the Sinclair appeal identified a number of water-use related issues associated with the licensing of water withdrawals from Trepanier Creek. The beneficial use of existing privately held water rights and water rights held by the Municipality of Peachland was brought into question. The benefit of protecting instream flow for the

fishery of Trepanier Creek was reviewed. Additionally, administrative matters related to the construction of the Okanagan Connector to the Coquihalla Highway were investigated.

The matters which will be discussed in this report include:

- 1) Sinclair Appeal
- 2) Fishery of Trepanier Creek - Application for Reserve
- 3) Licences held by the Municipality of Peachland.
- 4) Licences held by members of the Trepanier Ditch Water Users' Community (TDWUC).
- 5) Pipeline location dispute between the TDWUC and Walter Dietrich.

2.1 Sinclair Appeal

On February 10, 1988, Mr. A. D. Zackodnik refused the application by Thomas and Bernadette Sinclair for an irrigation water licence from Trepanier Creek. The Sinclairs appealed to the Comptroller of Water Rights on the grounds that a number of water licences were not being exercised, which created a false demand/supply conclusion. The Sinclairs contended that if those unused water rights were cancelled, there would be water available to satisfy their proposed irrigation use. They urged the Water Management Branch to properly and fairly apply the provisions and obligations of the Water Act to present users and applicants. Recommendations for adjudication of the appeal are contained in Section 3.0 of this report.

2.2 Fishery of Trepanier Creek - Application for Reserve

Trepanier Creek supports spawning runs of Okanagan Lake kokanee and rainbow trout. It is ranked fifth in importance for fish production for the Okanagan Lake fishery. The Ministry of Environment recognizes that instream use of water for benefit of fish is a valid and beneficial use of the water resource. In 1970, the Comptroller of Water Rights decided that no additional irrigation water rights would be granted on Trepanier Creek without supporting storage, and noted the creek as being "fully recorded unless supported by storage."

This administrative action was in reaction to a request by the Director of the Fish and Wildlife Branch for a minimum flow of 5.0 cubic feet per second in Trepanier Creek for fisheries maintenance purposes. Subsequently, an application for a 2.0 cfs conservation purpose licence was applied for on November 26, 1987, and on June 15, 1989, an application to the Lieutenant Governor in Council was made for a reserve of 4.6 cfs under Section 44 of the Water Act.

Did this
do this
not in 1987
1989

Recommendations for adjudication of the water licence application and the Section 44 reserve application are contained in sections 3.2.1 and 3.2.2 of this report.

2.3 Municipality of Peachland

The Municipality of Peachland is the largest user of Trepanier Creek. It is licensed to divert water for domestic, waterworks

and irrigation purposes. Allegations that the Municipality is not exercising all of its licensed water rights were investigated. The effect of the Municipality's fluctuating diversion rate on other users was also investigated.

Section 3.3 sets out the findings of this investigation and recommendations for further monitoring and regulation of licences.

2.4 Trepanier Ditch Water Users' Community Members' Licences

Evidence submitted to the hearing of the Sinclair appeal indicated that several licences held by members of the TDWUC did not accurately reflect the manner in which water was being used by the licensees. Investigation of the lands within the TDWUC was undertaken to determine which licences did not correspond to existing use, and to determine if the licences required amendment or were subject to cancellation.

In addition, there were outstanding licence amendment applications which were investigated. Section 3.4 sets out recommendations for adjudication of licence amendments.

2.5 Trepanier Ditch Water Users' Community and Wally Dietrich

The water requirements of the TDWUC had historically been conveyed by a ditch system. The water users individually pumped water from the ditch for use on their property. Initial construction activities for the Coquihalla highway resulted in replacing the open ditch with an enclosed pipeline system for

the water users' community. This action inadvertently resulted in works being constructed across property owned by Mr. Walter Dietrich, without his permission and without the necessary authority of the Water Act.

Investigation was required to determine if the Dietrich property was reasonably required for the works to convey water to the water users. The Comptroller of Water Rights requested submissions from the property owner, the water users' community, and the Ministry of Transportation and Highways.

Resolution of this issue is discussed in Section 3.5 of this report.

3.0 DISCUSSION OF ISSUES AND RECOMMENDATIONS

A detailed discussion is required for each of the issues briefly set out in Section 2 of this report. The recommendations contained in this section are the culmination of the investigation, and are to be considered by the Deputy Comptroller of Water Rights in his adjudication of the Sinclair appeal as well as the other matters covered by this investigation. Written submissions to the Comptroller, review of historic correspondence, personal interviews, and site inspections formed the basis for the recommendations set out below. The December 1989 report entitled *Trepanier Creek Water Supply Analysis* was used for water supply and demand distribution information. Other engineering and technical reports which were considered in this investigation are listed in Appendix A.

3.1 Sinclair Appeal

Mr. Thomas Sinclair posted a water licence application on February 17, 1987, proposing to divert and use 30 acre-feet per annum from Trepanier Creek, which flows through his property, for irrigation of 20 acres of his land.

An objection to the application, dated June 9, 1987, was registered by Mr. Henry Moeller, chairman of the TDWUC, on behalf of the water users' community. The basis for the objection was the lack of available water from Trepanier Creek and that the users had experienced water shortages in the past. The Municipality of Peachland also objected to any further licensing of Trepanier Creek.

3.1.1 The Regional Water Manager's Decision

The Regional Water Manager refused the Sinclair application, in his February 10, 1988 decision, on the grounds that there is insufficient water in the source to enable him to grant a new licence.

A. D. Zackodnik, P. Eng., Regional Water Manager, relied on the information and recommendations contained in the engineer's report on the application. The report concluded that there was not sufficient unrecorded water available to supply the existing licences in addition to the quantity requested by Mr. Sinclair.

$$6.08 \text{ cfs for } 100 \text{ d} = 1487,532 \text{ m}^3 \text{ in } 100 \text{ days}$$

- 7 -

The engineer's report summarized the licensed demand of Trepanier Creek at 6.08 cfs, based on a 100-day irrigation season. Flow records from Water Survey of Canada gauging station 08NM041 were analyzed to determine the available water supply.

The report concluded that:

0.148 m³/s.
FOR WHAT MONTH(S)

"According to flow record statistics and the probability of recurrence graph, the one in five year drought (flow) for Trepanier Creek is approximately 5.25 cfs with flows of 6.0 cfs or less expected every three years. As there is insufficient flow to supply the irrigation demand, 4 out of 5 years, it is recommended that this application be refused."

> 0.169 m³/s

3.1.2 Grounds for Appeal

Mr. Sinclair appealed the Regional Water Manager's refusal of the irrigation application, in his letter of appeal dated February 20, 1988. The grounds for the appeal are as follows:

- 1) A water use survey by the Water Management Branch showed that 71.4 acre-feet of licensed water use was not being used.

- 2) The Ministry of Transportation and Highways had acquired property on which there was 28.5 acre-feet of irrigation rights.
- 3) That 99.9 acre-feet of water licensed was not being used which far exceeded the 30 acre-feet requested in the application.

Mr. Sinclair maintained that if the 99.9 acre-feet of unused irrigation rights were cancelled pursuant to Section 20 of the Water Act, there would be sufficient water for his proposed use.

3.1.3 Hearing of the Appeal

A hearing of the Sinclair appeal was conducted through exchanging written submissions between the parties to the appeal. Initially the parties included the Regional Water Manager, Mr. H. Moeller on behalf of the TDWUC, and the appellant.

The Regional Water Manager relied on the engineer's report to explain the basis for refusing the application. After reviewing the engineer's report, submissions were received from Mr. Sinclair, dated May 23, 1988, and from Mr. H. Moeller, dated March 23, 1988, and July 28, 1988.

After exchanging the submissions, rebuttals were received from Mr. Sinclair, dated August 12, 1988, and from Mr. H.

Moeller, dated August 29, 1988. The Regional Water Manager did not have any further comments regarding the submissions.

Trepanier Creek was inspected and the parties were interviewed on September 7, 1988. The intake for the Municipality of Peachland and its Silver Lake reservoir were also inspected on that day. This inspection, the interviews, and a review of the submissions to the hearing of the appeal determined that a review of the water supply from Trepanier Creek and the use being made of that water must be completed before the appeal could be adjudicated. It was also determined that the Municipality of Peachland and the Fish & Wildlife Branch of the Ministry of Environment should also be parties to the appeal, as the decision on the appeal could affect their interests in the Trepanier Creek watershed.

A thorough review of the water supply from Trepanier Creek and the licensed demand for that water was completed and summarized in the December 1989 report *Trepanier Creek Water Supply Analysis*.

This report was included in a complete package of information containing 24 documents which was sent to all the parties to the Sinclair appeal, including the Municipality of Peachland and the Fish & Wildlife Branch of the Ministry of Environment. The opportunity to present further submissions was offered to the parties.

Submissions were received from the Municipality of Peachland, dated January 29, 1990, from Mr. H. Moeller, dated January 31, 1990, from Mr. T. Sinclair, dated March 6, 1990, from the Fish & Wildlife Branch, dated March 14, 1990, and March 22, 1990, from the Recreational Fisheries Branch, dated March 27, 1990, and from N. G. Banera, Allocation Section Head, on behalf of the Regional Water Manager, dated May 30, 1990.

Again, these submissions were exchanged amongst the parties for rebuttal. Mr. Sinclair responded in his letters dated June 17, 1990, and June 18, 1990. None of the other parties had any further comments, thus completing the hearing of the appeal.

Trepanier Creek was again inspected September 17-20, 1990. The parties were interviewed on-site, and their various interests and concerns were discussed.

Figure 2 shows a comparison between the total demand for Trepanier Creek against the April-September hydrograph. The example years shown range from unusually wet to extremely dry years.

3.1.4 Resolution of Appeal

On November 13, 1990, Mr. Sinclair filed an application for a storage water licence on Lacoma Lake. This applica-

tion is in support of his irrigation application, the refusal of which is under appeal to the Comptroller of Water Rights.

The storage purpose application will be adjudicated concurrently with the appeal. I recommend that the appeal be dismissed on the basis that the Regional Water Manager properly adjudicated the application. However, as the Sinclairs now propose to provide storage in support of their irrigation application, I recommend that the application be reinstated and that two conditional water licences issue to the Sinclairs. There is sufficient runoff from the watershed upstream of Lacoma Lake to satisfy the existing storage licences as well as the Sinclairs' additional demand. The release of water from Lacoma Lake in support of the irrigation withdrawals during July, August, and September will ensure that the Sinclairs' irrigation use will not adversely affect other licensees' rights, or the instream use of water by the fishery.

3.2 Fishery of Trepanier Creek

The sport fishery of Okanagan Lake provides economic, recreational, and social benefits to local residents and visitors. Trepanier Creek has historically provided spawning habitat for Okanagan Lake kokanee and rainbow trout. Trepanier Creek is ranked by the Fish & Wildlife Branch as the fifth important tributary, producing an average 4,000 kokanee per year.

There are limiting factors to the fish productivity: habitat quality, habitat quantity, and stream flow. Habitat quality and quantity are relatively fixed parameters, changing little from year to year under normal circumstances. However, due to upstream diversions and changing weather patterns, streamflow in the lower reaches of Trepanier Creek may vary widely, and consequently this has the greatest impact on the fishery. Therefore, the protection of, or the provision of, water for the Trepanier Creek fishery would help to ensure continued fish production.

3.2.1 Flow Requirements and Timing

The fishery of Trepanier Creek consists of two species: kokanee and rainbow trout. The water requirements and timing are different for each species.

Mature kokanee migrate to tributary streams during early September and spawn from mid September through mid October. By the end of May, kokanee fry have descended to Okanagan Lake, completing the annual cycle. Thus, water requirements for kokanee cover the period of September through May.

Rainbow trout ascend tributary streams during the spring freshet and spawn mid-April through to the end of May. Downstream migration of fry begins during June. However, a large percentage of rainbow trout fry maintain a stream residence for at least a year before entering the lake. This necessitates a year-round instream flow for

rainbow trout.

Several reports on water requirements for the fishery of Okanagan Lake tributaries have been reviewed. The most recent report, *Assessment of Alternatives to Enhance Okanagan Lake Fishery* (Dobson Engineering, June 1990), identified optimum water requirements for kokanee at 5.8 cfs between September and May, and optimum water requirements for rainbow trout at 10.0 cfs throughout the year.

In the June 15, 1989, memorandum to the Director of the Water Management Branch, D. W. Narver, Director, Recreational Fisheries Branch (now Fisheries Branch), applied for a reserve of 4.6 cfs of water in Trepanier Creek, which flow was required to support the fishery to meet current and projected angling demand.

For the purposes of this report and the investigation of Trepanier Creek, the fishery instream flow requirements have been taken as 4.6 cfs, which instream flow is required at the mouth of the stream. Due to seepage and evaporation losses from the channel upstream of the mouth, which approximate 1.0 cfs, the fishery instream demand is considered to be 5.6 cfs at the gauging station.

A comparison between the Trepanier Creek hydrograph, the distribution of licensed demand, and the water requirements for the fishery has been done. This compari-

son shows that conflicts do not arise between irrigation diversions and kokanee instream flow requirements, provided existing licensed storage is used beneficially, except perhaps during September in dry years. As the water requirements for rainbow trout cover the entire irrigation season, there is significant conflict between the instream flow required for rainbow trout and the existing irrigation and waterworks diversions.

3.2.2 Historic Protection of Instream Flow

In 1970, the Director of Fish & Wildlife Branch requested a minimum flow of 5.0 cfs be maintained in Trepanier Creek for maintenance of the fishery of this stream. This request is the first known documentation of any request for protection of Trepanier Creek flow for instream use. However, at that time, diversion licences had already accounted for most of the low flow of Trepanier Creek. The Comptroller of Water Rights acknowledged there was a need for instream flow, but could not ensure 5.0 cfs because of the volume of water already committed to licensed withdrawal. To "reserve" what remaining unlicensed base flow there was in Trepanier Creek, the Comptroller noted the stream as fully recorded for irrigation purpose unless supported by storage. Since that commitment by the Comptroller, all irrigation licences issued on Trepanier Creek were supported 100 percent by storage licences. In November 1987, the Fish & Wildlife Branch filed a conservation purpose application. In June

The intent of this application was to set aside water for the instream benefit of the fishery. That intent can be realized by the application of the Ministry's policy to consider the instream water requirements for fish in adjudicating water licence applications, or by granting of a reserve of unrecorded water by the Lieutenant Governor in Council pursuant to Section 44 of the Water Act. The Recreational Fisheries Branch has applied to the Lieutenant Governor in Council for such a reserve.

3.2.4 Application for Reserve - Section 44

On June 15, 1989, Dr. D. Narver, Director of the Recreational Fisheries Branch, applied to the Comptroller of Water Rights for reserves under Section 44 of the Water Act, on Mission, Powers and Trepanier Creek. Investigation of the reserve application on Trepanier Creek has been completed.

Section 44 of the Water Act states, in part:

"44. (1) Where it appears to the Lieutenant Governor in Council advisable, in order to enable a person to investigate the suitability of a stream for any purpose, or in order to make provisions for a water supply for a waterworks, irrigation or power system or project, or for the use of the Crown for any purpose, he may by order in council reserve all or part of the

unrecorded water of the stream from being taken or used or acquired under this Act.

(3) Every reservation made under this section applies to water which by reason of the abandonment or cancellation of a licence becomes unrecorded water during the existence of the reservation."

Thus, the Lieutenant Governor in Council may reserve all or part of the unrecorded water of Trepanier Creek from being taken or used or acquired under the Water Act where it appears advisable. Although this section refers only to the *unrecorded* water, subsection 3 implies that a reserve may cover water currently under licence which may become unrecorded at some future date. Thus, in adjudicating the reserve application, the quantity of water to be reserved need not be unrecorded at the time the reservation is granted.

Clearly, during parts of the year there is significantly less than 4.6 cfs of unrecorded water in Trepanier Creek. For example, during a drought with a 10-year recurrence, there would be approximately 2.0 cfs of unrecorded flow at the gauging station during July, no unrecorded flow during August, and less than 0.2 cfs of unrecorded flow during the first two weeks of September. Given the losses of approximately 1.0 cfs between the gauging station and the mouth of Trepanier Creek, there will be extended

periods of no flow at the mouth during a 1-in-10-year drought.

A reserve of unrecorded water under Section 44 of the Water Act could not improve those drought situations. However, a reserve will prevent the granting of new licences, except licences for domestic purpose, which would diminish the instream flow available for the fishery. Additionally, a reserve would provide a mechanism for improvement of the instream water supply if existing rights are cancelled or abandoned in the future.

Provided that the filling of storage is regulated to a reasonable rate, there is generally unrecorded water between mid-September and the end of June.

It is concluded that there is unrecorded water which could be reserved, except during the latter part of the irrigation season.

A number of reports on the fishery of Okanagan Lake and its tributaries have been reviewed with regard to the justification and need for a reserve of water for fishery maintenance purpose. Submissions to the hearing of the Sinclair appeal by the Fish & Wildlife Branch were also considered.

The kokanee fishery is the priority fishery of Trepanier Creek. There is ample evidence of this fishery. An

average of 4,000 kokanee spawners have been documented during the years 1983-89, with a high of 7,600 spawners in 1985 and a low of 700 in 1987. In 1984, approximately five percent of the total kokanee escapement for Okanagan Lake was to Trepanier Creek. As more than 50 percent of the kokanee escapement is attributable to shore spawners, Trepanier Creek has contributed up to 10 percent of the stream spawning kokanee from Okanagan Lake.

Therefore, failure of the Trepanier Creek kokanee fishery would have a measurable detrimental effect on the overall fishery of Okanagan Lake, as well as a detrimental impact on social and recreational benefits associated with the fishery. There is justification for the reservation of water to benefit the kokanee fishery.

The rainbow trout fishery of Trepanier Creek by comparison is not well documented. Visual surveys and site sampling indicate that Okanagan Lake rainbow trout spawn and rear in Trepanier Creek. Although there have been a number of estimates of the capacity of Trepanier Creek to support the rainbow trout fishery, there has been no quantifying measure of the existing fishery.

Since kokanee is the primary fishery of this stream and the period for which water is required for this fishery coincides more or less with the period where unrecorded flow exists, the reservation of 4.6 cfs of unrecorded water

under Section 44 of the Water Act is recommended.

The quantity to be reserved should be limited to the quantity required for kokanee. It is recognized that the optimum flow requirements for rainbow are greater than for kokanee. However, the rainbow trout productivity is already limited severely by low summer flows which will not be improved by a reserve. Significant steps to improve the summer flows by developing and using storage releases or by pumping water from Okanagan Lake would be required to achieve optimum rainbow trout productivity from Trepanier Creek.

3.3 Licences Held by Municipality of Peachland

Investigation of the Municipality of Peachland's use of its licences was undertaken to determine if the municipality is overlicensed, if it is operating within the terms of its licences, and what effect the municipality's use of water has on other users.

This study included a review of annual water consumption reports from the municipality, a review of actual water meter charts for 1988, 1989, and 1990, and personal discussions with Mr. R. Marriott, Public Works Superintendent. The study did not include the municipality's Peachland Creek or Okanagan Lake water systems, which are operated independently.

These figures demonstrate the variable diversion rate within this period. Although average monthly diversion for the April-September period, as shown in Figures 5 and 6, is significantly less than the municipality's licensed diversion rate, during July, August, and September the instantaneous peak diversion rates are close to—and for brief periods exceed—the licensed diversion rate.

For comparison, the Municipality's annual water consumption records were compared to its licensed demand. The average annual consumption by the Municipality, from Trepanier Creek, for the years 1984-91, was 269 million gallons a year. Its licensed quantity is equivalent to 620 million gallons a year. Thus, the Municipality has used approximately 44 percent of its licensed volume on an annual basis.

1,955,790 m³
←
compare w/
3,487,394 m³
now.

848,560
m³
compare w/
950,469 m³
(1995-2001)

Accordingly, it appears that the Municipality is over-licensed and most of the excess is for waterworks purpose. However, the rate of development and growth in this area in the near future may be significant. Consequently, any excess now may be beneficially used in the near future. It is difficult to predict, with any certainty, at what point full beneficial use of the Municipality's water lines will occur.

3.3.2 Terms of Peachland's Licences

The Municipality of Peachland has acquired a number of water licences, through expansion of its boundaries, in

addition to the licences applied for and granted to the municipality. Peachland now holds 29 diversion licences from Trepanier Creek and 6 storage licences on Silver Lake. Peachland also holds two water licences for diversion of Mile Creek into Silver Lake, with rediversion from Trepanier Creek. The Mile Creek diversion licences are not considered in this study, because the diversion works have not been constructed.

Essentially all the irrigation licences held by Peachland are "standard" licences. There are no special clauses, special restrictions or conditions for water diversion.

Where storage licences have been granted along with diversion licences, there are no clauses necessitating storage releases in support of the diversion.

However, upon review of the engineer's reports for the Municipality's most recently granted storage licences, it is clear that the construction and use of storage was a condition of the granting of those water rights. **It has been determined that the omission of a storage release clause in the diversion licences was in error.** Other irrigation diversion licences issued on Trepanier Creek at about the same time had special clauses setting out conditions for storage releases.

Those errors, which arise in Conditional Water Licences 57868, 57870, and 62125, may be corrected under Section 15

of the Water Act and are recommended in a separate memorandum to the Deputy Comptroller. The addition of special clauses stating...

"The rights granted under this licence are exercisable only during such times as the works authorized under Conditional Water Licence _____ on Silver Lake are being maintained and operated to the satisfaction of the engineer for the Vernon Water District."

will place the same obligations for storage releases as for other licensees whose rights were granted on the condition of having storage releases.

The domestic and waterworks purpose licences, held by the Municipality, authorize the diversion and use of water at a daily rate. That rate totals 1,010,736 gallons a day during the April-September period and 1,084,908 during the remainder of the year. There is no provision in these licences permitting a rate of diversion exceeding the average daily rate.

The majority of Peachland's waterworks purpose licensing is authorized under Conditional Water Licence 20626, which was issued on April 1, 1952, from amendment of an old power purpose licence. There was no justification for the quantity of this licence. No evidence could be found to show that the quantity of the licence has ever been

reviewed in the past.

Further examination of this licence should be undertaken to determine if it is appropriate for regulation of the rate of diversion. As noted earlier in this report, the Municipality's peak use rate approximates its total licensed diversion rate; however, on a monthly average and annual basis, its use is significantly less.

3.3.3 Effect on Other Users

Most of the Municipality's licences authorize diversion works described as "diversion structure, balancing reservoir, pump, chlorinator and pipe." In actuality, the intake structure is a dam. The pondage behind the intake dam does not function as a balancing reservoir. A balancing reservoir would buffer peak consumption rates, maintaining a relatively constant stream diversion rate. Investigation has shown that diversion is directly from stream flow and the Municipality's fluctuating rate of diversion has caused intermittent flow downstream of its intake.

There is about 2 cfs of Trepanier Creek flow which is presently licensed to the Municipality which serves only to satisfy the peak instantaneous demand. A requirement that the Municipality develop adequate balancing capacity within its water system could provide a more consistent instream flow for the fishery of Trepanier Creek.

Peachland has responded to complaints by the TDWUC of water shortage caused by peak municipal consumption rates and are more cognizant of its effect on downstream water diversions. However, as the area served by this water system develops and the Municipality's use of water increases, proper balancing capacity will be absolutely necessary.

The examination of Peachland's waterworks purpose licence, recommended in the previous section of this report, should include studying levels of balancing capacity. In-line balancing storage volumes necessary to offset daily, weekly, and monthly peaks should be determined. Consideration can then be given to the options for regulating the Municipality's diversion and ordering it to provide a reasonable balancing reservoir capacity.

A cursory inspection of the Municipality's water intake works determined that, as interim measures, stop logs may be installed in its primary screening chamber which would maintain a constant overflow back to the stream. This would artificially produce balancing by maintaining a constant minimum flow past the intake.

Nevertheless, Mr. R. Marriott advises that Peachland is investigating solutions to its need for balancing capacity. An engineered solution to this problem may be realized in the near future.

conflict between Mr. Walter Dietrich and the TDWUC over the pipeline crossing of his property showed that the Regional Water Manager had not properly considered the impact on affected landowners.

Consequently, on November 29, 1989, the Comptroller of Water Rights assumed responsibility for completing adjudication of the change of works amendment, as it pertained to those licences not already amended and reopened the consideration of the licence amendments completed by the Regional Water Manager.

Notice was given to affected property owners in accordance with the requirements of Section 15 of the Water Act. Mr. Dietrich objected to the works crossing his property. Mr. Dietrich gave notice to the water users' community to remove the works from his land or pay a rental. This dispute between Mr. Dietrich and the water users' community culminated on July 15, 1989, when the landowner excavated the pipe and severed it with a chainsaw, cutting off most of the community's water supply.

Water service was eventually restored to the community. Submissions were requested by the Comptroller on the application for change of works and the requirement of Mr. Dietrich's property for the works.

Although substantive legal arguments were submitted by the lawyers for the landowner and for the water users'

community, the question of whether Mr. Dietrich's property was reasonably required for the construction, operation, and maintenance of the works owned by the water users' community does not now have to be answered. As a result of a settlement initiative put forth by the writer, the matter was resolved to the satisfaction of the parties. Mr. Dietrich has now agreed to an easement for the community's works. The details of the settlement agreement are discussed in section 3.5 of this report.

There were no other objections to the change of works application. Where the Regional Water Manager has already amended licences, those decisions were improperly made and the new works are not correctly shown. Those decisions must be revoked under Section 36 of the Water Act. It is recommended that the application be granted and that all TDWUC members' diversion licences be amended under Section 15 of the Water Act of British Columbia, and new licences be issued in substitution. The location of the existing works is shown in Figure 7.

3.4.2 Unused Water Licences within TDWUC

A water use survey of licences within the TDWUC was conducted by regional Water Management staff in 1987. The survey identified the area of land under irrigation for each of the members' property. This survey information has been reviewed and further confirmed by site inspec-

tion during September 1990 and review of 1988 aerial photography. Sufficient evidence has been gathered to substantiate cancellation of some water rights under Section 20 of the Water Act. However, cancellation of unused licensing is not recommended at this time.

Where there is sufficient evidence to undertake cancellation, those rights are supported by storage in Lacoma Lake. A substantial initiative has been put forth by licensees to develop that storage and there has been a commitment to utilize their rights in accordance with the licence conditions.

The previous lack of developed storage in Lacoma Lake, the impact on lands from the construction of the Coquihalla Highway, and the Ministry of Agriculture's crop replacement program are all factors which have affected irrigation use within the TDWUC. Those landowners and licensees affected by these factors should be granted a reasonable period of time to react to the recent changes and to establish beneficial use of water.

Therefore, it is recommended that any initiatives to cancel water rights for non-beneficial use be stayed for 2-3 years. The information in this report can be referenced at that time to determine if, in fact, any changes in irrigated areas occur.

The following is a comparison of the licensed irrigation quantity versus actual use for water users' community members.

Final Water Licence 66523 - Klein

- This licence was issued in substitution of FWL 6609, by the Regional Water Manager, on April 18, 1989.
- It authorizes the diversion and use of 45.83 acre-feet per annum for irrigation of 15.28 acres, and 500 gallons a day for domestic purpose.
- The 1987 water use survey identified 12.9 acres under irrigation.
- The new highway encroached upon about 1 acre of previously irrigated land.
- Approximately 2-3 acres of land has since been brought under irrigation. Fruit trees and grape vines are being grown on this additional acreage.
- No cancellation of irrigation rights is appropriate.
- The granting of this licence, by the Regional Water Manager, in substitution of Final Water Licence 6609, did not follow the procedure required by the Water Act, and the licence does not correctly show the location of the existing works. Therefore, the decision must be revoked and the licence re-amended.

Conditional Water Licence 62053 - Fipke

- This licence authorized diversion of 21 acre-feet for irrigation of 7 acres and 250 gallons a day for industrial stockwatering.

- The 1987 water use survey established that 9.2 acres were being irrigated.
- This property has been subdivided and partly amalgamated with other Fipke property.
- Some of the irrigated land was taken as highway right-of-way, offsetting some of the over use.
- The remainder of over use is offset by the transfer of water rights by Mrs. Fipke and amalgamation of the properties.
- The rights under this licence are to be apportioned.
- The portion allocated to the Fipke property shall be combined with the rights under Final Water Licence 19399, into one licence.

Conditional Water Licence 62055 - Highways

- This licence authorizes the diversion of 3.51 acre-feet for irrigation of 1.17 acres.
- The 1987 survey did not find any beneficial use.
- Site inspection in 1990 confirmed the lack of use.
- The rights under this licence have been transferred as part of a settlement package resolving the dispute between Highways/TDWUC/Dietrich.
- These rights were combined with the rights under Conditional Water Licence 62057, into one licence.

Conditional Water Licence 62057 - Highways

- This licence authorized the diversion of 3.99 acre-feet for irrigation of 1.33 acres.
- The 1987 survey did not find any beneficial use.

- Site inspection in 1990 confirmed the lack of use.
- The rights under this licence have been transferred as part of a settlement package resolving the dispute between Highways/TDWUC/Dietrich.
- These rights were combined with the rights under CWL 62055, into one licence.

Conditional Water Licence 19399 - Fipke

- This licence authorizes the diversion of 15.6 acre-feet per annum for irrigation of 5.2 acres and 250 gallons a day for domestic purpose.
- The 1987 survey confirmed irrigation of 3.7 acres of land under this licence.
- The property has been subdivided and amalgamated with other land previously owned by the Kliens.
- The apparent under use of this licence is offset by the overuse on the previous Klein property.
- An application for T/A to the new property description has been received.
- As the priority of this right is the same as the priority of the portion of CWL 62053 allocated to the Fipke property, the rights will be amalgamated into one licence.
- Cancellation of the unused portion of this licence is not appropriate.

Final Water Licence 49522 - McKague

- This licence authorizes the diversion of 14.34 acre-feet per annum for irrigation of 4.78 acres, and 500 gallons a day for domestic use.

- The 1987 survey identified irrigation of 8.27 acres, which is 4.78 acres in excess of that permitted under the licence.
- Measures have been taken by the manager of the water users' community and by the licensee to reduce the amount of land under irrigation. However, as this irrigation is for pasture and not for forage crops or tree fruits, the three-foot duty may be somewhat high. Regulation of this licence may be required.
- This licence must be amended under Section 15 and a new licence granted to authorize the new works.

Final Water Licence 21330 - Hunyadi

- This licence authorizes the diversion of 7.5 acre-feet for the irrigation of 3.0 acres.
- The 1987 water use survey confirmed that 7.5 acre-feet was being used, but that quantity is sufficient for only 2.5 acres. A 3-foot duty is consistent with other lands in the area.
- CWL 58074 is also appurtenant to Hunyadi's land.
- This licence must be amended under Section 15 of the Water Act to authorize the new works.
- The appurtenant land has been subdivided and therefore this licence needs amendment under Section 17 of the Water Act.

Conditional Water Licence 58074 - Hunyadi

- This licence authorizes the diversion of 30 acre-feet per annum for irrigation of 10 acres.

- This right is in addition to FWL 21330, which is also appurtenant to Mr. Hunyadi's land.
- The 1987 survey identified 5.2 acres of land irrigated under this licence, representing a beneficial use of 15.6 acre-feet per annum.
- Site inspection during 1990 determined that the irrigated area had been reduced, due mainly to crop replacement under the Ministry of Agriculture program.
- There is evidence to support the cancellation in part of this licence, insofar as 13.5 acre-feet is concerned. This would leave a right to irrigate 5.5 acres with 16.5 acre-feet under this licence, which adequately reflects established beneficial use of water.
- However, the property has been subdivided since the survey and inspection. This licence must therefore be apportioned pursuant to Section 17 of the Water Act. Existing practice to provide the new landowners with time to put the water to a beneficial use should be adhered to. Thus, no cancellation of rights is recommended at this time.
- Amendment under Section 15 of the Water Act is required to authorize new works.
- This licence was granted on the condition that storage releases would be available from Lacoma Lake. However, there was no clause in the licence specifying that condition, unlike other irrigation licences issued at about the same time. That omission was in error. Amendment of this licence must include the correction of that error, by implementing the following

special clause, which is similar to other special clauses for storage release from Lacoma Lake:

"The rights granted under this licence are exercisable only during such times as the works authorized under Conditional Water Licence 58075 on Lacoma Lake are being maintained and operated to the satisfaction of the engineer for the Vernon Water District."

Final Water Licence 66255 - Harris

- This licence authorizes the diversion of 7.5 acre-feet per annum for irrigation of 3.0 acres.
- The 1987 survey found 3.54 acres to be irrigated and that the correct duty was 3 feet, and therefore established the use of 10.62 acre-feet per annum, an apparent over use of 3.12 acre-feet.
- Inspection of the land in 1990 showed a reduction in irrigated land resulting from a Ministry of Agriculture crop replacement program.
- The area of irrigated lands has been reduced sufficiently that, even with an increase in duty, there is no longer an over use of water on this land.
- Approximately 2.5 acres remain under irrigation. Mixed market vegetables are grown.
- This licence was issued in substitution of CWL 20689, by the Regional Water Manager, but the amendment to the licence did not follow the procedure required in the Water Act, and the licence does not correctly show the

location of the existing works. Therefore, the decision must be revoked and the licence re-amended.

Conditional Water Licence 57872 - Thiesmann

- This licence authorizes the diversion of 39 acre-feet per annum for irrigation of 13 acres.
- The rights under this licence are exercisable only when storage from CWL 57875 on Lacoma Lake is being operated to the satisfaction of the engineer.
- The 1987 survey found only 1.3 acres irrigated and this was confirmed in a site inspection in 1990.
- The date set for establishing a beneficial use under the licence was December 31, 1986, but was extended to December 31, 1989.
- There is sufficient evidence of lack of beneficial use to warrant cancellation in part of this licence.
- The licensee attributes the lack of irrigation use to the fact that the required storage in Lacoma Lake had not been developed.
- The licensee actively participated in the development of storage works on Lacoma Lake and intends on irrigating more land now that there is a more secure water supply.
- There is a pending subdivision of the appurtenant land; thus, amendment of this licence is not recommended at this time.
- Any initiative for cancellation of rights should be stayed until after the subdivision is registered and the new property owners have had a reasonable period of

time to establish beneficial use.

Conditional Water Licence 57874 - Moeller

- This licence authorizes the diversion of 39 acre-feet per annum for irrigation of 13 acres. It is backed by storage under CWL 57875 and storage release is a condition of the exercise of the diversion right.
- The 1987 survey found 13 acres under irrigation and this was confirmed by inspection of the site.
- This licence is to be amended under Section 15 of the Water Act to authorize new works.

Conditional Water Licence 57876 - Moeller

- This licence authorizes diversion of 12 acre-feet per annum for irrigation of 3 acres.
- The licence has an error, as the area of land to be irrigated should be 4 acres.
- The 1987 survey found only one acre of irrigated land under this licence.
- Site inspection shows that additional acreage of grape vines were developed but the licensee has subsequently reduced the irrigated area under a Ministry of Agriculture crop replacement program.
- As the area of irrigated land has increased and changed within the last three years, there is not sufficient evidence to support cancellation of any portion of the rights under this licence at this time.
- This licence requires amendment under Section 15 of the Water Act to authorize new works.

3.4.3 Application for Extension of Time

In a letter dated September 2, 1990, H. Moeller requested an extension of the time required to construct works on Lacoma Lake for development of storage. This request applies to all storage licences on Lacoma Lake.

The storage licence holders are seriously pursuing the development of storage works and are now fully aware of the benefits of storage, as well as their obligation to release water from storage.

Mr. H. Moeller has advised that the upgrading of the dam was undertaken during the summer of 1991 and that a new control structure was installed. The application for extension of time is not now necessary.

However, the dam should be inspected by Regional staff, to ensure its structural integrity. Any improvements or repairs that may be required can be dealt with by the engineer.

3.4.4 Certificate of Incorporation

The TDWUC Certificate of Incorporation must be updated as a result of the number of licence amendments recommended herein. The new Certificate of Incorporation should also include Mr. Dietrich, as his property will be served by the TDWUC's works.

The new Certificate of Incorporation has not been prepared at this time. As most of the licence amendments recommended herein require the giving of notice and are subject to the right of appeal, the new Certificate of Incorporation should be prepared after new licences have issued.

3.5 Resolution of Dispute between Dietrich and TDWUC

Mr. Dietrich owns property between Trepanier Creek on the west, and Trepanier Bench Road on the east. For many years the TDWUC ditch passed along Mr. Dietrich's property. There was never any registered easement for the ditch, although the original Crown grant for the property did exclude an irrigation ditch from the grant of Crown land. However, the ditch was not the cause of the dispute. It was the replacement of the ditch with a pipeline which created the conflict.

In order to facilitate construction of the Okanagan Connector to the Coquihalla Highway, the Ministry of Transportation and Highways (Highways) negotiated working easements with landowners along Trepanier Bench Road. Highways also agreed to replace the TDWUC's ditch water system with a pipeline to prevent interruption and contamination of its water supply. Highways entered into a contract with a private construction company, which installed the pipe.

This project proceeded on the understanding that all the necessary permits and permission required was in place. It also

proceeded on the understanding that the pipe would be placed in the existing ditch. In reality, however, it was impractical to follow the exact course of the meandering ditch with consecutive lengths of straight pipe. Consequently, the pipe generally followed the course of the ditch, but it was not placed exactly in the ditch in several areas.

To complicate matters, it was subsequently discovered that Highways had not entered into a working easement agreement with Mr. Dietrich, but, in fact, trespassed on his property. Highways did compensate Mr. Dietrich and paid him \$7,300 for site disturbance and trespass. That payment, however, was not compensation for installing the pipe across Mr. Dietrich's land.

At the time the pipe was installed, Highways was also a member of the water users' community by virtue of its acquisition of lands licensed to be served by the community system and of licences appurtenant to those lands. Therefore, when Highways installed works across Dietrich's property, they were operating as agent for the TDWUC and, at the same time, were also operating as licensee.

Mr. Dietrich continued to object to the pipe across his land, which pipe was installed without his consent or without legal authority. At the time the pipe was installed the licences did not authorize pipe; rather, they authorized a ditch.

On January 13, 1989, Mr. Dietrich wrote to the TDWUC, advising them to immediately remove their works from his property and

compensate him for damages, or pay a \$200 per month user fee, retroactive to December 1987.

The TDWUC and Mr. Dietrich did not come to any agreement, and on July 15, 1989, Mr. Dietrich excavated the pipe and cut it with a chainsaw, thereby severing the water supply to most of the water users. Water supply was restored after several days, but the conflict between the landowner and the licensee was not resolved.

The Comptroller reopened the application for a change of the works from ditch to pipe to determine if Mr. Dietrich's land was reasonably required for the construction, maintenance, and operation of works owned by the water users' community. If the change of works was granted the water users would be in a position to expropriate an easement from Mr. Dietrich; however, if the change of works was not granted, then the water users would have to move the pipe. The Comptroller requested submissions from the parties in his investigation of the amendment application.

The TDWUC also threatened legal action against Highways and claimed damages of approximately \$20,000, as it felt that Highways was negligent in installing the waterline without confirmation of landowner agreements.

Mr. Dietrich and his solicitor were met on the subject property during an inspection of the site, as part of the investigation of the change of works application. Mr. Dietrich's objection was

not focused on the actual loss of his land, or on the impact that a pipeline would have on future development, but, rather, it was focused on a number of other issues relating to water licences and disagreements with the community as a whole. Thus, it appeared that there may be a possibility for resolving the issue.

Various aspects of the water law were discussed. Mr. Dietrich's plans for developing or using the property were also discussed. The information indicated that a need for water was an important factor in the future development of the property. Therefore, a settlement initiative was proposed to Mr. Dietrich and his lawyer. The initiative involved three parties: Highways, TDWUC, and Mr. Dietrich.

The basic principles of the settlement initiative were:

1. Highways could transfer some unused irrigation and storage water rights to the TDWUC, and a cash award for an out-of-court settlement.
2. The TDWUC could, in turn, transfer the irrigation and storage rights to Mr. Dietrich, along with one hundred dollars in cash and a commitment to serve his property with water for an eight-lot subdivision, in exchange for an easement over Dietrich's property for the newly installed pipeline.

The initiative has resulted in settlement of the differences between the three parties, and transfer of the appurtenance of Conditional Water Licences 62055 and 62057 has been approved.

The granting of a domestic licence for 8,000 gallons a day to supply eight lots of Mr. Dietrich's proposed subdivision is also recommended, completing the settlement.

4.0 SUMMARY

The water supply of Trepanier Creek is used for waterworks and domestic purpose, for irrigation purpose and for the fishery. Storage facilities balance the skewed seasonal supply against the seasonal demand. For the most part, there are only three users of the stream: the Municipality of Peachland, the TDWUC, and fisheries. Other individual domestic users are insignificant in comparison to the total demand and to the stream flow.

Therefore, it should be relatively easy to ensure that the interests of all users are met without significant impact on another user. A basic framework for monitoring and regulating water use will provide an easy and quick means of resolving water use problems:

The framework should include:

1. water supply data collection
2. water diversion data collection
3. storage release data collection

The Water Survey of Canada gauging station should be continued. It will continue to provide a useful data base. More importantly, however, this station can provide an instantaneous reading of the available water supply from Trepanier Creek for monitoring and regulation purposes.

Prepanier Creek is the Municipality a system for recording its diversion be given to a periodic review, by e records. Future reference to that asonal deficiencies or excesses in the

est consumptive user of the stream. io quick means of determining its ions for establishing a flow meter or /stem should be explored.

ge should also be monitored. As the g station is downstream of the Silver sites, the records from this station are orage release data would provide the entiate between base flow and storage releases. A record of periodic reservoir level observations and the timing of storage releases or diversions into storage is required from the Municipality and the TDWUC.

An engineer under the Water Act has the power to order the construction, installation, and maintenance of any measuring device. If he is called upon to investigate complaints of water shortages, complaints of impact on the fishery's instream use of water, or to regulate the diversion and use of water, the data obtained would be valuable for determining appropriate action. The information would also benefit the licensees in ensuring the most efficient use of their storage quantities.

The granting of a reserve of unrecorded water, under Section 44 of the Water Act, will ensure that instream flow requirements for the fishery of Trepanier Creek are not impacted by new proposals for diversion from the stream. Such a reserve also provides a mechanism for improvement of instream flows upon licence cancellation or abandonment—which protection the Fish and Wildlife Branch has sought for a number of years.

Ultimately, the Fish and Wildlife Branch seeks to have optimum instream flows for the fishery of Trepanier Creek. However, without additional headwater storage or an Okanagan Lake pumping station, specifically for providing instream flow for fish, there will be times during low runoff years when the instream flow for fish will be less than optimum.

Nevertheless, Trepanier Creek should continue to provide adequate domestic, waterworks, and irrigation water supplies for many Peachland area residents, as well as spawning and rearing habitat for kokanee and rainbow trout from Okanagan Lake. The social and economic benefits derived from the water resource of Trepanier Creek are shared amongst those individual users, the general public, and the Province. The responsibility for ensuring that those benefits are fairly appropriated, and that the water resource of Trepanier Creek is sustained and healthy, rests with the Water Management Division, of the Ministry of Environment, Lands and Parks.

The first step to achieving that goal has now been completed.

TABLE 1

LOW FLOW ESTIMATESTrepanier Creek at Station 08NM0417-day Average Low Flow Estimates (in cfs)

| Period | <u>Recurrence Interval</u> | | | |
|-------------|----------------------------|-------------|--------------|--------------|
| | 1 in 2 year | 1 in 5 year | 1 in 10 year | 1 in 25 year |
| April | 12.7 | 8.74 | 7.74 | 7.08 |
| May | 66.2 | 39.4 | 30.0 | 22.3 |
| June | 35.6 | 22.2 | 17.8 | 14.4 |
| July | 12.0 | 8.54 | 7.24 | 6.14 |
| August | 7.59 | 5.42 | 4.62 | 3.98 |
| Sept. 1-15 | 7.19 | 5.02 | 4.16 | 3.41 |
| Sept. 16-30 | 7.46 | 5.51 | 4.68 | 3.91 |

15-day Average Low Flow Estimates (in cfs)

| Period | <u>Recurrence Interval</u> | | | |
|------------|----------------------------|-------------|--------------|--------------|
| | 1 in 2 year | 1 in 5 year | 1 in 10 year | 1 in 25 year |
| July | 11.3 | 8.18 | 7.02 | 6.04 |
| August | 7.66 | 5.43 | 4.60 | 3.90 |
| Sept. 1-15 | 7.16 | 5.08 | 4.26 | 3.52 |

30-day Average Low Flow Estimates (in cfs)

| Period | <u>Recurrence Interval</u> | | | |
|------------|----------------------------|-------------|--------------|--------------|
| | 1 in 2 year | 1 in 5 year | 1 in 10 year | 1 in 25 year |
| July | 11.7 | 8.34 | 7.12 | 6.12 |
| August | 7.95 | 5.72 | 4.88 | 4.16 |
| Sept. 1-15 | 7.47 | 5.36 | 4.50 | 3.74 |

Note: The estimates shown are based on Water Survey of Canada records from station 08NM041 for the years 1919-27 and 1960-88. The data of the years prior to 1968 have been adjusted to account for the reduced watershed area of Trepanier Creek resulting from Brenda Mines' diversion of MacDonald Creek. The estimates are based on the present watershed area, upstream of the gauging station, of 63 square miles.

Estimates are derived using the Ministry of Environment WSC DATA FREQAN program.

TABLE 2

SUMMARY OF LICENSED DEMAND

| <u>Period</u> | <u>Licensed Diversion Demand</u> | <u>Storage Demand</u> | <u>Total Demand</u> | <u>Storage** Release</u> | <u>Net Demand</u> |
|-----------------|--|---------------------------|-------------------------|------------------------------|-----------------------|
| Oct. 1-April 30 | 2.06 | 0.77 | 2.83 | - | 2.83 |
| May | 5.85 | 0.77 | 6.62 | - | 6.62 |
| June 1-15 | 6.37 | 0.77 | 7.14 | - | 7.14 |
| June 16-30 | 6.37 | - | 6.37 | - | 6.37 |
| July | 6.60 | - | 6.60 | 1.5 | 5.10 |
| August | 6.22 | - | 6.22 | 1.4 | 4.82 |
| Sept. 1-15 | 5.01 | - | 5.01 | 1.0 | 4.01 |
| Sept. 16-30 | 1.91 | - | 1.91 | - | 1.91 |

Licensed Demand by Purpose
(from WLIS Licence Demand Report 91/11/01)

| | | |
|------------------------|-------------|----------------------|
| Waterworks | 381,322,000 | gallons per year |
| Domestic | 20,750 | gallons a day |
| Industrial | 4,250 | gallons a day |
| Irrigation (municipal) | 877.79 | acre-feet per annum |
| Irrigation | 270.77 | acre-feet per annum |
| Storage | 416.06 | acre-feet per annum* |

*20 acre-feet per annum of this quantity recommended for cancellation (C.62054, C.62056, C.62058). Storage demand rate based on reduced storage quantity.

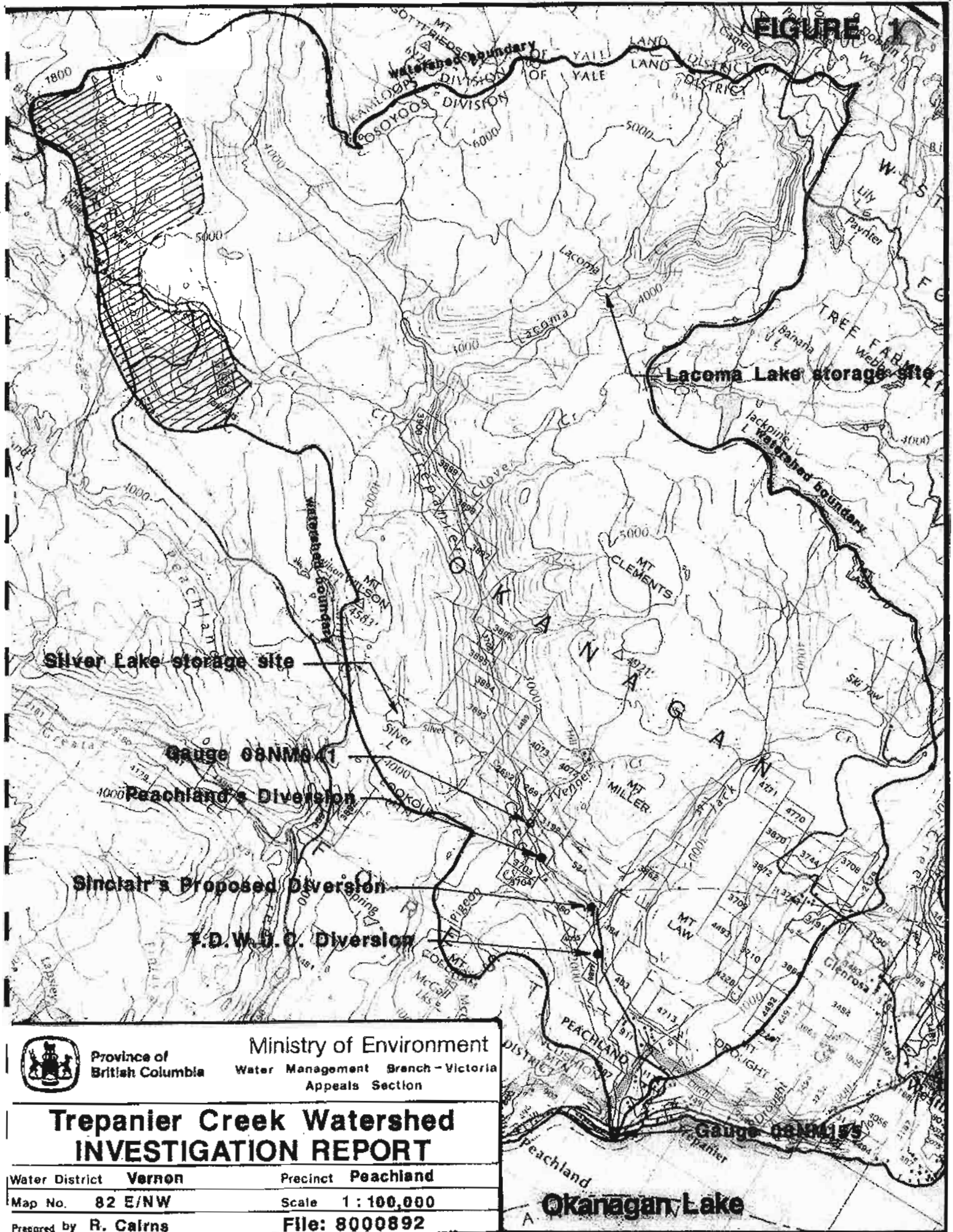
**Storage release rate shown is based on the release of storage for those irrigation licences with clauses requiring reservoir operation to the satisfaction of the engineer. The rates shown are equivalent to the diversion demand rate of the irrigation licences, based on the seasonal distribution of irrigation requirements. Other optional storage licences are not included in the storage release figures.

TABLE 3

SUMMARY OF APPLICATION DEMAND

| <u>Application</u> | <u>Quantity Applied for</u> | <u>Quantity to be Licensed</u> | <u>Purpose</u> | <u>Applicant</u> |
|--------------------|-----------------------------|--------------------------------|-------------------------|------------------|
| 8000892 | 30.0 acre-feet | 30.0 acre-feet | irrigation | Sinclair |
| 8001101 | 2.0 cfs | rec. refused | conservation | Min. of Environ. |
| 8001156 | 1,000 gad | 500 gad | industrial | Moeller |
| 8001158 | 1,000 gad | 500 gad | domestic | McKague |
| 8001171 | 5,000 gad | 250 gad | domestic s/w | Sinclair |
| 8001369 | 500 gad | undetermined | domestic | Leskewich |
| ADM-Sec. 44 | 4.6 cfs | 4.6 cfs | Sec. 44 reserve/fishery | Min. of Environ. |
| 8001472 | 4,000 gad | 8,000 | domestic | Dietrich |
| 8001473 | 45,000 gad | 0 | domestic | Dietrich |
| | 102 acre-feet | 0 | storage | Dietrich |
| 8001479 | 500 gad | undetermined | domestic | Campbell |
| | 2.1 acre-feet | undetermined | irrigation | Campbell |
| 8001516 | 500 gad | 500 gad | domestic | Thiesman |
| 8001585 | 30.0 acre-feet | 30.0 acre-feet | storage (for 8000892) | Sinclair |

FIGURE 1



Province of British Columbia
 Ministry of Environment
 Water Management Branch - Victoria
 Appeals Section

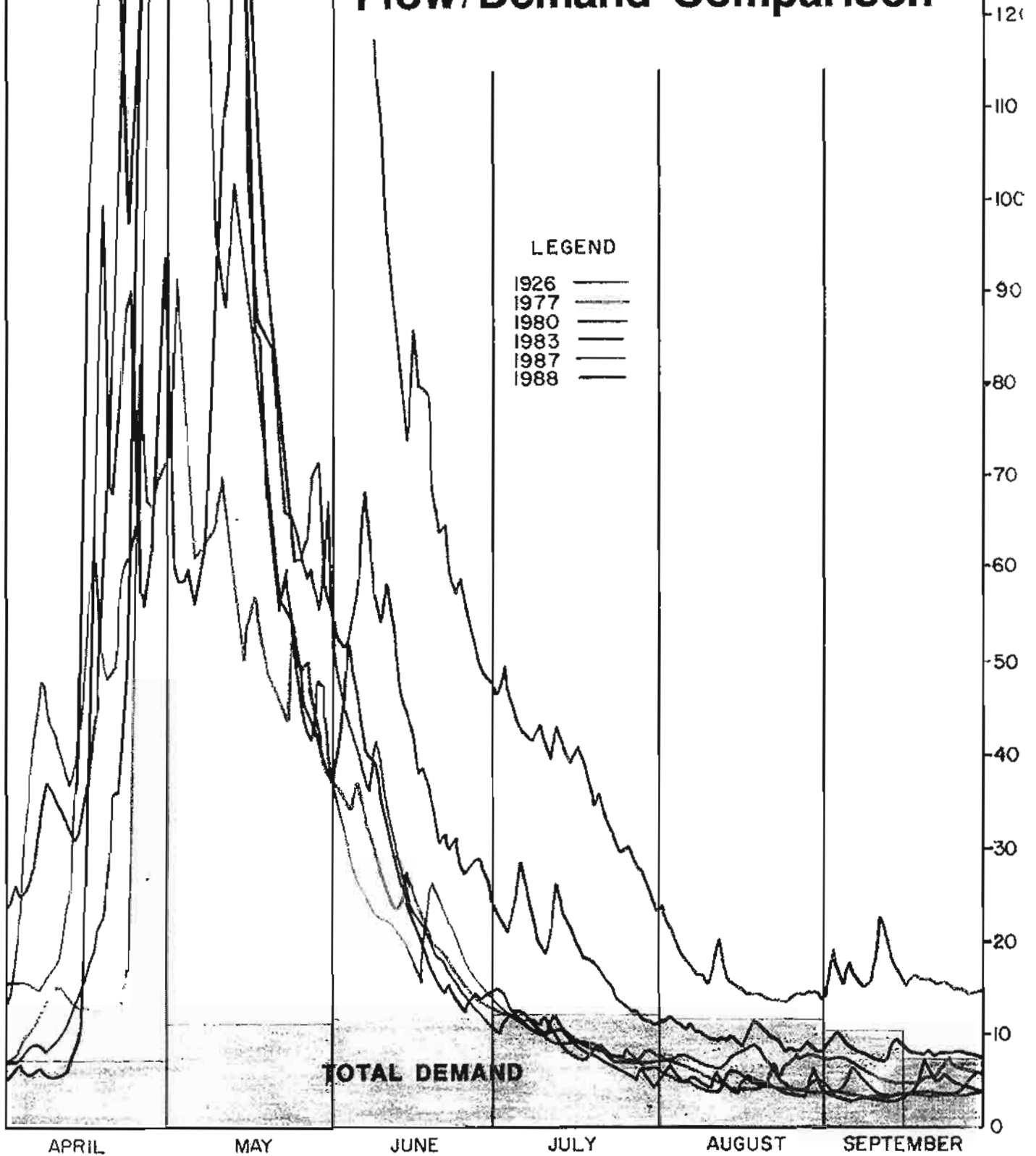
Trepanier Creek Watershed INVESTIGATION REPORT

| | | | |
|----------------|-----------|----------|-------------|
| Water District | Vernon | Precinct | Peachland |
| Map No. | 82 E/NW | Scale | 1 : 100,000 |
| Prepared by | R. Cairns | File: | 8000892 |




Okanagan Lake

FIGURE 2

TREPANIER CREEK Flow/Demand Comparison



Actual Diversion Rate vs. Licensed Quantity Municipality of Peachland

Legend
 Weekly Average 
 Peak Instantaneous 
 Licence Rate 

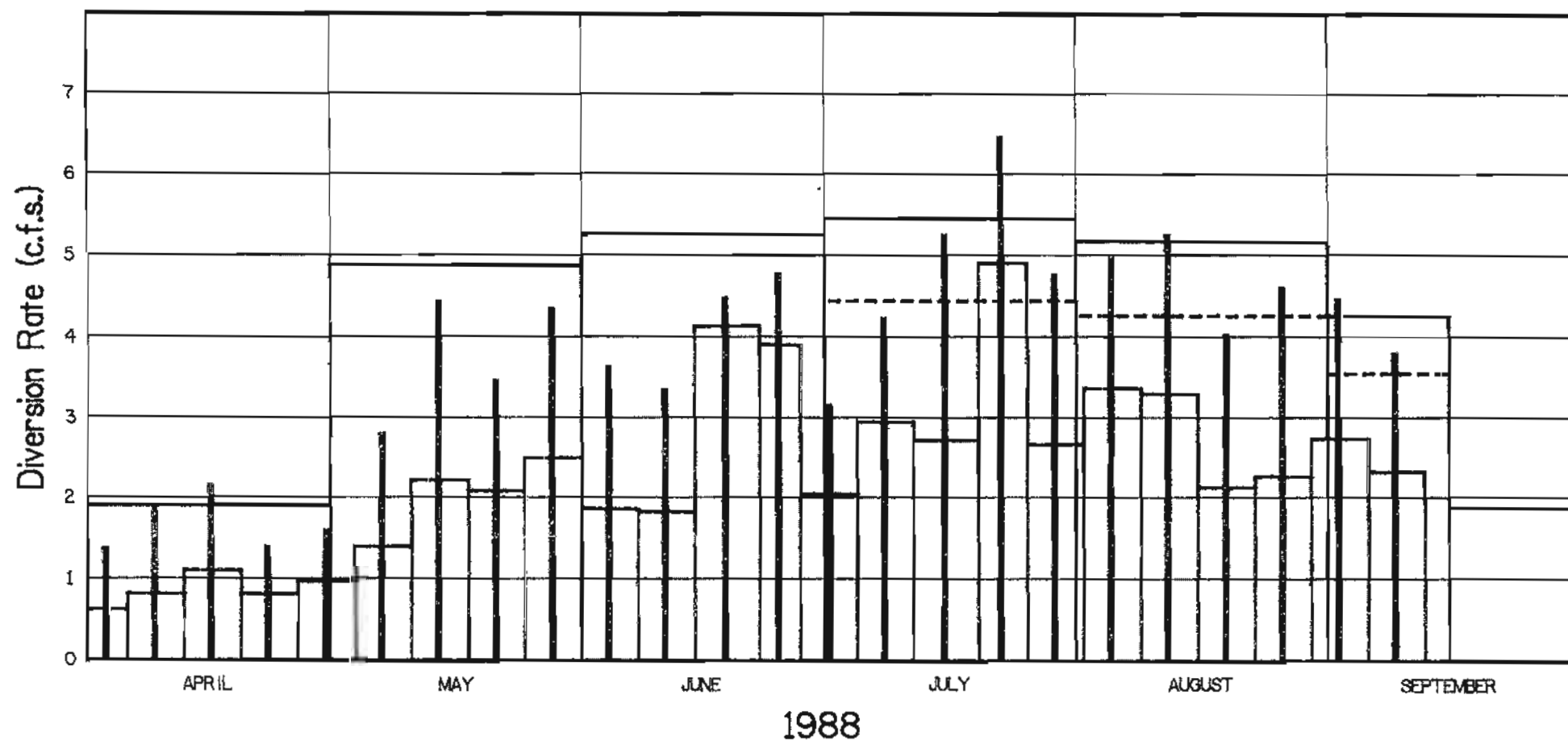


FIGURE 3

Actual Diversion Rate vs. Licensed Quantity Municipality of Peachland

Legend
 Weekly Average
 Peak Instantaneous
 Licence Rate

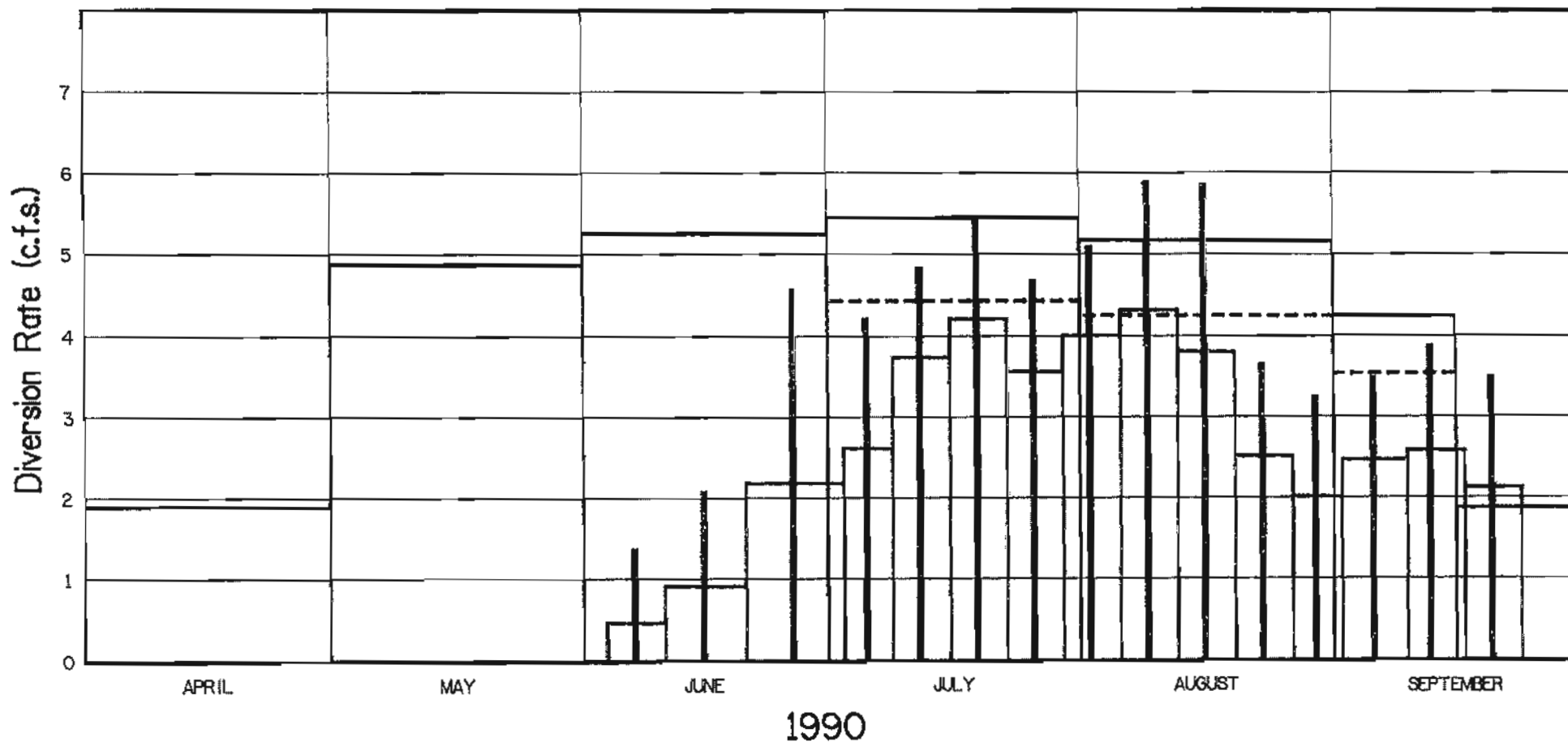


FIGURE 4

Actual Diversion Rate vs. Licensed Quantity Municipality of Peachland

Legend
 Monthly Average
 Peak Instantaneous
 Licence Rate

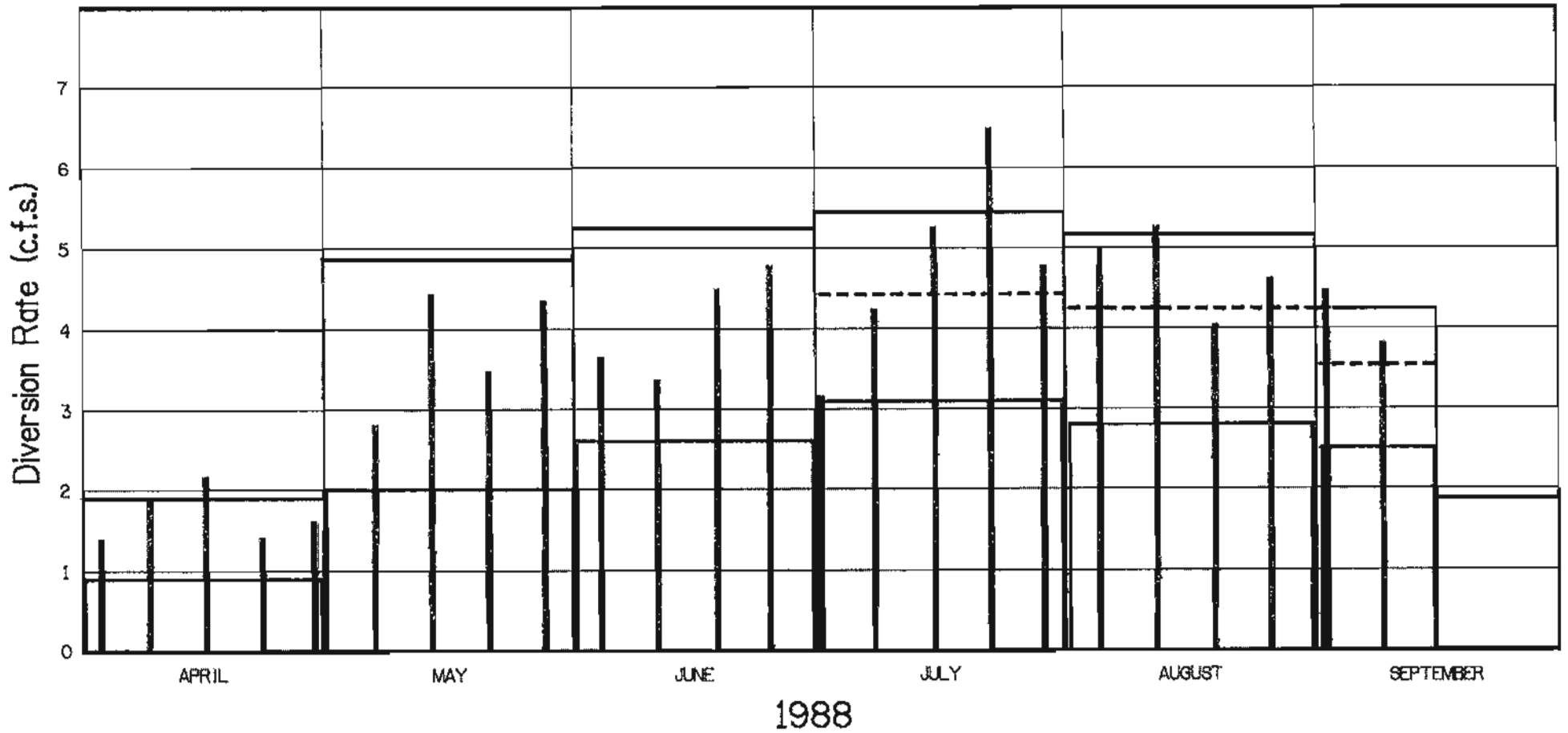


FIGURE 5

Actual Diversion Rate vs. Licensed Quantity Municipality of Peachland

Legend
 Monthly Average
 Peak Instantaneous
 Licence Rate

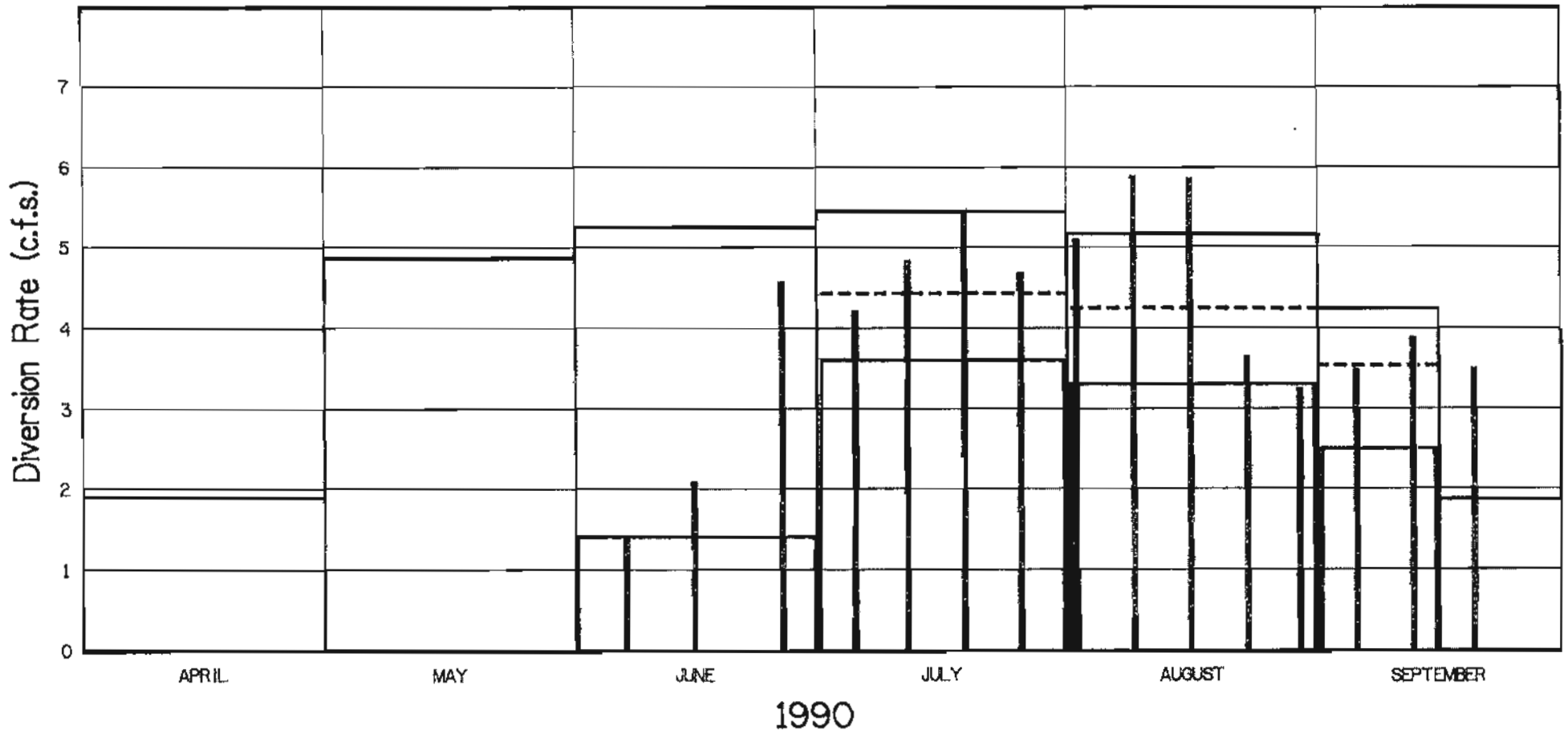
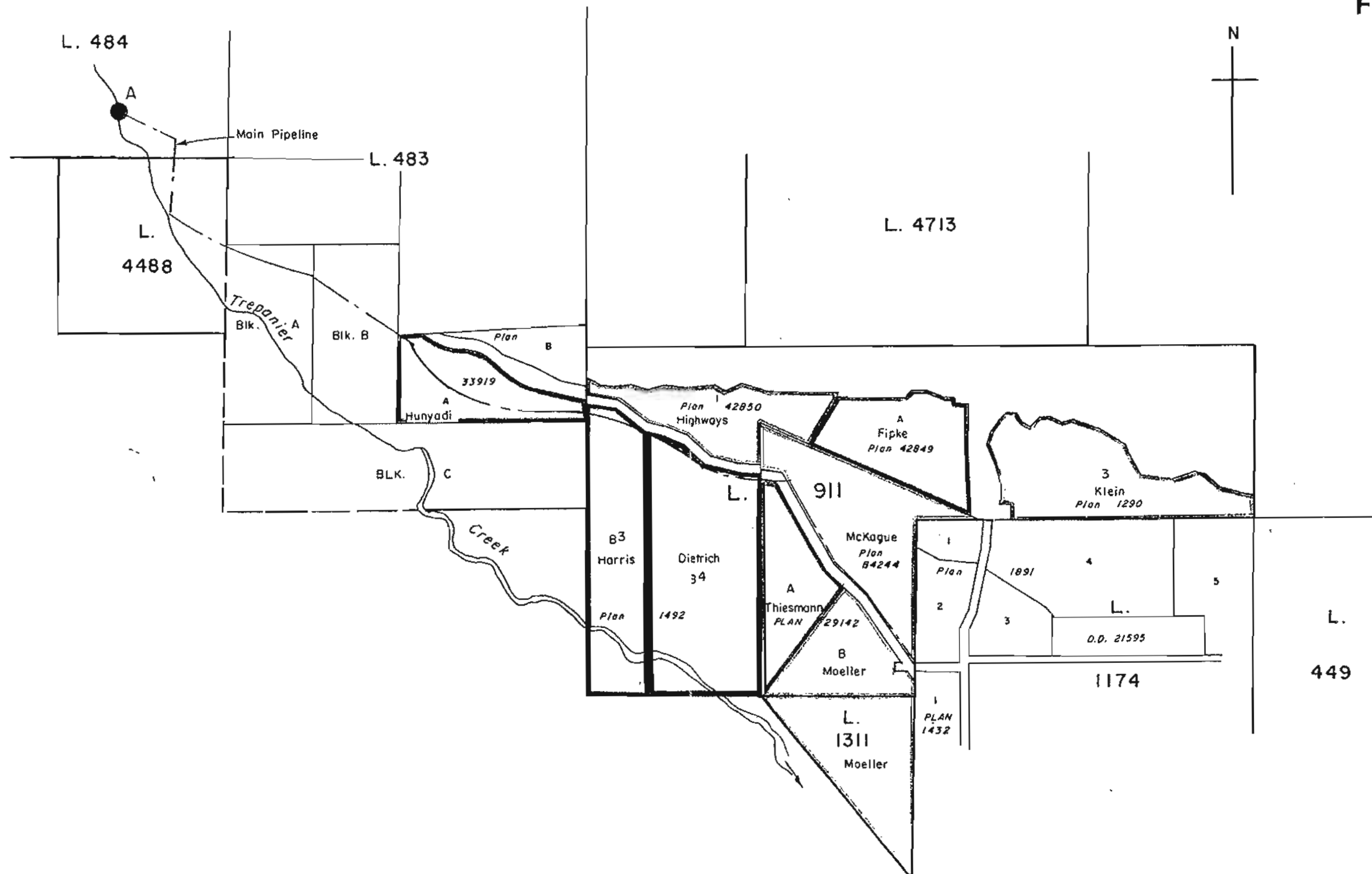


FIGURE 6

FIGURE 7



SKETCH SHOWING LOCATION OF TREPANIER DITCH
WATER USERS COMMUNITY PIPELINE AND PROPERTIES

VERNON WATER DISTRICT
PEACHLAND PRECINCT

SCALE:1:10 000

APPENDIX A

- Preliminary Report No. 5
Abstract on Fish Habitat Survey: Okanagan Tributary Streams - 1969
- The Main Report of the Consultative Board, Canada-B.C. Okanagan Basin Agreement - 1974
- Summary Report of the Consultative Board, Canada-B.C. Okanagan Basin Agreement - 1974
- Technical Supplement No. 9
Fisheries and Wildlife in the Okanagan Basin; Canada-B.C. Okanagan Basin Agreement - 1974
- Municipality of Peachland
Preliminary Report on Rehabilitation of Trepanier Area Water Supply System - 1974
- Overview of Rating of Production Capabilities and Enhancement Opportunities for Rainbow Trout and Kokanee in Tributaries to upper Okanagan Basin Lakes - 1978
- District of Peachland. Trepanier Water System, Pre-Design Report - 1979
- Okanagan Basin Implementation Agreement Summary Report. Tributary Water Management Studies. Program V - 1973
- Okanagan Lake Tributary Assessment Progress in 1987 - 1988
- Trepanier Creek Water Supply Analysis - 1989
- Trepanier Creek Assessment of Alternatives to Enhance Okanagan Lake Fishery - 1990

APPENDIX B

THIS INDENTURE made the _____ day of June, A.D. 1991,

BETWEEN:

WALTER DIETRICH, Welder, of
745 Wayne Road
Kelowna, B.C. V1X 4L9

(Hereinafter referred to as "Dietrich")

COPY

AND:

HENRY R. Y. MOELLER, ANNE MOELLER,
DONNA MCKAGUE, JOE KLEIN, JESSICA KLEIN,
HELMUT THIESMANN, GAIL THIESMANN, ED FIPKE,
ANNE FIPKE, KEITH HARRIS, BERT HUNYADI
and TREPANIER DITCH WATER USERS COMMUNITY,
all of RR #2, S. 27, C. 16 Peachland, B.C. V0H 1X0

(Hereinafter referred to as the "T.D.W.U.C.")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA as represented by
MINISTRY OF TRANSPORTATION & HIGHWAYS and the
WATER MANAGEMENT BRANCE of the MINISTRY OF
ENVIRONMENT all of 5th Floor,
609 Broughton Street Victoria, B.C.

(Hereinafter referred to as "Her Majesty")

WHEREAS:

A. Dietrich is the owner of land situated near Peachland, British Columbia, legally described as:

Parcel Identifier 011-546-981
Lot B4
District Lot 911
Osoyoos Division Yale District
Plan 1492

(Hereinafter referred to as the "Land").

B. T.D.W.U.C. is a water users' community incorporated pursuant to the Water Act R.S.B.C. 1979, c.429 and the individuals named as being of the second part of this Agreement are members of the T.D.W.U.C.

C. A water pipeline for the benefit of the T.D.W.U.C. was constructed along a portion of the Land bordering Trepanier Bench Road (hereinafter referred to as the "pipeline").

D. The parties hereto wish to enter into this agreement in order to facilitate the occupation of the Land by the pipeline.

E. Dietrich and the T.D.W.U.C. wished to settle all claims and issues in dispute between them pursuant to the terms of this agreement.

F. Her Majesty agrees to become party to this agreement in order to facilitate the settlement between Dietrich and the T.D.W.U.C. and thereby assist in resolving the outstanding dispute between Her Majesty and the T.D.W.U.C.

NOW THEREFORE WITNESSETH that in consideration of the mutual covenants and agreements contained herein the parties hereto agree as follows:

1. Dietrich agrees to execute and deliver an easement over the Land authorizing the existence of the pipeline on the Land in the form attached hereto as Schedule "A" and to deliver the executed easement agreement in registerable form to the T.D.W.U.C. for registration against the Land when the conditions precedent to this agreement contained in paragraph 12 are satisfied.
2. The T.D.W.U.C. agrees to pay all legal survey and other expenses incurred in the preparation and registration of the easement agreement. Each party agrees to bear its own legal fees incurred in the review and negotiation of the terms of this agreement and the easement agreement.
3. The T.D.W.U.C. agrees to pay Dietrich \$100.00.
4. Dietrich shall be accepted into membership of the T.D.W.U.C. and as a member, Dietrich agrees to comply with all the rules and regulations

of the T.D.W.U.C. a true current copy of which is attached and incorporated hereto as Schedule "C" and to pay promptly when due all hook up and other fees normally charged by the T.D.W.U.C. to its members as at the date of this Agreement.

5. The T.D.W.U.C. acknowledges that Dietrich intends to subdivide and develop the Land and that in order to facilitate such subdivision and development, Dietrich will apply to the Regional District of Central Okanagan to rezone the Land and he will apply to the Water Management Branch pursuant to the Water Act for domestic water and irrigation water licenses to service the rezoned and subdivided parcels. The T.D.W.U.C. and its members agree that if Dietrich applies to the appropriate Regional District or Municipal authority to rezone the Land to permit subdivision into no more than 8 individual parcels on the Land with a minimum lot size of 3 acres (RU/6 Zone or a combination of the RU/6 and RU/3 Zones), they will not express any objection to such an application either directly, indirectly, orally, or in writing. The T.D.W.U.C. and its members will agree to consent to such a rezoning application by Dietrich.

6. The T.D.W.U.C. agrees that it will consent to any application or applications Dietrich may make to the Water Management Branch pursuant to the Water Act for domestic and/or irrigation water licenses to service the Land in its current or future rezoned or subdivided state so long as the proposed development is otherwise consistent with this agreement. The T.D.W.U.C. agrees that if Dietrich makes such applications consistent with this agreement and the Water Management Branch grants Dietrich water licenses to service the Land or any portion or portions thereof, the T.D.W.U.C. will consent and agree to Dietrich hooking up to or connecting to the pipeline within the easement area at such location or locations as will provide for the most economical and efficient servicing of the Land or any portion or portions thereof with water as authorized under the said water licenses and as authorized under the Trepanier Ditch Water Users' Community Constitution as amended from time to time.

7. The T.D.W.U.C. agrees that Dietrich may enter onto the easement area to regrade the area to prevent the accumulation of surface water on the Land and/or the easement area.

8. The parties agree that in the course of subdividing and developing the Land, Dietrich may cross the easement area at whatever locations that are expedient for purposes of servicing the Land or any portion or portions thereof with road access or accesses, natural gas service, electrical service, water service (from a source other than the pipeline), telephone, cable television, or other utility in the course of subdividing and developing the Land. Dietrich agrees that in the course of utilizing the easement area for such purposes, he will endeavor not to damage the pipeline in any way, or, in the event of such damage, to repair it immediately at his expense, and he will not temporarily interfere with or interrupt the flow of water through the pipeline unless such interference or interruption is necessary and he has first provided the T.D.W.U.C. with at least 48 hours' notice of such interruption between the months of October and March of any year and 72 hours notice of such interruption between the months of April and September of any year which notice shall specify the purpose of service interruption, the expected time when service interruption shall commence and the expected time when water service will be restored through the waterline. Dietrich agrees that interruptions of service are to be kept to a minimum and be as brief as reasonably possible in the circumstances. Notice to the T.D.W.U.C. is sufficiently given if it is personally delivered to the manager of the T.D.W.U.C. or, if mailed, to the address aforesaid, provided notice shall be deemed to be delivered 48 hours after mailing.

9. IN CONSIDERATION for the T.D.W.U.C.'s covenants and agreements herein contained, and for other good and valuable consideration (the receipt and sufficiency of which by Dietrich is hereby acknowledged) Dietrich releases the T.D.W.U.C., its members and each of them from and against any claim which Dietrich had, has, or may have with respect to the trespass onto the Land by the Ministry of Highways, the removal of trees, regrading of the Land, and construction of the pipeline and

with respect to the T.D.W.U.C. occupying the Land and using the pipeline for transporting water through it for use by the T.D.W.U.C. and its members without the benefit of an easement agreement and, in particular, without restricting the generality of the foregoing, for any and all claims, right to compensation, if any, rights, fees or costs in the matter of the expropriation proceeding as against the land or part of it commenced by the T.D.W.U.C. against Dietrich on or about August 18, 1989 or thereafter pursuant to the Water Act, R.S. 1979, c429, as amended and/or the Expropriation Act, S.B.C. 1987, c.23, as amended. This Release is provided without an admission of liability by the T.D.W.U.C. or Her Majesty.

10. IN CONSIDERATION for Dietrich's covenants and agreements herein contained, and for other good and valuable consideration (the receipt and sufficiency of which by the T.D.W.U.C. is hereby acknowledged) the T.D.W.U.C. releases Dietrich from and against any claim which the T.D.W.U.C. or its members had, has, or may have with respect to Dietrich challenging the legitimacy of the construction of the pipeline and the pipeline's occupation of the Land and, without limiting the generality of the foregoing, all matters raised and set out in the Writ of Summons and Endorsement filed by the T.D.W.U.C. in the Supreme Court of British Columbia, Kelowna Registry, Action Number 8305 (the "legal proceedings"), between T.D.W.U.C. as Plaintiffs and Her Majesty the Queen in Right of the Province of British Columbia and Dietrich as Defendants. This Release is provided without an admission of liability by Dietrich.
11. Subject to this Agreement, the T.D.W.U.C. and Dietrich agree to instruct their respective solicitors to prepare and enter a consent dismissal order of the legal proceedings with each party bearing their own costs as if the T.D.W.U.C.'s claim was heard on its merits and dismissed without costs to any party.
12. Dietrich and the T.D.W.U.C. agree and acknowledge that it is a condition precedent to the enforceability of and registration of the

easement agreement and to the enforcement of the other terms and conditions of this agreement, that:

- (a) The Ministry of Transportation and Highways and the Water Management Branch assign and transfer all its ownership in and benefit of those water licenses more particularly described in Schedule "B" of this agreement to the T.D.W.U.C. which shall promptly transfer them to Dietrich and the Land to be distributed and allocated amongst the Land or any portion or portions thereof as Dietrich sees fit;
- (b) The Water Management Branch granting water licences to Dietrich for the benefit of the Land or any portion or portions thereof authorizing the diversion of a maximum of 8,000 gallons per day domestic water from the pipeline to be allocated or divided amongst the Land or any portion or portions thereof as may be authorized by the Water Management Branch.
- (c) The T.D.W.U.C. consents to and supports the said assignment, transfer and allocation of the said water licenses as provided in this paragraph 12; and
- (d) Items (a) - (c) above must be completed on or before October 1, 1991.

13. Her Majesty agrees to transfer the water licenses as provided in paragraph 12(a) and to issue the new water licenses as provided in paragraph 12(b) and to complete these transactions by October 1, 1991.

14. All the covenants in this agreement shall be joint and several where the context or a party requires.

15. This agreement shall be governed and construed in accordance with the laws of British Columbia.

16. This agreement shall be binding on the parties hereto and their respective successors, transferees, estates, and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their hands and seals on the day and year first above written.

Name

Address

Occupation

O. R. Mueller

Name RR 2 S-27 C-16

Address Peachland, B.C.

lumbermaker

Occupation

Joe Klein

Name RR 2 S 20A C5

Address Peachland BC V0H1X0

Farmer

Occupation

Anna Mueller

Name RR 2 S 27 C 16

Address Peachland V0H1X0

Farming

Occupation

Walter Dietrich
WALTER DIETRICH

Henry R. Moeller
HENRY R. MOELLER

O. R. Mueller
ANNE MOELLER

Donna Mckague
DONNA MCKAGUE

Name Henry Maeller
 Address R.R. 527 C16
Beachland VAH 140
 Occupation Farming

Joe Klein
 JOE KLEIN

Name Henry Maeller
 Address R.R. 527 C16
Beachland VAH 140
 Occupation Farming

Jessica Klein
 JESSICA KLEIN

Name Henry Maeller
 Address R.R. 527 C16
Beachland VAH-140
 Occupation Farming

H. Thiesmann
 HELMUT THIESMANN

Name Henry Maeller
 Address R.R. 527 C16
Beachland VAH-140
 Occupation Farming

G. Thiesmann
 GAIL THIESMANN

Name Henry Maeller
 Address R.R. 527 C16
Beachland VAH 140
 Occupation Farming

B. Fipke
 BO FIPKE

Henry Madley
 Name
R.R. 527-C16
 Address
Yukonland B.C. Y0H-1X0
Farming
 Occupation

Henry Madley
 Name
R.R. 527-C16
 Address
Yukonland B.C. Y0H-1X0
Farming
 Occupation

 Name

 Address

 Occupation

Anna Fipke
 ANNE FIPKE
 H.M.

Keith Harris
 KEITH HARRIS

 BERT HUNYADI

TREPANIER DITCH WATER USERS
 COMMUNITY

Per: S. Minnie
 Authorized Signatory

HER MAJESTY THE QUEEN IN RIGHT OF
 THE PROVINCE OF BRITISH COLUMBIA
 as represented by the MINISTRY OF
 TRANSPORTATION & HIGHWAYS and the
 WATER MANAGEMENT BRANCH of the
 MINISTRY OF THE ENVIRONMENT

Per: _____
 Authorized Signatory

SCHEDULE "A"

THIS INDENTURE made in duplicate the _____ day of May, A.D. 1991.

BETWEEN:

WALTER DIETRICH, Farmer, of 745 Wayne Road,
Kelowna British Columbia,

(hereinafter called the "Grantor")

OF THE FIRST PART

AND:

TREPANIER DITCH WATER USERS COMMUNITY, of
RR#2, S.27 C.16, Peachland, British Columbia,

(hereinafter called the "Grantee")

OF THE SECOND PART

WHEREAS the Grantor is the owner of that certain parcel or tract of land and premises situate in Peachland, in the Province of British Columbia, and more particularly known and described as:

Lot B4
District Lot 911
Osoyoos Division Yale District
Plan 1492
PIN 001 546 981

(hereinafter referred to as "the Grantor's Land")

THE Grantee is an Improvement District organized for the purpose of supplying water pursuant to the Water Act of British Columbia, being Chapter 429 of the Revised Statutes of British Columbia, 1979, and amendments thereto;

THE Grantor has agreed to grant to the Grantee an Easement and Right-of-Way for the purpose of laying down and maintaining a water pipeline and ancillary equipment;

NOW THEREFORE this Indenture witnesseth that in consideration of the sum of ONE HUNDRED (\$100.00) DOLLARS, now paid by the Grantee to the Grantor (the receipt whereof is hereby acknowledged by the Grantor) and in consideration of the mutual covenants and conditions hereinafter set forth, the Grantor DOES HEREBY GRANT AND CONVEY unto the Grantee, its successors and assigns forever in perpetuity the Easement rights and Right-of-Way hereinafter set forth over all that portion of the Grantor's land outlined in red on a plan of Easement and Right-of-Way registered in the Land Title Office at the City of Kamloops, in the Province of British Columbia, under Number _____ (hereinafter referred to as "the Easement Area"), that is to say, the right, licence, liberty,

privilege, right-of-way and easement in, over and upon such part of the Easement Area as may be reasonably necessary for the laying down construction, operation, maintenance, inspection and removal, replacement, reconstruction and repair of a water pipeline, together with all structures and other equipment and appurtenances as may be necessary in connection therewith, and together with the right of ingress, egress, and regress over the Easement Area for the Grantee, its servants, agents and contractors, with vehicles, supplies and equipment, and for all purposes useful or convenient in connection with or incidental to the exercise and enjoyment of the said rights and privileges herein granted.

IT IS MUTUALLY COVENANTED AND AGREED by and between the Grantor and the Grantee as follows:

1. The Grantor covenants and agrees with the Grantee that except as otherwise contemplated herein, the Grantor will not construct or maintain any embankment, fill or any building or any structure of any kind whatsoever which shall occupy any portion of the Easement Area including the sub-soil thereof, other than a boundary fence, decorative landscaping, subject to the Grantee's rights contained in clause 4 herein, road access to the remainder of the Grantor's land or any portion thereof as may be necessary to cross the Easement Area, and neither such boundary fence nor such roadway crossings shall interfere with the present or future utilization of the rights herein granted by the Grantor to the Grantee. In the event that the Grantor shall provide therein gates sufficient in width to permit the Grantee and its vehicles to pass along the Easement Area.
2. The Grantee covenants and agrees with the Grantor that it will cause any such water pipeline and ancillary equipment to be erected, installed and constructed, replaced and repaired in a firm and substantial and proper and workmanlike manner so as to do as little injury as possible to the Easement Area, and also will fill up all holes caused by such work and restore the surface of the ground as far as may be reasonably possible to its original condition, and also will repair or replace as the circumstances may require any boundary fence situate in the Easement Area which it may have to take down in the course of its work.
3. Notwithstanding any rule of law or equity, any and all chattels hereinafter installed by the Grantee on the Easement Area shall be and shall remain chattels and shall at all times remain the property of the Grantee notwithstanding that the same may be annexed or affixed to the freehold and shall at any time and from time to time be removable in whole or in part by the Grantee, its successors or assigns.
4. The rights granted herein shall include the right to construct, maintain and operate and remove and replace valves, fittings, meters, and other equipment that may be necessary for supporting

and carrying the same and shall carry with it the privileges and right to inspect and keep free from brush, trees, growth, and other obstructions, and for all such purposes to have access to and to enter upon the Easement Area, SUBJECT ALWAYS to the exercise of such privileges and rights in a good and workmanlike and reasonable manner so as to interfere as little as possible with the use of the Easement Area for other purposes.

5. The rights herein granted shall not in any way interfere with the full enjoyment of the Easement Area by the Grantor or those claiming through or under him, save as aforesaid, and as may be necessary for the purposes herein expressed.

6. The Grantee acknowledges that the Grantor intends to subdivide and develop the Grantor's Land, and the Grantor shall have the right to cross the Easement Area during the course of the development, provided that the Grantor shall provide notice, pursuant to paragraph 8 in the Settlement Agreement between the Grantor and Grantee dated _____, 1991, to the Grantee of any interruption in service, and that any damage to the water pipeline and ancillary equipment shall be repaired by the Grantor in a firm and substantial and proper and workmanlike manner within six (6) hours of the interruption of service.

7. Should any difficulties or disputes arise at any time between the parties hereto as to the construction of this Indenture or in reference to any matter arising out of this Indenture or in purported compliance therewith such difference or dispute shall be referred to the arbitration of three (3) arbitrators, one to be appointed by the Grantor, one to be appointed by the Grantee and these two to select a third and the award of the said arbitrators or any two of them shall be conclusive between the Parties hereto and the arbitration shall in all respects be governed by the Arbitration Act. PROVIDED ALWAYS that any person or company desiring an arbitration shall first deposit the sum of TWO HUNDRED (\$200.00) DOLLARS in any chartered bank in Kelowna, British Columbia, to the joint credit of the Grantor and Grantee to be used to defray the cost of arbitration, provided the same shall be awarded against such company or person desiring the arbitration.

8. The rights, liberties and easements hereby granted are and shall be of the same force and effect to all intents and purposes as a covenant running with the land, and this Indenture, including all the covenants and conditions herein contained, shall extend to and be binding upon and enure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties hereto respectively and, whenever the singular or masculine is used, it shall be construed as if the plural or feminine or the neuter, as the case may be, had been used where the context or the party or parties hereto so require, and the rest of the sentence

ML

SCHEDULE "B"

| | | | | | | |
|--------------------|--------------|---|--------------|--|--|---------|
| 1907.04.12 C 62055 | Trepanier Cr | A | 82.E.082.1.2 | 3.51 AF IRR 1.17 AC of L 1 of L 911 ODYD Plan 34177 | Transportation & Highways Ministry of | 0370493 |
| 1907.04.12 C 62057 | Trepanier Cr | A | 82.E.082.1.2 | 3.99 AF IRR 1.33 AC of L 2 of L 911 ODYD Plan 34177 | Transportation & Highways Ministry of Trepanier Ditch W.U.C. | 0370494 |

SCHEDULE "C"

CONSTITUTION OF THE TREPANIER DITCH WATER USERS' COMMUNITY

Incorporated under the Water Act, 1980.

Herewith the Trepanier Ditch Water Users' Community will be written as T.D.W.U.C.

1. The T.D.W.U.C. may require a professional engineer to approve a hook-up at the applicant's expense.
2. Each individual hook-up fee is \$100.00 (Can.). Any changes to be voted on by the community.
3. The cost of the hook-up and conveyance of water from the main pipe is to be born entirely by the applicant. The T.D.W.U.C. is not liable in the event of the failure of this system. Any disruption of the flow of water without the consent of the T.D.W.U.C. will be dealt with under the regulations of the B.C. Water Act.
4. The T.D.W.U.C. is a non-profit organization and collects fees for domestic and irrigation water adjusted yearly based on a schedule of expenses approved by the Comptroller of Water Rights.
5. Expenses incurred due to future property development which may necessitate changes to the community water system shall be born by the developer(s) in question.
6. Changes, including new applications, must be voted upon at a general meeting of the T.D.W.U.C.
7. The election of officials of the T.D.W.U.C. should occur at annual general meetings under the mandate of the Water Act.

1. MR

