

REGIONAL DISTRICT OF NANAIMO

**BOARD MEETING
TUESDAY, OCTOBER 25, 2005**

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– One Vote)

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– Drew Road – Area G. (All Directors – One Vote)

Bylaw No. 889.36 - Northern Community Sewer Local Service Area
Amendment Bylaw – Drew Road – Area G. (All Directors – One Vote)

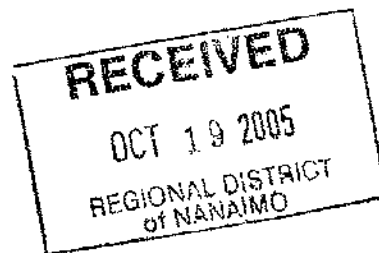
Bylaw No. 909.01 - Sandpiper Streetlighting Local Service Area Amendment
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10-29 Breakwater Enterprises Ltd. – Acquisition of Water System by EPCOR North
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1660 Admiral Tryon Blvd.
Parksville, B.C., V9P 1Y1
Oct. 17, 2005

Regional District of Nanaimo Planning Dept.,
6300 Hammond Bay Road,
Nanaimo, B.C., V9T 6N2

Re: Notice of Variance to Development Permit Application No. 60547
Lot 9, District Lot 28, Nanoose District, Plan VIP 76143

We live at Lot 19, Plan 33977, D.L. 28, Nanoose District and are voting "NO" to this Variance for the following reasons:

1. All the other builders have built within Development Permit #77.
2. A Variance Permit should apply to lots on which it is difficult to build. The above Lot 9 is flat and similar to other lots in the development. We can see no reason why it should be varied from 9.5 metres to 9.9 metres.
3. .4 metres additional height in the area behind us will significantly reduce the amount of afternoon sunshine for our vegetable and flower gardens.

We respectfully request that this variance NOT be permitted.

Sincerely,

Joshua and Helen Finck

1666 Admiral Tryon Blvd.
Parksville, BC
V9P 1Y1

REGIONAL DISTRICT	
REFUSED	
CHAIR	GM Cms
CAO	GM ES
DA CCD	Mod
OCT 20 2005	
REGIONAL DISTRICT OF NANAIMO	

Regional District of Nanaimo- Planning Department
6300 Hammond Bay Road
Nanaimo, BC V9T 6N2

Re: Lot 9, District Lot 28, Nanoose District, Plan VIP7143
Proposed Variance

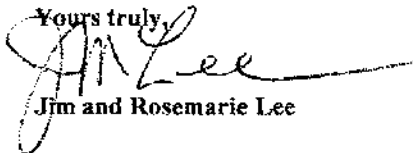
Board of the Regional District of Nanaimo

In regard to the above- cited proposed variance I wish to respectfully submit my strong objection to such a change on the following bases:

1. There is obviously no real need for such a variance as all other builders on the same project have built successfully on similar lots with no height variation;
2. We have worked hard, and spent considerable funds, to build and maintain a private back yard based on the existing Development Permit #77, which clearly specifies maximum height restrictions. Such a variance would clearly infringe upon that privacy for no reason;
3. Such a variance would inhibit the hours of sunlight available to existing dwellings built under the same Development Permit #77;
4. The increase in height would result in an unnecessary and rather imposing structure where such an increase is clearly not required . This would result in reduced property values for those of us already living here;
5. The developer knew about the height restrictions imposed on the area and easily could have designed more than adequate structures without requiring such a variance, just as other builders have done.

I greatly appreciate the Board's consideration of these objections and hope they choose to rule in the favour of those of us already living (and paying taxes) in the area.

Thank you.

Yours truly,

Jim and Rosemarie Lee

Russell, Blaine

From: McFarlane, Florence
Sent: Monday, October 24, 2005 8:21 AM
To: Llewellyn, Jason; Russell, Blaine
Subject: FW: Development Permit #77

From: Schoonderbeek
Sent: October 22, 2005 4:25 PM
To: McFarlane, Florence
Subject: Development Permit #77

To : Regional District of Nanaimo Planning Dept.
6300 Hammond Bay Road
Nanaimo, BC V9T 6N2

Re; Development Permit, parcel 608 Viking Way, Columbia Beach, Electoral Area "G"
Lot 9, District lot 28, Nanoose District, Plan VIP76143

Please be advised that we, the undersigned, are against giving a variance on the above mentioned property.

In our humble opinion, the builder/contractor can build homes just like all the other contractors have done in the same sub division, for which no variance was required as to our knowledge He can build within the limits.

Secondly it is our opinion that the Board has given far too many variances already, regarding this whole project on Viking Way.

Yours Truly

Willem Schoonderbeek
Petronella Schoonderbeek
1674 Admiral Tryon Blvd.
Parksville, BC V9P 1Y1

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**Vancouver Island Biosphere Centre
"Turning the Dream Into Reality"**

October 24, 2005

Mr. Joe Stanhope
Chairperson
Regional District of Nanaimo
6300 Hammond Bay Road
Nanaimo, BC V9T 6N2

Dear Mr. Stanhope,

On June 27, 2005 the VIBC Steering Committee met with Teunis Westbroek, Randy Longmuir, Kelly Daniels and you to discuss this exciting project and regional commitment to it. At the conclusion of the meeting, there was an expressed commitment by all parties to work together to identify an appropriate site for the Centre, co-fund the development of a business plan and find a way to capitalize the project on an ongoing basis. As a volunteer committee, we were very encouraged and energized by your response.

We're very pleased to report that the VIBC Steering Committee has recently met with Neil Connelly, Tom Osborne and Joan Michel of the RDN to review potential sites for the project. While inconclusive, it narrowed the focus of the site search enabling the committee to conduct the further research necessary to find a home for the Centre in the region. That work is ongoing.

We're also delighted to report that we have recently added two new members to the Steering Committee. Dr. Nicole Vaugeois, Department of Recreation and Tourism, Malaspina University-College and Caroline Grover, Economic Development Officer of the City of Parksville. Both have volunteered their considerable talents to help make this project a regional success.

As discussed at the June meeting, the Steering Committee now needs to move forward to Phase III of the project, which is the development of a business plan. Both Phases I and II research projects

recommended such a step as essential to the overall success of the project. Through consultation with the federal and provincial economic development and tourism agencies, we have established a \$75,000 budget for this step in the process. Included in this funding is a part-time project coordinator position that would, among other things, allow the Steering Committee to identify and contact potential major donors to the project so that it becomes a private and public sector partnership.

The funding source identified for the business plan is Western Economic Diversification's (WD) Western Economic Partnership Agreement (WEPA). This fund requires a one-third cost-sharing agreement among local, provincial and federal sources. The RDN, the Town of Qualicum Beach and the City of Parksville would need to combine resources to allocate \$25,000 to leverage the remaining \$50,000 from the provincial and federal governments. Provincial and federal government representatives have advised us that there is a high likelihood that their contributions would be forthcoming if the region makes this commitment.

The development of a business plan is an essential next step in the evolution of this tourism and economic development project. Once a business plan exists and a site is found, the project can begin to attract major donors and leverage additional government funds to make it a reality. We need your support to take this next step.

Thank you for your consideration of our request.

Greg Spears
Chair, Steering Committee
Vancouver Island Biosphere Centre
1585 Seacrest Road, Nanoose Bay, BC V9P 9B5
Telephone: (250) 468-1663



REGIONAL DISTRICT OF NANAIMO		
CHAIR	GM Cms	
CAO	GM ES	
DA CCD	MoF	
OCT 24 2005		
Board.		

MEMORANDUM

TO: Robert Lapham
Deputy Administrator

DATE: October 24, 2005

FROM: Jason Llewellyn
Manager of Community Planning

FILE: 6480 00 EA E

SUBJECT: Nanoose Bay Official Community Plan Bylaw No. 1400, 2005
Electoral Area 'E'

PURPOSE

To consider "Regional District of Nanaimo Nanoose Bay Official Community Plan Bylaw No. 1400, 2005" for adoption.

BACKGROUND

Following an extensive public consultation process including a Public Information Meeting held on January 18th, 2005, a revised draft Nanoose Bay OCP was presented to the community at a 2nd Public Information Meeting (PIM) held on May 30, 2005. Comments from this Public Information Meeting as well as other submissions and comments were reviewed and an amended Nanoose Bay OCP was received and given 1st and 2nd reading by the Regional Board at a Special Board meeting held June 14, 2005. The bylaw was then referred to a Public Hearing that was held on June 27, 2005.

The Board granted 3rd reading to the bylaw on July 26, 2005 and referred it to the Minister of Community Services for consideration of approval. The Minister provided the required Statutory Approval on October 20, 2005.

ALTERNATIVES

1. To adopt "Regional District of Nanaimo Nanoose Bay Official Community Plan Bylaw No. 1400, 2005."
2. To not adopt "Regional District of Nanaimo Nanoose Bay Official Community Plan Bylaw No. 1400, 2005."

MINISTER OF COMMUNITY SERVICES APPROVAL

The bylaw is subject to approval by the Minister of Community Services. The Minister provided the required Statutory Approval on October 20, 2005; therefore, the Board is in a position to adopt Bylaw No. 1400, 2005.

VOTING

Electoral Area Directors - one vote except Electoral Area 'B'.

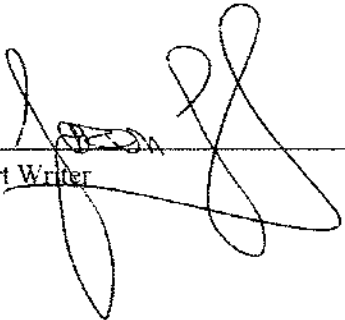
SUMMARY

"Regional District of Nanaimo Nanoose Bay Official Community Plan Bylaw No. 1400, 2005" was considered by the Board and given 1st and 2nd reading on June 14, 2005. Subsequent to that, a public hearing was held on June 27, 2005 and the Board granted 3rd reading on July 26, 2005. Approval pursuant to the *Local Government Act* was received from the Minister of Community Services on October 20, 2005. The required approval from the Minister of Community Services has been received, therefore, this bylaw may now be considered for adoption.

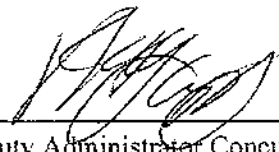
The following recommendation is provided for consideration by the Board.

RECOMMENDATION

That "Regional District of Nanaimo Nanoose Bay Official Community Plan Bylaw No. 1400, 2005", be adopted.



Report Writer



Deputy Administrator Concurrence

COMMENTS:

devsvs/reports/2005/6480 00 EAE adoption oct brd.doc



REGIONAL DISTRICT OF NANAIMO			
CHAIR		GM Cms	
CAO		GM ES	
DA CCD		MoF	
OCT 24 2005			
BOARD			

MEMORANDUM

TO: RDN Board of Directors **DATE:** October 20, 2005

FROM: John Finnic, P. Eng. **FILE:** 5500-31-BR-01 (ACQ)
General Manager of Environmental Services

SUBJECT: Breakwater Enterprises Ltd.
Acquisition of Water System by EPCOR North Island Water Inc.

PURPOSE

To respond to a request from the Deputy Comptroller of Water Rights for RDN to provide their position on the application by EPCOR North Island Water Inc. (ENI) to acquire the Breakwater Enterprises Ltd. private water utility (Breakwater) in French Creek.

BACKGROUND

At its September 20, 2005 meeting the Board received an update on the RDN initiative to acquire the Breakwater water utility (attached for reference as Appendix A). As noted in the update, the Board wrote to the Comptroller (on August 30, 2005) requesting the Comptroller hold a public oral hearing on the ENI application and also advising that the RDN had an interest in acquiring Breakwater. RDN staff also subsequently advised the Comptroller (on September 26, 2005) that the Memorandum of Understanding between RDN and ENI had been terminated. On October 20, 2005, RDN received a letter from the Deputy Comptroller of Water Rights (attached as Appendix B) requesting information, with reasons, as to whether RDN opposes or supports the application by ENI to acquire Breakwater. The Deputy Comptroller has requested a reply by November 4, 2005.

ALTERNATIVES

1. Advise the Deputy Comptroller that the RDN opposes the application by ENI to acquire Breakwater.
2. Advise the Deputy Comptroller that the RDN supports the application by ENI.
3. Take no position specific to the Comptroller's decision on the application but advise the Deputy Comptroller of RDN's continued interest in acquiring Breakwater, of reasons that support RDN ownership and reiterate the Board's previous request for an oral public hearing on the ENI application.

IMPLICATIONS

Notwithstanding the request from the Deputy Comptroller, the Board may not wish to provide a formal position to the Comptroller on ENI's application per se. The decision to approve or not approve the application for the transfer is the Comptroller's decision. The matter of public or private ownership of

water or other utilities is one of broader debate and opinion but the issue in front of the Comptroller (with respect to ENI's application) is not strictly one of public or private ownership, but rather the sale of one private company to another private company.

The results or implications of RDN opposing or supporting the application to transfer the utility to ENI are not clear at this time. A decision by the Comptroller to deny ENI's application does not mean that RDN will acquire the system but that the transfer to ENI will not occur. Breakwater may then elect to keep the utility. Breakwater's approach to then entering into sale negotiations with RDN is not known.

A decision by the Comptroller to approve ENI's application may re-open the door for further negotiations between RDN and EPCOR with regard to RDN acquisition of the utility. Staff understand that ENI may be receptive to resuming negotiations after the Comptroller's decision. Other RDN water systems, as directed by the Board, would not be part of any such discussions. EPCOR's approach to entering into any further negotiations should they acquire ownership is not known.

Nevertheless, RDN would prefer that RDN own and operate the Breakwater system. This is evident from our efforts expended over recent years in attempting to purchase Breakwater. Although possibly beyond the scope of the application from ENI that the Comptroller is assessing, there are a number of reasons that support RDN ownership of the utility, for example:

- Concerns exist about the sustainability of the groundwater resource in the RDN, particularly in specific areas such as French Creek. Recent study information available suggests that the groundwater levels in the French Creek area are declining and that groundwater extraction is exceeding the natural recharge capacity. Although the RDN has already implemented some strategies to relieve this concern, ownership and operation of water utilities in French Creek would provide RDN more effective control and management of the associated water supply, distribution and consumption issues. It is also noted that in the Deputy Comptroller's most recent correspondence dated October 19, 2005 to ENI, he has requested ENI to indicate, in light of the termination of the RDN/ENI MOU, how ENI proposes to provide for future water supply demands.
- Approximately 40% of the Breakwater supply is French Creek surface water. French Creek is a designated community watershed. Breakwater is the largest single user of unsupported water (licensed extraction without supporting storage) on French Creek. Water flows in French Creek appear to be stressed in recent years. Although EPCOR is receptive to mutually beneficial approaches to water conservation and watershed management, RDN ownership of the Breakwater utility would provide a singular and common focus for water supply in the area.
- Facilitation of the supply and distribution of bulk water to French Creek residents. Although Breakwater is within the French Creek Bulk Water Local Service Area, the other Arrowsmith Water Service partners have expressed concerns about the provision of bulk water to a private for-profit water supplier. RDN ownership of the Breakwater system would alleviate these concerns.
- Potential for cost savings associated with future integration of operational procedures and capital requirements within the RDN French Creek Water Local Service Area.

The Board may wish to convey this rationale to the Comptroller for his information.

CITIZENS/PUBLIC RELATIONS IMPLICATIONS

In respect of ENI's application, the Board has heard from a number of residents, including CUPE representing Nanaimo civic employees, who have expressed opposition to private ownership or operation of water utilities. Although staff suggest that some of the input may have been based on a misunderstanding that RDN was undertaking to privatize its Breakwater utility, it appears that many residents are not comfortable with either private ownership or operation of water utilities. On the other hand, it is noted that there are a number of water systems in the regional district that are not owned or operated by the RDN, including private, Improvement District and Water Board systems where staff are aware that residents are not receptive at this time to direct local government involvement in their utility.

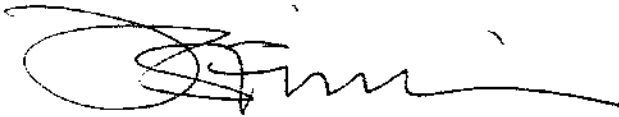
The Board has previously requested the Comptroller to hold an oral public hearing on the EPCOR application and advised the Comptroller that public awareness of process and opportunity for public input support the Board's strategic priority for effective communication with District residents. The Board may wish to reiterate this request to the Comptroller.

SUMMARY/CONCLUSIONS

On October 20, 2005 RDN received a letter from the Deputy Comptroller of Water Rights requesting information, with reasons, as to whether RDN opposes or supports the application by EPCOR North Island Water Inc. to acquire the Breakwater Enterprises Ltd. water utility in French Creek. Notwithstanding the request from the Deputy Comptroller, the Board may not wish to establish a formal position on the application since it is the Comptroller's role to make that decision following his review and assessment of the financial and public interest issues that fall within his legislative mandate. However, staff recommend that the Board again advise the Deputy Comptroller of RDN's interest in acquiring Breakwater and of the Board's support for a public hearing on the ENI application.

RECOMMENDATION

1. That the Board respond to the letter dated October 19, 2005 from the Deputy Comptroller of Water Rights by advising him of RDN's continued interest in acquiring the Breakwater Enterprises Ltd. utility, outlining benefits of RDN ownership and reiterating the Board's request for an oral public hearing on the ENI application.



Report Writer

COMMENTS:



UPDATE
RDN Initiative to Acquire the Breakwater Enterprises Water Utility

The following points provide a brief update on the background and status of RDN's undertaking to acquire the Breakwater Enterprises Water Utility.

- The RDN has had a long term interest in acquiring the Breakwater Utility and attempted to purchase the water system from Breakwater in the 1990's. Breakwater was not a willing seller at that time. Ownership of the Breakwater system would provide benefits to the RDN in terms of management of the water resource, supply and consumption in the French Creek area, and facilitation of bulk water supply and distribution to Breakwater residents.
- In June 2003 the RDN expressed renewed interest to Breakwater about acquiring the utility and entering into a management contract with them to operate components of the system. Progressive negotiations between the RDN and Breakwater continued until June 2004 at which time Breakwater decided to sell the utility to EPCOR North Island Water Inc.
- The RDN began discussions with EPCOR about acquiring the water system from them once the Comptroller of Water Rights approved EPCOR's application to acquire Breakwater. A Memorandum of Understanding (MOU) between the RDN and EPCOR was drafted to guide and facilitate the process. This draft MOU, which was non-legally binding, proposed the transfer of Breakwater to RDN in exchange for a 21-year operating agreement for the utility plus an initial 5-year operating agreement for the 14 other RDN water local service area systems. In lieu of an up-front capital purchase payment, EPCOR would secure a purchase price for the utility through fees associated with the operating agreements. This arrangement provided opportunity for the RDN to acquire the utility without major borrowing.
- At the January 25, 2005 Board meeting, the Board considered a report on the draft MOU and directed that the MOU be approved. Following subsequent discussions between the RDN and EPCOR staff, some housekeeping, grammatical, and format changes were made to the draft agreement. In addition, a clause that may have provided opportunity for EPCOR to be involved in the Arrowsmith Water Service (AWS) operations was removed. Although the MOU was legally non-binding and prepared for the purpose of facilitating discussions between the RDN and EPCOR, it was considered inappropriate and possibly ultra vires to include potential commitments on behalf of other AWS Joint Venture members who were not parties to the MOU.
- Staff then finalized the document; it was signed by RDN and conveyed to EPCOR for signing. A partially signed but undated copy was obtained from EPCOR in July, 2005. As of the August 23, 2005, Board meeting, the RDN had not received a final signed copy. It was since received, and is dated January 25, 2005.

- One of the implications of the MOU pertained to the five existing RDN Utilities operations staff. If the intent of the MOU had been fulfilled and the Breakwater and other RDN water systems were operated on a fee for service contract by EPCOR, it was recognized that the RDN would not require its own utility technicians to operate and maintain our water systems. Accordingly, the five utility technicians would have been offered alternate choices, such as accommodation with EPCOR, transfer to new or vacant positions within other ES or RDN departments, bridging opportunities within the RDN, or other possible options that were to be determined. No staff would lose a job with the RDN if they wished to remain an RDN employee.
- This staff matter raised concerns about and opposition to the MOU from CUPE. Although the transfer of Breakwater to EPCOR was essentially a private undertaking in which the RDN had no direct role, the subsequent initiative for the RDN to acquire the utility from EPCOR and enter into a public private arrangement with them for operation of the RDN systems was not supported.
- At the August 23, 2005, regular Board meeting, the Board directed that the 14 water local service areas now under the management of the RDN not be put on the table in any negotiations with EPCOR.
- In addition, the Board directed that the Memorandum of Understanding with EPCOR be rescinded, and further, that the Board correspond with the Provincial Comptroller of Water Rights and request that a public oral hearing be held by the Comptroller regarding EPCOR's application for purchase of Breakwater Enterprises and to also advise the Comptroller that the RDN has an interest in acquiring Breakwater Enterprises.
- EPCOR has been advised that the MOU is terminated. Further discussions with EPCOR regarding acquisition of the Breakwater utility are now on hold pending a decision from the Comptroller on EPCOR application.
- The Board has written to the Comptroller requesting an oral hearing on the EPCOR application and expressing continued interest in acquiring the Breakwater utility. The RDN will be given opportunity to respond to EPCOR's submission to the Comptroller. If the Comptroller decides to hold an oral hearing, his decision on EPCOR's application may be delayed until early 2006.



October 19, 2005

REGIONAL DISTRICT OF NANAIMO			
CHAIR		GM Cms	
CAO		GM ES	
DA CCD		MoF	
OCT 20 2005			

File: 0321094
Ref: 6301S

Your file: 5500-31-BR-01-ACQ

Regional District of Nanaimo
6300 Hammond Bay Road
Nanaimo, BC V9T 6N2

VIA FAX 250-390-4163

Attention: Joe Stanhope, Chair

Re: Breakwater Enterprises Ltd.
Acquisition of Water System by EPCOR North Island Water Inc.

Thank you for your letter of August 30, 2005 in which you request that an oral public hearing be held regarding EPCOR North Island Water Inc.'s (ENI) Application for certain approvals and other determinations in relation to the acquisition of the water system assets of Breakwater Enterprises Ltd., and for the letter of September 26, 2005 from John Finnie in which was stated that the Memorandum of Understanding (MOU) with ENI has been rescinded and therefore the Regional District of Nanaimo has terminated the MOU.

Before making a decision on whether to hold an oral public hearing additional information is required from ENI (copy of letter to ENI enclosed) and from you indicating, with reasons, whether you oppose or support the proposed Application by ENI. As ENI has stated that time is of the essence, I request your reply by November 4, 2005.

Enclosed are copies of the three letters received in response to ENI's answers to their questions and our Information Request No. 1. Also enclosed are ENI's letters of September 29, 2005 and October 14, 2005.

Yours truly,

Pieter J. Bekker
Deputy Comptroller of Water Rights
Enclosures

PC: Breakwater Enterprises Ltd. via fax 250-248-4576
EPCOR North Island Water Inc. via fax 780-412-3096
CUPE via fax 250-390-4163
French Creek Residents Association

Ministry of
EnvironmentWater Stewardship Division
Management and Standards Branch
Utility Regulation SectionMailing Address:
PO Box 9340 Stn Prov Govt
Victoria BC V8W 9M1
Telephone: (250) 387-6341
Facsimile: (250) 953-5124Location:
3rd Floor
1175 Douglas Street
Victoria BC V8W 2E1



October 19, 2005

File: 0321094
Ref: 6301S

EPCOR North Island Water Inc.
10065 - Jasper Avenue
Edmonton, Alberta T5J 3B1

VIA FAX (780) 412-3096

Attention: Jan Thygesen

Re: Breakwater Enterprises Ltd. - Acquisition of Water System by EPCOR North Island Water Inc. - INFORMATION REQUEST NO. 2

Before making a decision on whether to hold an oral public hearing on your Application to purchase the water utility assets of Breakwater Enterprises Ltd. additional information is required from you (as indicated below) and from the Regional District of Nanaimo (RDN). A copy of my letter dated today to the RDN is enclosed.

Enclosed are copies of letters received from the Canadian Union of Public Employees Local 401 (CUPE) dated September 30, 2005, French Creek Residents' Association dated October 1, 2005 and the Robinsons dated September 27, 2005. Please review these letters and provide your responses to me by November 4, 2005. As CUPE has stated that it has not received the appendices to your Application and is requesting them please send by courier a copy of all of them to CUPE by October 24, 2005.

In light of the fact that the RDN has rescinded and terminated the Memorandum of Understanding with you, indicate how your planning for the future operation of the water system will change. Also indicate how you propose to provide for additional sources of supply to meet the demands of future development. This information is also required by November 4, 2005.

Yours truly,

Pieter J. Bekker
Deputy Comptroller of Water Rights

Enclosures

- PC: Breakwater Enterprises Ltd. via fax 250-248-4576
- ✓ Regional District of Nanaimo via fax 250-390-4163
- CUPE via fax 250-729-0866
- French Creek Residents Association

Ministry of Environment

Water Stewardship Division
Management and Standards Branch
Utility Regulation Section

Mailing Address:
PO Box 9340 Stn Prov Govt
Victoria BC V8W 9M1
Telephone: (250) 397-6341
Facsimile: (250) 953-5124

Location:
3rd Floor
1175 Douglas Street
Victoria BC V8W 2E1





October 19, 2005

File: 0321094
Ref: 6301S

Canadian Union of Public Employees Local 401
11/12 - 1850 Northfield Road
Nanaimo, BC V9S 3B3

VIA FAX 250-729-0866

Attention: Rodger Oakley, President

Re: Breakwater Enterprises Ltd.
Acquisition of Water System by EPCOR North Island Water Inc.

Thank you for your letter of September 30, 2005, a copy of which has been forwarded to EPCOR North Island Water Inc. (ENI) for review and response. Copies of our letters to ENI and to the Regional District of Nanaimo are enclosed. ENI has been instructed to forward the appendices to its Application to you.

Your request for an extension of time to allow for review and comments on the appendices is granted provided they are received by me on or before November 4, 2005.

Yours truly,

Pieter J. Bekker
Deputy Comptroller of Water Rights

Enclosures

- PC: Breakwater Enterprises Ltd. via fax 250-248-4576
- EPCOR North Island Water Inc. via fax 780-412-3096
- Regional District of Nanaimo via fax 250-390-4163
- French Creek Residents Association

Ministry of
Environment

Water Stewardship Division
Management and Standards Branch
Utility Regulation Section

Mailing Address:
PO Box 9340 Stn Prov Govt
Victoria BC V8W 9M1
Telephone: (250) 387-6341
Facsimile: (250) 953-5124

Location:
3rd Floor
1175 Douglas Street
Victoria BC V8W 2E1





CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 401

1/12-1850 NORTHFIELD ROAD, NANAIMO, B.C. V9S 3B3 TEL: (250) 729-7557 FAX: (250) 729-0866 EMAIL: CUPE401@SHAW.CA

September 30, 2005

LAND AND WATER BRITISH COLUMBIA
RECEIVED
OCT 06 2005
BY FINANCE AND ADMINISTRATION

-094.
RECEIVED
UTILITY REGULATION SECTION
OCT - 6 2005
REF. _____
ACK. _____
ANS. _____

Comptroller of Water Rights,
c/o Rick Couroux,
Secretary to the Comptroller,
P.O. Box 9340,
STN PROV GOVT,
Victoria, B.C.

Dear Mr. Couroux:

Re: Responses by Epcor North Island ("Epcor") to Information Requests and Representations Concerning Epcor's Application to Purchase Breakwater Enterprises

Thank you for providing copies of Epcor's responses to information requests from the Comptroller as well as responses to various public representations concerning Epcor's application to purchase Breakwater Enterprises and to operate a private water utility in the French Creek area.

I am writing to provide some further commentary and information on behalf of C.U.P.E. Local 401, Nanaimo Civic Employees.

1. The Need for an Oral Public Hearing:

In its response to the Comptroller, dated August 26th, 2005, Epcor makes the following argument against an oral public hearing at page two "An oral public hearing is not required in order to afford an opportunity to properly test the information that has been filed. To the contrary, the evidence includes the responses that E.N.I. provided to numerous information questions that were issued by the Comptroller and customers." They further contend that an oral public hearing will be unnecessarily expensive.

C.U.P.E. Local 401 respectfully disagrees with this contention by Epcor and strongly recommends that the Comptroller conduct a full, oral public hearing. We believe that Epcor has not been adequately transparent, has not been sufficiently fulsome in providing information and has responded to enquiries and concerns in a strategic rather than fully open manner. Later in this letter, I provide some examples of why we feel this way.

Beyond the fact that Epcor has not provided the Comptroller and the public with adequate information, C.U.P.E. Local 401 submits that it is in the broad public interest to conduct oral public hearings. As evidenced by growing public concern about privatization of water and wastewater services in the mid-Island region and throughout Vancouver Island, it is important to hear directly from concerned citizens. The general public deserves an opportunity to provide the Comptroller with views and information about issues such as accountable governance, consumer costs, utility debt, environmental protection, the importance of regional integration of water operations,

legislated access to information, the regional drinking water protection plan, liability protection for the public, international trade agreements, past problems in the Breakwater service area, problems with private utilities elsewhere, fisheries concerns and much more.

It will be quite inadequate if the extent of public consultation on this important decision is an invitation to respond to a small ad placed in local newspapers by the proponent last spring. C.U.P.E. Local 401 calls on the Comptroller to ensure growing community concerns about the public interest are, instead, fully canvassed through a thorough oral public hearing.

2. C.U.P.E. concerns not dealt with:

After spotting the small proponent ad in local newspapers last spring, C.U.P.E. Local 401 decided to submit its concerns to the Comptroller. The advertisement about the Comptroller's process – placed by Epcor – stated that anyone requiring a copy of the Epcor application or other information should contact Epcor directly.

We did so. With the assistance of our national union, we contacted Epcor and requested a copy of their tariff application.

We were sent a copy of precisely what we requested, but no more. We were sent a copy of the tariff application, but were not sent any of the appendices which accompany it. We must have neglected to request all appendices.

Although we should perhaps have followed up with a request for the appendices as well, we did not. Rather, in the face of imminent deadlines, we proceeded to prepare a submission to the Comptroller. We assumed in good faith that we had been sent all the information necessary to assist us in commenting on this important application.

Now, after reviewing Epcor's response to our submission, we learn that we should not have relied on our good faith assumption. We learn that tariff Appendices "C" ("State of the System and Business Plan") and "E" formed a vital part of the tariff submission.

C.U.P.E. Local 401 has not made comments to the Comptroller about the information in those appendices. It was made uniquely difficult for us to do so, since we were not sent the full tariff application, including appendices.

Given all of that, it is particularly problematic to read in Epcor's response to the Comptroller about C.U.P.E.'s submission (at page 2) that: *"The issues raised by C.U.P.E. are among those identified in Appendix E of E.N.I.'s application and include public ownership, watershed protection, water supply and financial impacts. Accordingly, a separate response to C.U.P.E.'s submission has not been prepared."*

Likewise, (at page 2 of its August 26th note) Epcor says: *"Water Supply – Appendix 'C' State of the System and Business Plan provides extensive discussion of water supply, water management and water planning and coordination issues and discusses a strategy for dealing with the issues raised."*

While the Comptroller has access to these vital Appendices and will have reviewed the issues contained within them, C.U.P.E. Local 401 has never seen them. Because we were not sent these documents, I cannot comment on whether or not the Appendices do adequately respond to the issues we raised in our submission.

I do note that Epcor has failed to respond substantively to any of the concerns raised in our submission to the Comptroller.

May I please request that we be sent a copy of these two Appendices, as well as all the other appendices that accompanied the tariff application? Also, I would like to respectfully request an extension to the Comptroller's deadlines to allow us a chance to review the appendices and make informed comment on them.

3. Draft Regional District M.O.U.:

On the evening of August 23, 2005, the Board of Directors of the Regional District of Nanaimo considered the matter of a draft Memorandum of Understanding that management staff had concluded with Epcor.

C.U.P.E. made delegation presentations and a large crowd of citizens was present.

Staff reported to Directors that a penultimate version of this draft M.O.U. had been circulated to the Board for information several months before. A number of Directors said they did not recall seeing it. Management staff informed the Board that the version of the draft M.O.U. which had been circulated was not the final version that staff subsequently negotiated and signed. That final version had not been circulated to the Board before the meeting of August 23rd.

After considering the contents of the draft M.O.U., the Board of Directors of the Regional District of Nanaimo passed the following motions unanimously: *"MOVED Director Westbrook SECONDED Director D. Haimé -- That staff be directed that the fourteen water local service areas now under the management of the R.D.N. not be put on the table in any negotiations with EPCOR."* (Minutes of regular meeting of Board of Directors of Regional District of Nanaimo, August 23, 2005)

This motion was further explained to the public in a news release from the Regional District of Nanaimo dated August 25, 2005 and headlined R.D.N. Board Says No to Epcor Operation of Rural Water Systems. The news release begins with the following statements: *"At the August 23rd Board meeting, the Regional District of Nanaimo Board of Directors resolved that the RDN will attempt to purchase the Breakwater utility without contracting the operation of its 14 rural water systems to Epcor. Therefore, the existing 14 RDN water local service area systems will no longer be part of any negotiations with Epcor."*

The concept of Epcor operating these 14 water service areas in exchange for transfer of the Breakwater system is at the heart of the draft M.O.U. that managers negotiated. Now that this concept has been firmly ruled out by the R.D.N. Board, the essence of the M.O.U. has been nullified.

This is important in light of our concern that Epcor has not been sufficiently transparent and supports our recommendation for an oral public hearing.

Even though the R.D.N. Board meeting that unanimously rejected the core of the draft M.O.U. was held on August 23rd, 2005, and even though the R.D.N. issued a news release to inform the public about it on August 25th, Epcor cited the M.O.U. in a submission to the Comptroller dated August 26th In its submission of August 26th, Epcor did not inform the Comptroller of the decision of the

Regional District Board. Instead, it actually cited the old draft M.O.U. and included a copy of it as an attachment in the package for the Comptroller.

While it may be argued that it is not Epcor's responsibility to inform the Comptroller of the decisions of the Regional District of Nanaimo, a proponent that was acting in an open, transparent and good faith manner would have taken the initiative to inform the Comptroller of this important material change. Epcor chose instead to leave a misleading impression with the Comptroller about an M.O.U. that changed fundamentally as a consequence of a Regional District decision taken three days before Epcor's submission.

This reinforces our view that an oral public hearing is essential. The general public deserves an opportunity to test Epcor's evidence in open public sessions and to make its views known to the Comptroller.

Finally, in this regard, we remind the Comptroller that Epcor's original submission cited a Parksville water parcel tax that does not, in fact, exist. Epcor's reply to C.U.P.E.'s submission does not deal with this error, just as it neglects to deal with all the other issues and information we raised.

4. Liability protection for the public

Epcor's response to the Comptroller's questions confirms that it is proposing to significantly reduce liability protection for the public by relieving Epcor of any liability for economic losses caused by Epcor service interruptions. Epcor also concedes that this proposal is unprecedented. They suggest it will still be possible for aggrieved parties to sue, but – of course – there will be much less likelihood of such suits succeeding if Epcor's liability is significantly reduced in its formal permit.

We urge the Comptroller to put liability protection of the general public, including protection against economic loss, well ahead of the corporate interests of Epcor.

5. City of Edmonton Council rejects Epcor expansion

As is noted in its response to the Comptroller, Epcor is "...ultimately owned by a municipal government, the City of Edmonton."

It is interesting, then, to consider a recent decision of the Council of the City of Edmonton. After a two day public hearing, the Council of the City of Edmonton decided on September 28, 2005 to reject a proposal to transfer the drainage and sewer system of the City to Epcor. Epcor had pushed hard for the City to give it control and operation of the municipal drainage and sewer system, but Council rejected this proposed Epcor expansion. A number of councillors observed that utility services should be in public hands and should not be transferred to for-profit corporations like Epcor.

This is pertinent for the Comptroller's review of what is ultimately the best way to operate water services in the French Creek area. If even Epcor's owner (the City of Edmonton) is concerned that public utility services should not be transferred to a for-profit corporation like Epcor, then we here in British Columbia should think twice before transferring vital water services to this company.

I would like to reiterate our recommendation that the Comptroller request the Regional District of Nanaimo bring forward proposals for public ownership and operation of water services in the French Creek service area.

6. Rates will increase

The responses from Epcor confirm our understanding that water rates will increase. At page 2 of its response, Epcor says: "...no increase will be instituted after 2007 without an application to the Comptroller's office."

It goes without saying that an application will have to be made to the Comptroller if rates are going to vary from those permitted by the Comptroller.

Epcor's repeated indication (both in its original submission and in its August response) that it intends to make application in 2007/08 for a rate increase should be of concern to ratepayers in the French Creek area. It is a safe bet that Epcor will propose to increase rates at that time in order to help it recoup the unnecessarily high costs of its private borrowing, to meet the profit targets set by headquarters in Edmonton and to make up for the freezing of rates between now and 2007.

7. What is the Water Use Plan?

It may be that Epcor assumes the Business Plan contained at Appendix C of its tariff submission is the formal Water Use Plan which we trust the Comptroller is requiring of the proponent. I'm not sure, for the reasons noted in point 2 above.

In particular, we are unaware whether Epcor has any plan to access water from behind the Arrowsmith Dam.

But if there is, then we strongly urge the Comptroller to require Epcor to develop a formal Water Use Plan that is consistent with the Water Use Plan guidelines set out by the provincial government. Social, environmental, economic, fisheries, First Nations and other considerations should be reviewed comprehensively and formally, in consultation with all community stakeholders.

I hope the Comptroller will deal with the issue of water use planning in its decision regarding the Epcor application.

8. Summary

In summary, C.U.P.E. Local 401 recommends:

- an oral public hearing to test Epcor's evidence
- an extension to review deadlines to afford respondents an opportunity to fairly review all relevant appendices to the application. We also request that a copy of all appendices be sent to C.U.P.E. Local 401
- confirmation by the Comptroller that provincial government policy calls for regional government ownership and coordination of rural water services like those in French Creek
- that the Comptroller request the Regional District of Nanaimo to bring forward a plan for full integration of the French Creek water system within the overall public water system in the rest of the Regional District

- that the Comptroller ask Epcor for an explanation as to why it cited a draft M.O.U. in its August 26th response which had materially and significantly changed by that date
- that Epcor's request for reduced public liability protection be rejected
- in the event that Epcor is contemplating access to water supply from behind the Arrowsmith Dam, that the Comptroller order Epcor to commence a formal water use planning process and to bring forward a proposed Water Use Plan.

Thank you again for providing our Local with the responses from Epcor and for offering us the opportunity to provide this further comment.

Sincerely,



Rodger Oakley, President
Canadian Union of Public Employees
Local 401

French Creek Residents' Association
c/o 1266 Jukes Place
Parksville, B.C.
V9P 1W5

To: 250 - 953 - 5124

October 1, 2005

Your File: 0321094

Total 5 pages

Mr. Rick Couroux
Secretary to the Comptroller of Water Rights
P.O. Box 9340 Stn. Prov. Govt.
Victoria, B.C.
V8W 9M1

Dear Sir:

Re: Application by EPCOR to Acquire Breakwater Utility System

We received a binder of material on the above submission from your office on Sept. 19, 2005. The directors of French Creek Residents' Association at its board meeting on Sept. 21 asked me to review and respond to the material in the binder.

The following points follow the order in which the binder was assembled.

1. Page "Updated Comptroller 1, page 1 of 2". Is the purchase agreement between Breakwater and EPCOR conditional upon obtaining a Permit to Operate under the Drinking Water Protection Act? Who adjudicates the application for that permit?
2. Page "Updated Comptroller 1, page 2 of 2". It would be the contention of FCRA that EPCOR should have access to borrowed funds at a rate closer to that which local governments can obtain from the municipal financing authority.
3. Page "Updated Comptroller 2.6, page 1 of 3". (a) It does not seem reasonable that ENI can purchase any kind of insurance for approximately \$27. (b) What is the "test period"? Is ENI on probation? What are the consequences of a poor performance? What are the criteria for measurement of performance? (c) "BEL" has no staff dedicated to the operation this water utility argues for the urgent assumption of operating authority by an entity with full-time, fully trained employees.
4. Page "Updated Comptroller 2.6, page 2 of 3". Last paragraph and next page. Please explain the meaning of the words "water efficiency".
5. Page "Comptroller 2.5, page 1 of 1". Please explain how goodwill arises in the purchase of a regulated business and how the purchaser will receive a return on the investment in goodwill and/or how it will be amortized.
6. Page "Comptroller 2.5, page 2 of 6". Item (g). Again please explain Test Period.
7. Page "Comptroller 2.5, page 3 of 6". Item [c]. "your" s/b "year"? - 094.

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8. Page "Comptroller 2.5, page 4 of 6". Item (g). ENI is not accepting forecast risk if it will seek "retroactive adjustment.....(at) the next rate application".
9. Page "Comptroller 2.5, page 6 of 6". Item (D). Same comment as (8) immediately above. Should "with" in second paragraph be "will" and further, is this statement not self-evident?
10. Page "Comptroller 5.1, page 1 of 6". Item (b). Again a "test period" is mentioned. What is the purpose of this period and is it self-imposed by ENI or is it imposed by the Comptroller under the regulations?
11. Page "Comptroller 5.1, page 2 of 6". Item (i). As per (10) immediately above. Further, where utilities (or any enterprise for that matter) are owned as subsidiaries with shared management staff, costs are sometimes shared in an arbitrary fashion. There could be a big difference in the proper share for a subsidiary in startup or in the process of merger versus a restructured ongoing division.
12. Page "Comptroller 5.1, page 5 of 6". Last paragraph. We assume the word "with" should be "which"?
13. Page "Comptroller 5.2, page 1 of 2". Item "RDN". Mention is made in several places in the binder to a Memorandum of Understanding between EPCOR and the RDN. Although FCRA did not receive a copy of the MOU until mid August (from EPCOR) and not for a lack of trying, our submission to the Comptroller on June 30, 2005 was assembled with the comfort of its existence and a rough idea as to what it contained. The RDN by motion at its board meeting on August 23 effectively removed portions of the MOU and in FCRA's opinion made the MOU virtually impossible to pursue. The full background on the RDN's efforts is contained on their web site and a copy of the pertinent page is attached. FCRA is also curious as to why no mention is made of the Arrowsmith Water Service - a joint venture of the RDN, City of Parksville and Town of Qualicum Beach. FCRA perceives certain difficulties in a private water purveyor accessing the benefits of the AWS and the Comptroller should consider these issues before issuing a certificate.
14. Page "Comptroller 5.2, page 2 of 2". Item "CUPE". ENI suggests that its responses to the CUPE submission are contained within Appendix E. As few specific responses are contained within this item or the section of the binder dedicated to CUPE, we would ask that Appendix E be provided to us.
15. Page "FCRA - 1.0, page 1 of 1". From what we can see in the two draft Tariffs in the binder our suggestion to show all defined words in italics within the body of the tariff has not been implemented. However, it appears that defined words when used in the body of the tariff are capitalized - please confirm whether our impression is correct.
16. Page "FCRA - F-1, page 1 of 1". We would like to see a map of what the Comptroller proposes to establish as the authorized service area.
17. Page "FCRA - J-3, page 1 of 1". We believe the private utility as a condition of approval of a CPCN will be required to form a customer advisory committee as the RDN has done for the neighboring French Creek (Sandpiper) Water Local Service Area.
18. Page "FCRA - Sched. C, page 1 of 1". See our (16) above.

Although representatives of numerous interest groups have been consulted by EPCOR it does not appear that the company has provided an opportunity for the wider customer

base to investigate and press their concerns in an interactive forum. We continue to ask that the Comptroller hold a public hearing in French Creek/Parksville prior to rendering a decision on all matters relating to the purchase.

If you have any questions about our questions and concerns please phone or otherwise contact the undersigned. Phone 250-752-4579

Yours truly,



Michael C. Jessen, P.Eng.
Director, French Creek Residents' Association
mjessen@island.net

Attachment

cc. By email to Mr. David Rector, and mailed to EPCOR Richmond Address
Copy to all directors FCRA

Release Date: August 25, 2005

RDN Board Says No to EPCOR Operation of Rural Water Systems

At the August 23 Board meeting, the Regional District of Nanaimo Board of Directors resolved that the RDN will attempt to purchase the Breakwater utility without contracting the operation of its 14 rural water systems to EPCOR. Therefore, the existing 14 RDN Water Local Service Area systems will no longer be part of any negotiations with EPCOR.

The RDN has never had any intention of selling off its rural water systems. The RDN has been attempting to secure ownership of Breakwater Enterprises, a privately-owned and operated water utility servicing roughly 1,600 connections in the French Creek area. EPCOR, a privately-owned water utility owner and operator, is currently in the process of seeking provincial approval to purchase Breakwater. If it is successful, the RDN will then attempt to purchase the system from EPCOR.

The Regional District of Nanaimo is not the sole provider of water within its geographic area (Cassidy to Deep Bay), nor does the RDN Board have jurisdiction over all of the water sources in this area. The RDN is not responsible for the provision of drinking water by its member municipalities (Nanaimo, Parksville, Qualicum Beach and Lantzville). In fact, the RDN manages just 14 water systems servicing approximately 3,500 connections or 8,500 rural RDN residents. This represents a small portion of the RDN's population, now estimated at close to 150,000.

Households and businesses that are not connected to one of these 14 systems (Decourcey, Nanoose Bay, Fairwinds, Madrona, Wall Beach, West Bay Estates, Surfside, San Pareil, Driftwood, Morningstar, French Creek, Englishman River, Arbutus Park Estates and Melrose Community) receive water from a variety of other sources. Private water utilities and local water boards or improvement districts within the RDN are provincially regulated. Most individual on-site wells located on private property are not regulated by any government authority.

Breakwater Enterprises is a private water utility that has never been managed or operated by the RDN. The RDN has been interested in acquiring Breakwater for many years, but the owners of Breakwater have opted to sell the utility to EPCOR instead of to the Regional District of Nanaimo. This means that one private company within the RDN is negotiating to sell a privately-operated utility to another private company.

Prior to August 23, EPCOR and the RDN were in discussions about a memorandum of understanding regarding EPCOR potentially agreeing to sell Breakwater to the RDN in exchange for operating agreements for the Breakwater system and for the RDN's 14 rural water systems. At the August 23 Board meeting, the Board directed that the 14 RDN rural water systems be taken off the table in any negotiations with EPCOR. The RDN is still interested in acquiring the Breakwater utility.

The RDN cannot take control of Breakwater Enterprises without the approval of Breakwater Service Area Residents. If the province agrees to let EPCOR buy Breakwater, and EPCOR in turn agrees to let the RDN acquire the utility, then residents in the Breakwater Service Area will go to referendum on the issue.

Prior to such a referendum, there will be public consultation including public meetings, open houses, newsletters, and a consultation period. Financial information regarding the acquisition will also be provided.

The RDN has not held any public consultation to date because at this time, the RDN has nothing to do with the sale of Breakwater to EPCOR. Breakwater Enterprises is a private utility that may be sold to another private company, subject to approval of the Provincial Comptroller of Water Rights.

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Contact: John Finnie, General Manager, Environmental Services
Regional District of Nanaimo
390-6560 or 954-3792

484 Columbia Drive
Parksville, B. C.
V9P 1Y2

September 27, 2005

File: 0321094

Land & Water B. C.
Comptroller of Water Rights
1175 Douglas St.
Victoria, B. C.

Dear Sir:

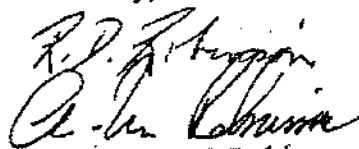
Our comments regarding Epcor's response are as follows.

Epcor has made good efforts to respond to queries, they met with groups concerned about water in the area but it still remains that there has not been any public meeting where Epcor explains what they plan to do and the public has an opportunity to ask Epcor questions. Perhaps having a public meeting versus a full blown public hearing would satisfy the need for public involvement.

A further complication that has arisen, since August 23, 2005 there is now confusion as a consequence of a Regional District of Nanaimo (RDN) Board vote regarding the memorandum of understanding between Epcor and the RDN. How does that affect negotiations?

We hope our comments are of use, it is important that there is opportunity for the public to make input.

Sincerely,


R.D. and A.M. Robinson

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