

FLETCHER CREEK IMPROVEMENT DISTRICT

BYLAW NO. 18
FRARY RIGHT OF WAY BYLAW

A bylaw to authorize an offer of compensation and to authorize commencement of legal proceedings should the offer be rejected.

The Trustees of Fletcher Creek Improvement District ENACT AS FOLLOWS:

1. That Jeffrey Kozel, Chairman of the Trustees, and Barbara Neelands, Secretary of the Trustees, are hereby authorized to offer compensation to CANDACE HELEN FRARY in the amount of \$1,500.00 for a Right of Way as drafted by Donald W. Skogstad, and attached as "Schedule A" to this Bylaw No. 18 over her land, more particularly known and described as:
Lot B, District Lot 195, Kootenay District Plan 12702
for the waterline used by the Improvement District and for access to the waterline; and further, that the Fletcher Creek Improvement District authorizes Donald W. Skogstad to commence the arbitration process according to the Municipal Act, should the offer of compensation not be accepted by Mrs. Frary in the time permitted.
2. That J. Kozel, Chairman of the Trustees, and B. Neelands, Secretary of the Trustees, are hereby authorized to execute on behalf of the District, all necessary instruments to give effect to the said right of way.
3. This bylaw may be cited as the "Frary Right of Way Bylaw".

INTRODUCED and given first reading by the Trustees on the 7th of September, 1986

RECONSIDERED and finally passed by the Trustees on the 7th of September, 1986

Original signed by:

Jeffrey Kozel
Chairman of the Trustees

Barbara Neelands
Secretary of the Trustees

I hereby certify under the seal of the Fletcher Creek Improvement District that this is a true copy of Bylaw No. 18 with "Schedule A" attached, of the Fletcher Creek Improvement District passed by the Trustees on the 7th of September, 1986

Barbara Neelands
Secretary of the Trustees

Registered in the office of the Inspector of Municipalities on December 15, 1986

Schedule A on following pages

SCHEDULE A

LAND TITLE ACT
Form 17 (Section 151, 152(1), 220) APPLICATION

NOTE: Before submitting this application, applicants should check and satisfy themselves as to the tax position, including taxes of the Crown Provincial, a Municipality, Improvement, Water and Irrigation Districts.

NATURE OF INTEREST: Statutory Right of Way

TRUE VALUE: \$100.00

HEREWITH FEE OF: \$11.00

Carey Nazaroff for
SKOGSTAD & COMPANY
BARRISTERS AND SOLICITORS
Box 140, Nelson, B.C.
V1L 5P7 352-7228

D. W. Skogstad
SIGNATURE OF APPLICANT/AGENT

This agreement made the 10th day of October, 1986

BETWEEN: CANDACE HELEN FRARY, Housewife
Box 884
Kaslo, B.C.
VOG 1M0
(hereinafter referred to as the GRANTOR)
OF THE FIRST PART

AND: FLETCHER CREEK IMPROVEMENT DISTRICT
a body duly incorporated as an Improvement District
under the Municipal Act by letters patent issued
the 21st day of August, 1980
of: c/o Jeff Kozel, Box 1018, Kaslo, Province
of British Columbia, VOG 1M0
(hereinafter referred to as the GRANTEE)
OF THE SECOND PART

WHEREAS the GRANTOR is the registered owner of an estate in fee simple of ALL AND SINGULAR those certain parcels or tracts of land and premises situate, lying and being in the Nelson Assessment Authority, in the Province of British Columbia and being more particularly known and described as:

Lot B
District Lot 195
Kootenay District
Plan 12702
hereinafter called the "Lands of the Grantor"

AND WHEREAS the Grantee is an IMPROVEMENT DISTRICT incorporated pursuant to the MUNICIPAL ACT R.S.B.C. 1979 Section 824, and licensed pursuant to the WATER ACT to take water from Fletcher Creek on the Lands of the GRANTOR and convey it to the members of the FLETCHER CREEK IMPROVEMENT DISTRICT for their domestic and irrigation use;

AND WHEREAS for the purpose of conveying and conducting water across the Lands of the GRANTOR to the lands and premises served by the GRANTEE, certain water pipelines, pipes and works have been laid in, on, upon and across the aforesaid Lands of the Grantor;

AND WHEREAS this RIGHT-OF-WAY is necessary for the operation and maintenance of the works hereinafter described;

AND WHEREAS for the purpose of assuring to the GRANTEE, its successors and assigns, the continuance of the use and benefit by it of a right of way on and over the Lands of the GRANTOR, the GRANTOR has agreed to grant the right of ways hereinafter contained:

AND PURSUANT The LAND TITLE ACT, R.S.B.C. 1979, c. 219, sec. 214,

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the premises and of the mutual covenants herein contained and of the sum of Ten (\$10.00) Dollars of lawful money of Canada now paid to the GRANTOR, the receipt and sufficiency thereof is hereby acknowledged by the GRANTOR, the GRANTOR hereby grants in perpetuity to the GRANTEE and to its successors and assigns, for the benefit of the GRANTEE, the free and uninterrupted rights, privileges and right of ways, at any and all times hereinafter, of ingress, egress, and regress in, upon and over the Lands of the Grantor for the purpose as follows:

- (a) to maintain and repair one water pipeline, and one or more water collection facilities and one or more water storage facilities, (hereinafter called the "Works") for the transmission, collection and distribution of water from the Lands of the GRANTOR to the GRANTEE and its members, and TOGETHER with the rights to inspect, maintain, remove, renew, repair and replace and substitute the same or any part or portions thereof;
- (b) to trim or fell all or any trees or growth now or hereinafter on or near the works and rights of way for the purpose only of effecting repairs to, or installing the Works;
- (c) to bringing on and removing from the Lands of the GRANTOR all materials, tools, machinery, equipment and workmen, servants, or agents necessary or useful for repairing and maintaining of the works;
- (d) to transfer, assign and convey to the GRANTEE all rights, title and interest in and to any works that the GRANTEE, or the GRANTOR have prior to this agreement established or constructed or maintained or operated within the right of way or in relation to any similar Works previously constructed by any party whatsoever within the right of way.

THE GRANTEE HEREBY COVENANTS WITH THE GRANTOR:

- (a) to assume liability for any acts committed by the agents or workmen employed for the purpose of working on the works;
- (b) to compensate the GRANTOR for damage done to any buildings, crops, fences, timber and livestock of the GRANTOR by reason of the exercise of the rights hereby granted;
- (c) as far as possible, carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands of the Grantor as possible.

THE GRANTOR HEREBY COVENANTS WITH THE GRANTEE:

- (a) to grant, convey, confirm and transfer, in perpetuity, unto the GRANTEE the full and uninterrupted right, license, liberty, privilege, permission and right of way to lay down, install, construct, entrench, operate, inspect, alter, remove, replace, bury, cleanse, string and otherwise establish one or more systems of works upon, over, under and across, that part of the Lands of the GRANTOR as shown outlined and marked on the attached diagram (over a width of five feet on either side of the water line;
(hereinafter and hereinbefore called the "right of way");
- (b) that for the purposes aforesaid and upon, over, under and across the right of way the GRANTEE shall for itself, its servants, agents workmen, contractors together with machinery, vehicles, equipment and materials to be entitled at all times to enter, use, pass and repass, labour, construct, erect, install, dig, carry away soil or other surface or subsurface materials, clear of all trees, growth, buildings or obstruction now or hereafter in existence, as may be necessary, useful, or convenient in connection with the operations of the GRANTEE in relation to the Works;
- (c) to grant, convey, confirm and transfer unto the GRANTEE for itself, and its servants, agents, workmen and contractors together with machinery, vehicles, equipment and materials, the right at all times, to enter upon and to pass and repass over such of the Lands of the Grantor as may reasonably be required for the purpose of ingress to and egress from the right of way and Works;
- (d) not to obstruct the erection, operation, maintenance, removal or replacement of the Works or any part thereof or obstruct access by the GRANTEE or its servants, agents and licensees, to the Works or any part thereof;
- (e) not to do nor knowingly permit to be done any act or thing which will interfere with or injure the said Works and in particular not carry out any blasting on or adjacent to the right of way without the permission in writing of the GRANTEE, which permission shall not be unreasonably withheld;
- (f) from time to time and at all times upon every reasonable request to do, execute or cause to be made, done or executed all such further and lawful acts, deeds, things, devices, conveyances and assurances in law whatsoever for the better assuring unto the GRANTEE the rights, liberties, and right of way hereby granted.

IT IS MUTUALLY AGREED BETWEEN THE GRANTOR AND THE GRANTEE THAT:

- (a) the Works hereinbefore described shall also include all valves, pipes, conduits, wires, casings, fittings, lines, meters, appliances, facilities, attachments or devices used in connection therewith;
- (b) notwithstanding any rule of law or equity to the contrary, the Works brought on to, set, constructed, laid, erected in, upon or under the right of way by the GRANTEE 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;
- (c) in the event that the GRANTEE abandons the Works or any part thereof, the GRANTEE may, if it so elects, leave the whole or any part thereof in place;
- (d) this agreement shall be construed as running with the lands, and shall bind the parties hereto and their respective successors in interest and that no part of the fee of the soil shall pass to or be vested in the GRANTEE under or by these presents and that the GRANTOR may fully use and enjoy the land subject only to the rights and restrictions herein provided;
- (e) the expressions "GRANTOR" and "GRANTEE" herein contained shall be deemed to include the executors, administrators, successors and assigns of such parties;
- (f) where the expression "GRANTOR" includes more than one person, all covenants herein on the part of the "GRANTOR" shall be construed as being several as well as joint;
- (g) wherever the singular and masculine are used in this agreement they shall be construed as being the plural or the feminine or body corporate where the context or the parties hereto require;
- (h) this agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors and assigns as the case may.

IN WITNESS WHEREOF, the GRANTOR and the GRANTEE have set their hands and seals on the date first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

<u>Signature</u>]	
Linda Crowley, Legal Assistant]	<u>Candace H. Frary</u>
Hamilton, _____ & _____ (illegible)]	CANDACE HELEN FRARY
Box ____ Nelson, BC]	

THE CORPORATE SEAL OF FLETCHER CREEK IMPROVEMENT DISTRICT was affixed in the presence of:

<u>B. Neelands</u>	<u>Jeffrey Kozel</u>	<u>Susan Kozel</u>
Authorized Signatory	Authorized Signatory	Authorized Signatory

V23432

LOT B.
RAN 12702

LOT 195

EL 2098.71
INTAKE STRUCTURE

INTAKE &
OVERFLOW
(RETURNS TO
CREEK)

EL
CULVERT - 41

PLAN

10497

EL 2080.30

EL 2100.19

LOT A.
RAN 12702

CROWN VALLEY CREEK

EASEMENT
10498

PLAT 10498

HIGHWAY

NO 31

PLAN 6A
7305 (R/N)

ELEV 2093.00

KEY PLAN

JPK SK

GENERAL NOTES

CULVERTS SHALL BE SPIRAL
HELICAL-BG MATERIAL
GALVANIZED COATING ETC

LAND TITLE ACT
Form 2
Sections 43(a) and 44(a)
AFFIDAVIT OF WITNESS

I, LINDA CROWLEY of the City of Nelson in British Columbia, make oath and say:

1. I was present and saw this instrument duly signed and executed by CANDACE HELEN FRARY the party(ies) to it, for the purposes named in it.
2. The instrument was executed at NELSON.
3. I know the party(ies) who is (are) 19 years old or more.
4. I am the subscribing witness to the instrument and am 16 years old or more.

Sworn before me at NELSON in British Columbia this 10th day of OCTOBER, 1986

Signature: Linda Crowley

A Commissionaire for Taking Affidavits for British Columbia

NOTE: This affidavit must be sworn by a witness who is not a party to the instrument.

LAND TITLE ACT
FORM 6
(Section 46)
PROOF OF EXECUTION BY CORPORATION

I CERTIFY that on the 9th day of October, 1986 at the City of Nelson in the Province of British Columbia, JEFF KOZEL and SUSAN KOZEL, who are personally known to me, appeared before me and acknowledged to me that they are the authorized signatories of the FLETCHER CREEK IMPROVEMENT DISTRICT, and that they are the persons who subscribed their names and affixed the seal of the corporation to the instrument, that they are authorized to subscribe their names and affix the seal to it, and that the corporation existed at the date the instrument was executed by the corporation.

IN TESTIMONY of which I set my hand and seal of office, at the City of Nelson in the Province of British Columbia this 9th day of October, 1986.

Signature: D. W. Skogstad
A Commissionaire for taking Affidavits for British Columbia

D W SKOGSTAD
Barrister & Solicitor
Box 140, Nelson, BC, V1L 5P7