

CAPITAL REGIONAL DISTRICT

BYLAW NO. 2312

**A BYLAW TO CONVERT THE AUTHORITY FOR LIQUID WASTE MANAGEMENT
TO A SERVICE FOR THE CORE AREA AND WESTERN COMMUNITIES**

WHEREAS:

- A. By Supplementary Letters Patent, Division VII dated December 28, 1967, as amended by further Supplementary Letters Patent, the Capital Regional District was granted the function of the acquisition, design, construction, operation, maintenance, renewal and administration of trunk sewers and sewage disposal facilities within all member municipalities of the Regional District except the District of Sooke and the Southern Gulf Islands;
- B. The Board of the Capital Regional District wishes to exercise the function granted to it by the Letters Patent in accordance with Part 24 of the *Local Government Act* subject to all the terms and conditions contained in the Letters Patent and including all the powers granted by the Letters Patent within all member municipalities except the District of Sooke and the Southern Gulf Islands;
- C. The Board of the Capital Regional District wishes to proceed under section 774.2 of the *Local Government Act* and convert the service to a service exercised under the authority of a bylaw for a portion of the Regional District by bylaw under sections 774.2(3) and 796 of the *Local Government Act*;
- D. The Board of the Capital Regional District has obtained the consent on behalf of the electors under section 801.4 of the *Local Government Act*;

NOW THEREFORE, the Regional Board of the Capital Regional District in open meeting assembled enacts as follows:

Service

- 1. The collection, conveyance, treatment and disposal of sewage is established as a service.

Boundaries

- 2. The boundaries of the service area shall be coterminous with the boundaries of the municipalities of Saanich, Victoria, Oak Bay, Esquimalt, View Royal, Colwood and Langford.

Participating Areas

- 3. The municipalities of Saanich, Victoria, Oak Bay, Esquimalt, View Royal, Colwood and Langford include the participating areas for this service.

Cost Recovery

- 4. (1) The annual operating costs and annual debt costs for the service shall be recovered by one or more of the following:
 - (a) property value taxes imposed in accordance with Division 4.32 of Part 24-11 of the *Local Government Act*;

- (b) fees and charges that may be imposed under section 797.2397 of the *Local Government Act*;
 - (c) revenues raised by other means authorized by the *Local Government Act*; and
 - (d) revenue received by way of agreement, enterprise, gift, grant or otherwise.
- (2) The amount of the requisition for any participating area shall not exceed the amount calculated under section 5 less any amount received from the participating area under section 4(1)(d) by way of agreement negotiated with that participant.

Apportionment Cost Sharing and Apportionment

(Bylaw 3028)

(Bylaw 3319)

5. (1) In this Bylaw:

- (a) "allocated treatment capacity" or "treatment capacity" means the portion of the maximum treatment capacity in ML/D of a wastewater treatment plant that is allocated to a participating area under this Bylaw as set out in Schedule "B" and Schedule "C" and as adjusted from time-to-time in accordance with this bylaw;
- (b) "annual debt and capital cost" means the principal and interest payable in each calendar year for the amortization of debenture and other debt;
- (c) "annual operating cost" includes all costs of operating, maintaining, replacing, refreshing, and administering all participating area facilities, works, and programs, excluding annual debt and capital costs;
- (d) "average annual flow" or "AAF" means calculation obtained from measuring the total flow from October 1 of one year and September 30 of the following year;
- (e) "average dry weather flow" means the calculation obtained from measuring the total flow from June 1 to August 31 in one year and dividing that amount by the number of days in that same period.
- (f) "cost per unit of capacity" means the number derived by dividing the total annual debt and capital costs for a wastewater treatment plant in its first year of repayment by the wastewater treatment plant's design capacity, in ML/D, as follows:

$$\frac{\text{total annual debt and capital costs}}{\text{treatment capacity (ML/D)}}$$
- (g) "cost per unit of operating expense" means the number derived by dividing the total annual operating cost in one year by the actual measured sewage flows, in ML/D, in the same year, as follows:

$$\frac{\text{total annual operating cost}}{\text{total actual measured sewage flows (ML/D)}}$$
- (h) "design capacity benefit" means a benefit to one or more participants that results from any new construction of, or capital additions or improvements to sewage conveyance facilities or their ancillary facilities, after December 21, 2002. To the extent that the benefit was the provision of, or the creation of conditions to allow, additional conveyance capacity, then the design capacity shall be calculated only on the extent to which each participant gained an increase in maximum allocated capacity. Where the

benefit was not an increase in capacity, then the design capacity benefit shall be calculated on the existing maximum allocated capacity of each participant in the facility that was altered, added to or affected by the change;

- (i) "East Coast Interceptor Trunk" means the sewer facilities and functions located in the municipalities of Saanich, Oak Bay and Victoria, comprising all Regionally operated facilities from the Finnerty Outfall diversion works to the Ross Bay trunk sewer at Dallas Road and Cemetery Road, as particularly set out in the East Coast Interceptor Operating Agreement, dated December 1993, and shown on Drawing No. 8-S184-2, including but not limited to:
- (i) that portion of the original Northeast Trunk Sewer from Currie Pump Station to McMicking Outfall;
 - (ii) the McMicking Outfall;
 - (iii) the Finnerty Cove diversion works and Outfall;
 - (iv) the Humber Pump Station;
 - (v) the Rutland Pump Station; and
 - (vi) the Penrhyn and Currie Lift Station and Currie and Hood Pump stations;
- (j) "Manager" means CRD's General Manager, Integrated Water Services department, or such other individual designated by the CRD;
- (k) "maximum allocated conveyance capacity" means that part of the maximum operating capacity of regional sewer allocated to a participating area to accommodate peak sewage flows from that participating area. When used in reference to spills, it is calculated as the peak wet weather flow in litres per second as shown in Schedule "B", as adjusted from time-to-time on transfer of capacity under this bylaw, and when used in reference to design capacity benefit calculations or the transitory clauses in section 5(2)(a) and (b) for regional sewer built before December 31, 2020, it is as shown on Drawings No. 8-S184-1 and 8-S184-2 on file in the Integrated Water Services department and forming a part of this bylaw by reference;
- (l) "ML/D" means megalitres per day;
- (m) "participating area facilities" means all regional sewer facilities that serve the participating areas, as set out in Schedule "A", but does not include those works owned or operated by a participant or a client of the service for a local sewer or wastewater system;
- (n) "peak wet weather flow" means the maximum flow measured over a 24-hour period on any given day within the calendar year;
- (o) "program" means investigations to assess the marine environment and shoreline discharges and contaminant sources and the coordination of these programs among all levels of government to enhance marine environmental quality;
- (p) "regional sewer" means a trunk sewer, pump station, outfall, treatment plant, interceptor, sewer, sewage disposal, or other wastewater system owned or operated as part of the regional sewer system for the conveyance, measurement, treatment, control, handling and disposal of wastewater (liquids and solids).
- (q) "Spill Regulation" includes the *Fisheries Act (Canada)* and regulations, the *Environmental Management Act (British Columbia)* and regulations, and any other

~~enactment of a Federal or Provincial government governing the discharge of or report of a discharge of wastewater into the environment.~~

- ~~(r) "wastewater treatment plant" means, as applicable, a single treatment plant or one or more plants as then operating.~~~~(a) "annual debt cost" means the principal and interest payable in each calendar year for the amortization of debenture and other debt;~~
- ~~(b) "annual operating cost" includes all costs of operating, maintaining and administering all participating area facilities and programs, excluding annual debt costs;~~
- ~~(c) "design capacity benefit" means a benefit to one or more participants that results from any new construction of, or capital additions or improvements to sewage conveyance facilities or their ancillary facilities. To the extent that the benefit is the provision of, or the creation of conditions to allow, additional conveyance capacity, then the design capacity shall be calculated only on the extent to which each participant gains an increase in maximum allocated capacity. Where the benefit is not an increase in capacity, then the design capacity benefit shall be calculated on the existing maximum allocated capacity of each participant in the facility being altered, added to or affected by the change;~~
- ~~(d) "East Coast Interceptor Trunk" means the sewer facilities and functions located in the municipalities of Saanich, Oak Bay and Victoria, comprising all Regionally operated facilities from the Finnerty Outfall diversion works to the Ross Bay trunk sewer at Dallas Road and Cemetery Road, as particularly set out in the East Coast Interceptor Operating Agreement, dated December 1993, and shown on Drawing No. 8-S184-2, including but not limited to:~~
- ~~(i) that portion of the original Northeast Trunk Sewer from Currie Pump Station to McMicking Outfall;~~
 - ~~(ii) the McMicking Outfall;~~
 - ~~(iii) the Finnerty Cove diversion works and Outfall;~~
 - ~~(iv) the Humber Pump Station;~~
 - ~~(v) the Rutland Pump Station; and~~
 - ~~(vi) the Penrhyn and Currie Lift Station and Currie and Hood Pump stations;~~
- ~~(e) "participating area facilities" means all facilities that serve the participating areas, including but not limited to: trunk sewers, pumping stations, treatment plants, outfalls and other works required for the conveyance, measurement, treatment, control, handling and disposal of sewage as shown on the latest revision of master drawing(s) on file at the CRD Environmental Services office;~~
- ~~(f) "maximum allocated capacity" means that part of the maximum operating capacity of a trunk sewer, pump station, treatment plant or other system allocated to a participating area to accommodate peak sewage flows from that participating area as shown on Drawing Nos. 8-S184-1 and 8-S184-2 attached hereto as Schedule "A";~~
- ~~(g) "program" means investigations to assess the marine environment and shoreline discharges and contaminant sources and the coordination of these programs among all levels of government to enhance marine environmental quality;~~
- ~~(h) "Spill Regulation" includes the *Fisheries Act (Canada)* and regulations, the *Environmental Management Act (British Columbia)* and regulations, and any other enactment of a Federal or Provincial government governing the discharge of or report of a discharge of wastewater into the environment.~~

(2) (a) The annual debt and capital costs of participating area facilities constructed prior to December 31, 2002 shall be apportioned on the basis of the proportion of the maximum allocated conveyance capacity of that part of the respective facilities within a participating area and downstream from the participating area allotted to the participating area.

~~(b) The annual debt and capital costs of participating area facilities constructed after December 31, 2002 shall continue to be apportioned on the basis of the design capacity benefit that each participating area derives from each particular facility constructed during that time period.~~

~~(c) After December 31, 2020, the annual debt and capital costs of acquiring land and constructing participating area facilities shall be apportioned on the basis of design capacity based on projected flows to full wastewater treatment plant capacity using the following proportions of 70% ADWF and 30% AAF, as set out in Schedule "C" and as deemed adjusted from time-to-time by transfer of treatment capacity under this bylaw.~~

~~The capital cost and net annual debt cost of participating area facilities constructed prior to December 31, 2002 shall be apportioned on the basis of the proportion of the maximum allocated capacity of that part of the respective facilities within a participating area and downstream from the participating area allotted to the participating area.~~

~~(b) The capital cost and net annual debt cost of participating area facilities constructed after December 31, 2002 shall be apportioned on the basis of the design capacity benefit that each participating area derives from each particular facility.~~

~~(c) The capital cost and net annual debt cost of acquiring land for sewage treatment after December 31, 2002 shall be apportioned on the basis of long-term (50 to 100 years) annual flows expected from each participant, as determined at the time the land is acquired.~~

(d) Where the total flow of sewage from a participating area in a calendar year exceeds that participating area's allocated treatment capacity, and the total flow of sewage from all participating areas during that year is less than or equal to 95% of the design capacity of the wastewater treatment plant, the costs apportioned to that participating area under section 5(2)(c) shall be increased by an amount that is equal to:

$$\frac{3 \times (\text{cost per unit of capacity} + \text{cost per unit of operating expense})}{\text{x number of ML/D over allocated treatment capacity}}$$

(e) Where the total flow of sewage from a participating area in a calendar year exceeds that participating area's allocated treatment capacity, and the total flow of sewage from all participating areas during that year is greater than 95% of the design capacity of the wastewater treatment plant, the costs apportioned to that participating area under section 5(2)(c) shall be increased by an amount that is equal to:

$$\frac{5 \times (\text{cost per unit of capacity} + \text{cost per unit of operating expense})}{\text{x number of ML/D over allocated treatment capacity}}$$

(f) Where either subsection 5(2)(d) or 5(2)(e) applies, the costs apportioned to the remaining participating areas under subsection 5(2)(c) shall be reduced by an amount equivalent to that derived under the applicable formula.

(3) (a) In the event that:

(i) a spill occurs from any of the participating area facilities;

~~(ii) the spill resulted from the capacity of regional sewer being exceeded, and by measurement it could be determined that flows from one or more participating areas exceeded the participating area's maximum allocated capacity or allocated treatment capacity; and~~

~~(ii) the spill resulted from the capacity of the trunk sewer being exceeded, and by measurement it could be determined that flows from one or more participating areas exceeded maximum allocated capacity as set out in Schedule "A" attached hereto; and~~

(iii) a fine is imposed against the CRD following a conviction under a Spill Regulation or the CRD is liable for damages as a result of the spill;

then the amount of the fine, damages or other liability and associated legal costs directly attributable to the spill shall be allocated to that participating area determined to have caused the spill;

~~(b) If more than one participating area jointly caused the spill, then the amount of the fine, damages or liability and legal costs shall be apportioned among those participating areas determined to have caused the spill in proportion to their AAF, or where flow records indicate the percentage of overflow contribution, based on the amount of overflow contributed by each participating area.~~

~~(b) If more than one participating area jointly caused the spill, then the amount of the fine, damages or liability and legal costs shall be apportioned on the average annual flow among those participating areas determined to have caused the spill or on the amount of overflow contributed by each participating area where flow records indicate the percentage of overflow contribution.~~

(4) Notwithstanding Section 5 (2), the net annual debt cost of the East Coast Interceptor, for portions constructed prior to December 31, 2002, shall be apportioned among the participating areas on the basis of the net taxable value of land and improvements for Regional Hospital District purposes within that part of each participating area that is within the benefiting or sewer catchment area of the East Coast Interceptor trunk after calculating the conversion on an annual basis of 100% of the current year's property assessment values for Regional Hospital District tax purposes by a factor equivalent to the variable tax rates, established for various classes of assessment by each of the participating member municipalities, for the taxation year immediately preceding the date of the apportionment of the capital cost and annual debt charges.

~~(5)~~

~~The annual operating cost for participating area facilities shall be apportioned among the participating areas, in proportion to the AAF of each participating area, as it relates to the Total AAF of all participating areas, as follows:~~

$$\text{Total operating costs} \times \frac{\text{AAF of Participating Area}}{\text{Total AAF}}$$

~~The annual operating cost for participating area facilities shall be apportioned among participating areas connected to each facility on the basis of the total annual flow into those facilities in~~

~~proportion to the annual average flow from that participating area to the total annual average flow of sewage from all participating areas connected to those facilities.~~

Maximum Requisition

6. The maximum amount that may be requisitioned under section ~~800-4339~~(1) of the *Local Government Act* for the service shall be the greater of:
- (a) twenty million (\$20,000,000) dollars; or
 - (b) an amount equal to the amount that could be raised by a property value tax of one dollar and six cents (\$1.06) per one thousand (\$1,000.00) dollars which when applied to the net taxable value of land and improvements within the service area will yield the maximum amount that may be requisitioned under sections ~~803378~~(1)(a) and (b) for the service.

Powers

7. In providing the service established by this bylaw, the Regional District may, without limiting the generality of Section 1:

~~(a) Acquire, design, construct, operate, maintain, renew, decommission, demolish, clean-up, restore, and administer regional sewer facilities, buildings, and works;~~

~~(a) acquire, design, construct, operate, maintain, renew and administer trunk sewers and sewage disposal and treatment facilities and buildings;~~

- (b) enter into an agreement with a member municipality on such terms as are mutually agreed upon providing that the municipality may undertake on behalf of the Regional District the design, construction, operation and maintenance of any of the facilities of the Regional District within that municipality;
- (c) make interim provision for sewage disposal;
- (d) at any time enter upon any lands, streets, waters or water courses, without the consent of the owner, for the purpose of making surveys and other examinations to determine whether or not the lands, streets, waters or water courses are required in the carrying out of the service;
- (e) carry any sewer or other works through, across or under any street in such manner as not unnecessarily to obstruct or impede travel and may enter upon and dig up any street for the purpose of laying sewers or other works and of maintaining, repairing and renewing the works in accordance with the following:
 - (i) in entering upon and digging up any street, the Regional District shall be subject to such reasonable terms and conditions as may be made by the authority having jurisdiction over such street;
 - (ii) before entering upon any street for the purpose of laying, maintaining, repairing or renewing a sewer or other works, the Regional District gives at least 30 days' notice of its contemplated action to the authority having jurisdiction over the street, but the authority may waive the giving of such notice or shorten the notice period; and
 - (iii) whenever the Regional District digs up any street for any of the purposes set out above, it shall, so far as practicable, restore the street to as good a condition as the street was in before such digging began, and the Regional District shall at all times indemnify and save harmless the municipality within which such digging occurred

against and from all damage which may be recovered against such municipality by reason of anything done or omitted by the Regional District, and shall reimburse the municipality for all expenses which the municipality may incur by reason of any defect or want of repair of any street caused by the construction, maintenance, repair or renewal of any of the sewers, drains or other works. No compensation other than as provided in this subsection shall be made by the Regional District in respect of anything done by the Regional District under this subsection;

- (f) make regulations for the purpose of:
 - (i) ~~minimizing the entry of surface, rainwater, and groundwater~~~~minimizing the entry of surface and rainwater taking into account the condition of the sewers;~~
 - (ii) controlling the quantity and quality of sewage discharging into its facilities;
- (g) carry out investigations to assess the marine environment and shoreline discharges and contaminant sources; and
- (h) coordinate programs among all levels of government to enhance marine environmental quality.
 - (i) accept, collect, convey, and treat leachate generated at Hartland Landfill;
 - (j) accept, collect, convey, and treat wastewater treatment plant residuals from one or more local governments, public authorities, or persons by agreement or by way of fee and charge;
 - (k) enter into an agreement with one or more First Nations, including Songhees Nation and Esquimalt Nation, on such terms as are mutually agreed, for the provision of sewage conveyance, treatment, and disposal services, where such agreements follow the cost and treatment capacity apportionment procedures as set out in this bylaw.

(h)

Negotiation, Mediation and Arbitration

8. (1) The participating areas shall make all reasonable efforts to resolve by negotiation a dispute regarding the allocation or reallocation of treatment capacity under section 9, or regarding the apportionment of capital and operating costs for the participating area facilities under subsections 5(2) or 5(5).

(2) In the event that negotiations under subsection (1) fail to resolve a matter in dispute, a Director representing a participating area affected or likely to be affected by the matter in dispute shall declare at a meeting of the Board at which it is intended to deal with any such question that he or she unwilling to accept the Board's determination with respect to the matter, and the Board shall not decide the question, but shall appoint a mediator under subsection (5) and refer the question to a mediator within 30 days.

(3) In the event that a question has not been resolved by the mediator within 90 days of the appointment of a mediator under subsection (5), the mediator shall terminate the negotiations by giving notice in writing to all affected participating areas.

(4) Following termination of the mediation under subsection (3), the matter in dispute shall be referred to an arbitrator appointed under subsection (6) by the Board as soon as reasonably practicable following the expiry of the time period referred to in subsection (3).

(5) A mediator appointed under subsection (2) shall be appointed by two-thirds vote of all the Directors of the Board present at the meeting of the Board at which the selection is made. Failing such vote, the Board shall request the assistance of a dispute resolution officer under Division 3 of Part 9 of the *Community Charter* in appointing a mediator.

(6) An arbitrator appointed under subsection (4) shall be appointed by two-thirds vote of all the Directors of the Board present at the meeting of the Board at which the selection is made. Failing such vote, the Board shall request the assistance of a dispute resolution officer under Division 3 of Part 9 of the *Community Charter* in appointing the arbitrator, from the list of persons qualified to act as arbitrators under Division 3 of Part 9 of the *Community Charter*.

(7) The arbitration shall be conducted as either a final proposal arbitration, or as a full arbitration, in accordance with Division 3 of Part 9 of the *Community Charter*. The choice of arbitration process shall be made by unanimous vote of all the Directors of the Board present at the meeting of the Board at which the choice of process is made. Failing such vote, a dispute resolution officer under Division 3 of Part 9 of the *Community Charter* may direct which process is to be used.

(8) The arbitrator's decision shall be final and binding on the Board and on all participating areas affected, unless within 60 days of the date of decision the parties come to an alternative settlement in accordance with section 290 of the *Community Charter*.

- ~~8. (1) The participating areas shall make all reasonable efforts to resolve by negotiation a dispute regarding the proportions in which the facilities or the several parts of a facility are allocated under subsections 5(2) or 5(5).~~
- ~~(2) In the event that negotiations under subsection (1) fail to resolve a matter in dispute, a Director representing a participating area affected or likely to be affected by the matter in dispute shall declare at a meeting of the Board at which it is intended to deal with any such question that he or she unwilling to accept the Board's determination with respect to the matter, and the Board shall not decide the question, but shall appoint a mediator under subsection (5) and refer the question to the mediator.~~
- ~~(3) In the event that a question has not been resolved by the mediator within 120 days of the appointment of a mediator under subsection (5), the mediator can terminate the negotiations by giving notice in writing to all affected participating areas. (Bylaw 3319)~~
- ~~(4) Following termination of the mediation under subsection (3), the matter in dispute shall be referred to an arbitrator appointed under subsection (5) by the Board as soon as reasonably practicable following the expiry of the time period referred to in subsection (3).~~
- ~~(5) A mediator appointed under subsection (2) and an arbitrator appointed under subsection (4) shall be:~~
- ~~(a) a Professional Engineer; and~~
- ~~(b) appointed by unanimous vote of all the Directors of the Board present at the meeting of the Board at which the selection is made and, failing such vote, by a Judge of the Supreme Court of the Province of British Columbia;~~
- ~~(6) The decision of the arbitrator shall be final and binding on the Board and on all participating areas affected by the arbitrator's decision.~~

Participating Area Facilities

(Bylaw 3028)

(Bylaw 3319)

9. (1) ~~With respect to the participating area facilities, w~~here a participating area:

(a) uses ~~95%~~^{90%} or more of ~~either the average annual flow or the maximum allocated capacity allocated to that participating area as set out in Schedule "A" to its allocated treatment capacity under~~ this Bylaw, based on either:

(i) measured flows, or;

(ii) where such flows are not available, as determined by the ~~General Manager of the CRD Environmental Services department~~^{Manager} based on the best available information and sound engineering practice;

and;

(b) desires additional capacity, ~~or in the opinion of the Manager, requires additional capacity;~~

then such participating area shall commence negotiations with the Regional District, ~~who will engage with the other participating areas for the reallocation of capacity, and with the other participating areas for the reallocation of capacity and the reapportionment of the annual debt cost of participating area facilities for providing increased capacity.~~

~~(2) Allocated treatment capacity is reallocated under this section 9 on a permanent basis as the Regional District and the participating areas agree.~~

~~(3) Allocated treatment capacity shall not be reallocated under this section 9 if the requested increase in capacity is inconsistent with the projected population growth of the sub-region of the Regional District containing the requesting participating area, as set out in the Regional District's Regional Growth Strategy.~~

~~(4) In the event that the participating areas cannot agree on a reapportionment of the annual debt and capital costs or on arrangements for reallocation of design capacity within six months of the date of notice to the Manager or the Manager's determination under subsection(1), then a Director on the Board of the Regional District representing a participating area may, at a meeting of the Board, require that the matter be settled by mediation or arbitration in accordance with Section 8 of this Bylaw, subject to subsections (5) and (6).~~

~~(5) The decision of the arbitrator appointed under subsection (4) may require one or more participating areas to transfer treatment capacity to another participating area, provided the transferring participating area is not expected to use more than 95% of its respective allocated treatment capacity within 10 years from the requested date of the transfer.~~

~~(6) A participating area that permanently transfers allocated treatment capacity (the "Transferor") must be compensated by the recipient for the cumulative debt servicing and capital costs paid by the Transferor to the date of the transfer, including interest costs and interest foregone, in relation to the transferred capacity, as calculated by the Regional District.~~

~~(7) Where additional design capacity in a wastewater treatment facility becomes available, whether through the construction of a new wastewater treatment facility or otherwise, the added design capacity shall be allocated by the Regional Board among the participating areas as follows:~~

(a) a participating area that requires additional design capacity shall submit a request in writing to the Regional District;

(b) all requests for additional design capacity that are received before January 1 in a calendar year shall be considered by the Regional Board at the same time for the following budget year, and additional design capacity shall be allocated based on:

(i) availability of additional design capacity;

(ii) the demonstrated need of each requesting participating area;

(iii) consistency of the request with the Regional District's Regional Growth Strategy;

(iv) the adequacy of existing or planned conveyance infrastructure;

(v) the Regional District's plans for future expansion of participating area facilities, and whether the participating area's request should be deferred until new capital projects are completed.

~~(2) In the event that the participating areas cannot agree on a reapportionment of the annual debt costs and/or on arrangements for increased capacity within six months of the date of notice to the General Manager and/or the General Manager's determination under subsection (1), then a Director on the Board of the Regional District representing a participating area may, at a meeting of the Board, require that the matter be settled by mediation and/or arbitration in accordance with Section 8 of this Bylaw and subject to Subsection (3).~~

~~(3) The decision of the arbitrator or mediator under Subsection (2) shall not increase the cost to any participating area which is not using 95% or more and which does not expect to use more than 100% of its allocated capacity, nor shall a participating area be forced to give up allocated capacity against its wishes.~~

~~(4) New participants may purchase excess capacity from existing participants, subject to the approval of the affected existing participants.~~

Sole Authority

10. (a) The Regional District is the sole authority with jurisdiction to construct the works referred to in paragraph 7(a), provided that a member municipality may proceed on its own initiative with any such work within its own boundaries that the Regional Board is unable or unwilling to construct at that time, the design of such work having been approved by the Regional Board;
- (b) Despite paragraph (a), the Regional District and a municipality which includes a participating area may agree that the construction and operation of works referred to in paragraph 7(a) are within the powers of the municipality.

Continuing Authority

11. Nothing in this bylaw shall be interpreted as affecting or impairing in any way the rights and powers of the Regional District under the Supplementary Letters Patent, Division VII, dated December 28, 1967, as amended by further Supplementary Letters Patent, in relation to that part of the Regional District not contained within the service area created by this bylaw, or the District of Sooke or the Southern Gulf Islands.

Citation

12. This Bylaw may be cited for all purposes as the "Liquid Waste Management Core Area and Western Communities Service Establishment Bylaw No. 1, 1995."