

**M A N I T O B A** ) Order No. 56/14  
)  
**THE PUBLIC UTILITIES BOARD ACT** ) May 22, 2014

BEFORE: Susan Proven, P.H.Ec, Acting Chair  
The Hon. Anita Neville, P.C., B.A. (Hons.), Member

**ST. GEORGES UTILITIES COOPERATIVE LTD.,  
FLETT'S ROAD WATER CO-OP LTD. and  
RURAL MUNICIPALITY OF ALEXANDER  
WATER LINE ACQUISITION AND MERGER AGREEMENT**

**Summary**

The Public Utilities Board (Board) hereby approves the terms of the Agreement between the St. Georges Utilities Cooperative Ltd. (St. Georges), Flett's Road Water Co-op Ltd. (Flett's) and Rural Municipality of Alexander (RM) dated November 19, 2013.

A copy of the Agreement is attached to this Order as Schedule "A".

## **Background**

The St. Georges Utilities Co-op Ltd., Flett's Road Water Co-op Ltd. and the Rural Municipality of Alexander have jointly applied to the Public Utilities Board for approval of an agreement (Agreement) all three parties have signed. This Agreement involves a portion of the Flett's water line and a water system owned by the RM, located in the Cap Doré subdivision. The Agreement was dated November 19, 2013.

In 2010 the Board became aware of the dispute over Flett's six inch water line, which runs from the St. George's pump house to Du Cap Road (shown on Schedule B of the Agreement). It was alleged at the time that a developer had connected the Cap Doré subdivision to the Flett's line without permission or notification to Flett's. By the time Flett's became aware of the connection, the Uphill water system customers had already connected to the Cap Doré water system.

The Board became involved when Flett's requested permission to disconnect the Cap Doré subdivision, and by extension, the Uphill water system. In a letter dated November 8, 2011 from the Board to Flett's, Uphill, St. Georges and the RM, the Board recommended that all parties meet and attempt to resolve the issue of the disputed water line and disconnection of water services. The proposed Agreement is the result of meetings on behalf of the affected parties.

The Public Utilities Board Act states, in part, that owners of public utilities are required to gain Board approval to merge or dispose of any property.

*Pursuant to Section 82(1)(h) - Discriminatory rates*

*No owner of a public utility shall without the approval of the board, sell, lease, mortgage, or otherwise dispose of or encumber its property, franchises, privileges, or rights, or any part thereof, or merge or consolidate its property, franchises, privileges, or rights, or any part thereof, with that of any other public utility or its owner;*

### **Application**

The Agreement provides for the RM to purchase, for the sum of \$50,000, Flett's six inch water line, which runs from the St. Georges pump house to Du Cap Road (shown on Schedule B of the Agreement). The Agreement also allows for the RM to subsequently sell to St. Georges, for the sum of \$1.00, the newly acquired line, along with the RM's water system currently servicing approximately nine (9) properties in the Cap Doré subdivision. St. Georges would then merge the newly acquired water system with their existing system. St. Georges is under a boil water advisory.

This water system consists of water lines, connections and related infrastructure located within the municipal right of way within the area covered by and shown on Schedule A to the Agreement; the water meters located within buildings serviced by the system; and related water distribution system fixtures, structures, equipment and facilities. St. Georges currently provides water to this water system, and will continue to do so after the Agreement has been approved.

Sections 23 and 24 of the Agreement refer to utility reserves for the water systems, and St. Georges is to establish a utility reserve account for the newly formed St. Georges combined water system, while having the RM and St. Georges maintain their existing respective utility reserves. The RM has advised the Board that there has been no reserve established for Cap Doré and Uphill.

The parties who have signed the Agreement are Flett's Road Water Co-op, St. Georges Utilities Cooperative, and the RM of Alexander. The Uphill water system (no longer a co-op or legal entity) is also affected by the agreement, and was offered the opportunity to participate in the discussions on the condition that they regained status as a legal entity. The homeowners elected not to spend the funds required to reestablish Uphill as a legal entity.

The Agreement does contain Section 22, which states that the Agreement shall not impact or effect the terms under which St. Georges provides water to the users of the Uphill water system.

The RM filed an application on November 21, 2013 for approval of the Agreement with a copy of Resolution No. 2013 572. A Public Notice was issued on January 3, 2014, affording customers the opportunity to comment to both the Board and the parties involved. There was a significant stakeholder response to the Notice of Application, and a Notice of Public Hearing was issued March 7, 2014 advising the public that the Board would convene a hearing April 9, 2014 in the community of St. Georges.

### **Stakeholder Response and Public Hearing**

The Board received two petitions signed by stakeholders from Cap Doré and Uphill. One of the responses specifically requested that a Public Hearing be convened. When reviewing an application, the Board has at its disposal several approaches. It may determine that a public hearing is warranted or that a paper review process is sufficient. In this case, the Board decided that a Public Hearing was in the best interest of all parties. The Public Hearing took place in accordance with the Notice. Approximately 38 stakeholders attended the hearing.

The RM made a presentation outlining the application to the Board, and after a stakeholder made a request, representatives for Flett's and St. Georges also made brief presentations.

Flett's representative advised the hearing that they had recently passed a resolution to accept \$50,000 in exchange for the disputed line. Once the ownership of the line has been resolved, Flett's has several options they will consider for the future, of which their representative declined to elaborate.

St. Georges' representative stated that their members do not agree with paying \$50,000 to acquire a line that was installed in 1991 at a historical cost of \$18,000. St. Georges would like to move past "outside influences" and concentrate on providing potable water to its members. Until the boil water advisory is lifted, St. Georges will not be offering any new memberships; the Cap Doré and Uphill customers will remain customers. Once the boil water advisory has been lifted, the membership charge will be \$700.

A customer from Uphill asked what the charges from St. Georges will be going forward; St. Georges advised that the \$45 monthly charge will stay the same.

When asked about accruing equity as customers rather than members, Greg Tramley, an attorney from McCandless Tramley, advised that the Agreement contained a provision in Section 23 for a new reserve to be created, which would be contributed to by all current members as well as the customers from Cap Dore and Uphill.

Currently, Cap Doré and Uphill customers are paying the RM a "line maintenance charge", which the RM stated they would be applying to the Board to eliminate once the Agreement was approved.

Many stakeholders expressed concerns related to the possibility of creating a regional water system that would be serviced from Powerview-Pine Falls, which has potable water.

### **Board Findings**

The Board would like to thank the RM of Alexander for taking a leadership role in resolving the disputed water line. This issue has taken up an extraordinary amount of resources, and the Board appreciates the time and energy expended by all parties. The Board would also like to thank all of the stakeholders who responded to the Notice and those who came out to the hearing. This participation allowed the Board to have a much better understanding of all of the sides of this dispute.

While the discussion of future plans, including the possibility of connecting to the Powerview-Pine Falls water system, was outside of the scope of the hearing and this Order, the Board felt that it was crucial to the community to give voice to those concerns, as well as the proposed solutions brought forward.

The Board will approve the Line Agreement as proposed by the St. Georges Utilities Cooperative Ltd, Flett's Road Water Co-op Ltd. and the Rural Municipality of Alexander.

The Board will also approve the termination of the line maintenance charge currently being levied by the RM against the residents of Cap Doré and Uphill.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure (Rules). The Board's Rules may be viewed on the Board's website at [www.pub.gov.mb.ca](http://www.pub.gov.mb.ca).

**IT IS THEREFORE ORDERED THAT:**

1. The Water Line Acquisition and Merger Agreement between St. Georges Utilities Co-op Ltd., Flett's Road Water Co-op Ltd. and the Rural Municipality of Alexander, dated November 19, 2013, BE AND IS HEREBY APPROVED as attached Schedule "A", effective July 22, 2014.
2. The Rural Municipality of Alexander terminating the charge known as a "line maintenance charge" to the residents of Cap Dore and Uphill BE AND IS HEREBY APPROVED, effective July 22, 2014.

Fees payable upon this Order - \$1,500.00

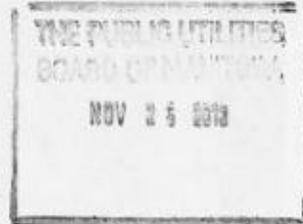
THE PUBLIC UTILITIES BOARD

"SUSAN PROVEN, P.H.Ec."  
Acting Chair

"JENNIFER DUBOIS, CMA"  
Acting Secretary

SCHEDULE "A"

THIS AGREEMENT MADE THIS 19<sup>th</sup> DAY OF November, 2013



BETWEEN:

**THE RURAL MUNICIPALITY OF ALEXANDER  
("MUNICIPALITY")**

-and-

**FLETT'S ROAD WATER CO-OP LTD.  
("FLETT'S WATER CO-OP")**

-and-

**ST. GEORGE UTILITIES COOPERATIVE LTD.  
("ST. GEORGES WATER CO-OP")**

WHEREAS:

- A. The Municipality owns and operates a water system currently servicing approximately nine properties in the Cap Dore subdivision, shown outlined on Schedule A;
- B. Flett's Water Co-op owns and operates a private water system currently servicing approximately thirty four properties in the Flett's Road subdivision area, shown outlined on Schedule B;
- C. St. Georges Water Co-op owns and operates a private water system currently servicing approximately one hundred properties in St. Georges, shown outlined on Schedule C;
- D. The Uphill Water Co-op Ltd. ("Uphill Water Co-op") owns and operates a private water system currently servicing approximately ten properties in the Uphill subdivision, shown outlined on Schedule D;
- E. The parties are proposing to have Flett's Water Co-op continue to service the Flett's Road subdivision area, and to merge the Municipality's water system with St. Georges' water system. St. Georges Water Co-op would own, operate and maintain the combined water systems;

THE MUNICIPALITY, FLETT'S WATER CO-OP, AND ST. GEORGES WATER CO-OP  
AGREE AS FOLLOWS:

## Definitions

1. "Municipality's water system" means the water lines, connections and related infrastructure located within the municipal right of way within the area covered by and shown on Schedule A, the water meters located within buildings serviced by this system, and related water distribution system fixtures, structures, equipment, and facilities.

"Flett's six inch water line" means the six inch water line running from the St. Georges water system's pump house to Du Cap Road as shown on Schedule B.

"Flett's water system" means the water line, connections and related infrastructure located within the municipal right of way within the area covered by and shown on Schedule B, water meters located within buildings serviced by this system, and related water distribution system fixtures, structures, equipment, and facilities.

"Merger possession date" means the date sixty days following the date of the Public Utilities Board approval of the merger.

"St. Georges existing water system" means the water pumphouse and the water treatment plant, the water line and connections from the water treatment plant, water lines and related infrastructure located within the municipal right of way within the area covered by and shown on Schedule C, and related water distribution system fixtures, structures, equipment, and facilities.

"St. Georges combined water system" means St. Georges existing water system, the Flett's six inch water line and the Municipality's water system.

"Uphill's water system" means the water line, connections and related infrastructure located within the municipal right of way within the area covered by and shown on Schedule D, water meters located within buildings serviced by this water service, and related water distribution system fixtures, structures, equipment, and facilities.

## Flett's six inch water line

2. In consideration of payment of \$50,000.00 and other good and valuable consideration, and on the terms and conditions set out in this Agreement, Flett's Water Co-op agrees to sell the Flett's six inch water line to the Municipality.
  3. The effective date of the sale and purchase of the Flett's six inch water line, the date in which Flett's Water Co-op shall provide possession of the Flett's six inch water line to the Municipality, the date on which the Municipality takes over responsibility for the Flett's six inch water line and pays the purchase price shall be the Merger possession date.
-

4. In consideration of payment of \$1.00 and other good and valuable consideration, and on the terms and conditions set out in this Agreement, the Municipality agrees to sell the Flett's six inch water line to St. Georges Water Co-op.
5. The effective date of the sale and purchase of the Flett's six inch water line, the date in which the Municipality shall provide possession of the Flett's six inch water line to St. Georges Water Co-op, the date on which St. Georges Water Co-op takes over responsibility for the Flett's six inch water line and pays the purchase price shall be the Merger possession date.
6. Flett's Water Co-op is selling the Flett's six inch water line as is and free and clear of all liens, charges and encumbrances.
7. Flett's remains responsible for the operation and maintenance of the Flett's six inch water line until the Merger possession date. Following the Merger possession date, Flett's will no longer be responsible for the Flett's six inch water line as set out in:
  - a. section 3 of this Agreement, and
  - b. section 4 of the January 8, 1991 agreement between Flett's and St. Georges Water Co-op.
8. Flett's Water Co-op shall assign the benefit of any warranties or guarantees it has relating to the Flett's six inch water line to the Municipality, to the extent such warranties and guarantees are assignable. The Municipality shall assign the benefit of any such warranties or guarantees to St. Georges Water Co-op.
9. Flett's Water Co-op is responsible for and the Municipality and St. Georges Water Co-op do not assume, have or accept any responsibility or liability whatsoever in respect of the Flett's six inch water line before the Merger possession date for the following:
  - a. the payment of taxes, encumbrances, liens, or charges,
  - b. any actions, suits, claims and demands, and
  - c. any environmental requirements. Any and all costs, charges, fees, claims, demands and requirements arising out of or related thereto shall be borne and carried out entirely by Flett's Water Co-op. The Municipality and St. Georges Water Co-op shall take title to the Flett's six inch water line free and clear of any outstanding or future work or remediation orders, or environmental requirements.
10. Flett's Water Co-op undertakes that it has reasonably reviewed its records and operations, and as of the date of the signing of this Agreement, there are no

outstanding matters of the nature described in subsections 9 a., b. or c. relating to the Flett's six inch water line.

11. Flett's Water Co-op undertakes and agrees to assume all obligations for and undertakes to pay and satisfy all liabilities, costs, and damages and to indemnify the Municipality and St. Georges Water Co-op for any matter or thing, and all costs, liability, and damages it may incur, including payment of all legal fees, relating to or arising out of any claim or demand by anyone respecting the Flett's six inch water line before the Merger possession date.
12. Within one year of the Merger possession date, the Municipality, at its cost, shall move the connection of the Flett's six inch water line to the corner of Du Cap Road. The Municipality's obligation to carry out this work is subject to the Municipality obtaining the necessary approvals and permission to carry out this work, on terms acceptable to the Municipality.

**Municipality's water system**

13. In consideration of payment of \$1.00 and other good and valuable consideration, and on the terms and conditions set out in this Agreement, the Municipality agrees to sell the Municipality's water system to St. Georges Water Co-op.
14. The Municipality is selling the Municipality's water system to St. Georges Water Co-op as is and free and clear of all liens, charges and encumbrances.
15. The Municipality shall assign the benefit of any warranties or guarantees it has relating to the Municipality's water system to St. Georges Water Co-op, to the extent such warranties and guarantees are assignable.
16. The effective date of the sale and purchase of the Municipality's water system, the date in which the Municipality shall provide possession of the Municipality's water system to St. Georges Water Co-op, the date on which St. Georges Water Co-op takes over responsibility for the Municipality's water system and pays the purchase price shall be the Merger possession date.
17. The Municipality is responsible for and St. Georges Water Co-op does not assume, have or accept any responsibility or liability whatsoever in respect of the Municipality's water system before the Merger possession date for the following:
  - a. the payment of taxes, encumbrances, liens, or charges,
  - b. any actions, suits, claims and demands, and
  - c. any environmental requirements. Any and all costs, charges, fees, claims, demands and requirements arising out of or related thereto shall be borne and carried out entirely by the Municipality. St. Georges Water Co-op shall take title to the Municipality's water system free and clear of any

outstanding or future work or remediation orders, or environmental requirements.

18. The Municipality undertakes that it has reasonably reviewed its records and operations, and as of the date of the signing of this Agreement, there are no outstanding matters of the nature described in subsections 17 a., b. or c..
19. The Municipality undertakes and agrees to assume all obligations for and undertakes to pay and satisfy all liabilities, costs, and damages and to indemnify St. Georges Water Co-op for any matter or thing, and all costs, liability, and damages it may incur, including payment of all legal fees, relating to or arising out of any claim or demand by anyone respecting the Municipality's water system before the Merger possession date.
20. The Municipality shall be responsible to collect any fees and charges for services provided by the Municipality to the users of the Municipality's water system prior to the Merger possession date.
21. The Municipality makes no warranty or representation as to its title or interest in the Municipality's water system, but by the transfer set out in subsection 13, the Municipality quit claims, in favour of St. Georges Water Co-op, any right, title or interest which the Municipality may have in the Municipality's water system.

#### **Uphill's water system**

22. St. Georges Water Co-op currently provides water to the users of the Uphill water system. The merger of the water systems provided for in this Agreement shall not impact or effect the terms under which St. Georges Water Co-op provides water to the users of the Uphill water system.

#### **Water systems' utility reserves**

23. By no later than the Merger possession date, St. Georges Water Co-op shall establish a utility reserve account for St. Georges combined water system.
24. The Municipality and St. Georges Water Co-op will not transfer any funds into the separate consolidated utility reserve fund from their respective utility reserves.

#### **Public Utilities Board Approval**

25. The actions described in this Agreement and the merger of the water systems is subject to Public Utilities Board approval. Following the signing of this Agreement, the parties shall jointly apply to the Public Utilities Board for approval of this Agreement and the merger of the water systems. The parties shall cooperate and do all things necessary to proceed with the application. The

parties are each responsible for their own costs related to the actions contemplated by this Agreement, and for obtaining the Public Utilities Board approval.

26. Upon the Public Utilities Board issuing an approval, the parties shall immediately review the approval. The parties shall notify each other within fourteen days of the date of the approval if the approval and conditions accompanying the approval are acceptable. If a party has a concern with the approval or a condition, then the parties shall meet in good faith in an attempt to resolve the concern or issue. If the parties are unable to resolve the concern or issue and are not all in agreement with the approval or conditions, then this Agreement shall terminate unless the parties agree otherwise.

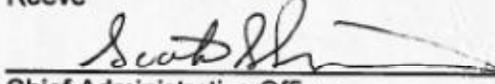
**General**

27. The parties agree to provide, obtain and/or execute such further and other conveyances, documents and evidence as may be required to give effect to this Agreement and the order.
28. The preamble forms part of this Agreement.

IN WITNESS WHEREOF the Municipality, St. Georges Water Co-op, and Flett's Water Co-op have executed this Agreement as of the date first above written.

**THE RURAL MUNICIPALITY OF ALEXANDER**

  
\_\_\_\_\_  
Reeve

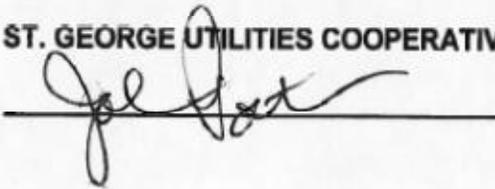
  
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Chief Administrative Officer

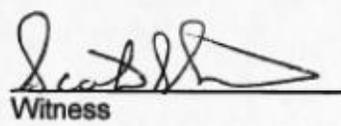
**FLETT'S ROAD WATER CO-OP LTD.**

  
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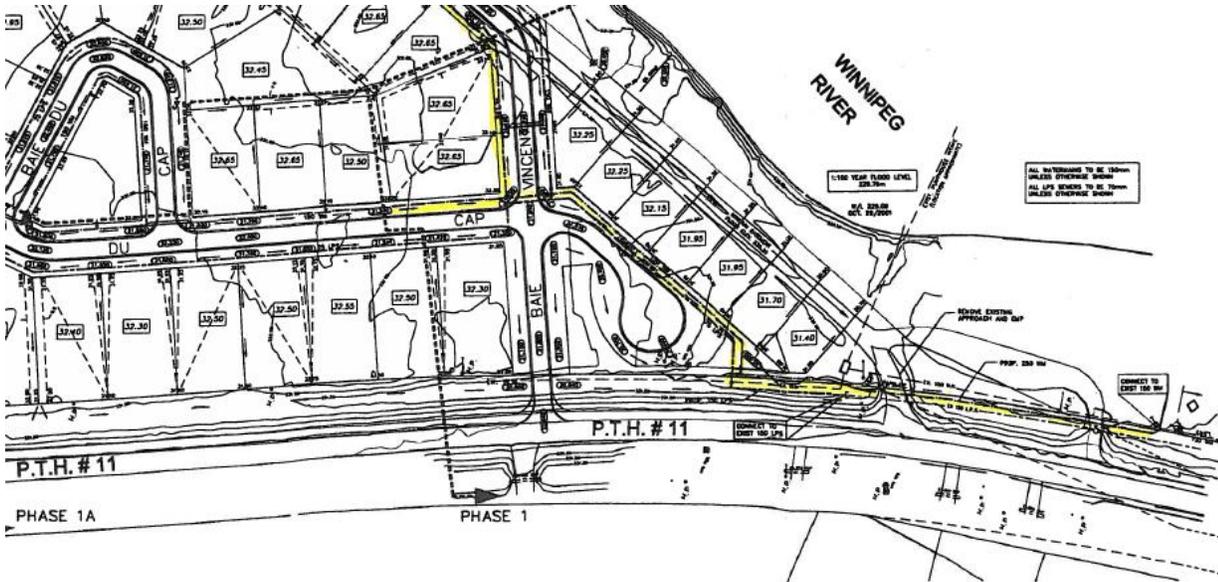
  
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**ST. GEORGE UTILITIES COOPERATIVE LTD.**

  
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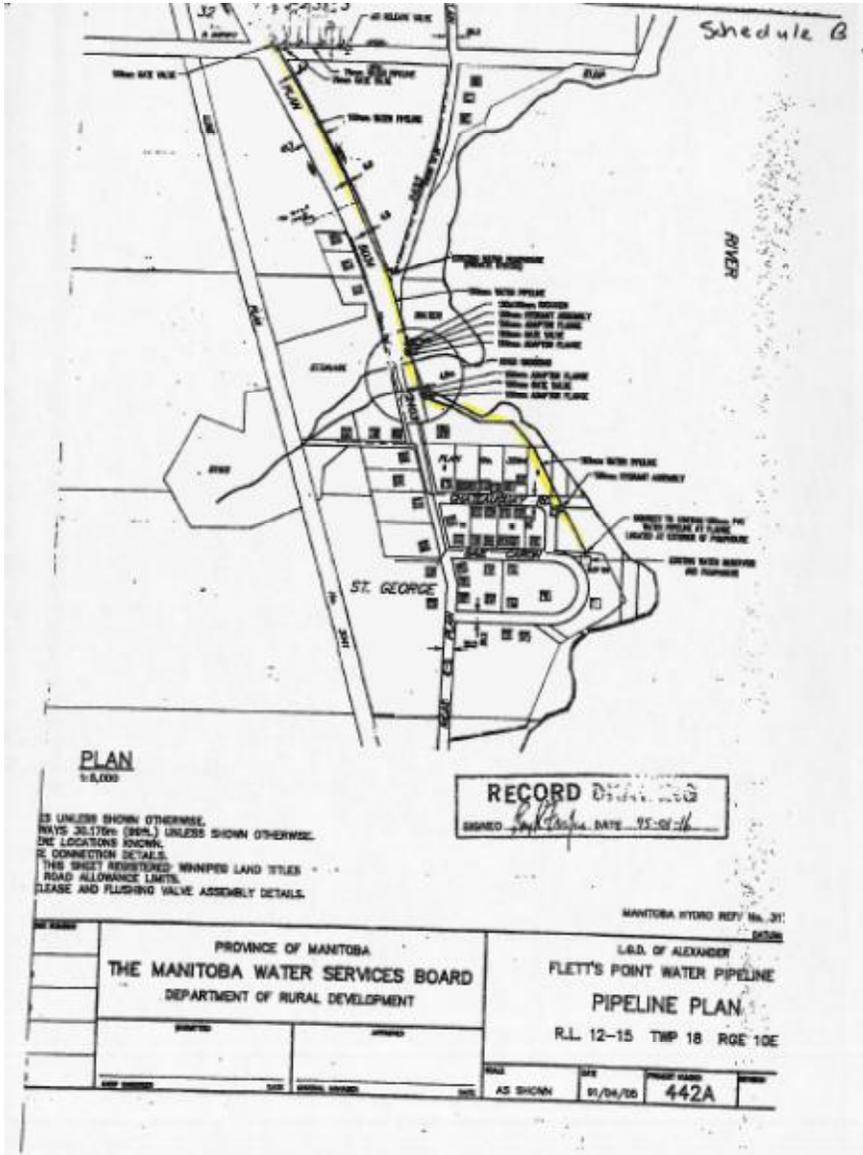
  
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**SCHEDULE A**  
**TO AN AGREEMENT BETWEEN**  
**THE RURAL MUNICIPALITY OF ALEXANDER, FLETT'S ROAD WATER CO-OP LTD.,**  
**AND ST. GEORGE UTILITIES CO-OPERATIVE LTD.**



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**SCHEDULE B**  
**TO AN AGREEMENT BETWEEN**  
**THE RURAL MUNICIPALITY OF ALEXANDER, FLETT'S ROAD WATER CO-OP LTD.,**  
**AND ST. GEORGE UTILITIES CO-OPERATIVE LTD.**

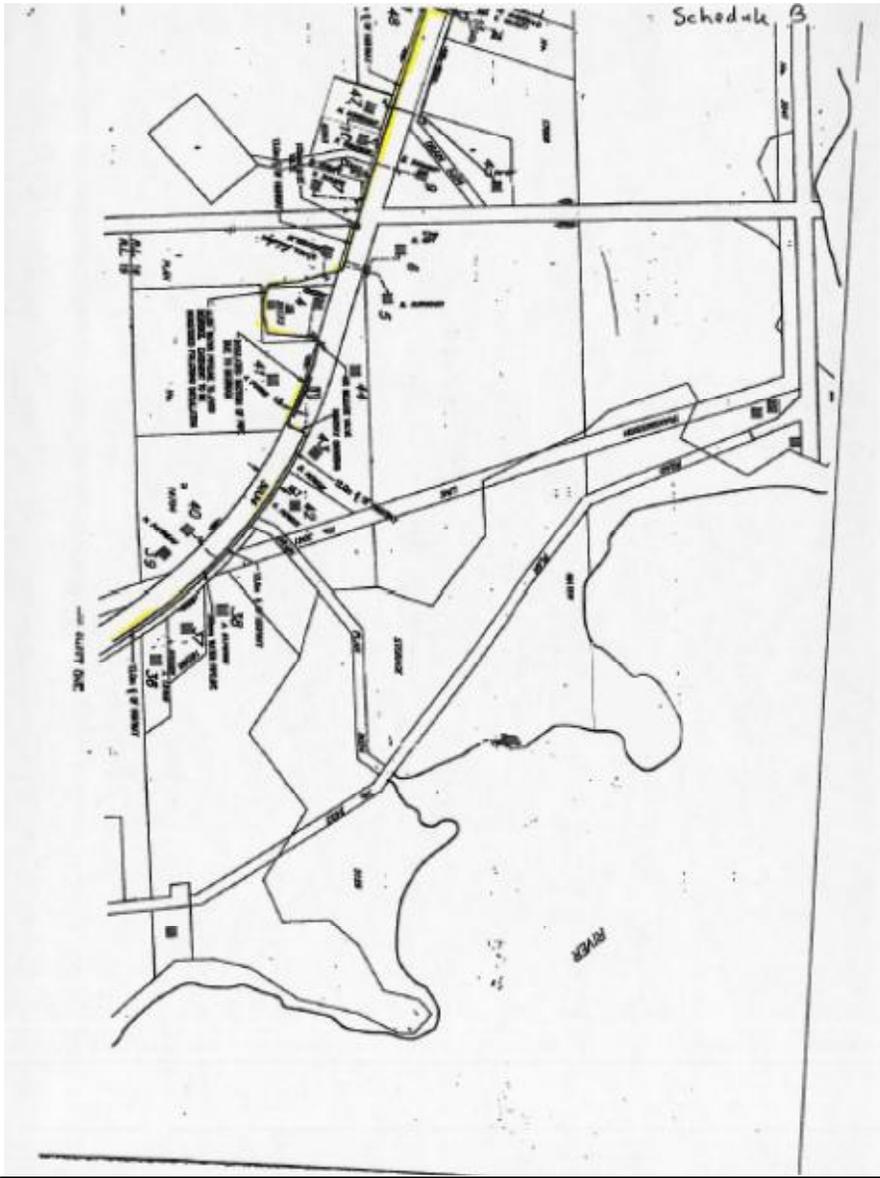


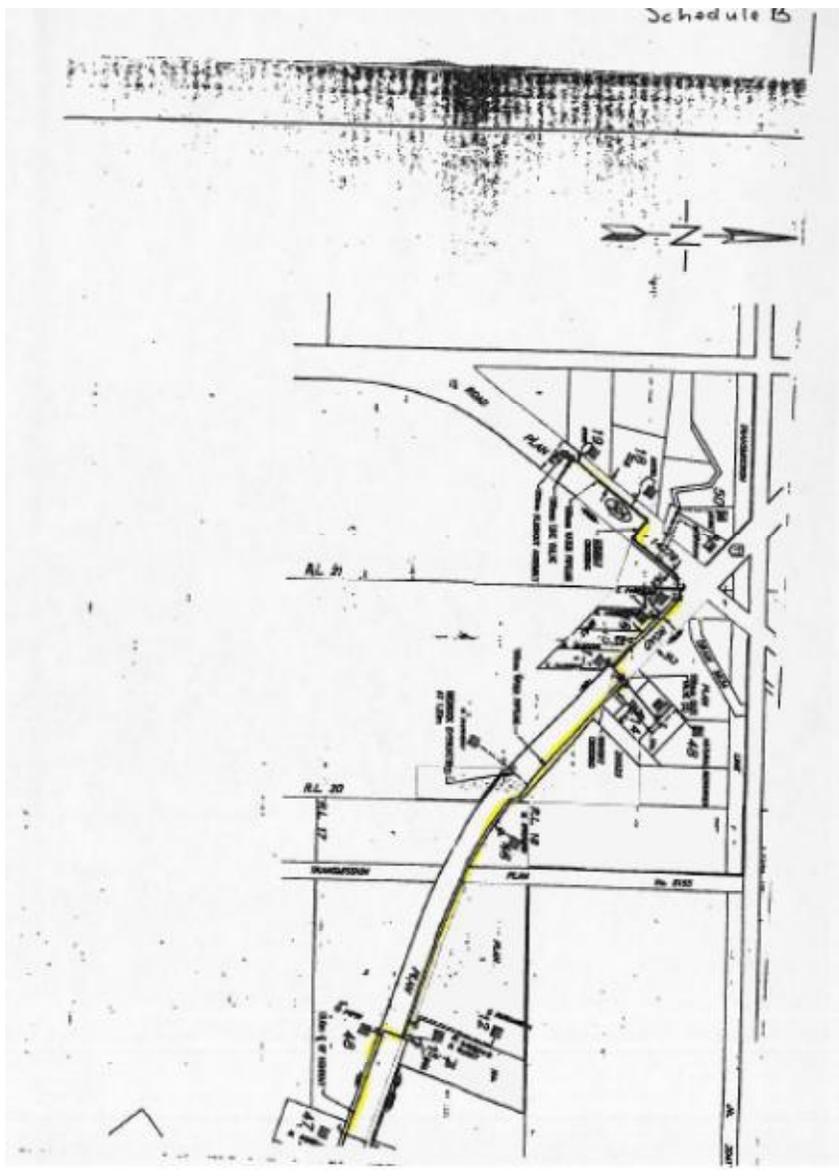
**PLAN**  
 1:1,000

IS UNLESS SHOWN OTHERWISE.  
 RAYS 30.175m (99ft.) UNLESS SHOWN OTHERWISE.  
 THE LOCATIONS SHOWN.  
 IS CONNECTION DETAILS.  
 THIS SHEET REQUIRES: WHIPPED LAND TITLES  
 ROAD ALLOWANCE LIMITS.  
 CLEANSE AND FLUSHING VALVE ASSEMBLY DETAILS.

**RECORD**  
 SIGNED: *[Signature]* DATE: 95-08-16

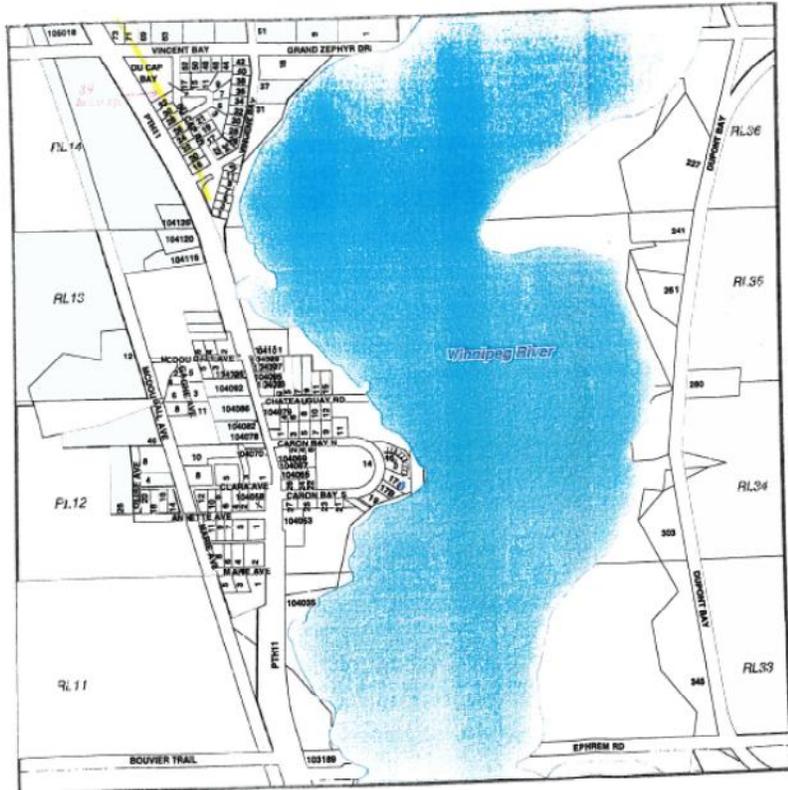
PROVINCE OF MANITOBA <b>THE MANITOBA WATER SERVICES BOARD</b> DEPARTMENT OF RURAL DEVELOPMENT		L.S.D. OF ALEXANDER <b>FLETT'S POINT WATER PIPELINE</b> <b>PIPELINE PLAN</b> R.L. 12-15 TWP 18 RGE 10E	
PREPARED BY DATE	DRAWN BY DATE	PROJECT NUMBER <b>442A</b>	SHEET NO. OF





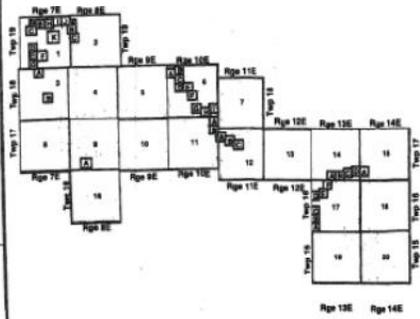


**SCHEDULE D  
TO AN AGREEMENT BETWEEN  
THE RURAL MUNICIPALITY OF ALEXANDER, FLETT'S ROAD WATER CO-OP LTD.,  
AND ST. GEORGE UTILITIES CO-OPERATIVE LTD.**



Schedule D  
**Map 6F  
RM of Alexander  
16-18-10E  
St Georges/Broadlands**

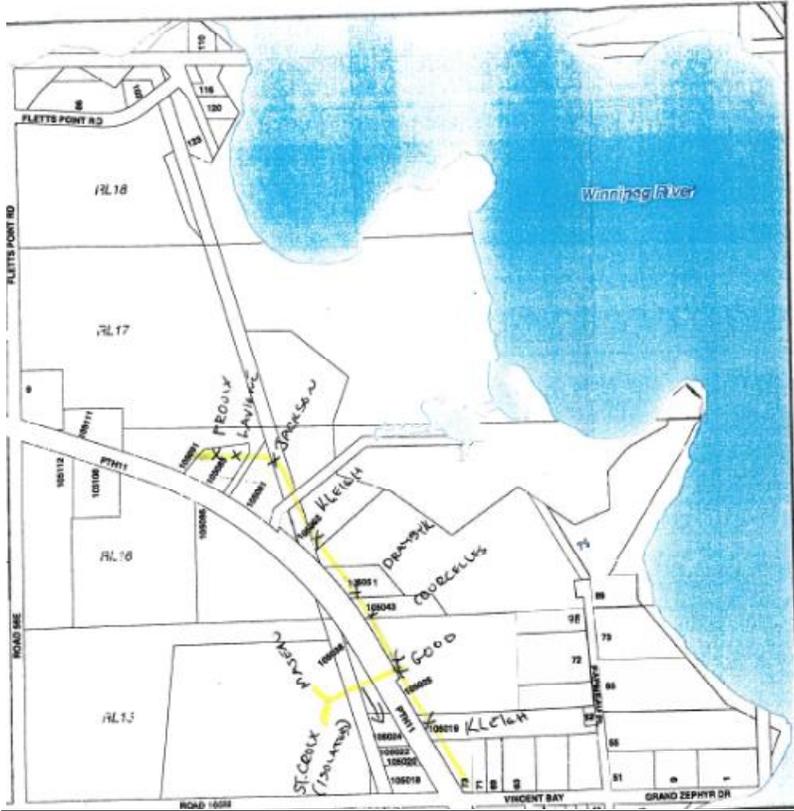
June 2010



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**Map 6F**

Schedule 10



Map 6E  
RM of Alexander  
21-18-10E

June 2010

