



**First Session - Thirty-Seventh Legislature**

**of the**

**Legislative Assembly of Manitoba**

**Standing Committee**

**on**

**Public Utilities**

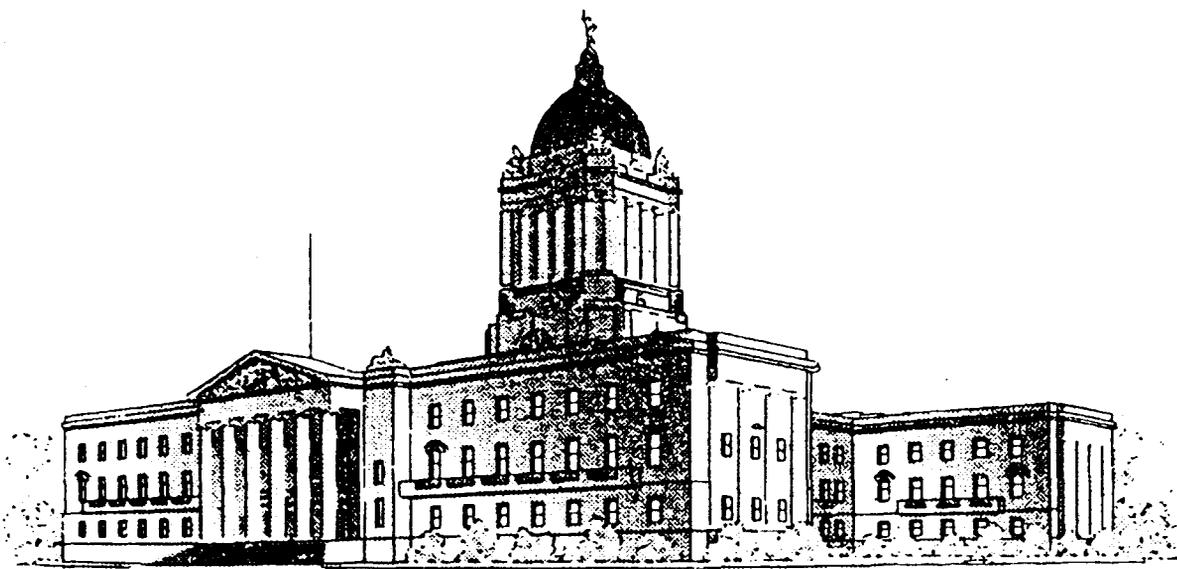
**and**

**Natural Resources**

*Chairperson*

*Ms. Linda Asper*

*Constituency of Riel*



**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty-Seventh Legislature**

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ALLAN, Nancy	St. Vital	N.D.P.
ASHITON, Steve, Hon.	Thompson	N.D.P.
ASPER, Linda	Riel	N.D.P.
BARRETT, Becky, Hon.	Inkster	N.D.P.
CALDWELL, Drew, Hon.	Brandon East	N.D.P.
CERILLI, Marianne	Radisson	N.D.P.
CHOMIAK, Dave, Hon.	Kildonan	N.D.P.
CUMMINGS, Glen	Ste. Rose	P.C.
DACQUAY, Louise	Seine River	P.C.
DERKACH, Leonard	Russell	P.C.
DEWAR, Gregory	Selkirk	N.D.P.
DOER, Gary, Hon.	Concordia	N.D.P.
DRIEDGER, Myrna	Charleswood	P.C.
DYCK, Peter	Pembina	P.C.
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FAURSCHOU, David	Portage la Prairie	P.C.
FILMON, Gary	Tuxedo	P.C.
FRIESEN, Jean, Hon.	Wolseley	N.D.P.
GERRARD, Jon, Hon.	River Heights	Lib.
GILLESHAMMER, Harold	Minnedosa	P.C.
HELWER, Edward	Gimli	P.C.
HICKES, George	Point Douglas	N.D.P.
JENNISSEN, Gerard	Flin Flon	N.D.P.
KORZENIOWSKI, Bonnie	St. James	N.D.P.
LATHLIN, Oscar, Hon.	The Pas	N.D.P.
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LEMIEUX, Ron, Hon.	La Verendrye	N.D.P.
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MAGUIRE, Larry	Arthur-Virden	P.C.
MALOWAY, Jim	Elmwood	N.D.P.
MARTINDALE, Doug	Burrows	N.D.P.
McGIFFORD, Diane, Hon.	Lord Roberts	N.D.P.
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MITCHELSON, Bonnie	River East	P.C.
NEVAKSHONOFF, Tom	Interlake	N.D.P.
PENNER, Jack	Emerson	P.C.
PENNER, Jim	Steinbach	P.C.
PITURA, Frank	Morris	P.C.
PRAZNIK, Darren	Lac du Bonnet	P.C.
REID, Daryl	Transcona	N.D.P.
REIMER, Jack	Southdale	P.C.
ROBINSON, Eric, Hon.	Rupertsland	N.D.P.
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SALE, Tim, Hon.	Fort Rouge	N.D.P.
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SMITH, Joy	Fort Garry	P.C.
SMITH, Scott	Brandon West	N.D.P.
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TWEED, Mervin	Turtle Mountain	P.C.
WOWCHUK, Rosann, Hon.	Swan River	N.D.P.

**LEGISLATIVE ASSEMBLY OF MANITOBA**

**THE STANDING COMMITTEE ON PUBLIC UTILITIES AND NATURAL RESOURCES**

**Tuesday, July 11, 2000**

**TIME – 10 a.m.**

first item before the Committee is the election of a Vice-Chairperson. Are there any nominations?

**LOCATION – Winnipeg, Manitoba**

**Mr. Gregory Dewar (Selkirk):** Yes. I nominate Mr. Schellenberg.

**CHAIRPERSON – Ms. Linda Asper (Riel)**

**VICE-CHAIRPERSON – Mr. Harry Schellenberg (Rossmere)**

**Madam Chairperson:** Mr. Schellenberg has been nominated. Are there further nominations? Hearing none, then Mr. Schellenberg has been elected Vice-Chairperson.

**ATTENDANCE -11 – QUORUM - 6**

*Members of the Committee present:*

Hon. Mr. Lathlin

Ms. Asper, Messrs. Dewar, Enns, Helwer, Loewen, Maguire, Nevakshonoff, Reid, Schellenberg, Struthers.

This morning the Committee will be considering the following bill, Bill 15, The Water Rights Amendment Act; Loi modifiant la Loi sur les droits d'utilisation de l'eau. We have presenters who have registered to make public presentations on Bill 15, The Water Rights Amendment Act; Loi modifiant la Loi sur les droits d'utilisation de l'eau.

**APPEARING:**

Hon. Jon Gerrard, MLA for River Heights  
Mr. Jack Penner, MLA for Emerson  
Mr. David Faurshou, MLA for Portage la Prairie

It is the custom to hear public presentations before consideration of the bill. Is it the will of the Committee to hear public presentations on Bill 15 first? *[Agreed]* I will then read out the names of those persons and organizations registered to speak to the bill: Wayne Motheral, the Association of Manitoba Municipalities; and Bill or Ray Hildebrandt, private citizen. Those are the names of the persons who have registered to speak this morning. Is there anyone else in the audience who would like to register or has not yet registered and would like to make a presentation? Would you please register at the back of the room.

**WITNESSES:**

Mr. Wayne Motheral, Association of Manitoba Municipalities  
Mr. Jerome Mauws, Executive Director, Association of Manitoba Municipalities  
Mr. Bill Hildebrandt, Private Citizen

**MATTERS UNDER DISCUSSION:**

Bill 15–The Water Rights Amendment Act

Just a reminder that 20 copies of your presentation are required. If you require assistance with photocopying, please see the Clerk of the Committee.

\* \* \*

**Madam Chairperson:** Good morning. Will the Standing Committee on Public Utilities and Natural Resources please come to order. The

Before we proceed with the presentations, is it the will of the Committee to set time limits on presentations? I see there is no will then to set time limits. Did the Committee wish to indicate

how late it is wishing to sit this morning? I hear twelve o'clock. Is that agreed? *[Agreed]* Thank you.

I will now call on Mr. Wayne Motheral, Association of Manitoba Municipalities. You have written copies of your brief for distribution to the Committee members. Please proceed then with your presentation, Mr. Motherall.

**Mr. Wayne Motheral (Association of Manitoba Municipalities):** Thank you very much. Good morning. I cannot say it is a wonderful morning. I drove in from Snowflake this morning, and my windshield wipers were going all the way. Maybe the timing is appropriate to talk about a drainage.

Anyway, on behalf of the Association of Manitoba Municipalities, AMM, I am pleased to present our association's position with respect to Bill 15, The Water Rights Amendment Act.

As many of you are aware, the AMM was created on January 1, 1999, as a result of a merger between the former Union of Manitoba Municipalities and Manitoba Association of Urban Municipalities. The AMM now represents all 201 municipalities through Manitoba. This allows us to speak with one unified and strong voice on behalf of municipalities.

\* (10:10)

The issues of drainage and water management in Manitoba have been long-standing and important issues to our membership. Since the 1930 Natural Resources Transfer Act, ownership and management of Manitoba's water resources has rested with the provincial government.

Historically, management of the province's water resources has included the regulation of drainage works. This changed fundamentally on March 16, 2000, when the Manitoba Court of Appeal set aside an earlier Court of Queen's Bench decision that a Manitoba property owner was guilty of diverting water without holding a valid licence under The Water Rights Act. In rendering its decision, the Court of Appeal concluded that the Province of Manitoba does not have jurisdiction over drains and drainage in

the province except where a body of water has been declared a provincial waterway.

Bill 15, The Water Rights Amendment Act, proposes amendments to the provincial Water Rights Act, which would reinstate provincial authority over land drainage activities. In reviewing the Bill, it appears the Bill does serve the purpose to reaffirm the province's licensing control over drainage. In fact, the Bill specifically addresses most of the Manitoba Court of Appeal's comments with respect to the deficiency in the prior act. We believe the Bill is also consistent with our position on drainage only from the limited standpoint of reasserting the Province's control of licensing under The Water Rights Act. Therefore, the AMM is prepared to support Bill 15, and we urge Members of the Legislature to pass Bill 15 as soon as possible in order to reinstate provincial authority over land drainage activities.

Although the AMM is supportive of Bill 15 as presented, we also want to remind members of the Legislature that all of the confusion inherent in the wording of The Municipal Act will remain irrespective of these amendments to The Water Rights Act. We believe that, in addition to The Water Rights Amendment Act, the Province should give serious consideration to amend The Municipal Act to address these points of confusion. Due to time restraints, I will not go into the specific details about the changes required to The Municipal Act. I would encourage members of the Legislature to review our position paper, which is attached to our presentation. Our position paper highlights the various amendments required to The Municipal Act to eliminate any confusion on drainage between The Municipal Act and The Water Rights Act.

The other aspect of our position paper that I wish to spend a bit more time on and is critical to our membership is the need for a long-term approach to all issues dealing with land drainage and water management. We believe our position paper on drainage identifies a number of key water management issues and makes practical and comprehensive recommendations for the long-term management of these issues. It is also consistent with the recommendations of the land drainage review and the drainage resolutions

passed at UMM and AMM conventions in recent years.

We want to make it clear that our support for Bill 15 is a qualified support in that we view these amendments as a first step only towards a long-term and more comprehensive land drainage and water management strategy. The AMM is putting a great deal of trust in the Province by supporting Bill 15, and we hope this trust will be recognized by the Province by introducing new legislation that would provide for a more harmonized approach to water management involving the Province and municipalities, as was indicated in the Province's news release of April 12, 2000.

I would now like to outline the specific proposals that the AMM would like to see incorporated into a more harmonized approach to water management. These proposals are also outlined in our position paper, which is attached to our presentation.

1. The Province should create watershed district boards for each watershed district in Manitoba. Provisions should be made for representation on these boards from municipalities within the district, conservation boards and such other stakeholders as the Province may determine. Provincial funding assistance will be required to establish and provide administrative support for these boards.

2. Each watershed district board should have responsibility and authority for creation of a water management plan for its district, with each plan approved and incorporated into the overall provincial water management plan.

3. Authority for approving or rejecting drainage licence applications within a watershed district should be delegated to the watershed district board.

4. Each watershed district board should have an employee of the Province working for the Board as a water manager in reviewing, recommending and/or processing drainage licence applications.

5. Provisions could be made for drainage licence applications to be filed through municipi-

palities located within the watershed district. In any event, the subject municipality should be provided the opportunity to make its recommendation for approval or rejection of the licensing request.

6. The water manager assigned by the Province for the watershed district board would review applications for licensing in the context of the approved water management plan for the district and in the context of the recommendation from the local municipality. The water manager should compile all reports and recommendations and provide a final recommendation of approval or rejection to the watershed district board that would meet periodically to consider and accept or reject applications.

7. Appropriate provisions should be made for appeal from any decision of a watershed district board on a licensing application.

8. Enforcement should be handled through the water manager for the watershed district with specific legislative provision for delegation of authority to the municipality within which a drainage infraction is occurring in order to deal with emergency situations. The legislative delegation of authority could be based upon the memorandum of understanding that was put in place last year between the former department of Natural Resources and AMM as an interim measure.

9. In addition to drainage matters, consideration could be given to utilizing the watershed district boards for all aspects of water management within the watershed district.

We believe that with the adoption of a system as outlined above, it would address the need for watershed-based management in the context of overall provincial control while recognizing the need for the input of municipalities in the licensing process and for a clear delegation of authority to municipalities to enforce violations in emergency situations.

In conclusion, the AMM would support Bill 15 on two conditions: First, amendments are made to The Municipal Act to clarify the confusion between The Water Rights Act and The Municipal Act. The second condition is that

the Province introduce new legislation that would provide for a long-term and comprehensive land drainage and water management strategy based on the concept of watershed districts outlined earlier.

With all the water issues facing Manitoba such as Devils Lake, issues surrounding flood protection, the importance of water quality in light of the Walkerton, Ontario, situation, and the prohibiting of bulk export of water, we hope that members of the Legislature will take a similar interest in this important water management issue. The AMM looks forward to working with all members of the Legislature on a co-operative basis to deal with the many and varied water management issues that confront us.

Thank you for allowing us the opportunity to present our views on Bill 15, The Water Rights Amendment Act.

**Madam Chairperson:** Thank you for your presentation. Do members of the Committee have questions to address the presenter? I have Mr. Enns, Mr. Maguire.

**Mr. Harry Enns (Lakeside):** Let us be very clear why we are here. We are here because one individual farmer beat the system, and this is big government in its most crass form exercising that they are not about to be beat. He took the government to court, he won, and now we are changing the rules.

Mr. Motheral, I have a specific question to you, and I am really concerned. Throughout your brief, not a single mention of conservation districts. I must say that over the years, going back to the '60s, it has been a policy of other governments, previous governments to work with municipalities in the creation of conservation districts, which I am sure you are familiar with. I take some pride in the fact that in the last eight or nine years, that work considerably expanded from about six districts to eleven or twelve. I take it that you are in favour of scrapping them and building up this Steve Topping bureaucratic empire in its place.

**Mr. Motheral:** No, we are not opposing conservation districts. We are saying in this presentation and in our position that there is a

need for water management on a watershed basis. There are, I think, two or three existing conservation districts who do manage that on a watershed basis. They are based on a watershed basis. But then not all the conservation districts in Manitoba are. That is the reason why we are not including that right now. If a conservation district is based on a watershed, yes, by all means, that district would take the place of a water board. So we are certainly not, by any means, saying anything against conservation districts.

\* (10:20)

**Mr. Enns:** I am just disappointed, Mr. Motheral, that drainage on the landscape is a big part of the whole conservation program. It has always been my ambition, shared by others, that all of, certainly, agri-Manitoba should be covered by conservation districts.

We, in the last few years, have made considerable advances. I think we are now in the order of 11 or 12, or at least from a long-time standing of six. Surely, making those conservation districts work, it is closer to the people affected; it is closer to the farm families affected; it is closer to the natural resources affected, and you, as a representative and spokesperson for local government, surely, should, in my opinion, embrace that opportunity that the conservation districts provide for you. If a particular conservation district does not have drainage under its current jurisdiction, then you should be pressing governments to get that authority from them, in my opinion.

I see a greater opportunity of resolving these issues. They are thorny issues, and they take a lot of time to resolve in some instances. I appreciate that in some instances municipalities, the local, individual municipalities would rather have that taken off their desk and put on the Minister's desk, put on the Province's desk, but that is not really the way to resolve these issues.

It is just like, if I can use—I know you are also familiar with it—we get from some of the pork producers and the pork organizations, Manitoba Pork for instance, they would like to take away from the municipalities any planning decisions as to where pork barns should be

located, because these have become controversial issues. They intimidate councillors. They used to press on me when I was minister. I know from time to time they will press this government. Well, those planning decisions, they should be taken away from the local government completely and just handed over to the senior government, to the provincial government. I sense, to an extent, this is what you are doing here. You have one or two difficult issues, and rather than butting the heads of your fellow councillors together and working through and with the conservation districts, you are resorting to the heavy-handed method of legislation and a central government.

By the way, Steve Topping is a great guy, and I think he will run a great bureaucratic empire here, but, Good Lord Almighty, I mean, for every 25 000 litres of water, I have to go and knock on his door for a permit. You can barely drain a septic tank without calling that a diversion under this act.

**Mr. Motheral:** Again, we are certainly not opposing any of the conservation districts. Also, the proposal that we have in our position to form boards on a watershed basis is certainly to utilize local people, local, not from the top down, from the bottom up, that it is the local people that would develop the management plan, the watershed plan, which is the same way that conservation districts do run. So we are certainly not opposing that particular concept. That is for sure. Thank you.

**Mr. Larry Maguire (Arthur-Virden):** Mr. Motheral, I would, first of all, look at the situation we are faced with here and see if you agree that this is a process of a knee-jerk reaction from the situation that the courts have ruled, where the municipalities now have responsibility for drainage.

**Mr. Motheral:** Actually, this has been the position of our organization over the past two or three years, that there be local control over this. The court case, as I say, did not really have that much to do with it. We do not like to bring that in. That is a particular case that we are not involved in ourselves, but it certainly did bring to light the situation.

**Mr. Maguire:** The local control that you say that you are in favour of it coming under was municipal control, or provincial control?

**Mr. Motheral:** No, there needs to be a local plan under an overall provincial strategy. That is what we are getting at.

Drainage is only part of it. There is also conservation. There is also holding water back. Each conservation district right now, today, usually does have that option of coming up with their plan. They can change it every five years, their vision, and that would be the same concept as the watershed basis drainage concept, too. It would be by local people; that is certain. We do not want to take that control away from local people. That means local municipalities; that means local councillors; that means your local anybody that is in that local situation, but there still needs to be a provincial person on those particular committees. That is our position.

**Mr. Maguire:** I would concur with the idea of setting up a comprehensive provincial plan for water management in the province of Manitoba. I think that is a must for the future of this province.

When we look at the detail in this act, the concern that is raised is from the situation that is very pertinent in the area that I represent, in Arthur-Virden, because of the flooding that we had there last year. But it is also important to farmers in all of Manitoba, and I will say particularly here in the Red River Valley, where you have a situation of some of the flooded land that we have right now, in the Member for Gimli's (Mr. Helwer) area and others here. This act, as it appears right now, would prohibit the ability of a farmer to take his tractor into a field and drain it out to the ditch, as is done in most of the Red River Valley when there is the kind of rains that we have seen this spring, and even in the last two or three weeks. So, as you said today coming in, it is very pertinent, the discussion we are having on this.

I guess, how would you see then getting around the situation where each of those individuals would have to get a permit to drive this tractor through to the ditch?

**Mr. Motheral:** We could see that person probably going to that local drainage area. Actually, emergency situations, we covered that in our position through a memorandum of understanding, and that was done last year, for emergency situations. That was for municipal situations, where you may have to protect your infrastructure and that.

The farmer's situation is something where we all know that any time there is an emergency situation—in fact, I heard on the radio this morning, and it was quoted from the La Broquerie area, where there has been an awful lot of roads cut, et cetera, because of the excess moisture they had. Still, when that happens, there is no thought of anybody downstream as to what can happen. I think that needs to be handled in a local way, in a strategy.

We all know that this happens far too often, when farmers do have larger equipment than municipalities, and they do right now, with the legislation existing the way it is. Previous to this amendment, there was absolutely no control at all over that. Right now, I am hoping with this amendment that there would be some local control over that. I do not know if I am answering your question, but it is a concern. Yes, I mean drainage is all part of water management.

**Mr. Maguire:** I would certainly agree that there needs to be an emergency process. Does your brief outline how an emergency process would be established and who would have the determination on calling it an emergency situation?

**Mr. Motheral:** I believe that is in our position paper, if you read it through. If I have any doubt on my ability to answer a question, I do have the vice-president with me here, who is involved in it, and also our research are here. So I am not afraid to ask them.

**Mr. Maguire:** Is there a reason why you did not mention conservation districts in your brief this morning?

**Mr. Motheral:** I think, if I may go out, and I will maybe stand to be corrected from my own people, but, because they were not all based on

watershed, I think that was the reason why they were not mentioned. I believe there are only two of the 11 or 13, I am not sure of the total number, are based on watershed boundaries. We all know that water knows no boundaries, whereas the municipalities, if they were to have control over all that stuff, from municipality to municipality, it would not be a good situation. Those cases have come up already.

**Mr. Maguire:** I would concur that the watershed management areas are something that we should strive to see as a long-term goal in the province of Manitoba. One of the situations that farmers are faced with today, as a particular instance in regard to drainage, being only a part of what a water management area would do, the management of water is the most important part of it, but the drainage system is what we are talking about here. The permit process that has had to be undergone in the past has left some degree of scepticism as to how a system would work.

Could you suggest the kinds of means that your organization sees permit applications being dealt with, and most pertinently, I would say, the amount of time that would be reasonable for a permit to be granted?

\* (10:30)

**Mr. Motheral:** That is a tremendous question. I like that question because the past system with the permit system certainly was not working. The applications were taking far too long, and it was defeating the whole purpose of the act itself. In some cases, they were taking up to two years and possibly three years before licences were being issued. That is definitely unacceptable. That cannot happen.

Hopefully, with the local watershed area planning, this would certainly speed it up. That has to be one of the conditions that we look at in the long term. The number of days, I do not know. I would think, myself, personally, two or three months would be max, unless it is an emergency situation.

**Mr. Maguire:** I guess the situation of two or three months is a long time in the situation that you are faced with today. When I look at what

happened in Arthur-Virden last year, and the southwest, and all of western Manitoba, and when I see it happening here in the Red River Valley, it is a situation where, first of all, as you say, in a watershed management area, there needs to be a plan. Once that plan is in place, a time frame of two or three months is considerably longer than what would allow a farmer to plan the kind of drainage that he may need to do in his own personal operation, a business where he has bought and paid for the land and is paying the taxes on, to alleviate a water situation on that land, after harvest, in a situation where he is facing November 1 being freeze up, if we will use that as a date when it generally occurs a week or two on either side of that, or a week on either side of that, and an application comes in on the 5th or the 10th of October, after the person is finished their harvesting and perhaps some of the fall work, would you concur that a system needs to be established that would allow it to be more like a maximum of two weeks?

**Mr. Motheral:** That actually would be handled by your local watershed board. It would be their decision hopefully to handle those things, to handle that, and nobody better than the local people to do that. We keep stressing that.

There are emergency situations that sometimes you cannot handle. Let us face it. We do not plan for 10-inch rainfalls. We do not plan for 14-inch rainfalls. Those are impossible things to handle. Most of your vision will be long-term vision. That will certainly be the majority. But, as far as the emergency situations, I would hope that the local people who are coming up with a watershed management plan would look into those things.

**Mr. Maguire:** Thank you.

**Mr. Tom Nevakshonoff (Interlake):** Mr. Motheral, I am the MLA for the Interlake. In this constituency, there are six rural municipalities, but, as important, I think it should be recognized that there are eight First Nations communities in this constituency as well. If you look at the map, you will see that most of these First Nations communities are located in flood plains, usually downstream of municipalities. The result is that

quite often they experience considerable flooding.

Now, I notice in your brief here that you were discussing creating watershed district boards to basically take over some of the jurisdiction from the Province, I think. Is there any place on these boards, in your opinion, for First Nations communities? I see you refer to other stakeholders. I am wondering if you may have had in the back of your mind Aboriginal people as such. Has any dialogue taken place between the Association of Manitoba Municipalities with First Nations communities? Basically, what is your position in that regard?

**Mr. Motheral:** Thank you for that question. Certainly, in a local situation, the Aboriginal people, First Nations, have to be involved. They would have to be involved. The answer to your second question, no, there was no consultation.

**Mr. Nevakshonoff:** I guess, just to follow up on that, are there plans in place or are you considering opening negotiations or some form of dialogue with First Nations people in regard to the creation of these watershed district boards?

**Mr. Motheral:** We would be open for any of those negotiations, yes.

**Hon. Jon Gerrard (River Heights):** I would, first of all, applaud your vision of having watershed management boards that deal with watersheds. I think that would be a considerable advance, and one of the things that, as I have visited many parts of the province, people have talked about. In view of the existing development of the conservation districts, which have already been the subject of some of the questions, it seemed to be that there may be, in many circumstances, a natural evolution from existing conservation districts to watershed boards, sometimes by changing boundaries, sometimes by changing mandates. Perhaps you could comment on that.

**Mr. Motheral:** Certainly. I think, if there is a move to look into the long term, and we do have watershed planning, I would think that we would have to look into—I do not like the word "tweaking" but I have used it quite often—

existing conservation districts. Hopefully, through that whole association of conservation districts, we can look ahead to possibly realign boundaries into a watershed basis. I really do not, myself, see that being too big of a problem.

**Mr. Gerrard:** I noticed your comment on the situation in La Broquerie. I would just like to explore that a little bit further, or have you explore it a little bit further. It would seem to me that having better management on a watershed basis would have the potential to considerably improve the long run management of the road infrastructure and prevent some of the problems with road outages, because of the better planning. In the long run, this could be very helpful for municipalities dealing with these issues on a daily basis. Do you want to comment?

**Mr. Motheral:** I did not really see a question. I think it was just a comment and I applaud the comment.

**Mr. Gerrard:** In the Act, there is the provincial authority over water management restored, as it were. We have had a permit system. The provincial authority does not necessarily mean, of course, that the Province is the one to issue all the permits, but rather can delegate that authority to watershed boards or to municipalities. I would like to have your comments on how such a permit system might operate so that, in fact, the level of drainage issue is dealt with and permitted most effectively by the various levels of authority.

**Mr. Motheral:** If I may, at this point, and I do not want to put anybody on the spot, that is the technical part of the whole process. We were hoping that applications would come in at the local level, and they could come in at the municipal level with input by your conservation districts that are involved in that, by your conservation people, and that there would be a provincial representative on each one of those conservation boards or drainage district boards that would have the power to issue the licence. That is how it would be. With the one question, that would certainly speed up the process.

I was going to ask Jerome if he would know the process. Is he allowed to make any presentation?

**Madam Chairperson:** I would ask if there is leave of the Committee. Is there leave of the Committee? *[Agreed]*

Mr. Motheral, the Committee has agreed. If you would not mind, please, putting your name on the record, sir?

\* (10:40)

**Mr. Jerome Mauws (Executive Director, Association of Manitoba Municipalities):** Jerome Mauws. I am the Executive Director with the Association of Manitoba Municipalities.

The question, I understand, is with regard to the process that we see evolving, if watershed drainage boards are put in place. The process that we see is that the Province would delegate the responsibility for the issuance of licences to the watershed district. The application would be processed by the individual municipality and then sent on to the watershed district board for them to review. Each watershed district board would have a person on staff that is assigned by the Province to do the administration. They would go out and do whatever ground work is necessary to ensure that the information is provided to the board. The board would then make a decision as to whether the permit would be issued or not.

We see the time limits being reduced substantially by this process because they would not have to go to a provincial body that would be necessary to review all of the applications but, rather, it would be done on a drainage basin district basis.

Also, we feel that each application would be reviewed in accordance with a watershed management plan that is prepared by that individual watershed. That watershed management plan would also be reviewed, in light of a larger provincial plan that would be prepared. That is the proposal we have put forward, and we feel that the time frame would be much quicker in that case.

I guess the other part of this is with regard to emergency situations. Last year, we had worked with the department of Natural Resources, at that time, to develop a system under which, in an emergency situation, someone could apply for an application for a licence that could be processed within 24 or 48 hours. We feel that is still necessary. We feel that process could be put in place with the watershed basin management plans that we are proposing as well so that in the case of an emergency something can be processed basically over the phones. So that there is not a situation where someone is being flooded out or has to do some drainage without a possibility for that being done. So we feel that that is sort of a second part of the whole process.

**Mr. Jack Penner (Emerson):** A question to the AMM organization. First of all, a comment when I look at your brief. I find your brief to be somewhat contradictory, and the statements that you have made, Mr. President, have been somewhat contradictory to the presentation that you have made before this committee. I would question whether you can, in fact, allow for the municipal involvement if you apply this act as it is drafted. You are suggesting that there should be some municipal involvement.

In your view, as the Act is drafted, would the municipalities have any jurisdiction on issues of water drainage at all?

**Mr. Motheral:** I think that was one of the conditions of our position, that The Municipal Act be looked into. Am I answering that properly? Give me the question again, please.

**Mr. Jack Penner:** Would the municipalities have any jurisdiction left at all on water management under the Act as it is written, as it is being proposed, as it is drafted, or would you give up all jurisdiction as municipalities on water issues?

**Mr. Motheral:** As you can see in the presentation, the municipalities would be involved in the local plan.

**Mr. Jack Penner:** You are suggesting in your brief that there should be some municipal involvement. My question to you is: If the application of this law, as drafted, is put in place,

are you giving up all water-related rights to the Province under this current act?

**Mr. Motheral:** I do not read that there. I think there is municipal involvement in the formation of the local plan. When the licence is issued, they would have to come under either the blessing of the municipality, or the municipality would have input into turning a licence down. I would think the Province would look at those local districts and make that decision on that basis. That is how I feel.

**Mr. Jack Penner:** Then I want to ask the AMM whether they have looked at the amendments. Amendment 2, section 1, which "temporarily or permanently alters or may alter the flow or level of water, including but not limited to, water in a water body, by any means, including drainage, or (b) changes or may change the location or direction of flow of water, including but not limited to water in a water body, by any means, including drainage" in this act.

Where would you have any authority left, as municipalities, on drainage issues?

**Mr. Motheral:** I am sorry. I did not follow. I did not have the Act in front of me at the time.

**Mr. Jack Penner:** If I can make just one short comment. I think we were very indulgent to the Honourable Member for Interlake (Mr. Nevakshonoff) when he was making a presentation. I only ask that same courtesy.

**Madam Chairperson:** Please proceed.

**Mr. Jack Penner:** This, Madam Chairman, is probably one of the most important acts that this legislature will deal with in respect to farmers, and farmers' rights, and municipalities' rights.

The question I am asking of the chairman of the AMM is, in section 2 of this amended act, it speaks to water body, and the meaning of "water body" means "any location where water flows or is present, whether the flow or the presence of water is continuous, intermittent or occurs only during a flood and includes wetland and aquifers."

Now under "water controls works," it means "dike, dam, surface or subsurface drain, drainage, improved natural waterway, canal, tunnel, bridge, culvert, borehole or contrivance for carrying or conducting water, that (a) temporarily or permanently alters, may alter the flow or level of water, including but not limited to water in a body of water, by any means, including drainage, or (b) changes or may change the location or direction or flow of water, including but not limited to a body of water, by any means, including drainage."

Now this bill speaks to the licensing authority, in other words, giving total authority to the Minister, taking all the authority away from municipalities and individuals. This is an authoritative bill. It speaks to the exact authority I have just described.

Can you see, as an organization, your municipalities being able to live with that kind of restrictive legislation on your municipalities or individuals trying to make a living off their farmland in your municipality? Is that what you are supporting in this bill?

**Mr. Motheral:** Municipalities are supporting provincial control over drainage.

\*(10:50)

**Mr. Jack Penner:** My question is then: To what extent? This bill gives total authority to the Minister on even diverting a puddle of water from one corner of the quarter section to another corner of the quarter section, and putting that water into a municipally constructed drainage ditch. This prevents that without a licence being issued. That means that, if I get two inches of heavy rain on my quarter section and I have a puddle of water in my beans that I need to get off within hours, I cannot legally do that without a permit from the Minister, not from the municipality, not from a conservation district board, not from a local person, but from the Minister. That is the kind of authority that I see is inscribed in this bill.

Is that what your organization, the organization of municipalities, is supporting?

**Mr. Motheral:** If I recall, that is what we have had for years. Have we not? I am just saying that the municipalities do want provincial control.

**Mr. Jack Penner:** The court case that we have just experienced, that we have just listened to, and it has been determined, says differently. The Province did not have that authority. That is what the court case determined. So legally we have never had this kind of authority before. We are now putting that kind of authority in place. Can we imagine ourselves, as farmers, trying to raise food for the nation, trying to make a living for ourselves and our families, having to go to the Minister, knock on the Minister's door, every time we have a heavy enough rain to puddle some water in our fields? Is that what we are supporting here?

**Mr. Motheral:** Again, I say that we are supporting provincial control. I am not getting into the details of individual cases and court cases.

**Mr. Jack Penner:** But, Madam Chairperson, these are the realities of the details of this law. These are the realities of this legislation that is being proposed. Having just done a tour of La Broquerie municipality over the last couple of days, one recognizes the importance, and having experienced on my own farm some three- or four-inch rains, where you have to get out and get the water off the fields in order to save the crop, and you do not have time to wait for some bureaucracy to determine whether this is feasible or not. This bill makes it illegal for the individual farmer to go out and, without a given licence, to make sure that water comes off those fields. This makes it illegal. So what we are really putting in place is a law that will make lawbreakers out of many farmers just trying to make a living after a heavy rain and to protect their properties.

I think what I would have liked to have seen in your presentation is some clear recommendations and maybe proposals for amendments to this law that would have proposed the establishment of conservation district boards based on your drainage basins. I think, if you go back to 1988-89 when we did the land and water strategy, there was a clear recommendation within that strategy. I see one of the staff members that was quite involved in that sitting in the back and nodding his head. We made clear recommendation that we should base the

formation of conservation districts on watershed basins, and that would lessen the number of conservation districts in this province and give them the authority and put enough staff in place that you could actually process these applications for temporary drainage almost immediately. But to go through the Minister's office and the convoluted process that you have to go through makes this bill simply unworkable and will make law breakers out of most farmers. That is why I am a bit concerned about your recommendations in this bill for the passage of this bill.

I would have liked to have seen your organization make some significant suggestions for change and/or proposals for amendments to this bill in order to make it functional and workable. That is my main concern with this bill. If the chairman wants to comment on that, I would welcome that.

**Mr. Motheral:** Our position paper is that it is based on a long-term look at the whole water management area, and that is of local boards, local autonomy, local boards coming up with your water management plan. That is mentioned. I apologize, the conservation district aspect maybe, possibly could have been mentioned in here to personify your concern that we were opposed to them, because we are certainly not opposed to that. We are opposed to that only because they are not all on a watershed basis. Hopefully, they will become watershed based in the future and we will still have that local autonomy. That certainly will speed up any emergency situation. As was said earlier, we are hoping we can speed it up. It was not acceptable the way it was. The old system, hopefully, is gone, and we can come up with something new at this time and, hopefully, quicker.

**Mr. Jack Penner:** That is my concern. I have always been concerned when we start drafting legislation in response to either individual situations, and/or rulings that we do not always agree with. I think that is what this is. This is a reactionary piece of legislation that, as I believe, is far too cumbersome, and has far too many controls given to the Minister. I think, as municipalities, and as individual farmers, and farm organizations, I would have a great deal of concerns with this bill, the way it is drafted.

Without amendments to this bill, I certainly will not support this bill, and I will not recommend any of our legislative colleagues to support this bill unless the Minister comes forward with some significant amendments that will give some authority to the municipalities and/or individual rights on individual's own properties when crops are endangered.

**Mr. Stan Struthers (Dauphin-Roblin):** First of all, welcome to our committee, and I want to begin by commending you and your organization for being able to see the big picture, for pointing out that there is a legitimate role for provincial government in co-ordination and in co-operation with the local level, in making water management decisions in this province. So I commend you and the AMM for that kind of big-picture thinking.

I also want to point out that I think you have hit the nail on the head by talking about having a local plan under the overall provincial strategy. It has been mentioned here before, in amongst the rhetoric about big government and the heavy hand of government, that water knows no boundaries. You have mentioned that yourself, and it is absolutely true. It is one of the strengths of our conservation districts. Whether the conservation districts are based on a watershed or not, they do come into contact with local producers and farmers who do have water problems, and all the conservation districts are making attempts to work with local people in draining land and coming up with strategies, in the long term, that will be helpful for many of our rural areas. I want to point out that the conservation districts are working in conjunction with the local rural municipalities and in conjunction with local towns and villages. There is a municipal presence on those conservation districts. They have members that represent the municipal level on those conservation districts.

My assumption was, Mr. Motheral, that you did support conservation districts right from the beginning of the presentation. I did not make the assumption that your group was in some way against conservation districts and the principles upon which they stand. It seems to me that the principles upon which conservation districts are based are reflected in your presentation here today, which are principles that we as a

provincial government would want to reflect as well. So I commend you on that.

I also want to point out your organization's foresight in looking down the road in suggesting some changes to the municipal amendments, to The Municipal Act, and looking at a long-term management strategy for drainage. This bill is not the end-all and the be-all, and it is not going to be the magic wand that solves every drainage problem out in rural Manitoba. It takes a significant step towards that, I believe, but it also means that we have to continue the process of changing our acts to reflect a provincial strategy when it comes to water.

I think that is all the comments that I wanted to make, but certainly I commend you with your presentation here today.

\* (11:00)

**Mr. Motheral:** I have got no comment there. One thing I think I want to make straight here is our association is certainly not against the farming population; We know the problems out there. We know each individual municipality certainly knows the problems out there with excess rainfall and excess water on farmland.

I am a farmer myself. I know about this. I do not want to give the impression that we are opposed to a farmer draining his field. That certainly is not the case.

**Mr. David Faurichou (Portage la Prairie):** Thank you, Madam Chairperson, and welcome this morning. In regard to the commentary and presentation made here this morning, and listening to comments from honourable colleagues around the table and again just echoed by a colleague from Dauphin-Russell is that we are in discussion of a piece of legislation that really is not what we are discussing this morning. We all recognize that you have come here this morning in support, that the Province should, in fact, have the last word or say as it comes to movement of water within our province, and I think in most parts, persons are agreeable to that.

However, the piece of legislation which we are debating here this morning is really not what

you have discussed. You have talked of conservation districts which is not in the legislation. You talk of a water management strategy. That is not within this legislation. So to say that perhaps we should be passing this legislation based upon the presentation this morning, I believe that is inconsistent. Based on comments from honourable members around the table, I really, truly believe that we should perhaps be withdrawing this legislation and coming back with a piece of legislation that addresses exactly what all of us want here, a clear water management strategy.

Having said that, there is a direct question that I have as it pertains to the Whitemud Watershed conservation district which I farm in. It is one of two that actually encompasses a watershed area. Having said that, the management for that watershed is already in place.

There is one question, and I do not know whether you can answer, Mr. Motheral, or whether the Minister has to answer that. It is, in fact, the jurisdiction when it comes to the two national railways right-of-ways. Is it in the power at the present time of the Province? It is certainly not in the municipal hands nor is it in the conservation district's hands to empower those authorities to direct the railways through their right-of-ways to provide passage of waters. It is of great concern to the constituents in rural Portage la Prairie that the water movement is severely restricted because of the numerous railway right-of-ways that are in the constituency of Portage la Prairie.

So, Mr. Motheral, whether you can answer that question, or Mr. Minister, I certainly would like to have that clarified because it does relate specifically to this bill and provincial authority as to the movement of water.

**Mr. Motheral:** I actually refuse to comment on something that was not in our presentation, and that is to do with railways. So I will not bother with any comment on that.

**Madam Chairperson:** Further questions?

**Floor Comment:** Can the Minister answer?

**Madam Chairperson:** Not this time. We are questioning in terms of the presenter. Further questions, Mr. Faurichou?

**Mr. Faurschou:** I would like then effectively to clarify the AMM's position. Are you then suggesting that this particular piece of legislation be withdrawn at this time until it more fully reflects your position as you have stated it here today?

**Mr. Motheral:** No, we have conditions, two conditions on our acceptance of the legislation, of the amendment, and that is that there be a further review of the two acts and also that there be a further long-term view and a water management plan as per se is what we said in the presentation.

**Mr. Faurschou:** So full clarification of this is that you are not in favour of the legislation as it exists today unless there are conditions included in it which would in fact relate the legislation into further acts.

**Mr. Motheral:** I would sooner say we support legislation with those considerations.

**Mr. Edward Helwer (Gimli):** Just one short question on this. When you talk about the watershed district boards, there is a considerable difference between what the watershed district boards and what the conservation districts would be. In areas where there are considerable wildlife management areas, conservation districts would have more control over not only drainage but also wildlife management areas, rather than where you only have watershed districts, would strictly be in looking at the drainage issues. I am just wondering if your brief should include possibly adding some other areas that would give it a broader control.

**Mr. Motheral:** I am not disagreeing with that at all. I would hope that when we get back into conservation districts and watershed and water board districts that they work in harmony. We have an opportunity here and I think we should take advantage of it, that we can get together and solve those problems, if it is a problem between watershed districts and conservation districts. Hopefully, the local people would certainly still take control and handle those matters.

**Madam Chairperson:** Are there any further questions? Thank you very much, Mr. Motheral, for coming and answering the questions.

I would like to call on the next presenter. I have Bill or Ray Hildebrandt. Will you please come forward to make your presentation to the Committee. I see that there are written copies for distribution. Please proceed with your presentation.

**Mr. Bill Hildebrandt (Private Citizen):** Madam Chairperson, the Honourable Oscar Lathlin and committee members, I would like to ask leave to present not only this brief, but also a short brief that our solicitor sent with me. Regrettably he cannot be here. It is included in the package.

**Madam Chairperson:** Yes, I would ask the Committee if there is leave for Mr. Hildebrandt to make a presentation on his behalf and also on behalf of Mr. Michael Waldron. Is there leave?  
*[Agreed]*

**Mr. Hildebrandt:** Some of our concerns may seem broader based than those addressed by the proposed amendment to The Water Rights Act. However, we trust that you will see that they are inter-related.

We would like to begin by suggesting that the province needs to guard against the kind of regional disparity which we saw in its differing responses in the 1997 flood in the Red River Valley versus the water-logged fields of 1999 in southwestern Manitoba.

\* (11:10)

The Red River Valley has a well-developed drainage system in place. Improvements, including land drainage work, were sanctioned and funded by both levels of government even as late as the fall of 1998.

It is on record that less than 2000 acres were left unseeded in the spring of 1997 in the valley. Now, contrast that to more than a million acres in southwestern Manitoba after a very wet spring in 1999. To date there has been no cost recovery of lost inputs. Neither has there been an offer to improve the drainage infrastructure of southwest Manitoba.

The province did take a curious stance in the spring of 1999. At a time when the issue of

jurisdiction had not been settled, the province decided to delegate responsibility to the rural municipalities. If I may add, that was last spring, right in the thick of all the water that came our way. In response, the rural municipalities merely declared a state of emergency in their particular locale, if they felt it was warranted. The Reeve of Morton went on radio suggesting that is where we live, Morton municipality, that farmers should do whatever they need to, even V trenching, to get the water off their fields. The rest is history, with last year ending up being one costly disaster.

Much of the topography of southwestern Manitoba is undulating and historical rainfall amounts are lower, but a succession of wet years can spawn many problems which could be addressed locally. Our rural councillors would have insights and suggestions, which would wind their way up the chain of command if the Province needed to become involved. It is a given that municipal officials know local conditions. They need to speak to local issues, particularly those related to drainage work, since the rural municipality has responsibility for road building, obviously ditch making as well. Further to this, it is our understanding that intermunicipal boards work relatively well in some areas of the province. The Province might well add to the 4300 kilometres of provincial waterways if and when there is a call for it. Watershed boundary changes should be done in consultation with local input, as this would have a significant impact. Our municipal tax base is weighted in favour of well-drained arable farmland. The well-being of an agricultural-based rural community is dependent on that land to produce consistently.

As participants of the Pembina River basin advisory committee this past year, we heard time after time that the Province should initiate a compensation package for property owners who are compelled to give up acreage for wildlife habitat. Having said that, it is also a matter of record that less than 18 percent of Manitoba's surface area is designated farmland. Agriculture is still a mainstay in Manitoba's economy. Could we suggest that provincial Department of Agricultural Involvement might lend some balance to the issues involving natural habitat and farmland? When should one become the

other, and what criteria would serve the interests of society in the long term? We may be facing a commodity glut at present, but as an exporting province nation, we should keep in mind that population growth globally is projected to reach another two billion in 20 years. Obviously, a balance needs to be struck between agricultural concerns, society's needs, ecological concerns and global realities.

Before the last election, Liberal Jean Charest did call for an improved drainage system for southwestern Manitoba, as did Alan Ransome of KAP, by way of resolution, which was passed. If the Province is open to this position, let us hear their response.

Increasingly, in our part of the country, we are hearing about Ducks Unlimited personnel working with and for the Department of Conservation and, in some instances, coming with a bias which does not serve agriculture. This has been our experience as well. In our case, the Department of Natural Resources assumed it had jurisdiction. Assumption became presumption; they figured we needed to keep that water on our property. For almost four years, we have lived with a bureaucratic fallout. It has been stressful and costly. Although we do not have a formula in mind which would prevent a repeat of our experience, we would suggest that, if this present administration is a government by the people for the people, it would make every attempt to serve the interests of the farming community, even with this legislation. The food on our plates even today would serve as a reminder that that is reasonable. How would the farmer in the Red River Valley get along if drainage ditches were not maintained or even closed? How would the farmers at The Pas manage if they were not allowed to use the ditches and the lift stations? How would the city of Winnipeg manage without well-engineered storm sewers? When Mother Nature throws a curve at us, the answer does not come to us by folding our hands in our laps, nor does it come to us by designating more land to wetlands.

Will there be "broad-based public consultation into a complete review of the Water Rights Act later this year?" That is a Manitoba Government news release as of April 12, 2000.

In what way will the "new legislation . . . provide for a more harmonized approach to water management involving the province and municipalities?"

If and when this legislation is passed, can you safeguard against the abuse of power in the future and safeguard against only certain interest groups that they might be served? Does this legislation serve the interests of the people in Manitoba? Thank you.

Now on to Michael Waldron's brief, which he quickly put together when he heard that we could present this brief. I will just go down in point form as he has presented it here:

As counsel for Ray Hildebrandt, I am probably as familiar with the existing legislation in this area as anyone else in the province.

1. Despite what you have heard, the provincial government is not changing the law back to what it was.

2. The proposed changes are in fact changing the law from what it has been for years.

3. The provincial government has jurisdictions over drainage without any amendments to The Water Rights Act. All the provincial government has to do is declare any particular waterway to be a provincial waterway. It will then have absolute jurisdiction over it.

4. Any waterway not declared to be a provincial waterway is then part of a municipal drainage system.

5. This logical division of jurisdiction ensures that the provincial government has control over significant waterways that impact on the province while the municipalities control minor drainage within the boundaries of the municipality.

6. The changes proposed to the law by the Conservation Department, formerly the Department of Natural Resources, are an attempt by the bureaucracy in that department to obtain the authority to enforce a philosophical mindset on the farming community. By authorizing this

amendment, the provincial Legislature is giving conservation officers the power to create wetlands on farmers' fields without process, without compensation and without appeal.

7. Who is protecting the interests of the farmer with respect to these legislative changes?

**Madam Chairperson:** Thank you for your presentation. For the sake of the record, could you state whether you are Bill or Ray Hildebrandt?

**Mr. Hildebrandt:** I am Bill Hildebrandt, representing both of us.

**Madam Chairperson:** Do members of the Committee have any questions they wish to address to the presenter?

**Mr. Enns:** Mr. Hildebrandt, can you just for the committee members' edification give us a very brief history? We are aware, of course, that you got into a dispute with the Department, with the provincial government, it ended up in a court case, and the court case ruled in your favour. But take us back to where this started. You had some land that you had farmed for many years.

**Madam Chairperson:** Mr. Hildebrandt. I am recognizing you for the record each time that you are going to respond.

\* (11:20)

**Mr. Hildebrandt:** Very well, thank you. Well, as a brief overview, two R.M.s, we have farmland in both, decided to rebuild, reconstruct what we call a divide road because it is obviously shared by the two R.M.s. We live right on that divide road, at least my farm yard is right on it, and there was a consensus reached that they would indeed bring a certain amount of water out of that area.

I would say about ten or a dozen years prior, another construction had brought additional water in, which was now beginning to build and flood some of our farmland.

**Mr. Enns:** Excuse me. Madam Chairperson, this was being done by the municipalities involved?

**Mr. Hildebrandt:** That is correct, the two R.M.s. Apparently they had been in touch with the engineering department and had verbal consent. The surveys were done, this would work, there would be no problems. When the project was about two-thirds done, the department of Natural Resources walked in and basically put their finger on my chest and said you are draining our wetlands, and the battle was on.

**Mr. Enns:** But this particular land in question was not wetland five or ten or fifteen years before. You had been farming it for a number of years.

**Mr. Hildebrandt:** That is correct. Yes, we are in pothole country. There are some wetlands, but certainly this had gone way beyond what was normal for our part of the country. It was actually putting part of that road at risk. There was a lot of pressure from Manitoba Pool and others to get that reconstructed, simply because it was needed.

**Mr. Enns:** Madam Chairperson, I have had the privilege of being both Minister of Agriculture and Minister of Natural Resources. I happen to have a lot of respect for organizations like Ducks Unlimited and the reclamation of wetlands in this province.

I am also aware, and I have presided over some fairly significant programs with dollars attached, that when we as a society decide that we are going to enlarge or we are going to develop our wetlands at Oak Hammock for instance, we took back from agriculture some 5000, 6000 acres of land but compensated the farmers very well for that land.

My question to you, Mr. Hildebrandt, when that resource officer tapped you on the chest and said you are draining our wetland, had you ever been offered any compensation for the acres of land that you had previously farmed but were now under water and being lost to you for farm production?

**Mr. Hildebrandt:** I am afraid, Mr. Enns, it is the exact opposite. It seemed as if the harassment had just begun, and we are going

back to the fall of '96. The two R.M.s, they were pretty much onside, wanting to ensure that that road would get built, so they lobbied and attempted to persuade the department to issue a licence.

It finally came, I believe it was in the spring of '99, with a proviso that the R.M.s would have to take full responsibility for any downstream effects. It was done on a very limited basis, although there was a one-time licence issued to get the water out to ensure that the road could be done, or finished. But, this, going back now, I believe it was probably a year after the road construction actually began.

But we lived with the frustration of an unfinished road but also with excess water. We could not see rhyme nor reason why this was happening, except we were going to build wetlands on farmland.

**Mr. Enns:** Well, Madam Chairperson, I regrettably, cannot say that I know Mr. Hildebrandt nor have I visited this particular land in question, but I object strenuously to the process.

I direct myself to the Minister. This land in question may well deserve to be put into our wetland inventory, and that is a legitimate function for Manitoba Conservation to consider. But, surely, we are fair-minded people around here. If that is the case, then long before this individual farmer, this individual citizen, had to go through the turmoil of going to court, paying the costs of going to court, fighting our government—and this action started before September 21, and I recognize that, Mr. Hildebrandt.

But, surely, it is not too late to redress what I believe to be a wrong. If this land is to be maintained as wetlands, then there should be serious discussions with the Hildebrandt families about compensation, about the future of that land in question, or they should be given what the court has ordered, the right to do what they are doing. Thank you, Madam Chairperson.

**Mr. Hildebrandt:** I am not sure if I have a response to that except to say that we would much prefer to farm our property and not be

encumbered with courts and whatnot. We went through the three levels of court, and it did take until this spring to finally get an answer.

**Madam Chairperson:** Are there further questions?

**Mr. Jack Penner:** Thank you very much, Mr. Hildebrandt. I think this is probably an unfortunate situation that we are here today. I think this bill has some very significant ramifications to the farm community in general. I only ask this committee and the Chairperson and the ministers: Who around this table or who, in this instance, speaks for the farmer? The farmer is the one that is going to be most significantly affected by this legislation.

I am concerned that the municipalities want to walk away from the responsibility that has been given them under law. That right is to determine, on a local regional basis, where and when water should be removed from farmland, and how that be done. This law would, in my view, look at putting in place a process that would remove entirely any local responsibility. That is what this law does.

I know what the recommendations are from the AMM, and I respect many of those recommendations because I think there is something to be said for using either drainage district boards or conservation districts. I think they could be one and the same if we chose to make it that. That is what this legislation should speak to. The licensing authority, or the permitting authority, should be much, much more localized, in my view, than this.

I would ask you whether you see, as a farmer, under this law, being able to operate in the long term in a wet year or even in a dry year, if in fact there are no more resources given to this department to police and/or to permit, under this law, the requirements. How, as a farmer, do you see being able to fulfil your duties?

**Mr. Hildebrandt:** Well, certainly, we did not feel that we could live with the kind of repressiveness that went with our fiasco. At a time when jurisdiction did not seem to be clear-cut, our two R.M.s did pass drainage by-laws which certainly would have served the purpose,

and that is why I made reference to inter-municipal boards. I am not quite sure how they are set up.

I have talked to people in Rhineland Municipality, Stanley, and apparently they work relatively well, because obviously water does flow across municipal boundaries. I made reference to Pembina River basin advisory board. I was a participant there this last year. More and more, we were hearing that there had to be grassroots input into these concerns. That is why I am a little nonplussed by the AMM's position when we need good rural representation. We need somebody to speak up for the farming community, rather than offload on the Province that they would now go back to where they thought they were at one point and could come in and send a young Natural Resources officer out and tell us that you have not seen anything yet. You might think that you would be living in a Communist state, because we will be patrolling every one of these roads. Now, that is a little difficult.

\* (11:30)

**Mr. Jack Penner:** Under section 3, "Section 2 is amended by striking out 'or diversion' and substituting ', diversion or control.'" That, if you go on to section 4 then, where we say section 3(1) is amended in a clause by adding "after 'he'; and" to this, which gives it in (b) the authority to construct or restrict construction, establish, operate, or maintain any works. I think that is the key operative word in this proposed amendment, that it would restrict or control any works at all. That includes, in my view, the ability of a farmer to take his tractor into the field and make tracks down the field to drain a puddle of water into a ditch. You would have to have a ministerial approval under this law for that kind of works. That is what concerns me about this legislation. Under (c) it goes on to say: "control water or construct, establish, operate, maintain any water control works, unless he or she holds a valid licence."

Now let me give you another example. In the case of the potato growers in the southern part of central Manitoba, we have built a large number of storage ponds, some of them up to 80 acres in its entirety. In order to be able to supply

water to those ponds, every spring the farmer sets up a large pump, up to 16 inches in diameter, and these pumps fill these large reservoirs in the spring of the year with run-off water to be able to irrigate their potatoes in summer. It works well. In order to be able to pond water within the flowing stream, they need to construct a little dam, sometimes here, sometimes there; it depends on where they are pumping the water from. This would mean that every time they would move a pump, they would have to go back to the Minister for a ministerial licence to operate this.

I will give you another example. This spring the streams did not flow water. There was no water. One of the farmers had to go to North Dakota to pump water out of the Pembina River and export water out of the United States into Canada and set up two large pumps and pump water into the south Buffalo and ran water down the Buffalo into a ponded area, and the farmers pumped water out of that area into their storage pond.

Now, if the Americans would have had exactly the same licence that we are applying here, that person would have had to go to Washington or the State of North Dakota in order to get a licence. Yet over there, all he had to do was go to the Cavalier County Water Management Board, and they said go ahead and pump. That allowed us to grow a crop of potatoes this year. This law would prevent any of those kinds of activities as the law is written. So for a farmer this simply becomes a law that will be broken year after year after year, which makes or will make our farmers lawbreakers.

Can you as a farmer operate, would you feel in good conscience you could operate in that manner of this new law?

**Mr. Hildebrandt:** I concur with you, Mr. Penner, that it would become so unwieldy and so difficult that there might even be an exodus of farmers from Manitoba if we are to live under those rules. Certainly our experience was that, when there was an assumption that the Province had jurisdiction and someone came in with a rather heavy hand, it pretty much took our focus from farming to survival rather than do what we ordinarily would have done with our families.

Maybe my theology does not allow for it, but I felt that we had been put through hell just to appease one or two individuals who felt that these wetlands needed to extend across our farm property.

**Mr. Jack Penner:** So, Mr. Hildebrandt, what you are really enforcing then is the statement that the Honourable Member Mr. Enns said before in the opening of his statement: This is the heavy hand of government coming down with an authoritative force to ensure that we will know who has the authority, and this law is a law that gives dictatorial powers to one minister.

Do you think that farmers will be able to abide by this law? Will they be able to function as food producers in this province under this current law as it is being proposed?

**Mr. Hildebrandt:** No, I feel that there has to be more local control. Yes, there is a place for the Province to be involved, but certainly we have to look at something that will give local people some authority, some jurisdiction in order to deal with local issues which can only be addressed locally. How would somebody in an office in Winnipeg be able to determine whether a licence or an application for a licence is legit?

When the two R.M.s in question here decided to pass their own by-laws, they also made provision for licensing which I think if left in their hands would have worked relatively well.

**Mr. Gerrard:** Thank you for your presentation. Clarification on a couple of points: What sort of time frame do you think is appropriate for an application to a decision? There has been some discussion of that clearly earlier on today, but in terms of land use and your ability to plan for your farm, what sort of time frame do you need to make a decision within?

**Mr. Hildebrandt:** We are talking about the licensing process here? Well, certainly, if an R.M. or in conjunction with a conservation district, however it is set up, it may be a watershed area, if they had personnel in place—and, again, I am saying that there is a place for the Province to be involved, but, certainly, if they came to look at a project or a problem area,

if it needs to be dealt with, and I am referring back to something that Mr. Penner said just a few minutes ago, how in the world are we going to do this quickly if it is all caught up in bureaucratic red tape and still get that water off if it needs to come off?

As I referred to in my brief, our reeve did come on radio to suggest if you need to V trench, whatever you need to do, we are in an emergency situation. A million plus acres did not get seeded, and most of us were out there by the middle of June trying to quickly beat the crop insurance deadline date, but we had to and we V-trenched as did most of our neighbours or even more so than that, used whatever means to try and reclaim some of the cropland that would ordinarily have gone into crop.

But the time frame, in itself, I wish it could be done in as quickly as a week, but I understand that that is probably unrealistic. But I would say somewhere between two and four weeks should allow a farmer to make some reasonable decisions.

**Mr. Gerrard:** In the presentation by Michael Waldron, there was the comment about the provincial waterways and the designation of additional water, rivers, lakes as provincial waterways. Perhaps you could comment a little bit more if this process were followed, how it would work.

**Mr. Hildebrandt:** Sir, I am not an expert, although I am now familiar with The Water Rights Act and a few other acts. But it seems to me that, historically, even though some of the news releases did come across as this being now, this legislation now reverting back the powers to the province, and I did grow up in the Red River Valley, things were done differently than what this legislation would propose. By and large R.M.s made decisions. I have had relatives—my grandfather was a reeve and a councillor. I remember him talking about situations back in the '40s and '50s. And, yes, there was co-operation between R.M.s and there needed to be, but as to the mechanics of dealing with provincial waterways and how they have been designated, obviously that has been in place.

I did do a little bit of a review on the history of legislation, how it developed over the years. To me it looked like it was evolving. Yes, there are problems, but it was evolving in the right direction where there would be some local input and control. Whether or not the R.M.s or the AMM, whoever might be involved in helping the province decide which provincial bodies would be designated provincial waterways, I am not quite sure how that would be done. Certainly, I think, there is room to expand on this very concept that seems to be foreign to a lot of people and yet it has been in place for years.

\* (11:40)

**Mr. Gerrard:** In your brief you referred to the fact that I called for better drainage in southwestern Manitoba. Indeed, you are quite correct. It seemed to me it was very important after the events of last year to move quickly to improve the drainage in water management so that there would not be a repeat if there was further wet weather. Just to ask you to comment a little bit further about what needs to be in place in terms of provincial support for building that improved drainage and water management system and perhaps comment back as well relative to what happened in the Red River Valley, for example, because you have some familiarity there.

**Mr. Hildebrandt:** Like I said, I did grow up in the valley and left there in my early '20s and proceeded to farm in the Boissevain area for the last 33 years. We do dialogue back and forth a fair bit with others that are relatives, friends, et cetera. What surprised me was that during the '97 flood, there was a lot of money flowing from both levels of government. I did have a visit with a gentleman that actually was doing custom work for neighbours, improving his own drainage system—this was late into the fall of '98. He said, we are getting custom rates for all of this kind of work. I am suggesting that we cannot just be closed down just because we live 150 miles west of the valley or 100 miles west of the valley. We need some consideration there. There are a lot of people hurting badly. The retail trade is down drastically because of last year's problems. However, it is done and whatever kind of funding gets put in place, it is

needed. We need a little more open-mindedness about drainage systems.

If Buffalo Creek and the valley can be improved, we have waterways that are silted. Road construction in years past has caused a lot of that. Where there used to be bridges, there are now culverts and some of them were placed too high in the roadway. We can see on older maps where waterways used to be and they are non-existent now. Are we prepared to let all this go back to wetlands during the course of, let us say, a succession of wet years? Or should we maintain our tax base in rural Manitoba and southwestern Manitoba? Should we maintain that so that there is something there for our children and for our future?

**Mr. Gerrard:** So the case that you are making is for some future investment provincially and federally to help prepare and make sure that southwestern Manitoba is better prepared in terms of wet weather years through water management and drainage infrastructure investments.

**Mr. Hildebrandt:** That is correct. I would like to be on record as saying that, yes, I believe in regulated drainage, but I do not believe in allowing one department to work at cross purposes with agriculture when I think it is a mainstay for Manitoba.

**Mr. Nevakshonoff:** Thank you for coming in today, Mr. Hildebrandt. First of all I would like to say that I am not a farmer, not yet, that is. I might be one in the future here, but as MLA for Interlake many of my constituents are farmers. I can certainly sympathize with them their feelings of frustration and so on, when they drive across and look at the yellowed fields and the full ditches and so on and so forth that we are experiencing right now. So my sympathies in that regard.

I think the crux of the issue here is basically the interaction between two systems. We have a provincial waterway system which is largely a static system. It was put in place years ago. It is essentially the trunk lines. Then you have an ever growing municipal network that is adding to this provincial system, a system that has set standards. It was built to certain specifications,

so many cubic feet per second and all that. I think this is the problem that the province is facing, that as the municipal network expands it puts pressure on the provincial system, and eventually it will go beyond the maximum point and the whole system could start to break down. So on that basis I think the province has a continued responsibility to exercise control over drainage. This is what I feel that this bill is all about here.

Individual farms are basically isolated entities, as I see it, and are under extreme pressure today to survive financially in a very competitive world. It must be very difficult for them if they are dealing with water problems. However, I think that we have to bear in mind and focus on the fact that water flows downhill and that any water going off one person's farm is going to go downhill onto the next person's farm. The Honourable Member for Emerson (Mr. Jack Penner) referred to maybe constructing little dams or draining puddles off fields, but oftentimes these are not puddles we are referring to. These are large buildups of water, and this water has got to go somewhere. I guess somebody has to be the arbitrator here.

Somebody has to sit back, somebody who is removed from immediate concerns, and make decisions as to where water is going to be contained or held or controlled until it all eventually can be flowed out of the system.

I think your frustration is based more with the limited resources of the system, the fact that it has taken so long for you to get drainage licences. Rather than remove the Province from the picture here, perhaps the solution is to expand the resources of the Department of Conservation, so that they can more efficiently address problems such as yours.

Quite possibly, the root of the problem here is the fact that cutbacks have been made over the years, over the past decade, to the point where the Department itself is undermanned now and underfinanced so that it cannot function properly. Maybe that is the root of the problem here, not necessarily the fact that the Province is trying to maintain its control over how water flows here. That is my one question to you.

\* (11:50)

**Mr. Hildebrandt:** With all due respect to your position, I should refer to what our solicitor put forward about a philosophical mindset. I imagine we all have differing agendas when it comes to water resources, but, certainly, I would have to take exception to your ideal of farms being isolated entities when, indeed, they are all part of this community or this rural infrastructure and certainly add to the good of the whole.

In our discussions last winter with the Pembina River basin advisory committee, there was one study. I am afraid I cannot name the study itself, but even if during the '97 flood all of the Pembina River escarpment had been drained, it would have added about an inch to the Red. Now, you might say that is a relatively small area, but it is quite extensive, and it does go down into North Dakota. It seems to me that the myth that any water drained just adds and causes flooding downstream, I believe that as farmers we know that water is very important as a resource, but if we grow crop rather than leave land in shallow slues, we take infinitely more moisture out of that soil than if it is just left there for the bulrushes.

So I am suggesting that there has to be a balance struck, and I do not see this legislation as adding anything to the viability of the farming community. To me, it looks like we are looking at heavy-handed government power coming down from on top. We need grassroots participation. We certainly need government from the bottom up.

**Mr. Nevakshonoff:** Due to the fact that there is so little time left, I will pass on further questions.

**Mr. Faurschou:** Just one quick question, Mr. Hildebrandt, in regard to the Manitoba Government news release dated April 12. Was it your impression that there would be broad-ranging public consultations prior to the passage of this legislation?

**Mr. Hildebrandt:** Very definitely, and I guess a further concern that I need to draw to your attention as a committee is the fact that I have had municipal people come to me after an AMM meeting, and they have overhead government

bureaucrats at the meeting suggesting, well, let us quickly get this thing done and let us not make too many waves. That I find unacceptable.

**Mr. Maguire:** Thank you for your presentation today, Mr. Hildebrandt. It was interesting and refreshing to hear your—or frustrating, I imagine, from your point of view, to have to ask you to go through the procedures that you went through in the process in the beginning of this whole issue when there were decisions being made by municipal levels, you said, as well, correct me there. My question is the involvement of the municipal level: The two municipalities did agree on a process?

**Mr. Hildebrandt:** If the municipalities had been allowed to do what they had proposed and what they were working at and even based on the surveys that engineering department of the department of natural resources had brought forward, none of these problems would have evolved. That is why I am suggesting that our experience has been that it should be left more so locally. In our case, we would not have gone through the courts. This water would have been brought down to an acceptable level. They backed away when the department became involved, where they were compelled to ask for a licence.

**Mr. Maguire:** I think there is definitely a difference between what this bill says and what everybody in the room has indicated they would like to see down the road in the future. I think that that is more co-operation between individuals, between municipalities, conservation districts, with the ultimate goal of a long-term plan.

This bill, as it is worded, does not speak to the long-term plan at all. That is our concern. To say, we are here, trust us, is not exactly what makes good legislation, because we do not know if the good intent of those who may be putting it forward today, they may not be here next week, next election, next year, whatever. So, I guess, to say that trust us and we will bring forth a good piece of legislation without even mandating an opportunity to look at developing further management plan for water in Manitoba is part and parcel of why we have some grave concerns

about the Bill in its present form moving forward.

Your presentation today says, you know, how do we assure that there is not going to be abuse of power in the future? You have a situation here where the Minister could overrule any of The Municipal Act changes that have been put in place in the past or The Municipal Act as it stands today. You have indicated, as well, that you are looking at a situation where the long-term planning is needed, but the overriding part of it is the ability, as you have said in your presentation today, for the province to be able to proceed without this bill. Can you elaborate somewhat more on that?

**Mr. Hildebrandt:** Can you rephrase that question?

**Mr. Maguire:** I will, just to clarify that it is your feeling that the Province could have rights over the drainage of water without bringing this bill forward. Let us go back one, that you would say that the court case that won was based on the definition of the word "divert." Is that true? Would that be the case?

**Mr. Hildebrandt:** That is largely the case. That is correct. Just as I read Michael Waldron's brief, the fact that the Province does have jurisdiction, if they so wish to designate provincial water-

ways where there are concerns with flooding, et cetera, obviously that means they are also then responsible for maintaining waterways. The very interesting part about our dilemma or the problems that we faced was that even though the two R.M.s did finally get a licence, the Province put a proviso in the licence saying "we will not accept responsibility." The two R.M.s have to take responsibility if you sign into this. In fact, it was not a licence, it was a contract.

Further to that, the Department did come in, did sort of a cursory overview of where those watershed boundaries were and in midstream changed the watershed boundary.

**Madam Chairperson:** Order, please. The hour is now 12 p.m. I would like to thank you for your presentation, Mr. Hildebrandt, and answering questions.

That concludes the list of presenters that I have before me this morning. Are there any other persons in attendance who wish to make a presentation?

Seeing none then, the hour being 12 noon, as previously agreed, the Committee will rise.

**COMMITTEE ROSE AT:** 12 p.m.