

**MANITOBA WATER STEWARDSHIP PUBLIC CONSULTATION DRAFT
NUTRIENT MANAGEMENT REGULATION**

Nutrient Management Regulation under *The Water Protection Act*

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PART 1

DEFINITIONS, INTERPRETATION AND PURPOSE

Definitions

1(1) The following definitions apply in this regulation.

"**Act**" means *The Water Protection Act*.

"**drain**" means a drain designated as an Order 1, 2, 3, 4, 5 or 6 drain on a Manitoba Water Stewardship plan that shows the designation of drains.

"**drinking water source**" means a source of drinking water for a public or semi-public water system as defined in *The Drinking Water Safety Act*.

"**groundwater feature**" means a sinkhole, a spring or a well other than a monitoring well.

"**high water mark**" means a point on land that would be at the water's edge when the water reaches the following level:

(a) in the case of a reservoir, the full supply level;

(b) in the case of a drain, the bank-full level;

(c) in the case of any other water body, the highest level to which the water usually rises each year and at which it remains long enough to change the characteristics of the land or the vegetation on the land.

"**nutrient management zone**" means a water quality management zone designated under section 3 for the management of nutrients.

"**organic soil**" means soil developed mainly from organic deposits and consisting of least 17% organic carbon (30% organic matter) to a depth of 40 cm (16 in) if formed from mesic and humic peat, or 60 cm (24 in) if formed from fibric peat.

"**registered plan**" means a nutrient management plan registered under Part 5.

"**soil class**" means a class of soil classified using the approach described under the heading "Soil Capability Classification for Agriculture" in *The Canada Land Inventory Report No. 2*, published in 1972 by the Government of Canada, Department of the Environment.

Interpretation of "major wetland, bog, marsh or swamp"

1(2) For the purposes of this regulation, a wetland, bog, marsh or swamp is major if

(a) it has an area greater than 2 ha (4.94 acres);

(b) it is connected to one or more downstream water bodies or groundwater features; and

(c) it contains standing water or saturated soils for periods of time sufficient to support the development of hydrophytic vegetation.

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Interpretation of "application"

1(3) For greater certainty, the deposit of manure by a grazing animal outside of a confined livestock area, as defined in the *Livestock Manure and Mortalities Management Regulation*, is not to be considered an application of a substance containing nitrogen or phosphorus to land by a person.

Purpose

2 The purpose of this regulation is to protect water quality by encouraging responsible nutrient planning and by regulating or prohibiting

- (a) the application to land of substances containing nitrogen or phosphorus; and
- (b) the development of certain types of nutrient generating facilities in environmentally sensitive areas.

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PART 2

WATER QUALITY MANAGEMENT ZONES FOR NUTRIENT MANAGEMENT

Water Quality Management Zones

3(1) The following water quality management zones are hereby designated for the management of nutrients in accordance with this regulation:

- (a) zone N1, consisting of land belonging to, or having the characteristics of, soil class 1, 2 or 3, other than 3M, 3ME, 3MI, 3MN, 3MP, 3MT and any other subclass of soil class 3 having an "M" subclass designation;
- (b) zone N2, consisting of
 - (i) land belonging to, or having the characteristics of, soil subclass 3M, 3ME, 3MI, 3MN, 3MP, 3MT or any other subclass of soil class 3 having an "M" subclass designation,
 - (ii) land belonging to, or having the characteristics of, soil class 4, and
 - (iii) land belonging to, or having the characteristics of, soil subclass 5M, if it is being irrigated;
- (c) zone N3, consisting of land belonging to, or having the characteristics of, soil class 5 that is not included in zone N2;
- (d) zone N4, consisting of
 - (i) land belonging to, or having the characteristics of, soil class 6 or 7, and
 - (ii) land comprised of unimproved organic soils;
- (e) zone N5, consisting of
 - (i) land in a city, town, village, local urban district, or a community as defined in *The Northern Affairs Act*,
 - (ii) a lot shown on a plan of subdivision and having an area of 2 ha (4.94) acres or less, and
 - (iii) land not described in subclause (i) or (ii) that is in a built-up area,but not including land used primarily for agricultural purposes;
- (f) the Nutrient Buffer Zone, consisting of the lands described in subsection (3).

Interpretation

3(2) For the purpose of subsection (1),

- (a) land that would otherwise be in any of nutrient management zones N1 to N4 is deemed not to be in that zone if it is in zone N5; and
- (b) land that would otherwise be in any of nutrient management zones N1 to N5 is deemed not to be in that zone if it is in the Nutrient Buffer Zone.

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Nutrient Buffer Zone

3(3) The Nutrient Buffer Zone consists of the following:

- (a) land within 15 metres of the edge of a groundwater feature, or within 20 metres of it if that area is not covered by permanent vegetation;
- (b) land within a roadside ditch or an Order 1 or 2 drain;
- (c) land between the water's edge and the high water mark of a wetland, bog, marsh or swamp other than a major wetland, bog, marsh or swamp;
- (d) land adjacent to a water body listed in the following table, having a width from the water's edge to a point that is the distance set out in column A or B, as the case may be, from
 - (i) the water body's high water mark, or
 - (ii) the top of the outermost bank on that side of the water body,whichever is further from the water.

Water Body	A	B
a lake or reservoir designated as vulnerable	30 m	35 m
a lake or reservoir (not including a constructed stormwater retention pond) not designated as vulnerable	15 m	20 m
a river, creek or stream designated as vulnerable		
a river, creek or stream not designated as vulnerable	3 m	8 m
an Order 3, 4, 5 or 6 drain		
a major wetland, bog, marsh or swamp		
a constructed stormwater retention pond		

Use Column A if the applicable area is covered with permanent vegetation. Otherwise, use Column B.

Vulnerable water bodies

3(4) For the purposes of the table in subsection (3), a water body is designated as vulnerable if it listed in Schedule A.

Director may provide zoning information

4(1) The director may at any time inform an owner or occupier of land as to how the nutrient management zones apply to the land. The information is to be provided in writing, and may, with the consent of the owner or occupier, be provided electronically.

Director must provide zoning information

4(2) The director must provide the zoning information to an owner or occupier who requests it in writing and has not previously been given that information.

Owner or occupier may object to zoning

5(1) An owner or occupier who does not agree with the zoning of any area of land that he or she owns or occupies may, within 90 days after receiving the zoning information from the director under section 4 or within such additional time as the director allows, file a written objection with the director that

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- (a) is in a form approved by the minister;
- (b) identifies the area which, in the opinion of the owner or occupier, is incorrectly zoned; and
- (c) is based on written scientific or technical information and includes that information.

Director to review zoning

5(2) After receiving an objection that meets the requirements of subsection (1), the director

- (a) must review the zoning of the area in dispute in light of the scientific or technical information provided with the objection;
- (b) may obtain expert advice to resolve any outstanding scientific or technical issues; and
- (c) as soon as reasonably practicable, must confirm or vary the application of the nutrient management zones to the area for which the zoning is in dispute, and notify the owner or occupier in writing of that decision.

Limited application while zoning in dispute

5(3) If

- (a) a person who was lawfully carrying on an operation or activity in an area within a nutrient management zone files an objection under subsection (1) in respect of the zoning of that area;
- (b) the carrying on of that operation or activity is prohibited or restricted under Part 3; and
- (c) the prohibition or restriction would not apply to that area if it were in the zone in which the person reasonably believes it to be;

then until the director has made a decision under clause (2)(c) and notified the person of the decision, that area shall be treated for the purposes of Part 3 as being within the zone in which the person reasonably believes it to be.

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PART 3

APPLICATION OF NUTRIENTS

Application

6(1) This Part does not apply

(a) before 2011 to land in nutrient management zone N1, N2 or N3; or

(b) before 2009 to land in nutrient management zone N4 or the Nutrient Buffer Zone;

unless there has been a material change in use of that land after November 8, 2006. For this purpose, a change in use is not material unless it adversely affects water quality or increases the risk of adversely affecting it.

Limited application — s. 7 and 8(2)

6(2) Section 7 and subsection 8(2) do not apply to land to which livestock manure is being applied while the land is the subject of a manure management plan that

(a) is registered under the *Livestock Manure and Mortalities Management Regulation*; and

(b) addresses all sources of nutrients that will be applied to the land, including livestock manure, synthetic fertilizers and municipal wastewater sludge.

Nitrogen application limits for zones N1 to N3

7 No person shall apply a substance containing nitrogen to land within nutrient management zone N1, N2 or N3 except

(a) as a fertilizer;

and either

(b) in accordance with a registered plan; or

(c) in the absence of a registered plan, in a manner or at a rate of application that results in a residual concentration of nitrate nitrogen within the top 0.61 m (2 feet) of soil at the end of the growing season, at any place within the application area, no greater than

(i) 157.1 kg/ha (140 lbs/acre), in the case of land in zone N1,

(ii) 101 kg/ha (90 lbs/acre), in the case of land in zone N2, or

(iii) 33.6 kg/ha (30 lbs/acre), in the case of land in zone N3.

Definitions

8(1) The following definitions apply in this section.

"**phosphorus removal rate**" means the rate at which, during a growing season, phosphorus, expressed as P_2O_5 , is removed from an area through plant uptake of phosphorus from the soil and export of the resulting product from the area, taking into account the plants grown or to be grown in that area for that growing season.

"**ppm**" means parts per million.

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"soil test phosphorus level" means the concentration of phosphorus within the top 0.15 m (6 in) of soil

(a) as determined using the sodium bicarbonate extractant soil test procedure for determining phosphorus levels as outlined in the *Recommended Chemical Soil Test Procedures for the North Central Region* (North Central Region Research Publication No. 221, Revised January 1998; University of Missouri-Columbia) and commonly known as the Olsen procedure; or

(b) as determined using another procedure acceptable to the director and converted to a result equivalent to the result that would be obtained by using the Olsen procedure.

Phosphorus application limits for zones N1 to N3

8(2) No person shall apply a substance containing phosphorus to land in nutrient management zone N1, N2 or N3 where the soil test phosphorus level for any place in the application area is 60 ppm or more, except

(a) as a fertilizer;

and either

(b) in accordance with a registered plan; or

(c) in the absence of a registered plan,

(i) at a rate of application that does not exceed

(A) two times the applicable phosphorus removal rate, if the soil test phosphorus levels are less than 120 ppm, or

(B) the applicable phosphorus removal rate, if the soil test phosphorus levels are 120 ppm or more but less than 180 ppm, or

(ii) as otherwise permitted by subsection 12.1(3) of the *Livestock Manure and Mortalities Management Regulation*.

Additional restriction

8(3) If livestock manure has been applied to land at more than two times the phosphorus removal rate as permitted by subsection 12.1(3) of the *Livestock Manure and Mortalities Management Regulation*, no person shall apply a substance containing phosphorus to that land before the next time that livestock manure may be applied to that land.

No nutrients to be applied in zone N4

9(1) Subject to subsection (2), no person shall apply a substance containing nitrogen or phosphorus to land within nutrient management zone N4.

Application to existing operations

9(2) If on November 8, 2006 a person was carrying on an operation or activity that involved applying substances containing nitrogen or phosphorus to land in nutrient management zone N4, the person may continue to apply them to that land in the course of carrying on that operation or activity after the day that this regulation comes into force, but only in accordance with a registered plan.

No nutrients to be applied in Nutrient Buffer Zone

10 No person shall apply a substance containing nitrogen or phosphorus to land within the Nutrient Buffer Zone.

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No discharge, release or application of nutrients to water

11 No person shall discharge, release or apply a substance containing nitrogen or phosphorus directly to a water body or into a groundwater feature, except as authorized by or under *The Environment Act*.

Restriction on winter application of nutrients

12(1) Subject to subsection (2), no person shall apply a substance containing nitrogen or phosphorus to land in any nutrient management zone between

- (a) November 10 of one year, or any later date specified by the director; and
- (b) April 10 of the following year, or any earlier date specified by the director;

in circumstances where livestock manure would be prohibited by the *Livestock Manure and Mortalities Management Regulation* from being applied to that land during that period.

Exception — wastewater sludge in unusual circumstances

12(2) A municipality may, with the director's approval, apply wastewater sludge to land during the period referred to in subsection (1), but only as permitted by the director. The director may approve the application of it in an emergency or exceptional circumstances.

Restriction — golf course or driving range

13(1) No person shall apply a substance containing nitrogen or phosphorus to land used as a golf course or driving range in any nutrient management zone except in accordance with a registered plan.

Application

13(2) Subsection (1) does not apply before 2009 to land in zone N5 where the land is being used for a golf course or driving range on November 8, 2006.

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PART 4

ACTIVITIES IN ZONE N4 AND THE NUTRIENT BUFFER ZONE

Prohibition re activities in zone N4 or the Nutrient Buffer Zone

14(1) Subject to subsections (2) and (3), no person shall construct, install, site, locate, replace, expand or modify any of the following on land in nutrient management zone N4 or the Nutrient Buffer Zone:

- (a) a manure storage facility as defined in the *Livestock Manure and Mortalities Management Regulation*;
- (b) a confined livestock area as defined in the *Livestock Manure and Mortalities Management Regulation*;
- (c) a sewage treatment plant as defined in the *Classes of Development Regulation*;
- (d) a wastewater treatment lagoon as defined in the *Classes of Development Regulation*;
- (e) an aerated wastewater treatment lagoon as defined in the *Classes of Development Regulation*;
- (f) a privy or an onsite wastewater management system, as defined in the *Onsite Wastewater Management Systems Regulation*, not including a composting toilet system or a holding tank.

Director may approve expansion or modification

14(2) Upon the written application of a person wishing to expand or modify any thing listed in subsection (1), the director may, if satisfied that the expansion or modification will

- (a) improve water quality; or
- (b) decrease the risk of adversely affecting water quality;

approve the expansion or modification, subject to any terms and conditions consistent with the purpose of this regulation that the director considers necessary.

Director may approve construction, etc.

14(3) Upon the written application of a person wishing to construct, install, site, locate or replace any thing listed in subsection (1), the director may approve the proposed activity, subject to any terms or conditions consistent with the purpose of this regulation that the director considers necessary, on being satisfied that

- (a) the applicant will suffer serious economic hardship unless the proposed activity is approved, and
- (b) the proposed activity will not
 - (i) present an unacceptable risk of significant harm to water or an aquatic ecosystem, or
 - (ii) place a drinking water source or public health at risk.

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Regional sustainability assessment

15 If in the director's opinion a region has a net import of nutrients such that water quality may be at risk, the director may carry out an assessment of the region to determine its sustainable nutrient balance, based on its cumulative nutrient inputs and nutrient exports. After such an assessment, the director may take action consistent with the purpose of this regulation, including one or more of the following:

(a) give guidelines or other recommendations to municipalities and other persons involved in land use planning for the region;

(b) give guidelines or other recommendations to owners and occupiers of land in the region in relation to their use of nutrients;

(c) advise the minister to consider recommending, pursuant to subsection 5(1) of the Act, that this regulation or any other regulation made under that subsection be amended, or that a new a regulation under that subsection be made.

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PART 5

NUTRIENT MANAGEMENT PLANS

Submitting a nutrient management plan

16 An owner or occupier of land may submit a nutrient management plan for a growing season, or for a crop rotation cycle or plant production sequence longer than one growing season, to the director for registration. It must be submitted

(a) before February 10, if the plan provides for a fertilization program starting in the following spring; or

(b) before July 10, if the plan provides for a fertilization program starting in the following fall.

Submitting a plan after the deadline

17 Despite section 16, an owner or occupier may submit a nutrient management plan to the director not less than 14 days before starting land application of a nutrient not provided for in a registered plan. An owner or occupier who submits a nutrient management plan under this section must pay an administration fee of \$100. when he or she submits the plan.

Order to submit a nutrient management plan

18 If the director reasonably believes that an owner or occupier of land is contravening this regulation, and there is no registered plan for the land on which the contravention is occurring, the director may issue a written order to the owner or occupier requiring that person to submit, by the date specified in the order, a nutrient management plan for the land to the director for registration.

Registration of a nutrient management plan

19(1) Subject to subsection (2), the director may register a nutrient management plan submitted under section 16 to 18 if it

(a) is in a form satisfactory to the director;

(b) is consistent with the purpose of this regulation and any guidelines respecting nutrient management published by the minister;

(c) addresses all sources of nutrients that will be applied to the land, including livestock manure, synthetic fertilizers and municipal wastewater sludge;

(d) demonstrates that nitrogen and phosphorus are not being applied in excess of the reasonable nutritive needs of growing plants;

(e) is signed by the owner or occupier of the land to which it applies; and

(f) includes or is accompanied by the following information:

(i) the name and mailing address of the owner or occupier, and any other business name under which he or she is or will be operating under the plan,

(ii) the name of the person who prepared the plan, if other than the owner or occupier,

(iii) the location (section, township and range; or municipal street address) of all lands subject to the plan,

(iv) the period to which the plan applies,

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(v) any other information specified in the form approved by the director or any guidelines published by the minister respecting nutrient management plans.

Nutrient management plans for existing activities in zone N4

19(2) If a nutrient management plan submitted for registration deals with the application of substances containing nitrogen or phosphorus to land in the circumstances described in subsection 9(2), the director may register the plan, or the part of the plan dealing with that land, only if the director is satisfied that it

(a) meets the requirements of subsection (1); and

(b) will not, if implemented, adversely affect water quality or increase the risk of adversely affecting water quality;

and the director may register it subject to any terms and conditions that the director considers necessary and consistent with the purpose of this regulation.

Nutrient management plan of small livestock operator

19(3) A nutrient management plan submitted to the director by a small livestock operator is deemed to satisfy the requirements of subsection (1) if it

(a) meets the requirements that would apply to it under the *Livestock Manure and Mortalities Management Regulation* if it were a manure management plan to be submitted under that regulation; and

(b) addresses all sources of nutrients that will be applied to the land, including livestock manure, synthetic fertilizers and municipal wastewater sludge.

"Small livestock operator" defined

19(4) In subsection (3), "**small livestock operator**" means an operator of an agricultural operation who boards, keeps or raises livestock and has fewer than 300 animal units, as determined under the *Livestock Manure and Mortalities Management Regulation*.

Owner or occupier may object

20(1) An owner or occupier of land who does not agree with a director's refusal to register a nutrient management plan, or with any terms or conditions imposed on a registration under subsection 19(2), may, within 90 days after receiving notice of the refusal or of the terms or conditions or such additional time as the director allows, file a written objection with the director that

(a) is in a form approved by the minister;

(b) identifies the reasons why, in the opinion of the owner or occupier, the refusal is incorrect or the terms or conditions are inappropriate or unnecessary; and

(c) is based on written scientific or technical information and includes that information.

Director to review decision

20(2) After receiving an objection that meets the requirements of subsection (1), the director

(a) must review the refusal to register, or the terms or conditions, in light of the scientific or technical information provided with the objection;

(b) may obtain expert advice to resolve any outstanding scientific or technical issues; and

(c) must, as soon as reasonably practicable,

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(i) confirm or reverse the refusal to register, or

(ii) confirm or vary the terms or conditions,

and notify the owner or occupier in writing of that decision.

Amending a nutrient management plan

21 A registered plan may be amended by the director at any time upon receipt of a written application from the owner or occupier of the land to which it applies, containing or accompanied by the information required by the director.

Effect of change in owner or occupier

22 A registered plan is deemed not to be registered after a change in the owner or occupier to which it applies, unless the new owner or occupier has given the director a written notice that

(a) sets out the name and mailing address of the new owner or occupier, and any other business name under which he or she is or will be operating under the plan;

(b) confirms the new owner's or occupier's adoption of the registered plan; and

(c) is signed by the new owner or occupier.

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PART 6

TRANSITIONAL ORDERS RE EXISTING OPERATIONS

Who may apply for a transitional order

23(1) An owner or operator of a commercial or agricultural operation that

(a) was owned or operated by him or her on the day this regulation came into force; and

(b) is affected by subsection 9(1);

may apply to the director for an order under this section.

Content of application

23(2) The application must

(a) be in writing and in a form satisfactory to the director; and

(b) propose a transitional plan by which the applicant will, over a specified period, come into compliance with subsection 9(1).

Transitional order

23(3) The director, on being satisfied that

(a) the applicant will suffer serious economic hardship unless an order is issued, and

(b) issuing an order will not result in activities that

(i) present or may present an unacceptable risk of significant harm to water or an aquatic ecosystem, or

(ii) place a drinking water source or public health at risk.

may make an order

(c) specifying the transitional plan by which the applicant may, over a specified period, come into compliance with subsection 9(1); and

(d) exempting the applicant from the application of subsection 9(1), for the specified period, subject to any terms or conditions consistent with the purpose of this regulation that the director considers necessary.

Notice of decision or order

23(4) Within 10 days after making the order, or deciding not to make an order, the director must give notice of the order or decision to the applicant.

Variation order

24(1) The director, on being satisfied that there has been a change in circumstances, may make a further order varying any provision, term or condition of an order made under section 23. The director may do so

(a) on his or her own initiative; or

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(b) on receipt of a written application, in a form satisfactory to the director, by the owner or operator to whom the order was issued, describing the changed circumstances and any proposed change to the transitional plan.

Notice of decision or variation

24(2) Within 10 days after making the variation order or deciding, in response to an application, not to vary the order made under section 23, the director must give notice of the order or decision to the owner or operator.

Appeal to minister

25(1) A decision or order under section 23 or 24, or a provision, term or condition of such an order, may be appealed by written notice to the minister by the owner or operator to whom it applies.

Notice of appeal

25(2) The notice of appeal must

- (a) set out the facts and reasons for the appeal in a form satisfactory to the minister; and
- (b) be filed with the minister within 14 days after the owner or operator received notice of the decision or order being appealed, or within such further time as the minister allows.

No stay of decision or order

25(3) An appeal under this section does not stay the decision or order pending the outcome of the appeal, unless the minister orders a stay.

Minister's power on appeal

25(4) As soon as is reasonably practicable after receiving a notice of appeal, the minister must consider the appeal and

- (a) confirm, vary or rescind the decision or order being appealed;
- (b) make any decision or order that the director could have made under section 23 or 24;
- (c) refer the matter back to the director for reconsideration in accordance with directions given by the minister; or
- (d) refer the matter to the water council, for a report of its findings and recommendations, before making a decision or order under clause (a), (b) or (c).

Notice of decision or order

25(5) Within 10 days after making a decision or order under subsection (4), the minister must give notice of it to the appellant.

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PART 7

COMING INTO FORCE

Coming into force

26 This regulation comes into force on the day it is registered under *The Regulations Act*.

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SCHEDULE A (Subsection 3(4))

VULNERABLE WATER BODIES

Vulnerable water bodies

1 The following water bodies are designated as vulnerable water bodies:

Rivers, Creeks and Streams

1. Assiniboine River;
2. Berens River;
3. Birch River;
4. Boyne River;
5. Burntwood River;
6. Churchill River;
7. La Salle River;
8. Lee River;
9. Manigotogan River;
10. Nelson River;
11. Pikewitonei River;
12. Pinawa Channel;
13. Red River;
14. Saskatchewan River;
15. Valley River;
16. Waterhen River;
17. Winnipeg River;

Lakes and Reservoirs

18. Boissevain Reservoir;
19. Bowden Lake;
20. Brereton Lake;
21. Caddy Lake;
22. Cliff Lake;

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23. Cross Lake;
24. Deloraine Reservoir;
25. Footprint Lake;
26. God's Lake;
27. Goudney Reservoir;
28. Granville Lake;
29. Hunt Lake;
30. Island Lake;
31. Jackson's Lake;
32. Killarney Lake;
33. Kississing Lake;
34. Lac du Bonnet;
35. Lake Irwin;
36. Lake Manitoba;
37. Lake Minnewasta;
38. Lake Wahtopanah;
39. Lake Winnipeg;
40. Lake Winnipegosis;
41. Landing Lake;
42. Mary-Jane Reservoir;
43. Moose Nose Lake;
44. Nutimik Lake;
45. Paint Lake;
46. Reindeer Lake;
47. Rice Lake;
48. Sherlett Lake;
49. Shoal Lake (located at approximate lat. 49° 37' N, long. 95° 11' W);
50. Snow Lake;

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51. Stephenfield Reservoir;

52. Wekusko Lake;

53. Wellman Lake;

54. West Lynn Lake;

55. White Lake;

56. William Lake.