A Proposed Regulation under
The Water Rights Act

A streamlined and balanced approach to drainage and water retention in Manitoba

Public Consultation Document
November 2018
MINISTER’S MESSAGE

Dear Manitobans,

I am pleased to launch public consultation on a proposed regulation under The Water Rights Act. The proposed regulation is enabled by the Sustainable Watersheds Act which received royal assent on June 4, 2018. The proposed regulation would streamline approvals for lower risk and lower impact drainage and water control works and focus review efforts on those projects that pose a greater risk to our environment and infrastructure. The proposed regulation also supports wetland protection and includes a new requirement to compensate for wetland drainage.

We look forward to hearing your feedback and encourage all stakeholders to share their thoughts.

Sincerely,

original signed by

Rochelle Squires
Introduction: A New Approach

Manitoba Sustainable Development is working towards a streamlined approach for coordinating drainage and water resource management with a goal of no net loss of wetland benefits. The proposed regulation under The Water Rights Act would introduce flexibility for applicants to register certain types of low impact, low risk routine works with Manitoba Sustainable Development for expedited approval. More substantial projects that do not meet the registration requirements would require detailed plans, a thorough review process, and wetland compensation measures. Diverting lower impact projects through the registration process would help Manitoba Sustainable Development address the existing licensing application backlog.

The proposed regulation would also introduce new application fees. The current $25 Water Rights Act licensing fee has not increased since it was introduced three decades ago in 1988. Proposed fees of $100 for registration and $500 for licensing would more accurately reflect the resources required to review project applications.

Expected Outcomes

The proposed regulation for drainage and water control works registration and licensing would:
- streamline applications and approvals
- provide consistent regulatory regimes for drainage, water control works, and compensation for wetland loss and alteration
- reduce red tape and provide timely approvals for low risk and low impact projects
- increase focus on reviewing higher-risk and higher-impact projects
- increase flexibility for requirements for downstream landowner approval of upstream activities
- improve surface water management coordination and communication by providing stronger linkages between watershed plans and municipal plans that influence land use decision-making

Amending The Water Rights Act

In June 2018, the Manitoba government passed The Sustainable Watersheds Act which amended four pieces of legislation, including The Water Rights Act. The amendments to the Act enabled a new registration process for lower risk, lower impact projects and compensation provisions to support no net loss of wetland benefits. The proposed regulation sets out the details to allow the amendments to the Act to come into force.
Harmonizing Provincial Approvals and Reducing Red Tape

The proposed regulation would streamline approvals and reduce red tape by exempting certain activities from The Water Rights Act including:
- Drainage and water retention projects that require a licence under The Environment Act
- Culvert replacements with no change in culvert size or invert elevation
- Water control works in urban areas where the water control works do not drain Class 3, 4, or 5 wetlands or outlet to outlying rural areas

Downstream Approvals

The proposed regulation would ensure that approval is required from those downstream landowners who are significantly impacted by a drainage or water control work project. However, the regulation would introduce flexibility for departmental discretion to ensure projects cannot be vetoed on the basis of complaints without merit.

Strengthening Surface Water Management

Manitoba Sustainable Development and conservation districts are exploring enhanced approaches to surface water management planning to build landscape resilience with a goal of no net loss of wetland benefits.

The proposed regulation would strengthen linkages between The Water Rights Act and The Water Protection Act to improve surface water management by balancing drainage with retention on a smaller watershed scale.
Streamlining Application Processes and Approvals

The proposed regulation under The Water Rights Act would streamline applications and approvals. If a project falls within one of six classes and meets the requirements for that class, it would be eligible to proceed through a simplified authorization process (see table on page 6). Applicants would register eligible projects with Manitoba Sustainable Development and within 14 days they would receive a registration certificate indicating they may proceed with their project. If a project is ineligible for registration or an application is incomplete, the applicant would be notified by a water resource officer within the 14 day period.

If the project cannot be registered, it would proceed through a full licensing review process similar to the existing licensing process. Although such projects will typically be more complex and will take more time to analyze and assess, Manitoba Sustainable Development expects that the licensing review process would move more quickly than the current process because of time savings achieved by moving more projects through the expedited registration process.
Registration and Licensing Application Requirements

<table>
<thead>
<tr>
<th></th>
<th>Registration</th>
<th>Licensing</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fee</strong></td>
<td>$100</td>
<td>$500</td>
</tr>
<tr>
<td><strong>Focus</strong></td>
<td>Lower risk projects</td>
<td>Higher risk projects</td>
</tr>
</tbody>
</table>
| **Requirements**     | • Submit all information on an approved form  
• Include all plans, documents, information and particulars specified in the application form  
• A project is registered if it meets the criteria and associated requirements for one of the six classes of works | • Submit all information on an approved form  
• Include all plans, documents, information and particulars specified in the application form  
• For projects proposing drainage or alteration of Class 3, 4 or 5 wetlands, applicants must choose one of the compensation options – see pages 14 and 15 |
| **Timeline**         | 14 days      | Depends on project complexity, but shorter wait times are expected |

**Fee Changes**

The current $25 licensing fee does not cover the cost of processing a licence application. The proposed registration fee reflects the true cost of reviewing a registration application, and the higher licensing fee reflects the additional resources required to review more complex project applications.

**Jurisdictional Comparison**

Fees for water control projects in other Canadian provinces range from $25 to $8,500.

**Project Bundling**

Individual projects may be grouped under one application for either registration or licensing if the projects are on connecting parcels of land.
Registrable Projects

The following project classes would be eligible for registration.

See pages 8 and 9 for more details on each project class.

A. Minor surface drain construction
B. Agricultural subsurface tile drain construction
C. Water control works for new crossings
D. Minor culvert changes
E. Wetland enhancement and restoration
F. Small dam construction

Non-Registrable Projects

Projects that involve the following actions would be ineligible for registration.

- Loss or alteration of a Class 3, 4 or 5 wetland (see page 12)
- Drainage of Canada Land Inventory Class 6 or 7 soil or unimproved organic soil
- Transfer of water between watersheds
- Negative impacts on fish spawning, rearing, or passage
- Inconsistency with an approved watershed plan
- Violation of conservation agreement restrictions
Registrable Projects and Associated Requirements

These projects would be eligible for authorization through registration and would not require a license.

<table>
<thead>
<tr>
<th>Project Class</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Class A – Minor surface drain construction</strong></td>
<td>• Cannot result in the drainage of Class 6, 7 or unimproved organic soils</td>
</tr>
<tr>
<td>Construction of surface drains with a depth not</td>
<td></td>
</tr>
<tr>
<td>exceeding 12 inches below natural prairie level</td>
<td></td>
</tr>
<tr>
<td></td>
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<tr>
<td>**Class B – Agricultural subsurface tile drain</td>
<td>• Project must be designed by a tile drainage designer who has completed</td>
</tr>
<tr>
<td>construction**</td>
<td>an approved tile drainage course</td>
</tr>
<tr>
<td>Construction of subsurface tile drains and all</td>
<td>• Cannot be located within 50 m of a prescribed class of wetland</td>
</tr>
<tr>
<td>associated water control works that have a drainage</td>
<td>• Average depth of the</td>
</tr>
<tr>
<td>coefficient of equal to or less than 3/8 inch over</td>
<td>o lateral pipe cannot exceed 36”</td>
</tr>
<tr>
<td>a 24-hour period on agricultural lands</td>
<td>o header pipe cannot exceed 60”</td>
</tr>
<tr>
<td></td>
<td>• All outlets are equipped with control devices</td>
</tr>
<tr>
<td></td>
<td>• Cannot result in the drainage of Class 6, 7 or unimproved organic soils.</td>
</tr>
<tr>
<td><strong>Class C – Water control works for new crossings</strong></td>
<td></td>
</tr>
<tr>
<td>Construction of water control works related to</td>
<td>• Application must show size of immediate upstream and downstream culverts</td>
</tr>
<tr>
<td>new access crossings that do not constrict water</td>
<td>• Must demonstrate that culvert in the approach will:</td>
</tr>
<tr>
<td>flow</td>
<td>o Be equal in size to the largest culvert immediately upstream or</td>
</tr>
<tr>
<td></td>
<td>downstream</td>
</tr>
<tr>
<td></td>
<td>o Have an invert elevation at the bottom of the drain</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Project Class</td>
<td>Requirements</td>
</tr>
<tr>
<td>------------------------------------</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Class D – Minor culvert changes</strong></td>
<td>Replacing an existing culvert with a culvert that does not change the hydraulic capacity of the culvert by more than 15%, as long as there is no change in the invert elevation of the culvert</td>
</tr>
<tr>
<td></td>
<td>• Include a pre-construction topographical survey that shows location, size, and invert elevation of existing culverts</td>
</tr>
<tr>
<td><strong>Class E – Wetland enhancement and restoration</strong></td>
<td>Construction of water control works that are not more than 1 m in height and retain less than 25 acre-feet of water that restore a wetland that had previously been drained or increase the area of an existing wetland</td>
</tr>
<tr>
<td></td>
<td>• Include a pre-construction survey of the site that shows the maximum flooded area</td>
</tr>
<tr>
<td></td>
<td>• Any associated landowner approvals including</td>
</tr>
<tr>
<td></td>
<td>o Those who may be flooded by the project</td>
</tr>
<tr>
<td></td>
<td>o Those immediately downstream who may see a reduction in water flow as a result of the plug</td>
</tr>
<tr>
<td><strong>Class F – Small dam construction</strong></td>
<td>Construction of dams less than 2.5 m in height that retain less than 25 acre-feet of water</td>
</tr>
<tr>
<td></td>
<td>• Include a pre-construction survey of the site</td>
</tr>
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<td></td>
<td>• A design plan approved by a professional engineer or other certified agent, that:</td>
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<tr>
<td></td>
<td>o Demonstrates the dam will accommodate a 1 in 100 year flood event</td>
</tr>
<tr>
<td></td>
<td>o Shows the maximum flooded area</td>
</tr>
<tr>
<td></td>
<td>• Any associated landowner approvals including</td>
</tr>
<tr>
<td></td>
<td>o Those who may be flooded by the project</td>
</tr>
<tr>
<td></td>
<td>o Those immediately downstream who may see a reduction in water flow as a result of the dam</td>
</tr>
</tbody>
</table>
Culvert Upgrade Example – Registration Versus Licensing

The following example demonstrates how a culvert upgrade project may meet the requirement for either registration or licensing, depending on the nature of the project.

Scenario 1 - Registration

Project Details:
- Hydraulic capacity of culvert is increased by 10%
- No change to the invert elevation of the culvert

► MEETS REGISTRATION REQUIREMENTS FOR A CLASS D MINOR CULVERT UPGRADE

- Applicant provides a pre-construction survey that shows location, size, and invert elevation of existing culverts
- Applicant submits a complete application form and $100 fee
- Project may be registered

✓ Applicant receives registration certificate within 14 days

Scenario 2 - Licensing

Project Details:
- Hydraulic capacity of culvert is increased by 20%
- No change to the invert elevation of the culvert

► DOES NOT MEET REGISTRATION REQUIREMENTS BECAUSE IT CHANGES HYDRAULIC CAPACITY BY MORE THAN 15%

- Applicant submits a complete license application form and $500 fee
- Project may be licenced

✓ Shortened licensing wait times as lower risk projects are fast-tracked through registration
Prescribed Wetlands

Amendments to The Water Rights Act in 2018 included a new provision for offsetting the loss or alteration of prescribed wetlands with a goal of no net loss of wetland benefits. The proposed regulation would define Class 3, 4 and 5 wetlands as prescribed wetlands. Applicants that apply for a licence to alter or drain a prescribed wetland would be required to work through a mitigation process to avoid wetland loss, minimize impacts and, as a last resort, compensate for the loss of wetland benefits.

<table>
<thead>
<tr>
<th>Registration Process</th>
<th>Licensing Process</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Class 1 and 2: Ephemeral and temporary wetlands</strong></td>
<td><strong>Class 3, 4 and 5: Seasonal, semi-permanent and permanent wetlands</strong></td>
</tr>
</tbody>
</table>

These wetlands usually hold surface water caused by snowmelt or precipitation for less than one month during years with normal moisture conditions. Land may be cultivated and seeded in drier years.

Loss or alteration does not require wetland compensation.

These wetlands usually hold surface water caused by snowmelt or precipitation for one month or more during years with normal moisture conditions. Land may be dry by midsummer or hold surface water throughout the growing season.

Drainage or alteration requires a Water Rights Act licence and compensation.
Compensation Methods

Restoration and enhancement are the methods of compensation required in legislation. These two methods are further defined in the proposed regulation:

**Restoration** is the return of a wetland to a close proximity of its natural condition.

**Enhancement** is defined three ways:
- Increasing the size (area) of a wetland
- Improving the wetland benefits associated with the wetland (including the surrounding upland habitat)
- Providing legal protection to a wetland through a conservation agreement

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### Ratios

The following table indicates the proposed requirements for wetland restoration or enhancement surface area compared to the surface area of wetland loss or alteration.

<table>
<thead>
<tr>
<th>Action</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restore or enlarge an existing wetland</td>
<td>2:1</td>
</tr>
<tr>
<td>Enhance and permanently protect wetlands</td>
<td>3:1</td>
</tr>
<tr>
<td>(including upland habitat)</td>
<td></td>
</tr>
<tr>
<td>Permanently and legally protect wetlands</td>
<td>3:1</td>
</tr>
</tbody>
</table>
Wetland Compensation Requirements

Pages 14 and 15 demonstrate the processes applicants would be required to follow for wetland compensation. In each case, the process would begin with the following steps.

1. Applicant seeks license to drain a wetland
2. Officer inspects wetland to confirm wetland size and classification
3. Landowner chooses one of three compensation options:
   - PAY
   - PURCHASE
   - PERFORM
Compensation Options

OPTION 1
PAY for wetland restoration or enhancement (standard price)
Calculate payment using this formula:

acres of wetland lost or altered \( \times 2 \times 6,000 \)

Payment would be remitted to an approved organization.

PAY
1. Applicant proposes to drain a Class 3 wetland
2. Water resource officer confirms wetland class and indicates wetland is 1 acre in size
3. Compensation calculation:
   \[ 1 \times 2 \times 6,000 = 12,000 \]
4. Applicant pays an approved organization $12,000
OPTION 2

PURCHASE a wetland restoration or enhancement

The applicant may pay an approved service provider to restore or enhance specific wetlands based on a price negotiated with the organization.

Following officer inspection of the wetland to be drained or altered, the applicant and the service provider would agree to a specific wetland compensation service and the cost of that service.

The price would reflect the surface area of the wetland to be drained and the applicable compensation ratio required for the project.

**PURCHASE**

1. Applicant proposes to drain a Class 3 wetland
2. Water resource officer confirms wetland class and indicates wetland is 1 acre in size
3. Required compensation is 2 acres of restored wetland
4. Applicant approaches an approved organization
5. Organization has a 2 acre wetland restoration project available with associated project costs of $9,000
6. Applicant pays organization $9,000

OPTION 3

PERFORM wetland restoration, enhancement, or protection

The applicant may choose to perform wetland restoration or enhancement on their own land.

The compensation project would be determined based on the area of the wetland to be drained or altered, the compensation method, and the applicable compensation ratio.

As part of the application for the drainage license, the applicant would provide the details of their proposed compensation. Restoration or enhancement practices would have to be completed and inspected prior to starting the proposed drainage works.

**PERFORM**

1. Applicant proposes to drain a Class 3 wetland
2. Water resource officer confirms wetland class and indicates wetland is 1 acre in size
3. Applicant develops a compensation proposal which describes method of compensation and includes associated compensation ratios as part of application
4. Applicant completes restoration and enhancement works prior to drainage works.
Consultation

We want to hear from you. Please send us your thoughts and suggestions to help refine Manitoba’s proposed Water Rights Act Regulation.

Comments collected during this consultation period may be used by the Manitoba government to inform changes to existing regulatory, program, and policy frameworks.

Email comments to:

    drainage@gov.mb.ca

Mail written submissions to:

    Attention: Drainage Consultation
    Manitoba Sustainable Development
    Box 16 – 200 Saulteaux Crescent
    Winnipeg, MB R3J 3W3

The deadline for feedback is January 19, 2019.