

# **The Water Rights Act**

**Manitoba Environment, Climate and Parks  
Drainage and Water Rights Licensing Branch**



# Why does Manitoba regulate water issues?

- Section 2 of The Water Rights Act states that all property in, and all rights to the use, diversion or control of, all water in the province, are vested in the Crown in right of Manitoba.
- Essentially, the Government of Manitoba owns all water in the province, and has all rights to the use, diversion or control of that water.

# Definitions

**"water control works"** means any dyke, 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 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; (s. 1)

**"works"** includes any excavation, well, structure, plant, operation or contrivance that diverts, or may divert, or is likely to divert water. (s. 1)

# Why does Manitoba regulate water issues?

- The Water Rights Act mandates that no person shall:
  - use or divert water
  - construct, establish, operate or maintain any works
  - control water or construct, establish or maintain any water control works
- without having a licence to do so.  
(Section 3(1))

# Authorization

- One obtains authorization by making an application to the Minister.  
(Water Rights Reg 126/97)
- Licences are also subject to suspension and cancellation by the Minister. However, if the licence is to be cancelled the licence holder must be given notice and The Municipal Board must hold a hearing – unless they consent.  
(s. 19)



The Water Rights Regulation was amended in 2019.

Highlights of the regulation:

- Exemptions to The Water Rights Act
- Registration Process, Projects and Fees
- Licensed Process, Projects and Fees
- Landowner Approvals
- Wetland Mitigation and Compensation

# Registration vs. Licensing

## Registration Process

A project can be registered if it meets the criteria and associated requirements for the seven classes of works:

- A. Minor surface drain construction
  - B. Agricultural sub-surface (tile) drain construction
  - C. Water control works for new crossings
  - D. Minor culvert changes
  - E. Wetland enhancement and restoration
  - F. Small dam construction
  - G. Small dry dam construction
- ✓ Focus on lower risk projects
  - ✓ Approval in 14 calendar days or less

## Licensing Process

If a project does not meet the criteria of a registrable project or requirements of one of the seven classes.

- ✓ Focus is on higher risk projects
- ✓ Drainage of Class 3 wetlands
- ✓ Shorter wait times as lower risk projects are fast-tracked
- ✓ Intent is to establish a service standard in the future
- ✓ Applicants can expect to receive a licence within six weeks.



# Application Fees



- New application fees more accurately reflect the resources required to review project applications:
  - \$100 for registration
  - \$500 for licensing
- Applications can be submitted through the Water Licensing Portal (online) or using a paper form.



## Registration Process

Written approval is required from:

- the landowner immediately downstream of the project, OR if written approval cannot be obtained, a written exemption from an officer confirming the applicant is not required to obtain other landowner approval.

## Licence Process

Written Approval is required from:

- signoff from those landowners that are deemed to be significantly affected. When the application is submitted, the officer will assess the site and the list of landowners that have signed off on the project. The officer may deem it necessary for additional sign off if there are other significantly affected landowners.

# No Net Loss of Wetland Benefits Approach

- New provision sets a requirement to restore wetland benefits where a licensee is authorized to drain a prescribed class of wetlands (The Sustainable Watersheds Act – Section 5)
- Requirements to compensate for prescribed wetland drainage in the regulation
- Amount of offset required is likely to vary depending on the type on the type of restoration or enhancement work being done
- The approach is based on mitigation hierarchy of avoidance, minimization, compensation



# Water Use Licensing Section

- is responsible for issuing authorizations (e.g., permits, licences, etc.) under The Water Rights Act for the diversion of water for consumptive use purposes; and the construction, establishment, operation or maintenance of works for consumptive use purposes.



# Exceptions

- There are exceptions to the prohibition on use and diversion of water. (s. 3(2))
- For instance, people who are using (not diverting) water for domestic purposes, where a person has lawful access to the water, and the use is less than 25,000 litres per day. (s. 3(2)(b))
- One other exception the Act makes is for a person (includes a corporation) who has a right under a provincial Act or a federal Act. (s. 3(2)(a))

# Manitoba: A Prior Appropriation Province (Western Water Law)

- Water is a provincial Crown resource
- All use, except domestic, requires a licence (or authorization).
- The water must be put to beneficial use - without waste.
- First in time - First in right

# Precedence of Licences

- FITFIR – First in time, First in Right

Section 8(1) of The Water Rights Act reads:

## Precedence of Licenses

8(1) – Licences have precedence in relation to one another according to the date of the submission of application for each licence.



# Priority Schedule

The order of priority of the purpose for which water may be used or diverted, in accordance with the Act is as follows:

- 1) Domestic Purpose ( $< 25,000$  L/day)
- 2) Municipal Purposes
- 3) Agricultural Purposes ( $> 25,000$  L/day)
- 4) Industrial Purposes
- 5) Irrigation Purposes ( $> 25,000$  L/day)
- 6) Other Purposes

# Licensing Process Outline

- 1) Project Proposal
- 2) Licence Application
- 3) Preliminary Investigation
- 4) Preliminary Works
- 5) Comprehensive Licence Investigations
- 6) Licence Creation & Issuance
- 7) Compliance, Monitoring & Enforcement

# Transfer of Licence

## Change of title to land

- Where an estate or interest in land is transferred, any subsisting licence relating to the estate or interest expires automatically as of the date of the transfer, unless the minister, upon the application of the transferee, transfers the licence to the transferee. (s. 11)



# Transfer of Licence

- Require application to “transfer”
- Transfer implies that the terms and conditions on the licence remain
  - e.g., purpose of use, maximum pumping rate, allocation amount
- Land title and/or written documentation to prove new ownership
- Application goes into the queue for processing and issuance of licence

# Compliance

- Branch will often take steps to work achieve voluntary compliance.
- Can often be very effective without the use of enforcement tools.

# Enforcement

- Enforcement of the Act is done through the Minister or officers appointed under the Act. (s.17.1)
- The Act provides officers with the authority to enter on any land for the purpose of administering or determining compliance with the Act or the Regulations (s.18(1)), and for enforcing an order (s.18.4(4)).

# Enforcement

- Two enforcement methods.
  - Prosecution under section 23
  - Civil enforcement under section 18.4



# Enforcement - Prosecution

- Officers have a few different options when it comes to enforcement:
  - Warning
  - Ticket
    - Brown Book
  - Long information
    - Mandatory court appearance
    - Fines up to \$50,000 for individuals, \$500,000 for a corporation and/or
    - Three months imprisonment
  - Ministerial order

# Ministerial Orders

- Section 18.4 provides the Minister with the authority to make an order in cases where someone is controlling water or has constructed or established or is operating or maintaining any water control works.

# Ministerial Orders

- The Minister can make an order requiring the person to (s. 18.4(1)):
  - remove the water control works;
  - cease controlling water; or
  - repair or reconstruct or alter the water control works in a manner stated in the order.
  - service of an order can be affected by personal service, registered mail, leaving a copy with an adult; or posting a copy on the land. (s. 18.4(2))

# Ministerial Orders

- If the person fails to comply with the order, an officer, or a person authorized by the Minister, may do or cause to be done such things as he or she deems necessary to stop the control of water or cause the water control works to be breached, blocked, filled, demolished or removed or to be otherwise dealt with as he or she deems necessary or advisable to enforce the order. (s. 18.4(3))
- Any cost incurred to carry out any of these actions can be recovered from the person to whom the order is against. (s. 18.4(5))



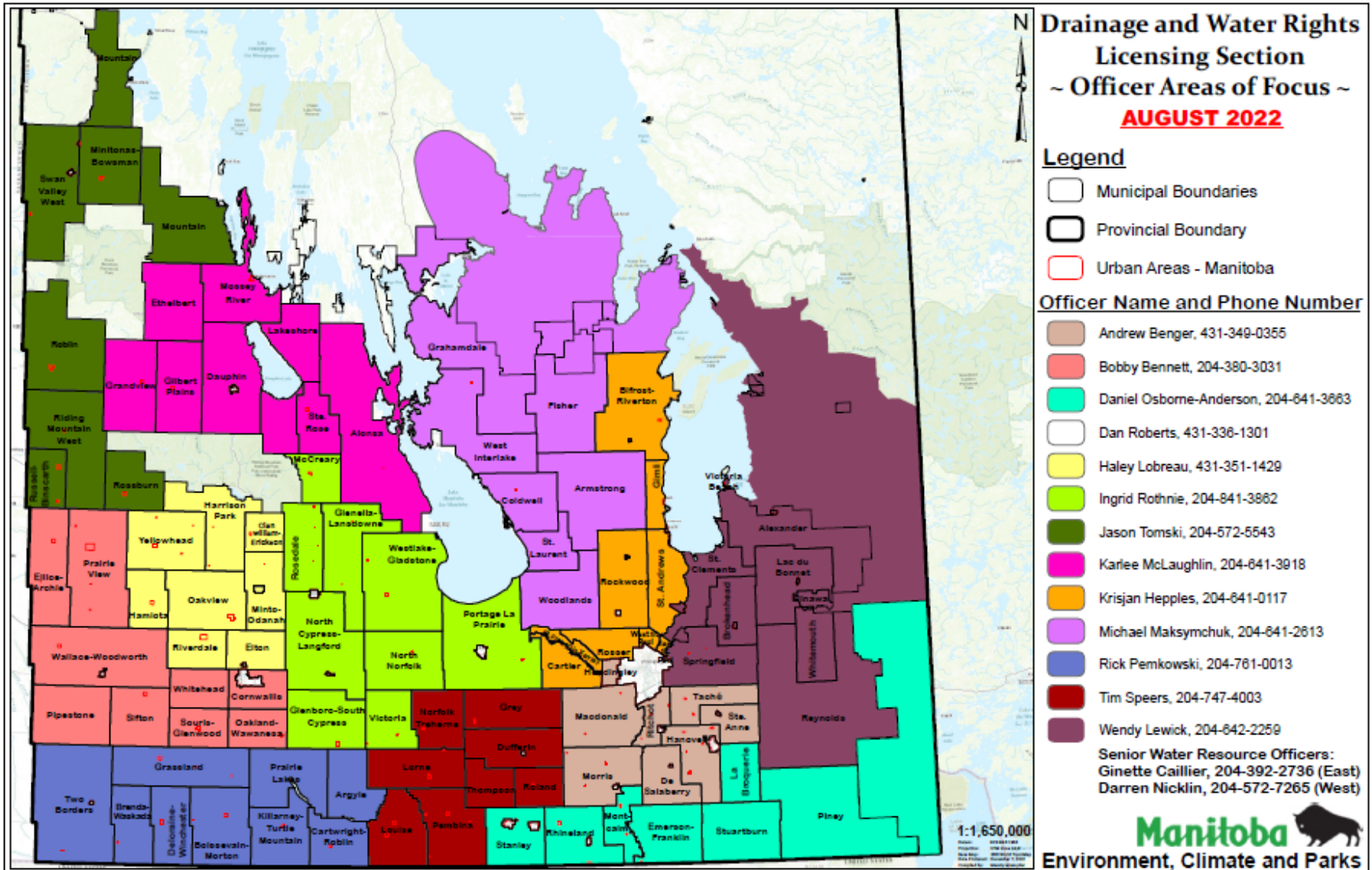
# Appeals

- Section 24
  - Appeals to The Municipal Board within 30 days of the making of the order or decision
  - Decision is final and not subject to further appeal
  - An appeal does not stay an order or decision, or affect the power to take authorized steps pending the appeal.

# Annual Report Statistics (21/22 FY)

- Received 740 new applications and issued 379 water control works licences and 361 registration certificates. Staff received and acted on 64 formal drainage complaints.
- Three drainage projects required financial compensation for the alteration of a seasonal wetland. In combination, 17.82 acres of wetlands were impacted with \$213,840 provided as compensation.
- A total of five offence notices and charges, six warnings and 11 orders were issued under The Water Rights Act.
- Number of active water use licences was 1,265.
- A total of 106 new and 20 renewed water use licences were issued.

# Drainage Contacts



— [https://www.gov.mb.ca/sd/pubs/water/water\\_rights/officer\\_aof\\_contact.pdf](https://www.gov.mb.ca/sd/pubs/water/water_rights/officer_aof_contact.pdf)

# For further information

- Contact the Drainage and Water Rights Licensing Branch
  - [drainage@gov.mb.ca](mailto:drainage@gov.mb.ca)
  - [wateruse@gov.mb.ca](mailto:wateruse@gov.mb.ca)



**Questions?**