

Appendix 5

Manitoba Water Laws

Manitoba has several laws relevant to the use and protection of water. For ease of reference, Manitoba's water laws may be grouped under the following categories:

1. Use, Allocation and Water Power
 - The Manitoba Hydro Act*
 - The Water Rights Act*
 - The Water Power Act*

2. Water Quality and Quantity
 - The Environment Act*
 - The Water Protection Act*
 - The Water Resources Conservation Act*

3. Drinking and Wastewater
 - The Drinking Water Safety Act*
 - The Drinking Authority Act*
 - The Groundwater and Water Well Act*
 - The Public Health Act*
 - The Water Services Board Act*
 - The Water Supply Commissions Act*

4. Flow Regulation
 - The Dyking Authority Act*
 - The Water Resources Administration Act*

This document summarizes some of the above laws that are most relevant to the use of water, the development of water power and the protection of the environment. It also lists a number of related boards, commissions and organizations.

A. Legislation

1. *The Water Power Act*

Purpose and Application

The *Water Power Act* (WPA) is designed to manage and control water power in Manitoba.¹ "Water power" is defined as "any force or energy of whatever form or nature contained in, or capable of being produced or generated from, any flowing

¹ *The Water Power Act*, CCSM c W60 [WPA]

or falling water in such quantity as to make of commercial value”.² The WPA applies to all provincial water powers, all undertakings, and all Crown lands required or connected to their operation (except those under federal jurisdiction).³

Legislative History

The first iteration of the Act was *An Act Respecting Provincial Water Powers*, assented to March 1930.⁴ That version was amended in 1959, 1966, 1967, 1970, 1972, and 1980. The current version was assented to in 1987 and came into force February 1, 1988. There have been no significant amendments to this version.

Summary of the Legislation and Key Provisions

Property in, and a right to use provincial water belongs to the Crown, as does land essential to the production or protection of water power.⁵ The Crown has authority to expropriate or dispose of lands connected to water power production.⁶ Lands essential to water power cannot be sold and may not be leased except in accordance with the WPA.⁷ The Minister may direct or order surveys or measurements in connection with developing the land for water power.⁸ Nothing in the WPA repeals or modifies any provision of *The Water Rights Act*.⁹

Regulations and Licensing Scheme

Section 14(1) of the WPA enables the Lieutenant Governor in Council to issue orders and regulations for the diversion, use or storage of water for power purposes, or the transmission and distribution of water power. There are two regulations under the WPA: the *Crown Lands Withdrawn from Disposal Regulation*¹⁰ which lists particular Crown lands which are exempt from disposal under *The Crown Lands Act*; and the *Water Power Regulation (WPR)*¹¹ which deals mainly with licensing of water power projects. The *Crown Lands Withdrawn from Disposal* regulation is not important for the purpose of this study.

2 WPA, s.1

3 WPA, s. 4. Also, s. 1 defines “undertakings” broadly to include any undertaking which relates to the development of water power or its transmission, distribution, or use, including construction of works such as dams and transmission lines, the storage and regulation of water, and the generation of energy that is auxiliary to the water power plant.

4 We note the roots of Manitoba legislation in the *Dominion Water Power Act*.

5 WPA, ss. 5-6(1)

6 WPA, ss. 7 and 8

7 WPA, s. 6(1)

8 WPA, s. 12(1)

9 WPA, s. 17

10 MR 542/88R

11 MR 25/88R

The WPR provides a detailed outline of the procedures a project proponent must follow when applying for a license under the WPA. According to the WPR, if an interim license is granted to begin development of a project and all conditions of that license and the WPR are satisfied, then a final license must be granted.¹² The licensing sections are grouped together and summarized below.

The License Application Process

In the first stage the applicant must file an application that sets out the maximum quantity of water to be used, stored or diverted and the territory where the power is meant to be transmitted and sold.¹³ Notice of the proposed undertaking is published and if any protests or objections are filed, the Minister has the discretion to hold a hearing.¹⁴ If there is a hearing, a report is made to the Director who in turn makes recommendations to the Minister.¹⁵ The Minister then decides what action is advisable, including dismissing the application if it is in the public interest.¹⁶ The Director may issue a survey permit to the applicant. Once surveys are completed, the applicant must file detailed plans and specifications to allow the Director to determine whether the proposed undertaking “is in general accord with the most beneficial utilization of the resources of the stream, and whether the proposed undertaking is feasible and practicable and in the public interest”.¹⁷ The plans and specifications must include details about such things as the location of the proposed undertaking, the area that will be used or flooded, the estimated demand for the power produced, water flow levels and what provisions have been made for navigation, logging and other uses.¹⁸

Interim Licenses

If the proposed undertaking is suitably designed, feasible, will be the most beneficial use of the stream, and in the public interest, the Minister may issue an interim license to the applicant.¹⁹ If the project goes into operation before a final license is issued, the licensee is required operate to the satisfaction of the Director. The licensee may not raise the level of the water above that which has been fixed by the Director, and the licensee must observe all the conditions that apply to final licenses.²⁰ An interim license may be amended by a supplementary license.²¹

12 WPR s.43(1)

13 WPR s. 3

14 WPR s. 6

15 WPR s. 6(5)

16 WPR s. 6(5)

17 WPR, ss. 7 and 12(1)

18 WPR, s. 12

19 WPR, s. 18

20 WPR, ss. 38 and 39

21 WPR s. 39

Final Licenses

There is no specific time when a final license must issue. According to s. 43(1) of the WPR, upon completion of the development and fulfillment of the terms of the interim license and the WPR, the licensee is entitled to a final license authorising the diversion, use, or storage of water at the site. The final license will include the conditions set out in the interim license as well as any other conditions the Minister may impose.²² The term of the license may not exceed 50 years from the date of completion set out in the original interim license.²³

Conditions of Licenses

The WPR sets out a number of conditions that must apply to all interim and final licenses. There are too many to list here, but some of the most important conditions include: not diverting, using or storing water in a way that will interfere with the “maximum advantageous development of the power”²⁴; limits on changes to flow and water levels;²⁵ compliance with the federal *Navigable Waters Protection Act* and provincial laws “governing the preservation of the purity of waters or governing logging, forestry, fishing, wildlife or other interests”²⁶; compliance of the regulations as they are at the time of issue and any other conditions the Minister may impose.²⁷ In addition, s. 66 of the WPR gives the Minister the authority to order a licensee to develop additional power to meet public demand and s. 67 gives the Lieutenant Governor in Council the authority to authorize the Minister to offer a new interim license to the licensee to establish a larger or more comprehensive development.

Expiry and Renewals of Licenses

Four to six years before a license expires, the licensee may apply for a renewal. The licensee will be given preference over other applicants and the Minister may hold a public hearing to determine if the license should be renewed.²⁸ In addition, the Minister may grant one or more 5-year extensions of a final license that has expired.²⁹

22 WPR, s. 44

23 WPR, s. 45(1)

24 WPR, s. 72

25 WPR, s. 72

26 WPR, s. 87

27 WPR, s. 20

28 WPR, s. 46

29 WPR, s. 92

2. The Water Rights Act

Purpose and Application

The Water Rights Act (WRA) sets out a licensing system to manage water use and allocation.³⁰ The licensing scheme is directed at water use and control for the purpose of economic development by agriculture, industry, and municipal users. The WRA does not apply to domestic users or people exercising a right under any other federal or provincial statute.³¹ Authority to use, divert and control water derives from the Crown's proprietary rights to water in the province.³² Management of the use and allocation of water is accomplished through licensing and much of the WRA and regulations concern conditions for granting licenses.

Legislative History, 1980 – present

The WRA was re-enacted in 1980. In 2000, it was amended by *The Water Resources Conservation and Protection and Consequential Amendments Act*, which forbid wholesale transfers of water out of Manitoba. In 2000, it was amended by *The Water Rights Amendment Act*, which added several provisions regarding water works and diversions, including s.7.1 that makes the provisions of the WRA inapplicable to water control works.

In 2005, the WRA was amended by *The Water Protection Act*, which added aquatic ecosystem protection as a criteria for licensing decisions. In 2006, it was amended by *The Water Rights Amendment Act*, which added provisions for stronger enforcement.

Summary of the Legislation and Key Provisions

The WRA gives the province property rights over all water and forbids anyone from diverting water, operating any “works”, or constructing any “water control works” without a license issued under the WRA.³³ The conditions of the license are set out in the regulations and any further terms set out by the Minister.³⁴ The Minister may require an application to be published and objections to the

³⁰ *The Water Rights Act*, CCSM c. W80

³¹ WRA, s. 3(2)

³² WRA, s. 2

³³ WRA, ss. 2 and 3(1). According to section 1 “**works**” includes “any excavation, well, structure, plant, operation or contrivance that diverts, or may divert, or is likely to divert water”, and “**water control works**” is defined as “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.

³⁴ WRA, s. 5

application may be made in writing. Before the Minister decides whether to approve the application, a public hearing must be held before the Municipal Board and any person may make representations either for or against the application.³⁵ Sections 8 to 11 of the WRA outline a priority system for users, as follows: domestic purposes; municipal purposes; agricultural purposes; industrial purposes; irrigation purposes; and other purposes.

When deciding whether to grant a license for the to use water or develop proposed works, the Minister must consider “scientific and other information relating to the groundwater and water body levels, and the in-stream flows that are necessary to ensure that aquatic ecosystems are protected and maintained”.³⁶ The Minister may refuse to issue a license if the action authorized would negatively affect an aquatic ecosystem.³⁷ The Minister also has the authority to suspend or restrict the rights of a licensee if the water flow is insufficient to ensure that aquatic ecosystems are protected and maintained.³⁸ In 2000 and 2005 the WRA was amended to give the Minister significant discretionary powers to deny or suspend a license in order to protect aquatic ecosystems; however, section 7.1 states these provisions do not apply “for the control of water and the construction, establishment, operation or maintenance of water control works”, which includes hydro operations.

The Minister may enter into agreements with respect to interprovincial waters with other provincial, federal or territorial governments.³⁹ Section 13(1) of the WRA allows the Minister to reserve any unlicensed water until a determination is made regarding how the water could be used to the greatest advantage of the residents of the province. The Minister may also amend or cancel a license if the license holder does not use the water according to the purpose authorized by the license.⁴⁰ If works are unsafe, orders can be made for them to be repaired or demolished.⁴¹

Section 19 of the WRA outlines the process for suspension or cancellation of a license. Offences and penalties are also included in the WRA⁴², and any person affected by a decision or order made by the Minister has the right of appeal to the Municipal Board.⁴³

35 WRA, s. 6

36 WRA, s. 9.1

37 WRA, s. 9.1(2)

38 WRA, s. 9.2

39 WRA, ss. 21 and 22

40 WRA, s. 15

41 WRA, s. 16

42 WRA, s. 23

43 WRA, s. 24

Regulations

Section 26 of the WPA sets out the authority to make regulations relating to licenses. The *Water Rights Regulation (WRR)*⁴⁴ requires applications to be made in a prescribed form and they must include plans, documents and specific information.⁴⁵ The term of a license can be up to 20 years, with the exception of water control works, which may be issued in perpetuity.⁴⁶ A separate license is needed for each stream or source of water from which water is diverted.⁴⁷ Every holder of a license must keep records of his or her water use.

3. *The Water Protection Act*

Purpose and Application

The Water Protection Act is intended to assure a consistent supply of high quality water for the social, economic, and ecological well being of the province.⁴⁸ In order to accomplish this objective, *The Water Protection Act* sets out provisions for the protection of water sources, pollution control, the establishment of water quality management zones, and the operation of watershed management plans, among other provisions.

Legislative History

The Water Protection Act replaced *The Water Commission Act* (1987). It was assented to June 16, 2005 and came into force January 1, 2006. In 2008, *The Water Protection Act* was amended by *The Phosphorus Reduction Act*, which prohibited the sale of products with high amounts of phosphorus after July 1, 2010. In 2011, it was amended by *The Save Lake Winnipeg Act*, which enabled the Minister to designate areas of Crown lands as provincially significant wetlands and placed requirements on Winnipeg's wastewater treatment.

The Water Protection Act may be amended by *The Groundwater and Water Well and Related Amendments Act*, which was assented to in 2012, but has not yet been proclaimed into force. This Act would allow aquifer management plans to be included in the planning framework.

44 *Water Rights Regulation* 126/87 [WRR]

45 WRR, ss. 2 and 4

46 WRR, s. 5

47 WRR, s. 7

48 *The Water Protection Act*, CCSM c W65. See s. 2 and the preamble for a more detailed description.

Summary of the Legislation and Key Provisions

The provisions of *The Water Protection Act* fall into three general categories: water protection; watershed management; and compliance and general provisions.

Water Protection

The main feature of this part is the power to make regulations designating water quality management zones in any area of the province for the purpose of protecting water, aquatic ecosystems, or drinking water sources. Within these zones the minister may regulate or prohibit any use, activity, or thing.⁴⁹ Other provisions deal with pollutants such as phosphorus⁵⁰ and invasive species.⁵¹ Section 4 of *The Water Protection Act* allows regulations to be made regarding water quality standards, objectives, and guidelines that must be considered in any decision made under the *Environment Act*. The minister also has power to declare a “serious water shortage”, which gives the ministry special powers to take action necessary to prevent, minimize or alleviate the water shortage.⁵²

Watershed Management

Section 14(a) of *The Water Protection Act* gives the Lieutenant Governor in Council the authority to make regulations designating watersheds and specify their boundaries. Watershed plans can be made and administered by a water planning authority made up of the board of a conservation district, the board of a planning district, a municipal council, any other person, or a combination thereof.⁵³ The watershed plans must identify issues relating to the protection, conservation or restoration of water, aquatic ecosystems, and drinking water sources, and must contain objectives and recommendations on a number of topics including: conservation; pollution control; drainage and flood protection; the supply, distribution, and storage of water; and emergency preparedness.⁵⁴ The watershed plans must also be developed in consultation with municipal councils, any Aboriginal bands within the area, and residents of the watershed area.⁵⁵ Watershed plans are referred to the Manitoba Water Council for recommendations and must be given final approval by the minister.⁵⁶

49 *The Water Protection Act*, s. 5(1)

50 *The Water Protection Act*, s. 8.1

51 *The Water Protection Act*, s. 9

52 *The Water Protection Act*, s. 11

53 *The Water Protection Act*, s. 14(b)

54 *The Water Protection Act*, s. 16(1)

55 *The Water Protection Act*, s. 17

56 *The Water Protection Act*, ss. 18-20

Compliance and general provisions

This part sets out consequences for violating the legislation and regulations.⁵⁷

Regulations

Section 39(1) of *The Water Protection Act* gives the Lieutenant Governor in Council the authority to make regulations on a number of topics related to water protection. Regulations must be reviewed no later than every five years in consultation with persons affected by the regulation.⁵⁸ Amendments to regulations cannot be made without public consultation, except in an emergency.⁵⁹ There are currently three regulations under *The Water Protection Act* directly relevant to water power, as follows:

- Manitoba Water Quality Standards, Objectives, and Guidelines Regulation;⁶⁰
- Phosphorous Reduction Regulation;⁶¹ and
- Nutrient Management Regulation.⁶²

4. The Environment Act

Purpose and Application

The Environment Act (EA) provides for the assessment of projects that are likely to have a significant effect on the environment.⁶³ The EA sets out a process of review that is designed to address environmental issues and provide for public consultation while recognizing the responsibility of elected governments as decision makers.⁶⁴ The purpose of the EA is “to ensure that the environment is protected and maintained in such a manner as to sustain a high quality of life, including social and economic development, recreation and leisure for this and future generations.”⁶⁵ The EA requires an environmental license for all “developments”, which are broadly defined as any project, industry, operation or activity which is likely to cause:

- the emission of pollutants;
- an effect on any rare or endangered feature of the environment;
- a substantial alteration of any natural resource;
- a significant effect on the environment; or

57 *The Water Protection Act*, ss. 30-35

58 *The Water Protection Act*, s. 8

59 *The Water Protection Act*, s. 39(3)

60 MR 196/2011

61 MR 76/2010

62 MR 62/2008

63 *The Environment Act*, CCSM c E125. [EA] See s.1(1)(b) to (e)

64 EA s.1(1)(c),(d)

65 EA s.1(1)

- a significant effect on the social, economic, environmental health and cultural conditions of a people or a community.⁶⁶

Summary of the Legislation and Key Provisions

The EA separates developments into three classes, each having different requirements for licensing approval. The classes are defined in the *Classes of Development Regulation*.⁶⁷ Manitoba Hydro projects generally fall under either Class 2 or Class 3.⁶⁸

- Class 2 Developments – Proponents must submit a proposal that includes an assessment of the environmental and socio-economic impacts of the project and a description of the environmental management practices to be used in order to mitigate those adverse impacts.⁶⁹ The Director may require the proponent to submit more information or reports or to carry out public consultations.⁷⁰ Once all the necessary steps have been taken, the Director must issue a licence or refuse to do so and provide reasons.⁷¹
- Class 3 Developments – The approval process for a Class 3 Development is similar to a Class 2 Development, however an important difference is that the final decision whether to approve the development rests with the Minister, not the Director. On receipt of a proposal with all the necessary information, the Minister must notify the public and submit a summary of the proposal to the Clean Environment Commission (CEC).⁷² The Minister may decide to require a public hearing before the CEC.⁷³ If objections are made to the proposed development, the Minister may request the CEC hold a public hearing. If the Minister does not request a public hearing, written reasons must be given and made public.⁷⁴ Following the hearing, if one is held, the Minister must either issue the licence or refuse to issue it. The Minister may also impose conditions or modifications for effective environmental management.⁷⁵

66 EA, s. 1(2)

67 MR 164/88

68 Class 2 developments include generating stations equal or less than 100 megawatts and major operational changes or modifications to existing stations. Class 3 includes generating stations equal or larger than 100 megawatts.

69 *Licensing Procedures Regulation* 163/88, s. 1(1)

70 *Licensing Procedures Regulation* 163/88, s. 11(9)

71 *Licensing Procedures Regulation* 163/88, ss. 11(11) and 12

72 *Licensing Procedures Regulation* 163/88, s. 12(4)

73 *Licensing Procedure Regulation* 163/88, s. 12(5)

74 *Licensing Procedure Regulation* 163/88, s. 12(6)

75 *Licensing Procedure Regulation* 163/88, s. 12(7)(b)

Sections 6 and 7 of the EA establish the CEC and set out its duties. If a project will affect another jurisdiction a joint approval process may be undertaken in partnership with that jurisdiction subject to certain requirements.⁷⁶

Regulations

Section 41(1) of the EA gives broad regulation-making authority to the Lieutenant Governor in Council, for instance to make regulations regarding the classes of development, the policies for environmental management and environmental quality objectives, limiting the number or type of developments that may cause cumulative effects, and exempting specific developments or classes of development from the requirement for an environmental assessment.

There are several regulations under the EA, however the most relevant for the purposes of this review are:

- *Classes of Development Regulation*;⁷⁷
- *Licensing Procedures Regulation*;⁷⁸ and
- *Participant Assistance Regulation*.⁷⁹

5. The Water Resources Administration Act

The Water Resources Administration Act (WRAA) mainly deals with protection from flooding and the management of reservoirs.⁸⁰ The WRAA assigns responsibility to the Minister of Conservation and Water Stewardship for the construction and operation of “water control works” under the administration and control of the province.⁸¹ Section 5 of the WRAA gives the Minister the authority to construct and operate any water control works deemed necessary and in the public interest, or at the request of any local authority or authority under statute.

B. Boards, Commissions and Government Organizations

Lake Winnipeg Stewardship Board

The Lake Winnipeg Stewardship Board was created in 2003 as part of the Lake Winnipeg Action Plan, a strategy to reduce the contribution of nitrogen and

76 EA, s. 13.1

77 MR 164/88

78 MR 163/88

79 MR 125/91

80 *The Water Resources Administration Act*, CCSM c W70. [WRAA]

81 WRAA, s. 2(3)

phosphorus by about 10%. The Board identifies measures needed to achieve the 10% reduction and reports on their implementation.⁸²

The Manitoba Water Council

The Manitoba Water Council was established in 2007 pursuant to s. 24 of *The Water Protection Act*. It is the senior advisory body to the Minister of Manitoba Conservation and Water Stewardship. The Council's responsibilities include monitoring watershed plans, reviewing regulations respecting water quality management zones, and advising the Minister on topics related to water generally.⁸³ Membership in the Council is intended to be representative of diverse perspectives including government, regional, agricultural, and environmental interests.⁸⁴ The Council coordinates the work of all provincial advisory bodies on water protection and composes written reports on issues related to water.⁸⁵

The Clean Environment Commission

The CEC was established pursuant to ss .6 and 7 of *The Environment Act* to carry out certain functions with respect to environmental matters and licensing decisions. At the request of the Minister, the CEC must provide advice and recommendations, conduct public hearings, investigate specific concerns, or mediate in an environmental dispute.⁸⁶

C. Inter-governmental Agreements and Organizations

Master Agreement on Apportionment and the Prairie Provinces Water Board

The Master Agreement on Apportionment is an intergovernmental framework formed in 1969 between the provincial governments of Alberta, Saskatchewan, Manitoba and the federal government to manage transboundary waters. The Agreement apportions water between the prairie provinces and promotes water

82 See Lake Winnipeg Board Final Report (2007) accessed at: http://www.gov.mb.ca/waterstewardship/water_quality/lake_winnipeg/lwsb2007-12_final_rpt.pdf; and Manitoba's Progress Towards Implementing Recommendations of the Lake Winnipeg Stewardship Board (2010), accessed at: http://www.gov.mb.ca/waterstewardship/reports/misc/lake_winnipeg_stewardship_board_report_on_progress.pdf

83 WPA s. 25

84 *The Water Protection Act*, s. 26(1)

85 The Manitoba Water Council's website is at: http://manitobawatercouncil.ca/about_us.html

86 EA s. 6(1)

quality and transboundary aquifers. It is reviewed and revised periodically. The Agreement is administered by the Prairie Provinces Water Board (PPWB). The PPWB is composed of senior officials from departments involved in water governance from each province, and federal officials from Environment Canada and Agriculture and Agri-Food Canada. Board members are responsible for sharing information and coordinating with officials in their jurisdictions to ensure that the commitments of the Agreement are met. Board members also inform each other of programs and policies of mutual interest and any projects that may have an impact on another province.⁸⁷

Canadian Council of Ministers of the Environment

The Canadian Council of Ministers of the Environment (CCME) coordinates water governance at the national level by facilitating agreements between provinces. The CCME works on the basis of consensus and agreements made in good faith which are not legally binding. There are two committees of the CCME and a task group that deal with water: the Water Management Committee, the Municipal Wastewater Effluent Coordinating Committee, and the Water Quality Task Group. The CCME has also developed a three year strategic plan for water management (2011-2014).⁸⁸

87 The Prairie Provinces Water Board's website is at: <http://www.ppwb.ca/>

88 Available online at
<http://canadawaterweek.com/sites/default/files/files/images/wap_ministers_public_rpt_final_e.pdf>
last accessed March 19, 2015.