

A Proposed Regulation under The Water Rights Act

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

Association of Manitoba Municipalities
Annual Convention
Nov 28th 2018



The Water Rights Act states that no person shall control water or construct, establish or maintain any water control works unless he or she has a valid and subsisting licence to do so.

- Proponent submits application and a \$25 fee
- Departments reviews and assesses each application individually
- Project sites are inspected
- Licence is issued or denied
- If issued, and the applicant proceeds with construction of the project.

The Sustainable Watersheds Act

ROYAL ASSENT ON JUNE 4, 2018

- Support a **new streamlined and strengthened provincial drainage regulatory regime** and modernize inspection and enforcement tools including enhanced offence and penalty provisions.

EXPECTED OUTCOMES OF NEW REGULATORY FRAMEWORK

- **streamline** applications and approvals
- provide **consistent** regulatory regimes for drainage and water control works and compensation for wetland loss and alteration
- **reduce red tape** for low risk and low impact projects
- increase **flexibility** of requirements for downstream approvals, and
- provide **stronger linkages** between watershed plans and land use decision-making

The proposed regulation sets out details to allow the amendments to the Act to come into force

Highlights of the Proposed Regulation:

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

The following projects would not require authorization under The Water Rights Act:

- Culvert replacements with no change in culvert size or invert elevation
- Drainage and water retention projects that require a license under The Environment Act
- Water control works in urban areas where the proposed works do not:
 - drain Class 3, 4, or 5 wetlands or
 - outlet to outlying rural areas

Registration versus Licensing

Registration Process

A project is registered if it meets the criteria and associated requirements for the six classes of works:

- 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
- ✓ Focus on lower risk projects
 - ✓ 14 day approval

Licensing Process

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

- ✓ Focus is on higher risk projects
- ✓ Drainage of Class 3, 4 and 5 wetlands
- ✓ Shorter wait times as lower risk projects are fast-tracked

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 - ✓ Application Fee \$100 (can bundle projects)

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-
- ✓ Application Fee \$500 (can bundle projects)

The following projects types are not eligible for registration:

- Class 3, 4 or 5 wetland loss or alteration
- Class 6 or 7 soil or unimproved organic soil drainage
- Water transfer between watersheds
- Negative impacts on fish spawning, rearing, or passage
- Inconsistency with an approved watershed plan
- Violation of conservation agreement restrictions

Registrable Projects



Class of Works	Requirements
<p>Class A – Minor surface drain construction</p> <p>Construction of surface drains with a depth not exceeding 12 inches below natural prairie.</p>	<ul style="list-style-type: none">✓ Project does not result in the drainage of Class 6, 7 or unimproved organic soils.
<p>Class B – Agricultural subsurface tile drain construction</p> <p>Construction of subsurface tile drains and all associated water control works that have a drainage coefficient of equal to or less than 3/8 inch (metric) over a 24-hour period on agricultural lands.</p>	<ul style="list-style-type: none">✓ Project must be designed by a tile drainage installer that has taken an approved course✓ Cannot be located within 50 metre of a prescribed wetland✓ Average depth of the<ul style="list-style-type: none">○ lateral pipe cannot exceed 36"○ header pipe cannot exceed 60"✓ All outlets are equipped with control devices✓ Project does not result in the drainage of Class 6, 7 or unimproved organic soils.

Class of Works	Requirements
<p>Class C – New Access Crossings</p> <p>Construction of water control works related to new access crossings that do not constrict water flow.</p>	<ul style="list-style-type: none">✓ Shows size of immediate upstream and downstream culverts✓ Demonstrates that culvert in the approach will:<ul style="list-style-type: none">○ Be equal in size to the largest culvert immediately upstream or downstream○ Have an invert elevation at the bottom of the drain
<p>Class D – Minor culvert changes</p> <p>Replacing an existing culvert by no more than 15% increase in hydraulic capacity and no change to the invert elevation of the culvert.</p>	<ul style="list-style-type: none">✓ Must include a pre-construction topographical survey that shows location, size, and invert elevation of existing culverts

Class of Works

Class E – Wetland enhancement and restoration

Works that restore a wetland that had previously been drained or increase the size of an existing wetland, that are not more than 1 m in height and retain less than 25 acre-feet of water.

Class F – Small dam construction

Construction of dams less than 2.5 m in height that retain less than 25 acre-feet of water.

Requirements

- ✓ Must include a pre-construction survey of the site that shows the maximum flooded area
 - ✓ Any associated landowner approvals including
 - Those who may be flooded by the project
 - Those immediately downstream who may see a reduction in water flow as a result of the dam
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- ✓ Must include a pre-construction survey of the site
 - ✓ A design plan approved by a professional engineer or other certified agent, that:
 - Demonstrates the dam will accommodate a 1:100 year flood event, and
 - Shows the maximum flooded area
 - ✓ Any associated landowner approvals including
 - Those who may be flooded by the project
 - Those immediately downstream who may see a reduction in water flow as a result of the dam

Example – Culvert Upgrade



NOTE: It is proposed that culvert upgrades with no change in culvert size or invert elevation would not require authorization - exemption

Registration

- Hydraulic capacity of culvert is increased by 10 %
- no change to the invert elevation of the culvert



Minor Culvert Upgrade (Class D)

- Applicant provides a pre-construction survey that shows location, size, and invert elevation of existing culverts
- Applicant submits a complete application form and fee

- ✓ Project can be **REGISTERED**
- ✓ Applicant receives registration certificate within 14 days

Licence

- Hydraulic capacity of culvert is increased by 20%
- Invert elevation is lower than existing culvert



does not meet registration requirements

- Applicant submits a complete application form and fee

- ✓ Project can be **LICENCED**
- ✓ Shorter wait times as lower risk projects are fast-tracked

Registration Process

Written approval is required from:

- the applicable municipality or local authority, and
- 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

When the application is submitted, the officer will assess the site and provide the proponent with a list of significantly affected landowners

Written Approval is required from:

- the applicable municipality or local authority, and
- signoff from those landowners that are deemed to be significantly affected by the department

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 proposed 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



Classes 1 and 2 - Ephemeral and temporary wetlands

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.

Classes 3, 4 and 5 – Seasonal, semi-permanent and permanent wetlands

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.

**Class 3, 4 and 5s will be prescribed
and therefore require compensation
if altered or lost**

Methods and Ratios

Restoration

- Restore a previously existing wetland

Enhancement

- Increase the size of a wetland
- Improve the benefits associated with a wetland (including upland habitat) and provide permanent legal protection
- Provide permanent legal protection of a wetland

Ratios indicate the required surface area of wetland restoration or enhancement compared to the surface area of wetland loss or alteration.

Action	Restore or enlarge an existing wetland	Enhance an existing wetland (including upland habitat) (*includes permanent protection)	Permanent protection of a wetland
Ratio	2:1	3:1	3:1

Mitigation Process



If proponent wishes to proceed with a project that impacts a class 3, 4, or 5 wetland, a compensation process will follow:

- Applicant seeks licence to drain a prescribed wetland
- Officer inspects wetland to confirm size and classification of wetland
- Landowner may choose from 3 compensation options or may choose not to drain the wetland



PAY

PURCHASE

PERFORM

Compensation Options



PAY for wetland restoration or enhancement (Cost per acre)

The applicant may pay an approved organization to restore or enhance wetlands based on the surface area of lost or altered wetlands.

Payment is calculated with this formula:

Required Payment = Area of wetland impacted x 2 x \$6,000

Example: 2 acre Class 3
wetland,
RP = 2 x 2 x \$6,000
Required Payment is
\$24,000

Compensation Options

PURCHASE a project for wetland restoration or enhancement

The applicant may pay an approved organization to restore or enhance specific wetlands based on a negotiated price. The surface area of restored or enhanced wetlands must correspond with the applicable compensation ratio.

Following officer inspection of the wetland to be drained, the applicant and the service provider must provide an agreed to plan that specifies the wetland compensation and the cost.

Example: 2 acre Class 3 wetland,
Service provider can restore a 4
acre wetland for a negotiated
price

Required Compensation = Area of wetland lost or altered x compensation ratio

Compensation Options

PERFORM wetland restoration, enhancement, or protection

The applicant may perform wetland restoration or enhancement.

The surface area of restored or enhanced wetlands must correspond with the applicable compensation ratio.

Example: 2 acre Class 3 wetland,
Proponent can enhance and
protect 6 acres of wetland and
upland habitat on own property.

Following officer inspection of the wetland undergoing loss or alteration, the applicant must submit a written proposal that specifies the wetland compensation actions. The director must approve the proposal and an officer inspects the restoration project.

Next Steps

- Public Consultation Period (45 days)
<http://devweb46.intranet.mbgov.ca/conservation/consultations/index.html>
- Assess comments
- Finalize and register regulations, proclaim Act amendments

Modernizing Manitoba's Conservation Districts Program

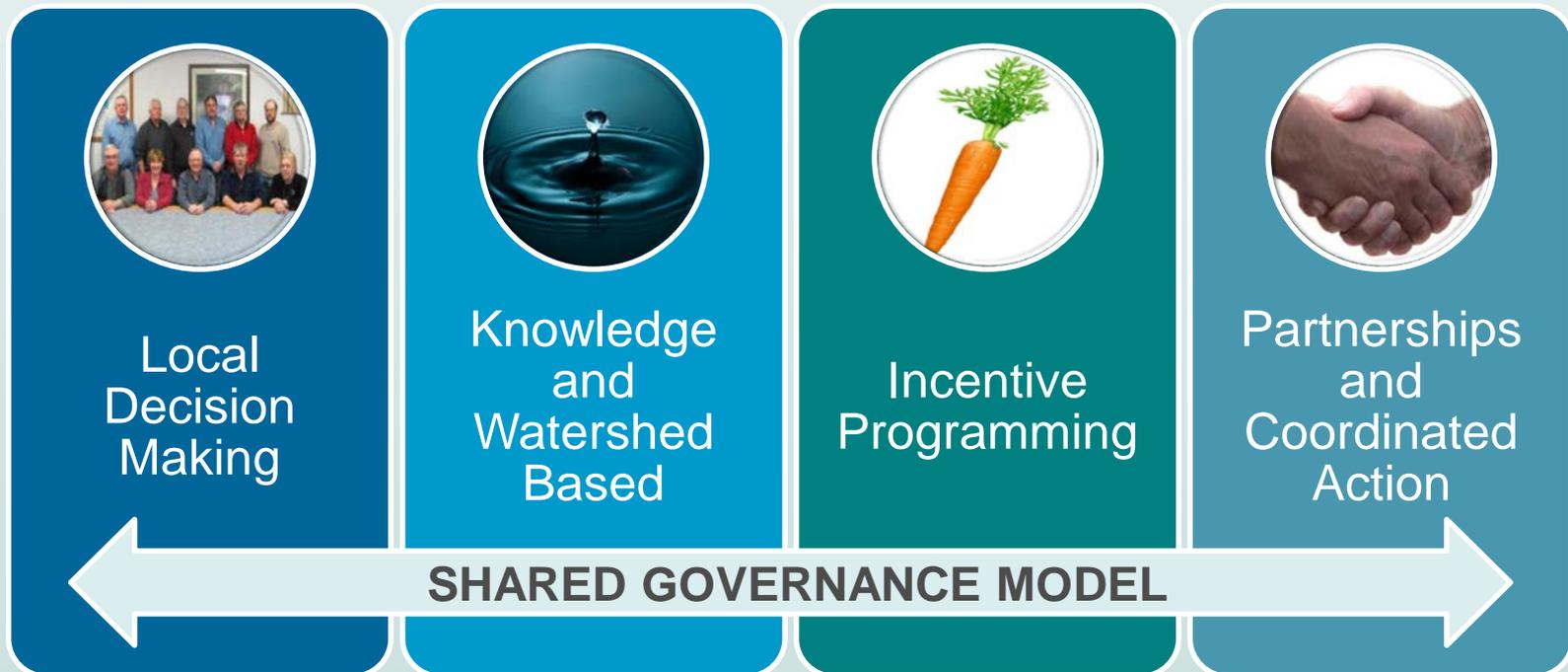
The Evolution of Conservation Districts
into Watershed Districts

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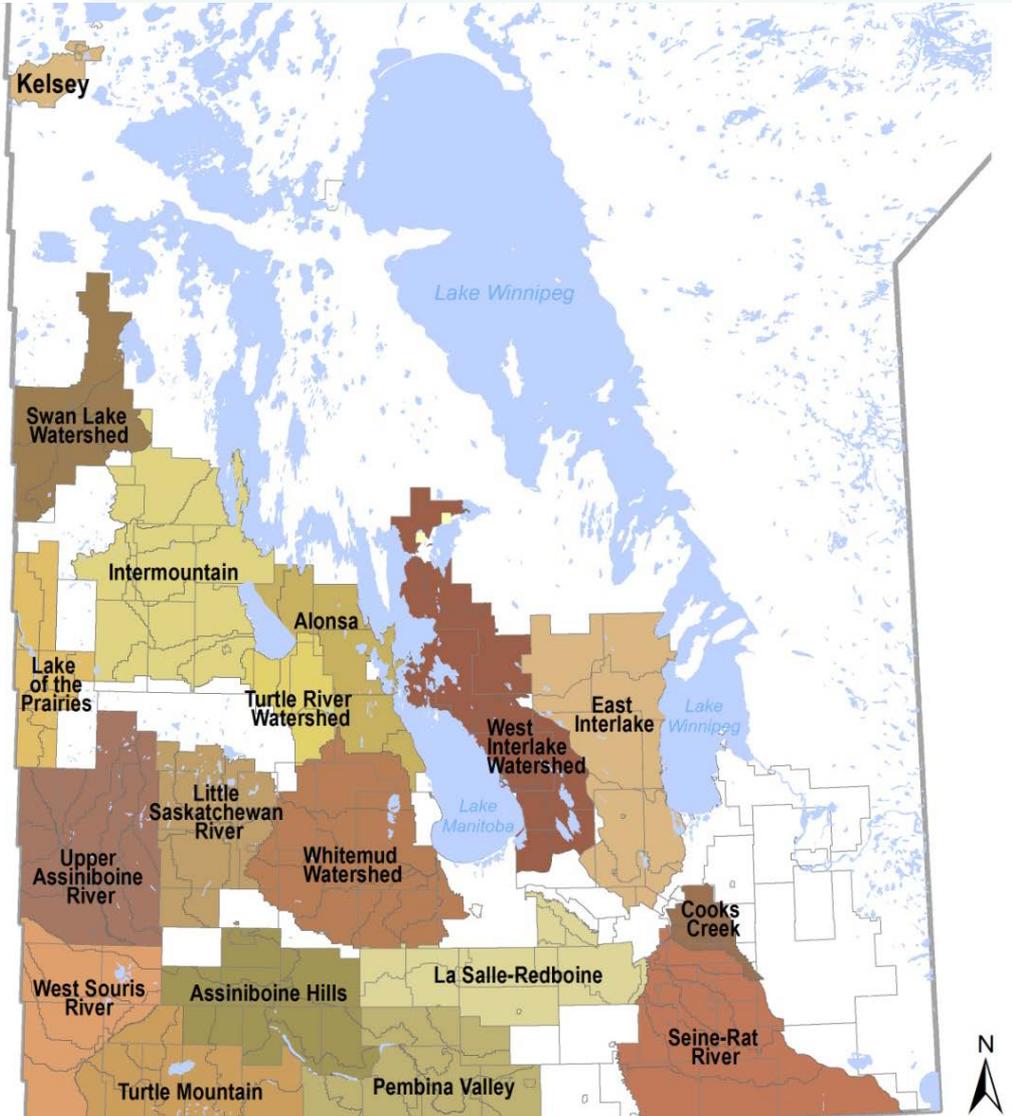


What is a Conservation District?

A partnership between municipal and provincial governments to work together through local boards to manage land and water resources in a sustainable manner through locally delivered programs, outreach and education.



Conservation District Program



18 Conservation Districts
104 Municipal Members
\$5.3 M Provincial Grant
\$1.7 M Municipal Levy
\$3.2 M External- NGO, federal
\$10.2 M Program Budget
Four Infrastructure Districts
Over 80 employees (40 FT)

Improve Surface Water Management

Drain maintenance



Crossing replacement



Water Retention



Safeguard Drinking Water



Source Water and Well
Water Testing



Wellhead Remediation



Sealing abandoned wells

Protect and Restore Habitat

Wetland protection and restoration



Conservation agreements

Fish habitat enhancement



Tree planting and shelterbelts



Build Capacity in Local Watersheds



Youth education
and water festivals



Producer education



Community rain garden

Improve Water Quality

Riparian Area Management
and off-stream watering
system



Manure management



Grassed waterway



Streambank Stabilization



Support Sustainable Communities

Community tree planting



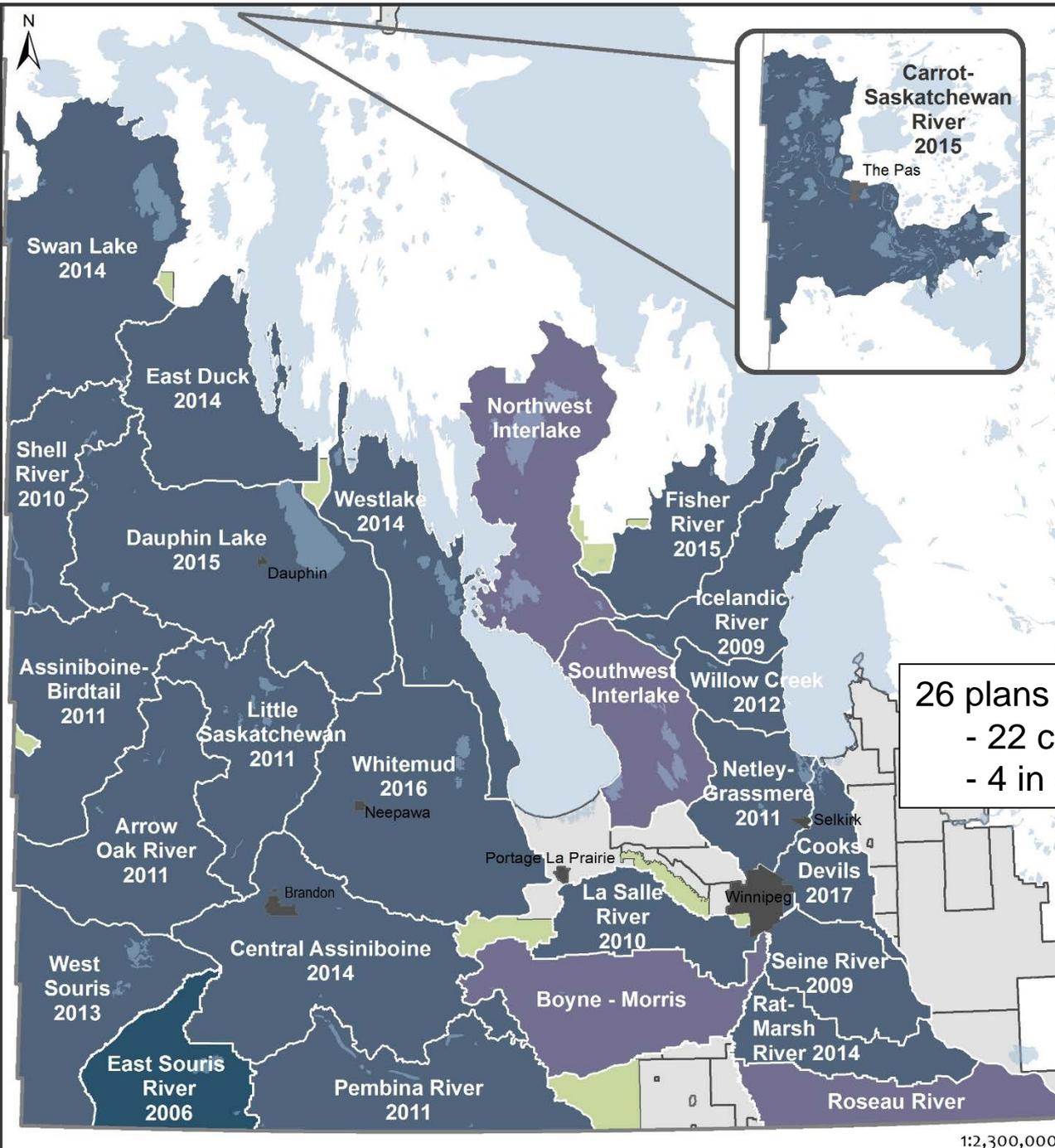
Native prairie establishment



Sustainable community food production

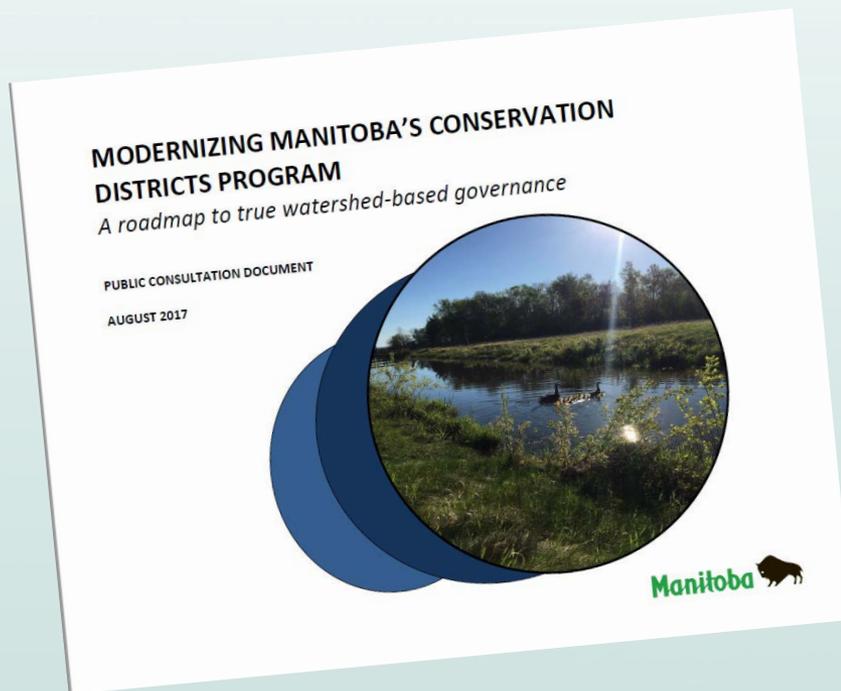


Coordinate Action through Watershed Planning



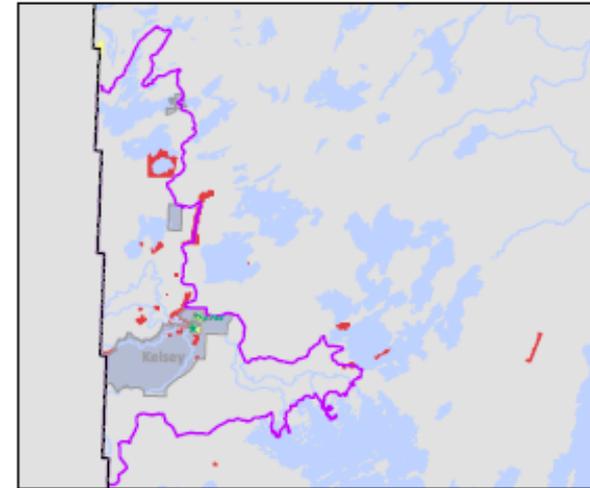
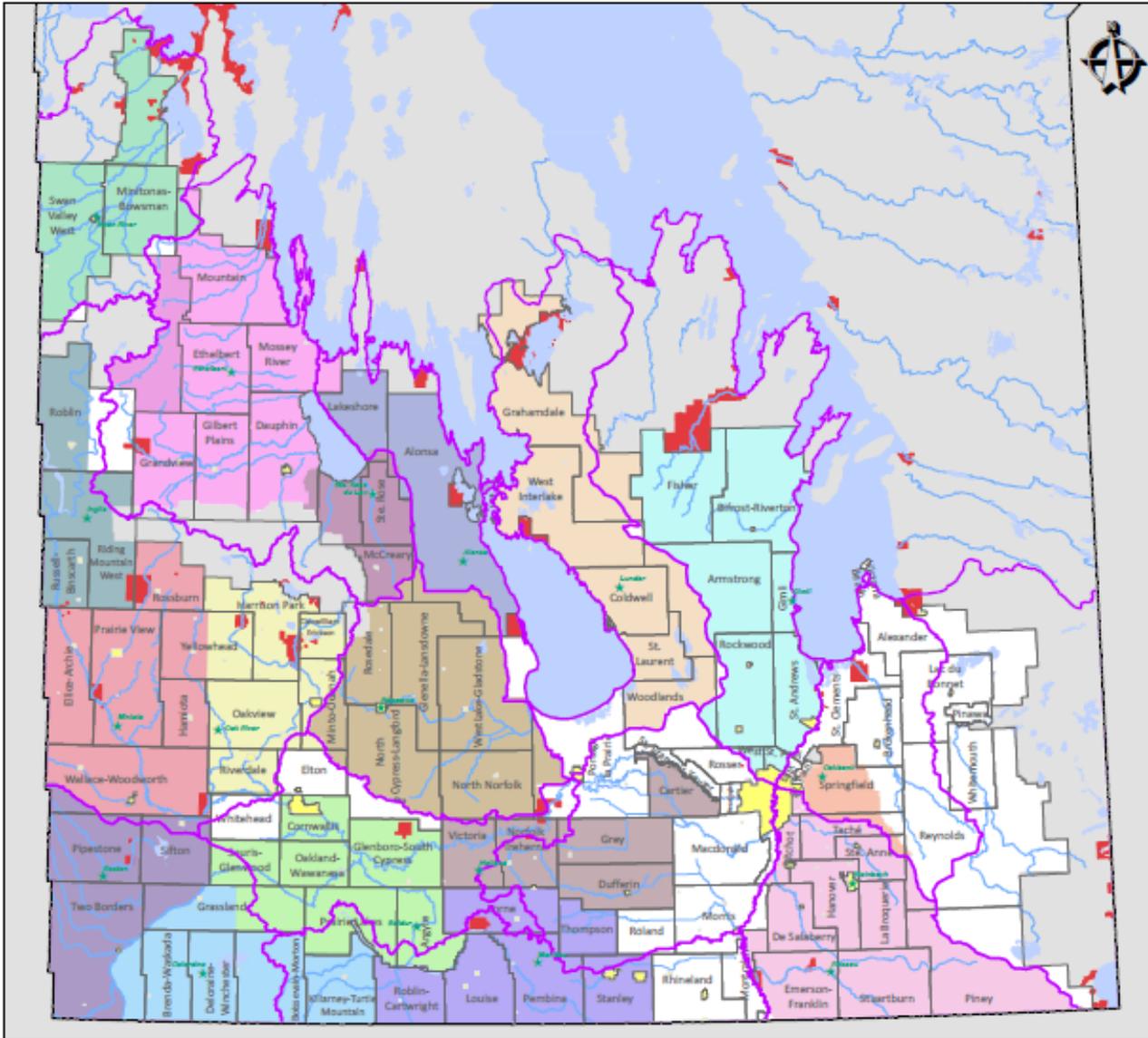
26 plans initiated, of which:
- 22 completed
- 4 in development

Modernizing Manitoba's CD Program



1. **Align districts to watersheds**
2. **Refresh the program mandate**
3. **Amend legislation**
4. **Modernize funding models**
5. **Enhance watershed planning**

Future Boundaries of Watershed Districts



PROPOSED WATERSHED DISTRICTS

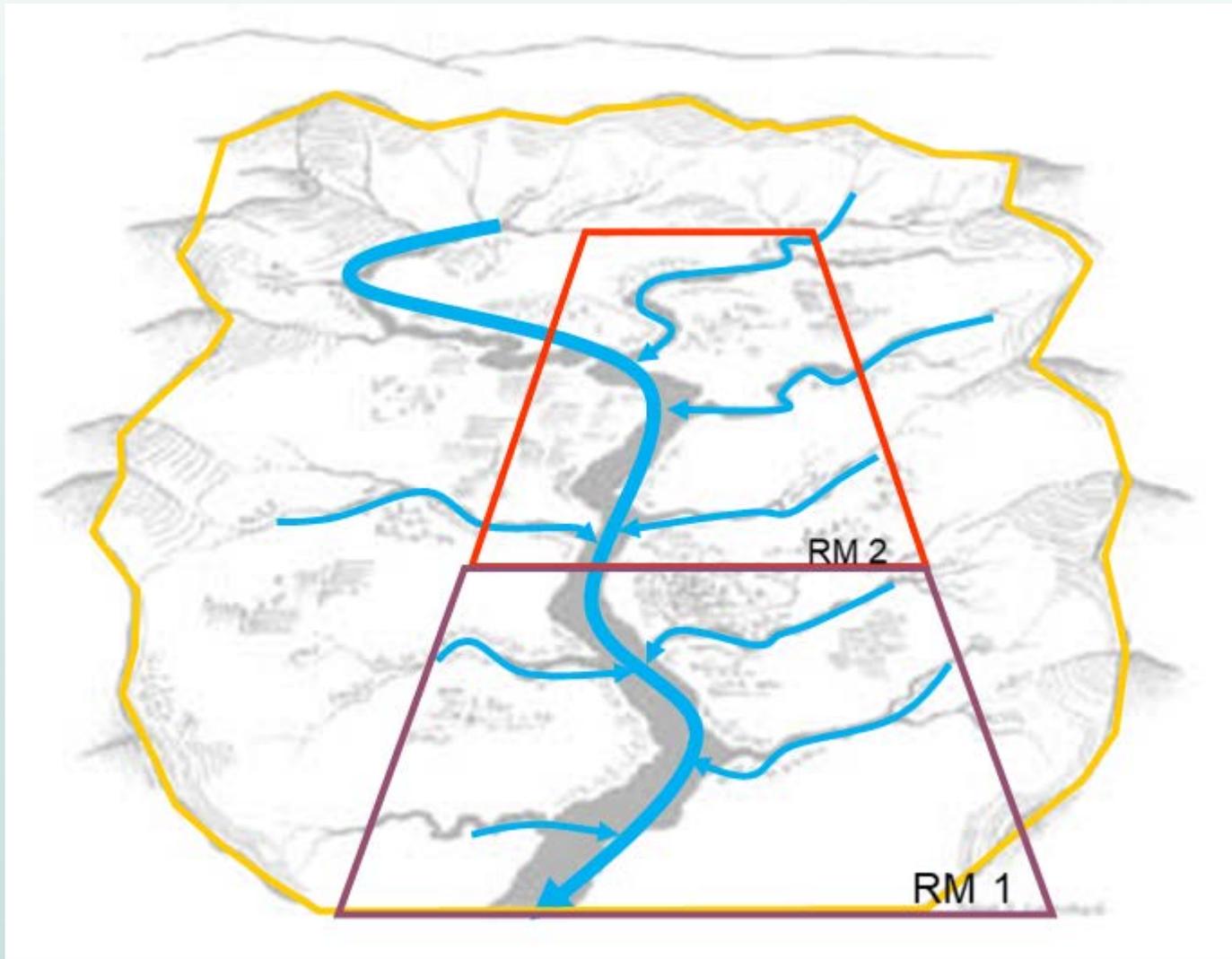
-  CD Offices
-  Urban Areas
-  Provincial Boundary
-  First Nation Lands
-  Proposed Watershed Districts
-  Municipal Boundaries

Conservation Districts

-  Alonsa
-  Assiniboine Hills
-  Cooks Creek
-  East Interlake
-  Intermountain
-  Kelsey
-  La Salle-Redboine
-  Lake of the Prairies
-  Little Saskatchewan River
-  Pembina Valley
-  Seine-Rat River
-  Swan Lake Watershed
-  Turtle Mountain
-  Turtle River Watershed
-  Upper Assiniboine River
-  West Interlake Watershed
-  West Souris River
-  Whitemud Watershed



Why Watersheds?



Program Funding Model

- 3:1 provincial-municipal funding ratio
- Access to additional funding sources
- Three tiered funding approach:
 - Tier 1: Administration and operation
 - Tier 2: Conservation programming
 - Tier 3: Infrastructure programming
- Funding is linked to outcomes / return on investment
- Streamlined provincial reporting

Legislation Amendments

- Bill 7 – The Sustainable Watersheds Act received Royal Assent on June 4, 2018
- Amends four acts including The Conservation Districts Act
- Change name of the Act to The Watershed Districts Act
- Proclaimed on January 1, 2020

Highlights of Legislation Amendments

- Supports name and boundary changes
- Enables partnerships with non-municipal entities such as Indigenous communities
- New provisions for board membership and committees
- Enhances flexibility in municipal funding
- Formalizes formation and withdrawal processes

Timeline and Next Steps

<p>November - December 2018</p>	<ul style="list-style-type: none"> • Presentation at AMM, MCDA conference • Draft proposals for each watershed district
<p>January – March 2019</p>	<ul style="list-style-type: none"> • Present draft proposal to districts and municipalities, finalize proposals • Seek municipal approval of proposals
<p>March – September 2019</p>	<ul style="list-style-type: none"> • Draft regulations for The Watershed Districts Act, public consultation
<p>January 1, 2020</p>	<ul style="list-style-type: none"> • Proclamation of Bill 7 - The Sustainable Watersheds Act, aligns with boundary and name changes

Watershed District Proposals

- District Name
- District and Subdistrict Boundaries
- Mandate
- Municipal Appointments and Funding
- Any other relevant information to support the transition

Current municipal members will be asked to review and sign off on proposals at their February or March council meetings. Deadline is March 31, 2019.

For more information

<https://www.gov.mb.ca/sd/consultations/index.html>

www.manitobawatersheds.ca