

# The Water Rights Regulation under The Water Rights Act

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



# Outline

- Intro Drainage and Water Right Licensing Branch of the new Department of Conservation and Climate
- Overview of legislation and regulation changes
- What do changes mean to the business of municipalities?
- What other tools are being implemented to speed the processing of applications?
- What progress has been made toward more consistent and timely responses?

# The Water Rights Act - 1988



*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

June, 2018 – The Sustainable Watersheds Act amended The Water Rights Act to include a new streamlined approach for lower risk, lower impact projects, enhanced protection for wetlands, and modernize inspection and enforcement tools including enhanced offence and penalty provisions.

October, 2019 – Amendment to The Water Rights Act received proclamation and an amendment to the Water Rights Regulation came into force.

# Drainage Regulation Steering Committee

- Stakeholder group to discuss and offer advice on regulation development.
- Membership included AMM, KAP, MBP, DUC, MHHC, DWF, MCDA, IISD, Manitoba Agriculture and Resource Development, Manitoba Municipal Relations and Manitoba Infrastructure
- We thank this group for their time and efforts toward regulation passage and ongoing feedback.



The amended regulation sets out details on how the changes to the Act will be applied.

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

The following projects do 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 licence 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 directly to outlying rural areas



# 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



# Application Fees



- New application fees more accurately reflect the resources required to review project applications:
  - \$100 for registration
  - \$500 for licensing
- Projects or works can be bundled in one application providing they are related and are on contiguous parcels of land.



# Registrable 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
<b>Class A – Minor surface drain construction</b>  Construction of surface drains with a depth not exceeding 12 inches <u>below natural prairie</u> .	<ul style="list-style-type: none"><li>✓ Project does not result in the drainage of Class 6, 7 or unimproved organic soils.</li></ul>
<b>Class B – Agricultural subsurface tile drain construction</b>  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 over a 24-hour period on agricultural lands.	<ul style="list-style-type: none"><li>✓ Project must be designed by a person that has taken a course approved by the minister</li><li>✓ Cannot be located within 50 metres of a Class 3, 4, or 5 wetland</li><li>✓ Average depth of the lateral tile cannot exceed 36"</li><li>✓ Header pipe is not perforated below 60"</li><li>✓ All outlets are equipped with control devices that can control or stop flows out of the tile,</li><li>✓ Project does not result in the drainage of Class 6, 7 or unimproved organic soils.</li></ul>



# Registrable Projects



Class of Works	Requirements
<p><b>Class C – New Access Crossings</b></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"><li>✓ Shows size of immediate upstream and downstream culverts</li><li>✓ Demonstrates that culvert in the approach will:<ul style="list-style-type: none"><li>○ Be equal in size to the largest culvert immediately upstream or downstream</li><li>○ Have an invert elevation at the bottom of the drain</li></ul></li></ul>
<p><b>Class D – Minor culvert changes</b></p> <p>Replacing an existing culvert by no more than 15% increase in <u>hydraulic capacity</u> and no change to the invert elevation of the culvert.</p>	<ul style="list-style-type: none"><li>✓ Must include a pre-construction topographical survey that shows location, size, and invert elevation of existing culverts</li></ul>

# Registrable Projects



## 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 higher than prairie level 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
- 
- ✓ 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



# Registrable Projects



## Class of Works

### Class G – Small dry dam construction

Construction of dams for the purpose of flood control that

- Do not exceed 1 m in height
- Retain less than 25 acre-feet of water on a temporary basis,
- Have an outlet that allows for continuous flow 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

# Example – Municipal Works



## Registration

- All municipal registrable works can be included on one **paper application** for registration.
  - Ensure that all projects on the application **meet requirements for registration** to ensure application proceeds smoothly.
  - Registration classes for minor culvert changes and new approaches most likely.
  - Municipal ditch cleanouts unlikely to meet registration requirements.
  - Staff enter your application into the Water Licensing Portal to generate a **Registration Certificate**.
- ✓ Applicant receives registration certificate within 14 calendar days of entry into the Water Licensing Portal

## Licence

Projects that do not meet requirements for registration may seek authorization through the licensing process.

Works may be grouped on one application if contiguous.

Municipal ditch cleanouts may be licensed with a 3 shot survey profile as long as the proposal meets all requirements, including:

- drainage doesn't divert flows across a watershed boundary
  - No class 3, 4 or 5 wetlands are impacted by the proposal
- ✓ Shorter wait times expected as lower risk projects are fast-tracked



## 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.

# Municipal Approvals

- Discussed with AMM representatives on drainage regulation stakeholder committee.
- Regulation amended – municipal approval no longer required unless designated impacted or immediately downstream of registrable project
- Municipalities who wish to have more control may pass a drainage bylaw – more information is available.

# 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





# Prescribed Wetlands



## **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 wetlands will require compensation if lost or altered.**

**\*A policy that prohibits the drainage of Class 4 and 5 wetlands will continue under normal circumstances.**

# Methods and Ratios

## Restoration

- Restore a previously existing Class 3, 4, or 5 wetland

## Enhancement

- Increase the size of a Class 3, 4, or 5 wetland
- Improve the benefits associated with a wetland (including upland habitat) and provide permanent legal protection of the improvement
- Provide permanent legal protection of a Class 1 or 2 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 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 three 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: Two acre  
Class 3 wetland,  
 $RP = 2 \times 2 \times \$6,000$   
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: Two acre Class 3 wetland - service provider can restore a four acre wetland for a negotiated price

Required compensation = area of wetland lost or altered x compensation ratio



# Compensation Options **Manitoba**

## **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.

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.

Example: Two acre Class 3 wetland - proponent can enhance and protect six acres of wetland and upland habitat on own property.



# Water Licensing Portal



# Background/Context

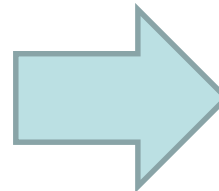
## Manitoba Ombudsman Report - develop a provincial database

- Tracks applications and complaints from acceptance to conclusion
- Includes necessary forms and a mechanism to monitor progress



Water Use Licensing  
System “WaRMS”  
(1996)

Drainage/Water Control  
Works Licensing Access  
System (1996, 1999)



## Water Licensing Portal





# EXPECTED OUTCOMES

## Public Facing Online Application and Mapping Portal

- Proponents
  - apply and pay for licence applications online
  - view status update of their applications and final authorizations on their “dashboard”
- Complainants – submit complaints online
- Researchers – search location and status of licensed projects by map

## Internal Facing Review and Assessment

- Conduct and track site inspections
- Assign tasks to officers to manage workloads
- Create and issue authorizations
- Monitoring water use
- Responding to complaints/compliance issues
- Report and analyze data





# SUBMITTING APPLICATIONS

## Login on behalf of an External User

Search for a User

Applicant Name

Account ID

Create External User

Search

Show  entries

Account ID



Company Name



Full Name



Address



Phone Number



Account Status



Login



No data available in table

Showing 0 to 0 of 0 entries

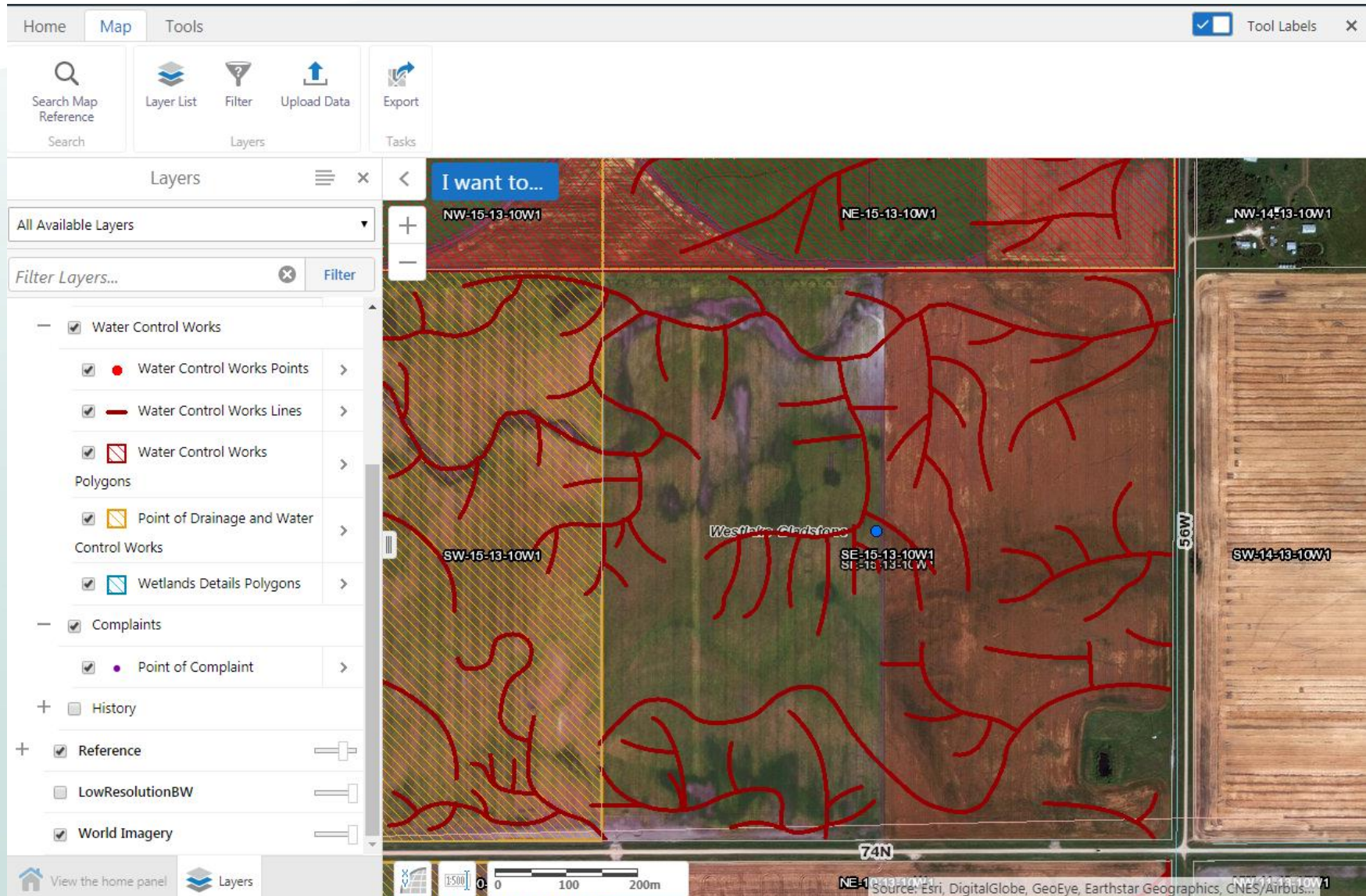
Previous

Next

User Guide

Download User Guide

# MAP VIEWING CAPABILITIES



The screenshot displays a web-based map application interface. At the top, there is a navigation bar with tabs for 'Home', 'Map', and 'Tools'. A 'Tool Labels' checkbox is visible on the right. Below the navigation bar is a toolbar with icons for 'Search Map Reference', 'Layer List', 'Filter', 'Upload Data', and 'Export'. The main map area shows a satellite view of a rural landscape with red lines indicating water control works. The map is divided into sections labeled with coordinates: NW-15-13-10W1, NE-15-13-10W1, NW-14-13-10W1, SW-15-13-10W1, SE-15-13-10W1, and SW-14-13-10W1. A blue dot is marked on the map near the SE-15-13-10W1 section. The left sidebar contains a 'Layers' panel with a search bar and a list of layers. The 'Water Control Works' section is expanded, showing 'Water Control Works Points', 'Water Control Works Lines', and 'Water Control Works' (Polygons). Other layers include 'Point of Drainage and Water Control Works', 'Wetlands Details Polygons', 'Complaints', 'History', 'Reference', 'LowResolutionBW', and 'World Imagery'. A scale bar at the bottom indicates 0, 100, and 200 meters. The source of the map data is listed as Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus...

Home Map Tools ☒ Tool Labels

Search Map Reference Search

Layer List Filter Upload Data Export

Layers

All Available Layers

Filter Layers... Filter

Water Control Works

- ☒ Water Control Works Points
- ☒ Water Control Works Lines
- ☒ Water Control Works

Polygons

- ☒ Point of Drainage and Water Control Works
- ☒ Wetlands Details Polygons

Complaints

- ☒ Point of Complaint

History

Reference

LowResolutionBW

World Imagery

Scale: 0 100 200m

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus...

# PRODUCE LICENCE

Generate Licence Conditions





Licence Template: TL-1123

Water Use Reporting Template: C5

Number of Signature Lines: 2

Add Custom Condition

Add Standard Condition

Conditions		Standard Code	Order	
Standard Condition populated from TL-1123 template		1	▼	<input type="checkbox"/> Exclude?
Second standard Condition populated from TL-1123 template		2	▲▼	<input type="checkbox"/> Exclude?
Third standard Condition populated from TL-1123 template		103	▲▼	<input type="checkbox"/> Exclude?
First custom condition		2	▲	<input type="checkbox"/> Remove?

Attachments

Generate

Attach

Name	File Type	Document Type	Related Task	Author	Upload Date	Action
2016-034.pdf	PDF	Licence	Prepare Licence	John Doe	2016-10-10	<div>Remove</div>

Save

Complete



# Portal Statistics since Oct 1st

- Received 44 applications – 38 for drainage, 6 for water use
- Of the 38 drainage applications received, 20 were registrable, 18 were licensable
- Most registrable project applications received via the Water Licensing Portal
- All registrable applications received to date have resulted in registration certificate issuance within 14 calendar days
- Current application backlog for drainage is less than 120 (most of which are for surface drainage) and for water use less than 150.

# More consistent, responsive...

- Website updates
- Policy development and review underway
- Full complement of Water Resource Officers and addition of a Registrar
- Reduction in backlog of drainage applications
- Promoting use of the Water Licensing Portal and working to improve its functionality as we get feedback from staff and users

**Questions?**