

**FACT SHEET:  
Water Rights and Property Rights**

This fact sheet is intended to provide information on Albertans' rights to use surface and groundwater associated with their property.

- Who owns the water in the province?
- Do I need a licence to use water?
- Why do I need a licence to use water?
- What is the household purpose exemption?
- Can I register or license my household use?
- What is the agricultural use exemption?
- Can I register or license my agricultural use?
- How do I apply for a water licence?
- Does the licence "run with the land"?
- Can a licence be transferred to another person?
- Do I own my property up to the water's edge?
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- Do activities affecting water require any other approvals?
- Where can I get more information?

**Who owns the water in the province?**

In Alberta, just as in other Canadian provinces, the provincial government owns all water in the province. The province asserts this ownership right under the *Water Act*. It does not matter if the water is located on private land or public land, the government owns it.

The province also owns the bed and shores of all permanent, naturally occurring water bodies whether on private or public land. This ownership right is established under the *Public Lands Act*. This means that the land underneath all water bodies, such as wetlands, lakes and rivers, also belongs to the province.

## **Do I need a licence to use water?**

The general rule is that you need a licence under the *Water Act* to divert or use any surface water or groundwater in Alberta. There are certain exceptions to this rule including exemptions for household purposes and agricultural use. These exemptions are described in further detail later on this fact sheet.

There is also a list of exemptions under Schedule 3 of the *Water Ministerial Regulation*, Alta. Reg. 205/98. Examples of exempted activities under Schedule 3 that do not require a licence include diverting water from a water well equipped with a manual hand pump and diverting water for fire-fighting purposes.

## **Why do I need a licence to use water?**

As owner of all water in the province, the government decides how others may use the water by issuing licences under the *Water Act*. The terms and conditions of the water licence are intended to protect the source of water supply, the rights of the licensee and the rights of other water users.

A water licence also gives you priority over other licensed users based on the date the licence was issued. In other words, a user who was licensed first (at an earlier date) has prior right to the water source before those licensed at a later date. This means that in times of water shortage, a person holding a more senior licence is entitled to obtain the entire quantity of water allocated under the licence before those persons holding junior licences can take any of their water allocation.

## **What is the household purpose exemption?**

The *Water Act* allows water to be diverted for “household purposes” without a licence. A household purpose means the water must be used for the purposes of human consumption, sanitation, fire prevention and watering animals, gardens, lawns and trees. To fall under this exemption, the water cannot be used for commercial or agricultural purposes.

The household user exemption applies to “riparian owners” or those whose land directly borders a watercourse or water body or to owners with groundwater underneath their land. A household user does not include persons who receive water from a municipality or another licensed water supply.

The maximum amount that may be diverted is 1250 m<sup>3</sup> per household per year (about 1 acre foot or 750 gallons per day). Amounts over 1250 m<sup>3</sup> per household per year require a water licence.

### **Can I register or license my household use?**

A household user cannot obtain a licence for this use and cannot register this use. However, a household user has the highest priority of water rights among users. This means a household user has priority over other uses such as licences issued the under *Water Act*. A household user does not have priority over other household users; all householder users are all equal in terms of priority.

### **What is the agricultural use exemption?**

The *Water Act* allows water to be diverted for “agricultural use” without a licence. Agricultural use means the water must be used for the purposes of raising animals or applying pesticides to crops as part of an agricultural operation on or before January 1, 1999. The agricultural use exemption applies to “riparian owners” or those whose land directly borders a watercourse or water body or to owners with groundwater underneath their land.

The maximum amount that may be diverted is 6250 m<sup>3</sup> per year (about 5 acre feet or 3,767 gallons per day) or an amount specified in an “approved water management plan” for your area, whichever amount is greater. An agricultural user also has the right to divert water for household purposes without a licence, to a total amount of 7,500 m<sup>3</sup> per year (about 6 acre feet).

## **Can I register or license my agricultural use?**

An agricultural user had the opportunity to register this use with Alberta Environment until January 1, 2002. If you obtained a registration before 2002, then you are considered to be “traditional agricultural user.” This means your use is granted priority as of the date that water was first diverted for traditional agricultural purposes. In other words, your registration number is “grandfathered” back to the date when the water was first put to use.

If you did not register before 2002 you can no longer do so. You may continue to use the water as an exempt agricultural user, but this use enjoys no priority vis-à-vis other users. You have the option of applying for a water licence for this use, but you only obtain priority from the date the licence is issued.

## **How do I apply for a water licence?**

To apply for a licence, you must submit an application form to Alberta Environment. The application form is available from Alberta Environment’s regional offices located in Peace River, Edmonton, Spruce Grove, Red Deer, Calgary or Lethbridge. The form is also available on Alberta Environment’s website at [http://www3.gov.ab.ca/env/water/legislation/Approvals\\_Licences/WAApplication.pdf](http://www3.gov.ab.ca/env/water/legislation/Approvals_Licences/WAApplication.pdf). A fee will be charged based on the amount of water requested under the licence.

In the application form, you will be asked to provide details about the location, purpose, rate and quantity of the water diversion. You will also be asked to submit drawings showing the location of the diversion in relation to the township lines and indicating features such as the location of other water wells, dugouts, pump houses, dams and reservoirs in the area. Examples of these drawings are located on the Alberta Environment website at <http://www3.gov.ab.ca/env/water/Legislation/FactSheets/examplePlans.cfm>.

A government officer with Alberta Environment called “the Director” will review the application and determine if additional information is required or if

the public must be notified of the application. Applying for a licence under the *Water Act* may consist of up to six steps:

- (1) The person or company files an application for a licence.
- (2) The Director issues a public notice of the application; typically, notice is given by placing an ad in the local newspaper.
- (3) Interested or affected members of the public, such as local water users, are given the opportunity to submit “statements of concern” about the application to the Director.
- (4) The Director reviews the application and statements of concern of those persons found to be “directly affected” by the application.
- (5) The Director makes a decision whether to issue the licence and whether to attach conditions to the licence. The applicant and directly affected persons are notified of the Director’s decision.
- (6) If dissatisfied with the Director’s decision, the applicant or directly affected persons may appeal the Director’s decision to the Environmental Appeals Board (EAB).

If public concerns have been addressed and you have provided enough information to show that your water diversion does not cause a negative impact on the water source or surrounding users, a licence may be issued. Your licence may include conditions such as requiring you to submit data on the quantities of water diverted or to monitor nearby sources. The licence will be issued for a term, usually for 10 years. When a licence expires, the licence holder will be required to apply for a renewal.

As noted above, there is a right to appeal the Director’s decision on the licence to the Environmental Appeals Board. For further information on this topic, please see the Environmental Law Centre’s fact sheet on Alberta’s Environmental Appeals Board.

## **Does the licence “run with the land”?**

Water licences generally “run with the land.” This means that the licence will be transferred to the new owner of the property when the land is sold. However, it is possible to transfer the water licence or “detach” the rights associated with a licence from the land. Further information on this topic is described under the next heading.

## **Can a licence be transferred to another person?**

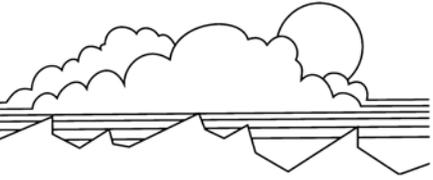
The *Water Act* provides the ability to transfer an allocation of water under a licence from the original licensee to another person. What is being transferred is the right to divert a volume of water from a water source under a certain priority date established for the licence.

The transfer of a water allocation under a licence must first be authorized in a water management plan for the area or through an order of Cabinet. An application for a transfer then can be made to the Director with Alberta Environment. The application form is available from Alberta Environment’s regional offices or on Alberta Environment’s website at [http://www3.gov.ab.ca/env/water/Legislation/Forms/Transfer\\_Application.pdf](http://www3.gov.ab.ca/env/water/Legislation/Forms/Transfer_Application.pdf)

Transfers can be made on either a permanent or a temporary basis. A temporary transfer is where the transferred allocation of water reverts back to the original licensee after a specified time period. You should also be aware that the government has the option of withholding up to 10% of the water that is being transferred for the purposes of keeping the water within the water source.

## **Do I own my property up to the water’s edge?**

You only own the land up to “the bank” of the water body. Under the *Public Lands Act*, the provincial government retains ownership of the beds and shores of permanent, naturally occurring water bodies, whether on private or public land. The extent of the province’s ownership of the bed and shore is defined by the line called the bank. The bank is a line along the upper limit of the bed and shore



that is formed by the continuous presence of surface water on the land. The presence of water forms the natural boundary between the provincially owned bed and shore, and your privately owned land. You can hire a land surveyor to determine the location of the bank.

In some cases, private property is separated from a water body by a municipally owned reserved. A municipal or environmental reserve is generally located between the private lot boundary and the bank of the water body, and it is created at the time the land is subdivided. Such reserves are owned by the municipality. The location of these reserves will be indicated on the subdivision plan for your property. You should be able to obtain the subdivision plan from the land titles office.

## **Can I drain a wetland located on my property?**

All water in Alberta, including water within a wetland, is owned by the province under the *Water Act*. Therefore, in order to drain a wetland you need to obtain an approval under the *Water Act* from Alberta Environment. The *Water Act* requires an approval of any “activity” that alters the flow of water or affects the aquatic environment, including activities such as draining water bodies.

## **When do I need to obtain a water approval?**

An approval under the *Water Act* is required before undertaking an “activity” within a water body. An “activity” is anything that alters the flow of water or affects the aquatic environment. This includes the construction of structures such as dams, crossings, culverts, dugouts or berms or the draining of water bodies.

Some activities do not require an approval under the *Water Act*. For example, an approval is not required for placing or constructing:

- a. floating platforms, seasonal piers, boat launches or docks;
- b. fences in water bodies;

- c. portable pumps if not disturbing the bed and shores of the water body;
- d. water wells if the water is used for household purposes; and
- e. dugouts where the dugouts are not located in watercourses, lakes or wetlands.

An approval is also not required for removing beaver dams, exploring for groundwater in order to apply for a licence to divert water, or for surface water control systems approved for confined feeding operations. A complete list of exemptions is included under Schedule 1 of the *Water Ministerial Regulation*.

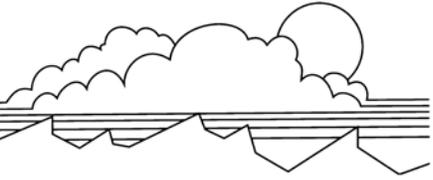
In addition, you should also be aware that some activities affecting water bodies may require federal approval. This is described in further detail later on in this fact sheet.

## How do I apply for a water approval?

To apply for a water approval, you must submit an application form to Alberta Environment. The general application form is available from Alberta Environment's regional offices located in Peace River, Edmonton, Spruce Grove, Red Deer, Calgary or Lethbridge. The form is also available on Alberta Environment's website at [http://www3.gov.ab.ca/env/water/legislation/Approvals\\_Licences/WAApplication.pdf](http://www3.gov.ab.ca/env/water/legislation/Approvals_Licences/WAApplication.pdf).

Please note that there is a special application form for activities that impact the bed and shore, such as constructing a permanent boat launch or stabilizing the bank. These applications require approval under both the *Water Act* and the *Public Lands Act*. There is a "one-window" approach to obtain both approvals at once by submitting form available on Alberta Environment's website at [http://www.srd.gov.ab.ca/land/pdf/LS\\_102\\_APPLICATION\\_FOR\\_SHORE\\_LINE\\_WATER\\_BODY\\_MODIFICATION.pdf](http://www.srd.gov.ab.ca/land/pdf/LS_102_APPLICATION_FOR_SHORE_LINE_WATER_BODY_MODIFICATION.pdf).

In the application form, you will be asked to provide details about the location of the work or activity affecting the water body. You will also be asked to submit



drawings showing the location of the work and activity in relation to the township lines and other water bodies in the area. Examples of these drawings are located on the Alberta Environment website at <http://www3.gov.ab.ca/env/water/Legislation/FactSheets/examplePlans.cfm>.

A government officer with Alberta Environment called “the Director” will review the application and determine if additional information is required such as the need to submit construction plans. Applying for an approval under the *Water Act* may consist of up to six steps:

- (1) The person or company files an application for an approval.
- (2) The Director issues a public notice of the application; typically, notice is given by placing an ad in the local newspaper.
- (3) Interested or affected members of the public, such as local water users or residents in the area, are given the opportunity to submit “statements of concern” about the application to the Director.
- (4) The Director reviews the application and statements of concern of those persons found to be “directly affected” by the application.
- (5) The Director makes a decision whether to issue the approval and whether to attach conditions to the approval. The applicant and directly affected persons are notified of the Director’s decision.
- (6) If dissatisfied with the Director’s decision, the applicant or directly affected persons may appeal the Director’s decision to the Environmental Appeals Board (EAB).

If an approval is issued, the approval will often contain conditions which detail specific operating requirements that must be carried out by the applicant. Conditions may include conducting regular inspections or submitting monitoring data about the activity or work. Once the activity is completed, the

approval holder will be required to submit a “certificate of completion” that certifies the activity has been carried out in accordance with the approval.

As noted above, there is a right to appeal the Director’s decision on the approval to the Environmental Appeals Board. For further information on this topic, please see the Environmental Law Centre’s fact sheet on Alberta’s Environmental Appeals Board.

## **Do activities affecting water require any other approvals?**

Some activities affecting surface water bodies may require federal approval. For instance, undertakings that result in the harmful alteration of fish habitat or involving the deposit of certain substances in water frequented by fish require an approval under the *Fisheries Act*. Activities that may harm migratory birds or their nests require a permit under the *Migratory Birds Convention Act, 1994*. In-water structures that may block navigation may require an approval under the *Navigable Waters Protection Act*.

You should also check with your local municipality to determine if any bylaws or planning documents govern or restrict activities in or around water bodies. If there is a municipal or environmental reserve separating your property from the edge of a water body, you will have to check with the municipality before placing structures on or removing vegetation from the reserve. Remember that the municipality owns this land and only the municipality can determine the use that can be made of this land.

## **Where can I get more information?**

For general information about water rights, please contact the Environmental Law Centre. The Centre has a publication explaining water rights in Alberta called the *Alberta’s Wetlands: A Law and Policy Guide*, which is available from our library or for purchase. Further resources are included below.

Environmental Law Centre Library Resources and Online Catalogue:



Haekel, Garry. *The Law and the Lake: Navigating Alberta's Regulatory Framework* (Edmonton: Alberta Sustainable Resource Development, 2002).

Kwasniak, Arlene. *Alberta's Wetlands: A Law and Policy Guide* (Edmonton: Environmental Law Centre (Alberta), 2001).

## Online Articles:

Alberta Agriculture, Food and Rural Development. *Groundwater Management*, online: Alberta Agriculture, Food and Rural Development <[http://www1.agric.gov.ab.ca/\\$department/deptdocs.nsf/all/wwg417](http://www1.agric.gov.ab.ca/$department/deptdocs.nsf/all/wwg417)>.

Mallet, James. "Receding lakes and property lines – subject to change?" (2003) 18:2 *Environmental Law Centre News Brief* 12, online: Environmental Law Centre <<http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=776>>.

Percy, David, Q.C. "Water rights under the *Water Act*" (1998) 13:4 *Environmental Law Centre News Brief* 1, online: Environmental Law Centre <<http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=627>>.

## Additional Online Resources:

Alberta Environment, water approvals and licences, online: <<http://www3.gov.ab.ca/env/water/Legislation/FactSheets/GeneralInfo.pdf>> - this website provides information on approvals and licences under the *Water Act*.

Alberta Sustainable Resource Development, water bodies and management of bed and shores, online: <[http://www.srd.gov.ab.ca/land/APL\\_Water\\_Bodies.html](http://www.srd.gov.ab.ca/land/APL_Water_Bodies.html)> - this website provides information on provincial ownership of the bed and shores of water bodies.

# **ENVIRONMENTAL LAW CENTRE**



## **A word of caution about your use of this material**

The information provided in this fact sheet is current to December 31, 2006. While every effort has been made to ensure the accuracy and timeliness of the information, the information provided is of a general nature and is not a substitute for legal advice. The Environmental Law Centre encourages individuals to seek specific advice on matters of concern and not to rely solely on the information in this document.

## **The Environmental Law Centre**

The Environmental Law Centre (Alberta) Society is a registered charitable organization that was incorporated in 1982 to provide Albertans with an objective source of information on environmental and natural resources law. The Centre, which is staffed by four full-time lawyers, a librarian and a small support staff, provides services in environmental law education, assistance, research and law reform. The Centre maintains an extensive library of environmental law materials that is accessible by the public free of charge.

Funding for the Environmental Law Centre is provided by the Alberta Law Foundation and through the generous support of the public. The Centre also accepts private and government research contracts for work relevant to and consistent with the Centre's objectives.

**Alberta LAW  
FOUNDATION**

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