

Association of Manitoba Municipalities Update

Water Rights Regulation

The Water Rights Regulation was recently amended to reduce red tape for lower-risk, lower-impact drainage and water retention works and focus departmental review on higher-impact, higher-risk projects. The shift toward streamlined drainage authorizations and no net loss of wetlands will support the sustainable management of water in Manitoba.

How will the new streamlined process work?

Departmental staff worked with stakeholders to develop a more streamlined process for authorization of low-risk/low-impact projects, as announced on October 1, 2019. If a project fits within one of the identified seven classes and it meets the regulatory standards for that class, it can proceed through a registration process with the department. The department will provide the proponent with a registration certificate (approval to proceed with the work) within a short period of time (14 days).

What are the seven classes of registrable works?

The seven classes of registrable works are as follows:

1. Minor surface drain construction
2. Agricultural subsurface tile drainage construction
3. Water control works for new crossings
4. Minor culvert changes
5. Water control works involved in wetland restoration or enhancement
6. Construction of small dams
7. Construction of small dry dams

More information on registrable projects can be found at the following link - https://www.gov.mb.ca/sd/pubs/water/water_rights/registrable_projects.pdf

Why have the application fees increased?

Fees related to drainage and water control work have not changed since the regulation was initially drafted in 1987. The department examined the workflow process for water control works authorizations to determine the cost to the department to issue a water control works licence. Based on average time requirements for each process, the new application fee structure was meant to reflect the direct costs to government, including conservative recovery-cost estimates for staff time, mileage costs to conduct site inspections (as needed), related office costs, and costs associated with the Water Licensing Portal.

What can be done to defray the costs associated with the new application fees?

In order to defray the costs associated with the new structure for application fees, municipalities are encouraged to bundle any contiguous drainage projects such that the new application fee structure can be potentially spread over more than one project to further decrease the application costs on a per project basis.

The following three scenarios may be useful in bundling applications for municipalities:

Scenario 1 (if a municipality has multiple works that qualify for registration and they are not contiguous): Municipalities may use the Municipal Registrable Works form to submit all of these works at the same time, for the fee of \$100. Requirements are outlined in the "What is a Registrable Project?" document -

https://www.gov.mb.ca/sd/pubs/water/water_rights/registrable_projects.pdf.

Scenario 2 (if a municipality has multiple works that fall into the registration OR licence category and are contiguous): Applications can be submitted using the municipal water licensing portal account to submit the application online. If you are submitting an application with more than ten locations, it is advisable to submit using a paper-based application available through your local water resource officer in order to avoid difficulties with mapping issues associated with a significant number of locations.

Scenario 3 (if a municipality has multiple works that fall into the licence category and they are not contiguous): Applications can be submitted using a paper-based application form for the fee of \$500. All of the work on the application must be contained within the same sub-watershed and there must be contiguous surveys done for all land contained on the application. Stated differently, this means that you could have non-contiguous works, but you must have contiguous survey in order to support the "whole watershed approach" to drainage. Paper-based application forms are available through your local water resource officer.

What are the timelines to receive authorization?

How long does it take to obtain a registration certificate for my water control work project?

If you apply online, meet all the criteria, and provide all the required documentation you will receive a registration certificate authorizing the works within 14 days. Projects submitted for registration that do not meet each of

these requirements may not be processed within that timeframe. If you are unable to use the Water Licensing Portal and submit your registration application using an alternate format, your registration certificate will be sent within 14 days of department staff entering your information into the Water Licensing Portal.

How long before I receive a water control works licence?

Applications are processed in the order they are submitted. The length of time prior to receiving a licence will largely depend on the number of applications awaiting processing, the complexity of your project and whether or not all information is included with your submission. You may check the status of your application on the Water Licensing Portal. Applicants can expect to receive a licence within six weeks.

Why would I want to use the Water Licensing Portal?

Submission of applications using the Water Licensing Portal is strongly encouraged as it will result in faster service delivery times. If you are unable to submit an application using the portal, please contact your local water resource officer for a paper-based application. The portal can be used to view your application status in real-time, view details of your projects(s), and upload documents and reports.

General

I wish to conduct maintenance on my existing drain. Do I need to seek authorization?

If your project has been authorized (by license or registration certificate), you can conduct maintenance to return the project to the original specifications without further authorization. If the project has not yet received authorization, maintenance work cannot be conducted until you have received authorization.

What is leading to drainage licence application wait times?

There are a variety of factors that lead to delays in addressing applications. Some delays are a function of many applications being submitted for approval at the same time. More often, applications are delayed because applications are submitted with missing or incomplete information. In order to improve the application process, the department has developed a streamlined approach to further reduce processing times for low-risk/low-impact projects to 14 days or less.

What is a three shot survey?

A three shot survey is survey elevations along the road, typically in the center, prairie, which is the height of land opposite the drain, and the center of the ditch or drain. (Please see the Appendix at the end of this document).

What steps are being taken to increase consistency in licensing and administration of The Water Rights Act?

The Drainage and Water Rights Licensing Branch has recently updated their policies and procedures in conjunction with recent amendments to the Water Rights Regulation. Staff training has been completed to ensure consistency when assessing applications.

How are illegal drainage activities brought to the attention of a water resource officer?

Unauthorized water control works may be discovered in several ways: directly observed by the officer, the officer may have reasonable grounds to suspect that there are unauthorized works or by the receipt of a completed complaint form indicating that works have been constructed/maintained.

Definitions

Natural prairie level

Under the Water Rights Regulation, "**natural prairie level**" means the existing level of the ground before any excavation, filling or building work. This definition is used for registrable projects including Class A – Minor Surface Drains Construction (for constructing minor surface drains in agricultural fields) and Class E – Water Control Works involved in wetland restoration or enhancement.

Contiguous project

Means sharing a common border or touching or next or together in sequence. Similar to adjacent, neighbouring or adjoining.

Three shot survey

A three shot survey is survey elevations along the road, typically in the center, prairie, which is the height of land opposite the drain, and the center of the ditch or drain.

Municipal Issues

Why is approval by municipal government no longer a requirement?

Prior to regulation amendments, the department sought municipal signoff on all applications. As a result of consultation with the Association of Manitoba Municipalities, the unconditional municipal signoff requirement was removed. This creates flexibility for municipal governments as they can pass a drainage bylaw outlining specific requirements for those that wish to construct water control works (e.g., drainage, dams, etc.) or create an exemption for certain types of water control works within their municipalities.

Municipalities have the opportunity to review projects and provide their assessment in instances where municipal lands are immediately downstream of registrable projects or if they are deemed to be impacted in the case of projects assessed for licensing.

What happens if a municipality does not provide signoff?

Departmental staff will contact the municipality and discuss the reasons for not providing signoff. If the reasons stated are valid the project will not be authorized. If impacts of the project can be mitigated through licensing conditions, a project may still be licensed. Officers have the discretion to approve projects without signoff in instances where objections are without merit.

What are the survey requirements for municipalities?

A survey is required for culvert-to-culvert clean outs where culvert elevations will not be altered.

A survey must be attached for all clean outs of municipal drains, as follows:

- Minimum one shot profile with geodetic benchmark or three shot profile with assumed benchmark;
- Existing drain bottom and proposed gradient must be clearly illustrated; and
- Culverts with invert elevation, size and material to be identified.

Can a municipality proceed with a water control works project without authorization?

No. Manitoba Conservation and Climate is responsible for authorizing water control work including drainage under The Water Rights Act.

Do municipalities need to provide surveys in support of project applications?

Pre-construction surveys will be required for all projects approved through the licensing process. For registrable projects, pre-construction surveys will only be required for minor culvert changes, wetland enhancement/restoration projects and construction of small dams.

Water Licensing Portal

To apply for authorization to construct Water Control Works, an application including all required documentation must be completed. Remittance of the appropriate application fee is also required at the time of application. Submission of applications using the online [Water Licensing Portal](#) is strongly encouraged for faster service delivery times. If you are unable to submit the application using the online [Water Licensing Portal](#), please contact your local water resource officer for a paper-based application.

How to create a user account - https://youtu.be/jqt_sv4Wn8Y

This video will walk you through how to create a new user account for the Water Licensing Portal. In order to log in to your portal account, you need a valid log in ID. If you know you already have applications or licences with the Drainage and Water Rights Licensing Branch, contact us at drainage@gov.mb.ca.

How to apply for a Water Control Work Registration Certificate -

<https://youtu.be/C3NzviewxAMw>

This video will walk you through how to apply for a new Water Control Works Registration Certificate using the Water Licensing Portal. Registration Certificates can be issued for specific types of Water Control Works projects as referenced in the Water Rights Regulation section 10 through section 21. Project applications submitted through this portal and approved by the Registrar will receive a Registration Certificate within 14 calendar days.

How to apply for a Water Control Works Licence -

<https://youtu.be/vjldWgIoIYU>

This video will walk you through how to apply for a new Water Control Works Licence using the Water Licensing Portal.

Further Information

If you require further information, please contact your local water resource officer. Specific details are available at the following link -

https://www.gov.mb.ca/sd/pubs/water/water_rights/officer_aof_contact.pdf

Alternatively, the Drainage and Water Rights Licensing Branch can be reached at 204-945-3983 or by email at drainage@gov.mb.ca.

Wetlands

Can I drain a wetland on my property?

Under The Water Rights Act and the Water Rights Regulation, Class 3 (seasonal) wetlands are eligible for drainage through authorization by license. A proponent must demonstrate their use of the mitigation process, including how all options to avoid and minimize impacts to the wetland have been considered. Any proposed loss of wetland benefits must be offset by compensation for lost acres of wetlands as required by The Water Rights Act and the Water Rights Regulation (as set out in Schedule D).

Water rights authorization will not be issued for the drainage of Class 4 (semi-permanent), and 5 (permanent) wetlands. Class 1 and 2 wetlands are eligible for drainage through the registration process (assuming all other requirements are met).

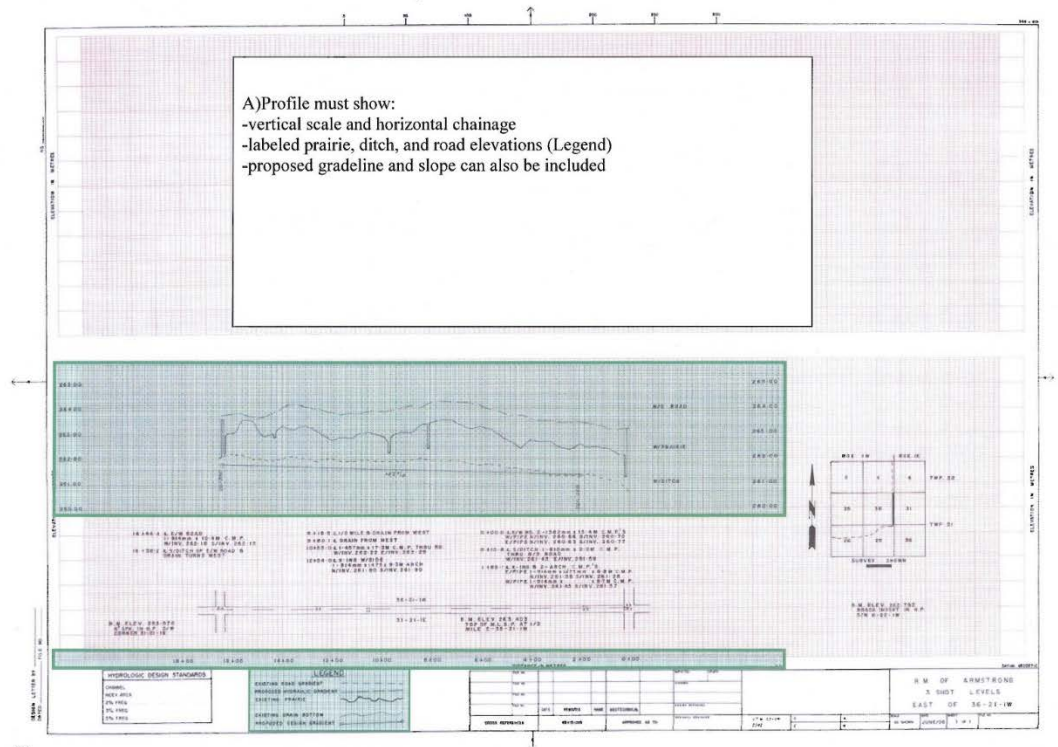
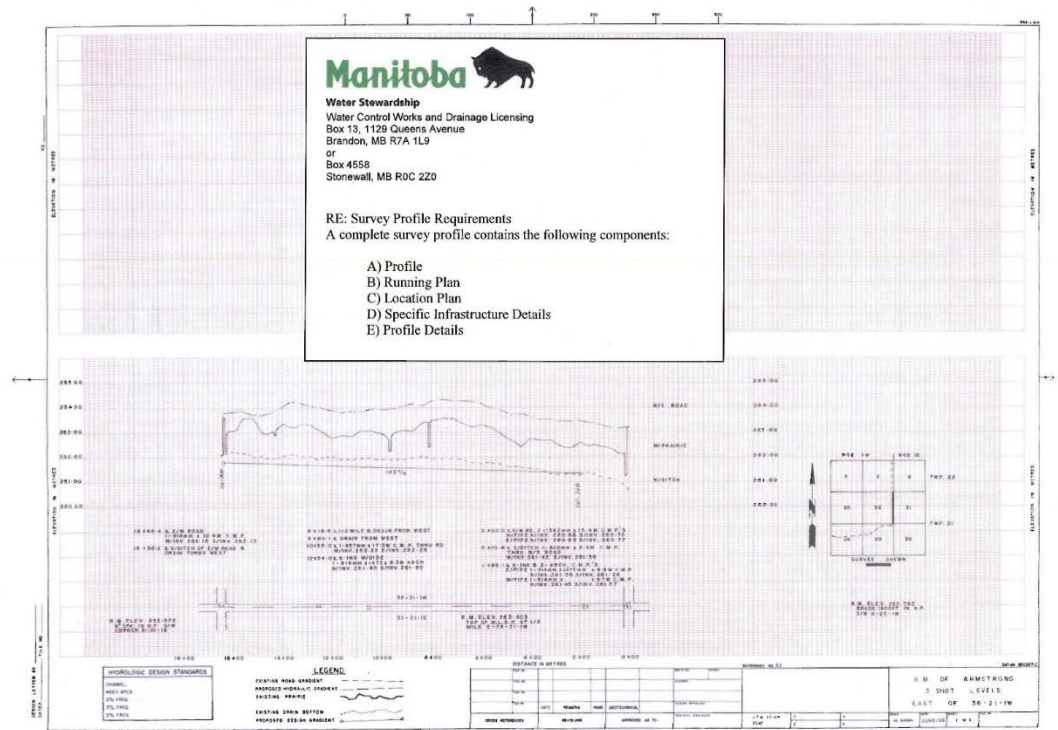
Classes of Wetlands under the Water Rights Act and the Water Rights Regulation (as set out in Schedule C).

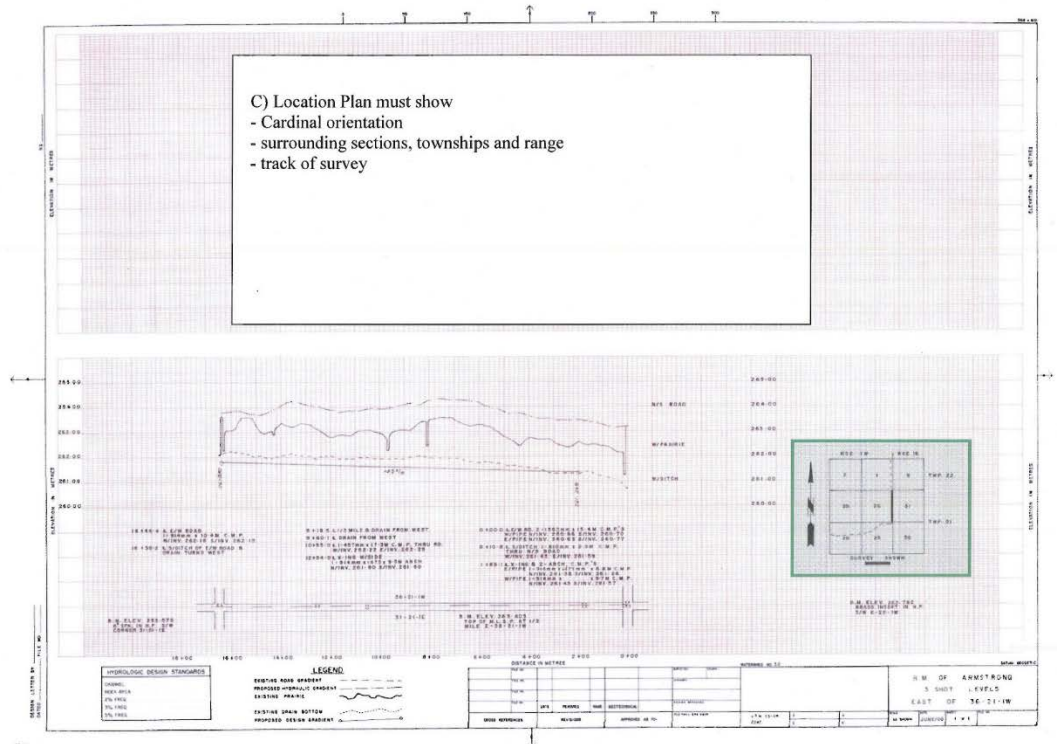
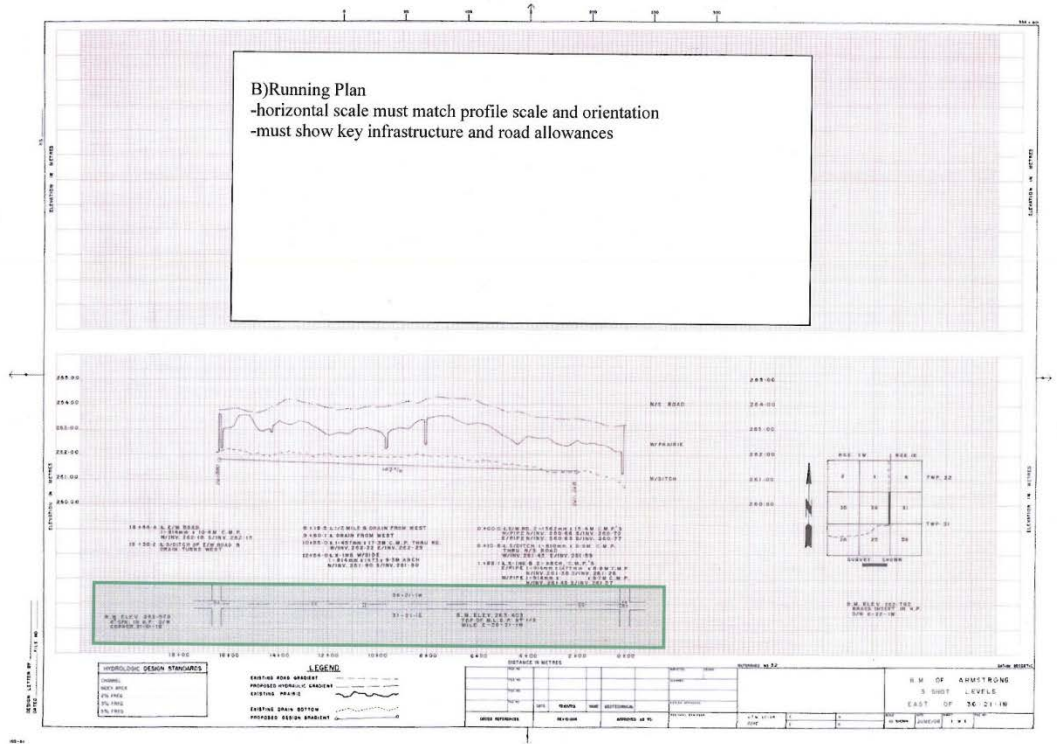
What does 'no net loss of wetland benefits' mean?

'No net loss of wetland benefits' is a principle that is intended to preserve the valuable ecological functions of wetlands while still promoting land use and development. By incorporating the principle into our land use and development processes, we can avoid drainage and degradation of wetlands wherever possible. In instances where the loss of wetlands cannot be avoided, the party responsible will be required to provide compensation. This compensation will fund the restoration or enhancement of other wetlands, ideally in the same area or watershed as the loss occurred. This approach balances the need to protect existing wetlands while still supporting economic development.

'No net loss' is a concept recognized and used in wetland conservation both nationally and internationally and was strongly endorsed by Manitobans throughout the recent consultation process. The principle is built upon the hierarchy of avoidance, minimization, and compensation – landowners and developers must seek to avoid and minimize their impact on wetlands, but if that is not possible they must provide compensation.

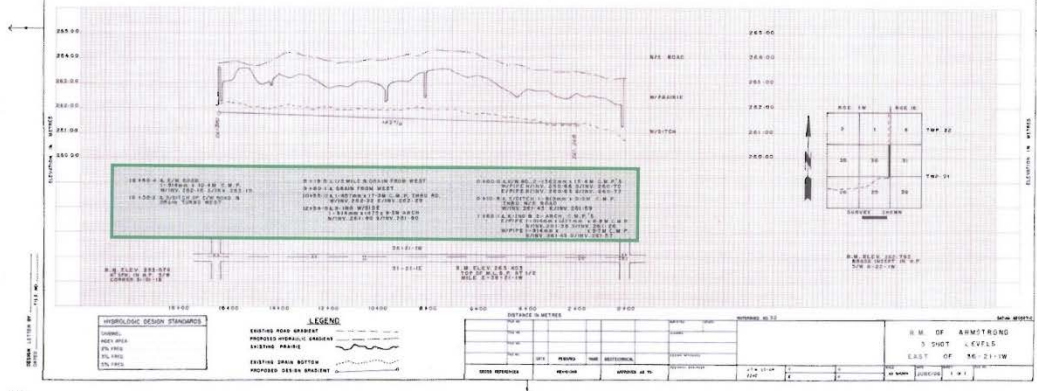
Appendix – Survey Profile Requirements





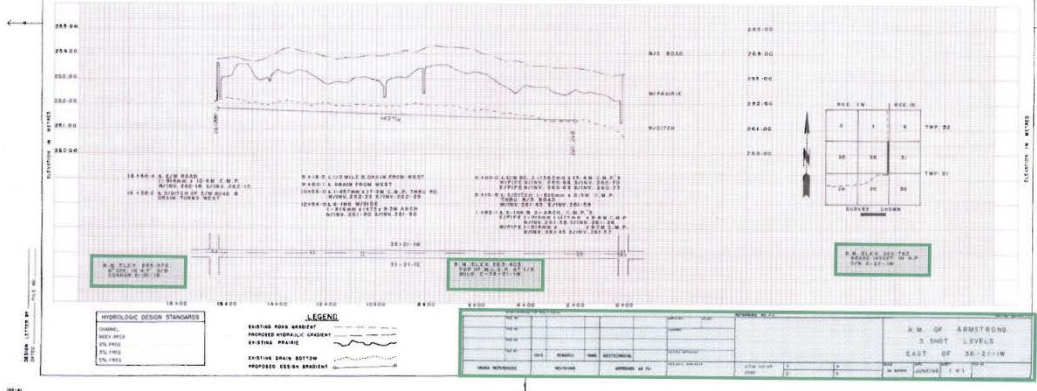
D) Specific Infrastructure Details must show

- chainage
- infrastructure type
- invert details (upstream versus downstream)
- infrastructure orientation (along drain versus thru road)
- elevation



E) Profile Details

- benchmark details-location, and elevation
- survey date
- general location description
- surveyor name



Addendum to Frequently Asked Questions Association of Manitoba Municipalities Update – January 2021

Municipal Drainage Bylaws

Municipalities can pass drainage bylaws outlining specific requirements for those that wish to construct water control works (e.g., drainage, dams, etc.) or create an exemption for certain types of water control works within their municipalities. The Red River Basin Commission produced a sample drainage bylaw for use by municipalities and can be accessed at https://3e53b99f-c971-42e0-ba68-911972f3ac23.filesusr.com/ugd/4odb74_df7d2ea1f2294924980a8bea061d5dd3.pdf.

Registrable Projects

A streamlined approval process for lower-risk/lower-impact projects was implemented in October 2019. If a project fits within one of the identified seven classes and it meets the regulatory standards for that class, it can proceed through the registration process with the department and a registration certificate will be issued within 14 calendar days. Incorrect or incomplete applications, projects requiring a field visit or projects not submitted online may encounter additional delays.

Minor Surface Drain Construction

Class A registrable projects are limited to the construction of surface drains with a depth not exceeding 12 inches below natural prairie. As such, this class of project will be largely limited to agricultural fields.

Municipal ditch cleanouts do not satisfy the definition of a registrable project as outlined in 4.1(2) of The Water Rights Act. Projects that have previously been licensed do not require further authorization providing it does not deviate from the original design specification and conditions of the Water Rights Licence.

Water Control Works for New Access Crossings

Numerous access crossings (Class C) can be authorized at the time of application in instances where a new residential development is established. There is no timeline associated with the construction of new access crossings.

Minor Culvert Changes

Minor culvert changes (Class D) are included as a registrable project. This includes replacing an existing culvert with another culvert that does not change the hydraulic capacity of the culvert by more than 15%, as long as there is no change in the invert elevation of the culvert. Proposed projects must include a pre-construction topographical survey that shows the location, size and invert elevation of existing culverts.

The issuance of a registration certificate does not enable applicants to incrementally increase the hydraulic capacity of culverts by 15% on a continual basis. Should this type of request or application be made, department staff are able to view past authorizations issued and can investigate the situation to deny further authorizations.

Cleanout of Debris

Projects with existing authorization are allowed to cleanout or maintain the infrastructure back to the original design as often as required.

In instances where debris accumulates in ditches following a heavy rainfall event, municipalities are asked to contact their local water resource officer for further guidance.

Further Upgrades to Water Licensing Portal

The department continues to make upgrades to the Water Licensing Portal (www.gov.mb.ca/waterlicensingportal) as resources allow. Suggested changes can be brought to the attention of the department by emailing drainage@gov.mb.ca.

Municipal Approvals

Municipalities have the opportunity to review projects and provide their assessment in instances where municipal lands are immediately downstream of registrable projects or if they are deemed to be impacted in the case of projects requiring licensing. If additional municipal oversight is required, municipalities are encouraged to pass a drainage bylaw outlining their specific requirements.

If a municipality does not provide signoff, department staff will contact the municipality and discuss the reasons for not providing signoff. If the reasons stated are valid, the project will not be authorized. If impacts of the project can be mitigated through licensing conditions, a project may still be licensed. Officers have the discretion to approve projects without signoff in instances where objections are made without merit.

Exceptions under The Water Rights Act

Section 3(2) of The Water Rights Act provides exceptions to a person exercising a right under any other Act of the Legislature or any Act of the Parliament of Canada.

This would apply to railways such as the Canadian National Railway or Canadian Pacific Railway (Canada Transportation Act) or to Manitoba Infrastructure exercising authorities provided to them under The Water Resources Administration Act or The Transportation Infrastructure Act. Manitoba municipalities are not granted the same exceptions under The Municipal Act.

Complaints and Illegal drainage

Complaints can be submitted using the Water Licensing Portal - www.gov.mb.ca/waterlicensingportal. If unable to submit a complaint using the online portal, please contact your local water resource officer or email drainage@gov.mb.ca for alternate formats. Complainants should provide as much information as possible to assist with facilitating an inspection by department staff. Only complaints in writing will be inspected.

Department staff are responsible for ensuring compliance of all water control works involving surface water pursuant to The Water Rights Act. In order for a charge to be upheld, the department needs to be able to gather adequate evidence. If an offence has been committed, charges may be laid against the offending individual(s) and/or landowners. Anyone convicted of an offence is responsible to ensure remedial work is conducted to bring the work into compliance with The Water Rights Act. Failing to do so may result in further charges and remedial work may be required by Manitoba through the issuance of an 'Order'.

Signoff Requirements

Section 4(2)(d) of the Water Rights Regulation requires written approval from all landowners whom the applicant has determined may be significantly affected by the proposed water control works. Applicants are requested to self-identify as part of the initial application. If additional signoff from additional parties is required as part of the application review process, applicants will be advised of this requirement.

LiDAR Imagery

LiDAR imagery can be accessed at http://mliz.gov.mb.ca/dems/index_external_lidar.html.

While LiDAR imagery is useful for planning purposes, LiDAR imagery alone does not replace detailed site-specific information provided through surveys.

Culvert Installation for Conveyance of Livestock Manure

While the installation of culverts to allow the passage of umbilical cords for the purposes of liquid manure application were not installed with the intent to convey water, the presence of this conduit enables water passage to occur. The Water Rights Act does not differentiate based on purpose of the culvert within the context of a water control work but rather focuses on all means used to carry, conduct or convey water. As such, authorization under The Water Rights Act is required for such applications.

***** Manitoba Conservation and Climate will update this document periodically as new information is received. *****