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## Purpose:

This Guide is to improve public knowledge of the regulatory instruments and processes applicable to the Alberta Wetland Policy Implementation.

## Background:

The Wetland Regulatory Requirements Guide is a guide that identifies, to the public, the primary legislation and requirements applicable to wetland administration. These are the requirements and specific pieces of the legislation that must be complied with to carry out an activity in a wetland. With the implementation of the Alberta Wetland Policy on June 1, 2015 (White Area), this guide provides clear, consistent and transparent information about requirements.

## Reference Documents

- *Water Act*
- *Water (Ministerial) Regulation*
- *Water (Offences and Penalties) Regulation*
- *Public Lands Act*
- Alberta Wetland Policy
- Water Act Regulatory Requirements Guide
- Alberta Wetland Identification and Delineation Directive
- Alberta Wetland Assessment and Impact Report Directive
- Alberta Wetland Mitigation Directive

## Definition and Ownership

Wetlands are administered under both the *Water Act* and the *Public Lands Act*. Activities or water diversions that may impact wetlands may require approval, authorization, a licence and/or a disposition under both Acts. In addition, compliance with other legislation, both provincial and federal (e.g. *Species at Risk Act*), may be required before proceeding.

Wetlands “are land saturated with water long enough to promote formation of water altered soils, growth of water tolerant vegetation, and various kinds of biological activity that are adapted to the wet environment (Alberta Wetland Policy).

Wetland is defined as a “Water body” under *Water Act*, Section (1)(ggg) as “any location where water flows or is present, whether or not the flow or the presence of water is continuous, intermittent or occurs only during a flood, and includes but is not limited to **wetlands** and aquifers but does not include except for clause (nn) and section 99 “water body” that is part of an irrigation works if the” irrigation works is subject to a licence and the irrigation works is owned by the licensee, unless the regulations specify that the location is included in the definition of water body.”

The *Water Act* provides the Government of Alberta ownership of water and Alberta Environment and Parks (AEP) is responsible for the administration of water management under provisions of the *Water Act*; including water in wetlands.

The *Public Lands Act: Section 3* provides the Government of Alberta with ownership to the beds and shores of most permanent and naturally occurring water bodies. The Department is responsible for administration of public land under provisions of the *Public Lands Act*; including wetlands. The criteria which must be met for ownership (public land) of wetland are:

- A body of water
- Permanent; and
- Naturally occurring

Some exceptions exist and these are outlined in Section 3(2) of the *Public Lands Act*. Under section 3(3) of the *Public Lands Act*, the Government of Alberta ownership of bed and shore is retained even if a water body is drained or altered without authorization.

The Government of Alberta’s ownership of bed and shore under Section 3 of the *Public Lands Act* is a reservation against the original land grant (Section 61(1)a of the *Land Titles Act*: Implied conditions), and applies even if the current land title is silent regarding ownership of a body of water. Consequently, even if the landowner has title to the land – unless the bed and shore is specifically mentioned on the title - the landowner may not own the wetland.

The ownership of the bed and shores of a water body is not always obvious, and must be determined prior to initiating any project. The Guide for Assessing Permanence of Wetland Basins is a tool which provides information to assist in determining if the bed and shore is public land or private land. Validation of public land ownership by the Department’s Water Boundaries technical experts must be attached to any application related to wetland.

- [Guide for Assessing Permanence of Wetland Basins](#)

The Alberta Energy Regulator (AER) is responsible for the administration of the *Water Act* and the *Public Lands Act* for all upstream oil and gas activities.



## **Acquiring Ownership of Land that is a Crown-Owned Wetland**

In order to impact any permanent wetland that is public land, one must have ownership or obtain a disposition. A permanent impact for private use, such as draining or infilling a wetland, is a conversion of a Public Land asset. The *Public Lands Act* authorizes the Minister to exchange public land for other land where it is in the public interest to do so. If a proposed activity will result in loss of a Public Land asset, acquiring ownership to it must occur through a land exchange or a land sale at the appraised market value. A land exchange is a tool used by the Department to acquire lands in order to achieve provincial objectives. In the event a sale of the Public Land asset is approved, the land sale proceeds are required to be paid into Alberta's Land Stewardship Fund. This payment is separate from any wetland replacement requirements under the *Water Act*.

## **Diversion or Use of Wetland Water**

If you are planning to divert water, operate a works, or use the water in a wetland you will need a *Water Act* Licence (*Water Act: Section 49*).

*"Diversion of water"* means (*Water Act: Section 1(1)(m)*):

- (i) *the impoundment, storage, consumption, taking or removal of water for any purpose, except the taking or removal for the sole purpose of removing an ice jam, drainage, flood control, erosion control or channel realignment, and*
- (ii) *any other thing defined as a diversion in the regulations for the purposes of this Act."*

Water in wetlands is "surface water." A Licence defines the maximum amount of water that can be diverted and used, for a specific time and purpose.

## **Activity Affecting a Water Body**

Any activity that affects or has the potential to affect (including cumulative effects) a water body and/or the aquatic environment (*Water Act: Section 36*) requires a *Water Act* approval. Additionally, before initiating any activity on "public land" (water bed or shore line) (*Public Lands Act: Sections 20 and 47*) an approval under the *Public Lands Act* is required.

*"Activity"* means (*Water Act: Section 1(1) (b)*):

- (i) *placing, constructing, operating, maintaining, removing or disturbing works, maintaining, removing or disturbing ground, vegetation or other material, or carrying out any undertaking, including but not limited to groundwater exploration, in or on any land, water or water body, that:*
  - (A) *alters, may alter or may become capable of altering the flow or level of water, whether temporarily or permanently, including but not limited to water in a water body, by any means, including drainage,*
  - (B) *changes, may change or may become capable of changing the location of water or the direction of flow of water, including water in a water body, by drainage or otherwise,*

- (C) *causes, may cause or may become capable of causing the siltation of water or the erosion of any bed or shore of a water body, or*
- (D) *causes, may cause or may become capable of causing an effect on the aquatic environment;*
- (ii) *altering the flow, direction of flow or level of water or changing the location of water for the purposes of removing an ice jam, drainage, flood control, erosion control or channel realignment or for a similar purpose;*
- (iii) *drilling or reclaiming a water well or borehole;*
- (iv) *anything defined as an activity in the regulations for the purposes of this Act but does not include an activity described in sub clause (i) or (ii) that is conducted by a licensee in a works that is owned by the licensee, unless specified in the regulations.*

If the proposed activity involves disturbing a water body, regardless of whether the bed and shore are owned by the Province of Alberta, an approval is required under the *Water Act* (Section 36).

## **Wetland Regulatory Instruments Definitions**

The *Water Act* and *Public Lands Act* define Approval/ approval and Authorization/ authorization differently. Depending on the legislative context, the following definitions apply.

### **Approval:**

*Public Lands Administration Regulation: Section 1(1)(e): An instrument, other than a formal disposition or an authorization, that is issued to a person by or on behalf of the Department and that grants to the person the permission or consent of the Minister, a director or an officer that is required under the Act, the regulations or the conditions of a formal disposition or an authorization.*

*Water Act: Section 1(1)(f) means an Approval issued under this Act and deemed Approval under this Act.*

Common meaning: When not capitalized, the term “approval” is also used as a verb meaning to approve something.

### **Authorization:**

*Public Lands Administration Regulation: Section 1(1)(f): An instrument, other than a formal disposition or an approval, by which an authorization under section 20(1)(a), (b) or ?l of the Act is granted.*

*Water Act:* Is not defined under the *Water Act*, however, it is used as a verb in the context of providing official permission or approving something.

### **Licence:**

A regulatory instrument under the *Water Act* is defined as a *licence issued under this Act and includes a renewed licence and a deemed licence under this Act* (Section 1(1)(dd)).



**Disposition:**

A regulatory instrument under the *Public Lands Act* (Section 1(e)) is defined as:

*“...any instrument executed pursuant to this Act, the former Act, the Provincial Lands Act, RSA 1942 c62, or the Dominion Lands Act (Canada), RSC 1927 c113, whereby*

- (i) any estate or interest in land of the Crown, or*
- (ii) any other right or privilege in respect of land of the Crown that is not an estate or interest in land, is or has been granted or conveyed by the Crown to any person, but does not include a grant.”*

**Wetland Directives**

In addition to legislative requirements, the following the directives must be abided by:

- Alberta Wetland Identification and Delineation Directive
- Alberta Wetland Assessment and Impact Report Directive
- Alberta Wetland Mitigation Directive

**Relevant Legislation**

In addition to the *Water Act* and *Public Lands Act*, activities or water diversion may impact wetlands may require compliance with other legislation.

- *Alberta Land Stewardship Act (ALSA)* for activities on the land base
- *ALSA* is implemented through Land Use Framework Regional Plans

If the Director is of the opinion that an activity, diversion of water, or operation of a works requires an approval under the EPEA the Director a) must refer the activity, diversion of water or operation of a works for review, and b) may make any recommendations that the Director considers appropriate (Section 5).

The activity/diversion application may also require a regulatory review under other Alberta legislation such as the:

- *Fisheries (Alberta) Act*
- *Wildlife Act*
- *Forests Act*

In addition, Federal legislation may apply. It is the applicants' responsibility to ensure compliance with all relevant legislation before initiating a project.

**Wetland Activities**

The following provides a quick reference for common wetland activities and the legislation that is applicable.

**NOTE:** This is not a comprehensive list of activities. For further clarification, contact the nearest regional office.



Proposed Activity	Public Lands Act Crown-Owned Wetland	Water Act
Aquatic Vegetation Modification	[1]	✓
Drainage	✓	✓
Excavation	✓	✓
Erosion Protection Works	✓	✓
Pipeline and Telecommunication Line Crossings	[1]	[2]
Placing Fill Material (directly related to wetland impacts)	✓	✓
Outfall Structure	[3]	[2]
Water Control Structures	✓	✓

- [1] Exempt if there is no modification to the bed of the wetland
- [2] *Water Act* Code of Practice for Pipeline and Telecommunication Line Crossings and/or Outfall Structures may apply
- [3] License of Occupation required for any portion of a structure that will occupy the bed and shore

## Application Submission

The Wetland Application Checklist is intended to assist Applicants with *Water Act* and *Public Lands Act* applications pertaining to activities in wetlands to ensure complete and consistent application submissions. The checklist is divided into 3 main stages:

- Stage 1: Planning and Legislative Alignment
- Stage 2: Wetland Assessment and Impact Report
- Stage 3: Application Submission

More information on the requirements for an application and the application process affecting activities in wetlands can be found at Alberta Environment and Parks website.

For requirements under the *Public Lands Act*, see:

- [Approvals & Regulatory Requirements](#)

For requirements under the *Water Act*, see:

- [Water: Education/Guidelines](#)
- [Water Act Regulatory Requirements Guide](#)

For upstream oil and gas application requirements and processes, see Alberta Energy Regulator:

- [Application Process](#)

## **Contact Information**

Any comments, questions, or suggestions regarding the content of this document may be directed to:

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## **Authorities**

Original signed by: \_\_\_\_\_

Date: Jun1, 2015

Andy Ridge, Director  
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