
Water Law in Alberta

A Comprehensive Guide

Chapter 2: Use and Flow of Water

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Environmental
Law Centre

Water Law in Alberta

Chapter 2: Use and Flow of Water

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CHAPTER TWO: USE AND FLOW OF WATER

In this chapter, we will deal with law behind the use and flow of water, which, practically speaking, covers two separate subjects. The first is the taking and use of water for any purpose, including consumption, irrigation, and industrial uses, such as oilfield well injection. The second is the modification of the flow of water, including through such activities as drainage, flood control, erosion prevention, and channel realignment. Both of these aspects of water are primarily regulated by the *Water Act*¹ and, accordingly, this legislation will be the central focus of this chapter.

To provide a fulsome discussion of the regulatory regime that governs the use and flow of water, this chapter will be divided into three parts. The first part will deal with the regulatory regime behind the taking and use of water. Specifically, it will provide an overview of how water allocation planning works in Alberta, outline the licensing scheme that permits the taking and use of water, and give a brief overview of the specific regulations that govern water service utilities.

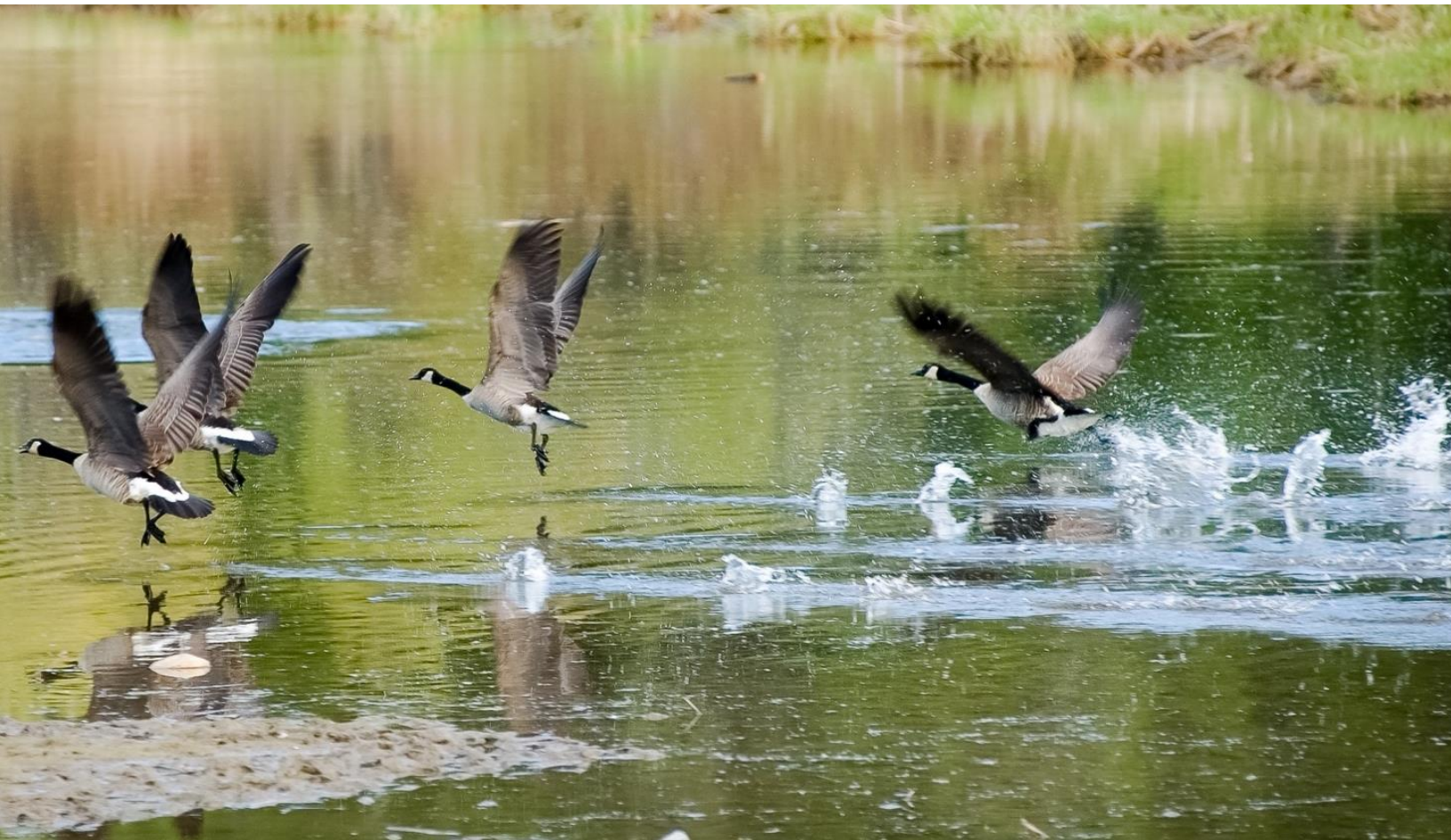
Then, the second part of this chapter will discuss the approval scheme for activities that affect the flow of water, including those activities that may cause erosion or otherwise affect the natural aquatic environment. This section will focus on the *Water Act* but will also mention some of the other, more targeted legislation that regulates activities that affect the flow of water.

¹ *Water Act*, RSA 2000, c W-3.

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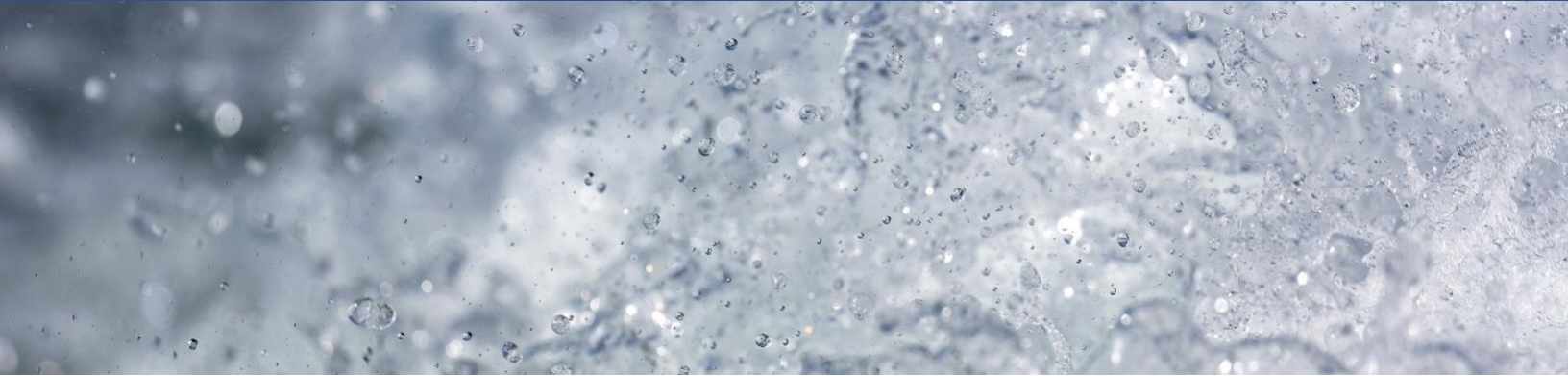
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Finally, the third part of this chapter will provide a brief overview of the different ways the provincial government can enforce the *Water Act*. It will also discuss the appeals process that is available to challenge the decisions made by government actors under the *Water Act*, such as the decision of whether to issue a water licence.



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I. THE USE OF WATER

Under the *Water Act*, the provincial government is the owner of the water in the province of Alberta, as well as the right to take and use that water.² This means more or less what it sounds like: the government owns the water in Alberta and controls the right to use that water for any purpose, including for drinking water, irrigation, or any industrial use. As a consequence, to take or use water in Alberta, you must receive permission to do so from the provincial government, whether under a water allocation such as a licence or a registration or under a general permission set out in the *Water Act*.

The only exception to this rule is that the *Water Act* scheme does not apply to surface waters in national parks, which are instead governed by the federal government under the *Canada National Parks Act*³. Similarly, the *Water Act* probably does not apply on First Nations' reserve lands, although the law is a little less clear on this point. For more information about the rules that apply to reserves, and the reasons for the uncertainty in the law, take a look at the [chapter on water in Indigenous communities](#).

With these two exceptions in mind, in this section, we will explain how water is allocated in Alberta. To do this, we will start by discussing the different tools the provincial government uses to plan for the allocation of water. Then, we will provide a description of the different types of licences and other authorizations the government may issue to allow water usage, and, finally, we will give an overview of the regulations that apply to the licensees who distribute water to other users—namely, public and private water utilities.

² *Ibid*, s 3.

³ *Canada National Parks Act*, SC 2000, c 32. See also *National Historic Parks General Regulations*, SOR/82-263, ss 8-11; *National Parks General Regulations*, SOR/78-213, ss 17-20.

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i. Water Use Planning

Imagine for a moment the difficult task of deciding who gets to use the water in Alberta and how much they get to use. In many areas of the province, there is an abundance of water, which can be more easily divided between the different possible users and uses. However, in other parts of the province there are sensitive ecosystems that require adequate flow levels to maintain the aquatic environment, or, in some cases, there is just significantly less water than there is demand for it.

As a notable example, in the south, there is only about 20% of the water in the province, but approximately 80% of the demand.⁴ These circumstances require the government to make important choices about how water use should be allocated, including who should be able to use water, how much they should be able to use, and what they should be able to use the water for. Additionally, it is important for the government to consider how water usage will match the province's development into the future, especially given concerns relating to reduced or changed flow patterns caused by climate change.

To undertake this feat, the provincial government has a number of legal tools at its disposal to plan for and manage how water will be used in the province. In this section, we will discuss these legal tools, starting with the international treaties and interprovincial agreements that govern water use, as well as the regional land use plans developed by the provincial government. Then, we will look at the legal tools available to the provincial government under the *Water Act*, including water management plans, water conservation objectives, water allocation orders, and planning directives. Finally, we will provide an overview of the priority system, which is the tool the provincial government uses to manage conflicts between the different water users.

⁴ *Facts About Water in Alberta* (Edmonton: Alberta Environment Information Centre, 2010), online: Government of Alberta at 4 <https://open.alberta.ca/publications/9780778589709>.

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a. International Treaties and Interprovincial Agreements

Many of the major rivers in Alberta flow from Alberta into other provinces or territories and, in the case of the Milk River and its tributaries, the United States.⁵ This means that the use of water in Alberta affects the amount of water that flows into these other jurisdictions. In addition, some of the rivers in Alberta come from other jurisdictions, such as the Hay River, which flows from British Columbia and the St. Mary and Milk Rivers, which come into Alberta from Montana.⁶

To manage the impact of water usage and to fairly allocate water flow between jurisdictions, the Government of Alberta and the Government of Canada have entered into agreements with the governments of the other jurisdictions that share our waterways. These agreements impose binding limits on the amount of water Alberta can use and the amount of water that the Alberta government must allow to flow through to other jurisdictions. Practically, this means that these agreements impose hard limits on the amounts of water the Government of Alberta can allocate to Albertans under the *Water Act*.

In Alberta, there are three main interprovincial and international agreements that govern the use and flow of water: the *Boundary Waters Treaty*, the *Master Agreement on Apportionment*, and the *Mackenzie River Basin Transboundary Waters Master Agreement*. In the following sections, we will discuss each of these three agreements in turn.

As you review these sections, take note that each of these agreements includes provisions governing the quality of water in Alberta. For more information about those provisions and what they do, take a look at the discussion on water management in the [chapter on water quality](#).

⁵ See *ibid* at 9-11.

⁶ *Ibid*.

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Boundary Waters Treaty (1909)

The *Boundary Waters Treaty* is a treaty between Canada and the United States that manages the waters that are shared between the two countries.⁷ Specifically, it restricts the use of water from the lakes and rivers along the border between the two nations, insofar as that use affects the flow of water on the other side of the border.⁸

In addition, the *Treaty* governs the use of water from the Milk and St. Mary Rivers and allocates roughly half of the water flow in each of these rivers to each country.⁹ The *Treaty* also establishes an International Joint Commission, which is responsible for making sure each country is complying with the *Treaty* and for resolving any disputes that may arise between them.¹⁰

For more information about the federal legislation that implements the terms of the *Boundary Waters Treaty*, take a look at the section of this chapter on [approval schemes other than the *Water Act*](#).

Master Agreement on Apportionment (1969)

The *Master Agreement on Apportionment* is an agreement between the governments of Alberta, Saskatchewan, and Manitoba and the federal government. It sets out a framework for managing the rivers that travel eastward from Alberta into the other prairie provinces, including the Cold River, Beaver River, North Saskatchewan River, South Saskatchewan River, and Battle River.¹¹

Schedule A of the *Master Agreement on Apportionment* governs the flow of water from Alberta into the other prairie provinces. It requires Alberta to allow roughly 50% of the water in the rivers covered by the *Agreement* to flow into Saskatchewan.¹² The Prairie Provinces Water Board, which was

⁷ See *International Boundary Waters Treaty Act*, RSC 1985, c I-17.

⁸ *Ibid*, Schedule 1, Articles II, III.

⁹ *Ibid*, Schedule 1, Article VI.

¹⁰ *Ibid*, Schedule 1, Articles VII-X, XII.

¹¹ “Master Agreement on Apportionment” (2021), online: Government of Alberta <https://www.alberta.ca/master-agreement-on-apportionment.aspx>; *The 1969 Master Agreement on Apportionment and By-laws, Rules and Procedures* (July 2015), online: Prairie Provinces Water Board <https://www.ppwb.ca/uploads/media/5cad077eeae53/master-agreement.pdf?v1>.

¹² *Ibid* at 9-11.

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created under the *Agreement*, is responsible for reviewing streamflow data and for preparing reports and recommendations on the apportionment of water for the signatory provinces.¹³

Mackenzie River Basin Transboundary Waters Master Agreement

The *Mackenzie River Basin Transboundary Waters Master Agreement* was entered into by Alberta, British Columbia, Saskatchewan, Yukon, and the Northwest Territories in 1997 to facilitate the cooperative management of the Mackenzie River Basin, which runs through each of these jurisdictions.¹⁴

The *Master Agreement* sets out a general framework and a dispute resolution process to manage any disputes that arise between the signatory jurisdictions. Under the *Master Agreement*, each jurisdiction is committed to entering into a bilateral agreement with each of its neighbouring jurisdictions to set out their detailed obligations for managing the Mackenzie River Basin.¹⁵ In 2015, Alberta entered into a bilateral agreement with the Northwest Territories and, currently, is in the process of developing agreements with Saskatchewan and British Columbia.¹⁶

b. Regional Land Use Plans

In 2008, Alberta developed a *Land-Use Framework* to guide long term planning for the use of the province's land and natural resources.¹⁷ The *Framework* divides the province into seven regions, with the goal of developing a land use plan for each region, including a plan to manage the overall water flow and usage in each region.¹⁸ In 2009, the provincial government passed the *Alberta Land*

¹³ *Ibid* at 21-23.

¹⁴ *Mackenzie River Basin Transboundary Waters Master Agreement* (24 July 1997), online: Government of Alberta <https://open.alberta.ca/publications/mackenzie-river-basin-transboundary-waters-master-agreement>.

¹⁵ *Ibid*. See also "Mackenzie River Basin" (2021), online: Government of Alberta <https://www.alberta.ca/mackenzie-river-basin.aspx>.

¹⁶ *Ibid*; *Mackenzie River Basin Bilateral Water Management Agreement Between the Government of Alberta and the Government of the Northwest Territories* (23 February 2015), online: Government of Alberta <https://open.alberta.ca/publications/mackenzie-river-basin-transboundary-waters-master-agreement>.

¹⁷ *Land-Use Framework* (December 2008), online: Government of Alberta <https://landuse.alberta.ca/LandUse%20Documents/Land-use%20Framework%20-%202008-12.pdf>.

¹⁸ *Ibid*.

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*Stewardship Act*¹⁹, which provides the legal tools for developing and implementing regional land use plans.

Currently, only two regional plans have been finalized: the Lower Athabasca Regional Plan and the South Saskatchewan Regional Plan.²⁰ The North Saskatchewan Regional Plan is currently being developed, and the other plans will be worked on once that is completed.²¹

In the remainder of this section, we will discuss the two completed plans, with a focus on the parts of the plans that relate to water use and flow. More information about the parts of the plans that relate to water quality can be found in the [chapter on that subject](#).

Lower Athabasca Regional Plan

The *Lower Athabasca Regional Plan*²² covers an area in the northeast of Alberta, spanning from the northern border of the province to the southern edge of the Municipal District of Bonnyville.²³ It includes the municipalities of Fort McMurray, Cold Lake, and Lac La Biche.²⁴ As it relates to the use and flow of water, the *Lower Athabasca Regional Plan* primarily regulates the use of water in oil sands operations.

To accomplish this, the *Lower Athabasca Regional Plan* establishes two water management frameworks. The first is the *Surface Water Quantity Management Framework for the Lower Athabasca River*²⁵. This *Framework* sets limits for the total amounts of surface water that can be withdrawn from the lower Athabasca River, which is the portion of the Athabasca River that runs from approximately the

¹⁹ *Alberta Land Stewardship Act*, SA 2009, c A-26.8.

²⁰ “Regional plans” (2016), online: Government of Alberta <https://landuse.alberta.ca/RegionalPlans/Pages/default.aspx>.

²¹ *Ibid.*

²² *Lower Athabasca Regional Plan, 2012-2022* (August 2012), online: Government of Alberta <https://landuse.alberta.ca/LandUse%20Documents/Lower%20Athabasca%20Regional%20Plan%202012-2022%20Approved%202012-08.pdf>.

²³ “Regional plans” (2016), online: Government of Alberta <https://landuse.alberta.ca/RegionalPlans/Pages/default.aspx>.

²⁴ *Ibid.*

²⁵ *Surface Water Quantity Management Framework for the Lower Athabasca River* (1 February 2015), online: Government of Alberta <https://open.alberta.ca/publications/9781460121733>.

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Grand Rapids to the Athabasca River Delta.²⁶ In addition, the *Framework* establishes systems to monitor water flow levels in the lower Athabasca River, identifies indicators of potential water flow problems, and sets out a management process for how to deal with water flow problems before they become critical, including the imposition of further withdrawal limits on licensees.²⁷

Interestingly, the *Surface Water Quantity Management Framework* itself has no binding legal power. Instead, it is implemented through conditions attached to water licences issued under the *Water Act*, which are the province's main type of authorization to take and use water.²⁸ For more information about water licences, take a look at the section of this chapter on the [types of water authorization](#).

The second framework established by the *Lower Athabasca Regional Plan* is the *Lower Athabasca Region Groundwater Management Framework*²⁹. That *Framework* covers three groundwater management areas within the Lower Athabasca Region: the north Athabasca oil sands, the south Athabasca oil sands, and the Cold Lake-Beaver River area.³⁰ Eventually, the *Framework* will include a management system for the usage of groundwater in each of these areas, similar to the *Surface Water Quantity Management Framework*. However, the specific parameters are still under development.³¹

In the meantime, in situ oil sands operations must abide by the groundwater use limits that are set out in the *Water Conservation and Allocation Guideline for Oilfield Injection*^{32, 33}. As well, in lieu of a

²⁶ *Lower Athabasca Regional Plan, 2012-2022* (August 2012), online: Government of Alberta at 58 <https://landuse.alberta.ca/LandUse%20Documents/Lower%20Athabasca%20Regional%20Plan%202012-2022%20Approved%202012-08.pdf>; *Surface Water Quantity Management Framework for the Lower Athabasca River* (1 February 2015), online: Government of Alberta at 3, 29 <https://open.alberta.ca/publications/9781460121733>.

²⁷ See *ibid* at 25, 43-44.

²⁸ *Ibid* at 24.

²⁹ *Lower Athabasca Region Groundwater Management Framework* (1 August 2012), online: Government of Alberta <https://open.alberta.ca/publications/9781460105344>.

³⁰ *Lower Athabasca Regional Plan, 2012-2022* (August 2012), online: Government of Alberta at 55 <https://landuse.alberta.ca/LandUse%20Documents/Lower%20Athabasca%20Regional%20Plan%202012-2022%20Approved%202012-08.pdf>.

³¹ *Ibid*; *Lower Athabasca Region Groundwater Management Framework* (1 August 2012), online: Government of Alberta at 27 <https://open.alberta.ca/publications/9781460105344>.

³² *Water Conservation and Allocation Guideline for Oilfield Injection* (1 January 2006), online: Government of Alberta <https://open.alberta.ca/publications/water-conservation-and-allocation-guideline-for-oilfield-injection>.

³³ *Lower Athabasca Region Groundwater Management Framework* (1 August 2012), online: Government of Alberta at 27 <https://open.alberta.ca/publications/9781460105344>.

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regional framework, under the *Lower Athabasca Regional Plan*, the provincial government is able to require site-specific groundwater management plans for any facility that uses groundwater.³⁴ This means a groundwater management framework that is specific to the site or facility in question, including site-specific groundwater monitoring systems and indicators for potential problems with groundwater levels.³⁵

South Saskatchewan Regional Plan

The *South Saskatchewan Regional Plan*³⁶ covers the southernmost part of the province, spanning from the Rocky Mountains in the west to the Saskatchewan border in the east.³⁷ It extends as far north as the northernmost point of the Municipal District of Bighorn, and it includes Calgary and the surrounding communities, as well as Lethbridge and Medicine Hat.³⁸

Unlike the *Lower Athabasca Regional Plan*, the *South Saskatchewan Regional Plan* mainly sets out broad strategic goals for water use and flow. Major goals laid out in the *Plan* include managing water scarcity by monitoring water use levels and continuing to look for efficiencies in water allocation and use, as well as opportunities for water storage for periods of drought or lower flow.³⁹ The *Plan* also identifies the need to develop a groundwater management plan for the region and to continue to take flood mitigation actions, especially in response to increased risk from climate change.⁴⁰ With respect to water use and flow, there are no binding regulatory requirements in the *South Saskatchewan Regional Plan*.

³⁴ *Lower Athabasca Regional Plan, 2012-2022* (August 2012), online: Government of Alberta at 57 <https://landuse.alberta.ca/LandUse%20Documents/Lower%20Athabasca%20Regional%20Plan%202012-2022%20Approved%202012-08.pdf>.

³⁵ *Lower Athabasca Region Groundwater Management Framework* (1 August 2012), online: Government of Alberta at 35 <https://open.alberta.ca/publications/9781460105344>.

³⁶ *South Saskatchewan Regional Plan, 2014 – 2024* (May 2018), online: Government of Alberta <https://landuse.alberta.ca/LandUse%20Documents/South%20Saskatchewan%20Regional%20Plan%202014-2024%20-%20May%202018.pdf>.

³⁷ “Regional plans” (2016), online: Government of Alberta <https://landuse.alberta.ca/RegionalPlans/Pages/default.aspx>.

³⁸ *Ibid.*

³⁹ *South Saskatchewan Regional Plan, 2014 – 2024* (May 2018), online: Government of Alberta at 86-87, 88 <https://landuse.alberta.ca/LandUse%20Documents/South%20Saskatchewan%20Regional%20Plan%202014-2024%20-%20May%202018.pdf>.

⁴⁰ *Ibid* at 84, 86-87.

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c. Water Management Plans

Under the *Water Act*, the provincial government has the power to develop water management plans, which are plans for how water will be used in a given region of the province.⁴¹ A single water management plan usually covers an entire watershed, which is an area in which all water flows to a common location.⁴² Note that a watershed may be as large as an entire river basin or as small as the area feeding into a creek, so there is a wide range in the possible geographic scope of water management plans.

Functionally, a water management plan may impose binding legal restrictions on water usage, including more restrictive criteria for approving water licences and other government authorizations to use water.⁴³ Notably, for a water management plan to include binding legal requirements, it must be approved by the provincial cabinet or by the responsible Minister where cabinet has granted the Minister this power.⁴⁴ For more information about water licences and other government authorizations to use water, take a look at the section of this chapter on the types of water authorization.

In addition to binding legal restrictions, a water management plan may include broad planning goals for water management, including flood prevention planning, water quality objectives, and management plans for sensitive riparian areas, which are the lands next to waterbodies and watercourses.⁴⁵ These types of planning goals are not legally binding, but they do allow the provincial government to set out its intentions for how it will deal with these water-related issues.

⁴¹ *Water Act*, *supra* note 1, s 9.

⁴² *Framework for Water Management Planning* (1 January 2001), online: Government of Alberta at <https://open.alberta.ca/publications/0778517381>.

⁴³ *Water Act*, *supra* note 1, s 11(3).

⁴⁴ See *ibid*, ss 11(1)-(2).

⁴⁵ See *Framework for Water Management Planning* (1 January 2001), online: Government of Alberta <https://open.alberta.ca/publications/0778517381>.

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Currently, there are five approved water management plans in effect in Alberta, which apply to the Battle River, the Cold Lake-Beaver River Basin, the Lesser Slave Basins, the South Saskatchewan River Basin, and the Wapiti River Basin. More information about these plans and their specific contents can be obtained from the Government of Alberta.⁴⁶

d. Water Conservation Objectives

Under the *Water Act*, the provincial government may establish water conservation objectives, which are statements of the minimum amount of water that should be maintained in a watercourse or waterbody to protect the aquatic environment, to manage fish or wildlife, or to protect recreational or waste-related uses of water.⁴⁷ When establishing a water conservation objective, the government must engage in public consultation and, then, once the objective is established, make information about it available to the public.⁴⁸

Water conservation objectives are not legally binding on the government. However, they are still important, because they are very likely to be considered by government officials when making decisions under the *Water Act*, such as whether to issue a water licence or other water use authorization.⁴⁹ Additionally, under the *Water Act*, the government is able to implement water conservation objectives by issuing water licences to itself, thereby allocating a certain amount of water to meet the objectives.⁵⁰ For more information about the circumstances when the government may issue a water licence, take a look at the section of this chapter on the types of water authorization.

Currently, in Alberta, there are water conservation objectives in place for the Bow River Sub-Basin, the Oldman River Sub-Basin, the Red Deer River Sub-Basin and the South Saskatchewan River Sub-

⁴⁶ See “Water management plans” (2021), online: Government of Alberta <https://www.alberta.ca/water-management-plans.aspx>.

⁴⁷ *Water Act*, *supra* note 1, ss 1(1)(hhh), 15.

⁴⁸ See *ibid*, ss 15(2)-(3).

⁴⁹ See *ibid*, ss 51(4)(c)(iii), 66(3)(c)(iii).

⁵⁰ *Ibid*, s 51(2).

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Basin.⁵¹ More information about the specific water conservation objectives that are currently in place can be obtained from the Government of Alberta.⁵²

e. Water Allocation Orders

Under the *Water Act*, the government has the power to issue an allocation order, which is an order that reserves a certain amount of unallocated water for whatever purposes are specified in the order.⁵³ In other words, the government can notionally set aside a certain amount of unallocated water, and that water can only be allocated according to the rules set out in the order.⁵⁴

In an allocation order, the government can attach terms or conditions to the water allocated under the order.⁵⁵ It may also make special rules for the priority ranking of any water allocated under the order, although in no case can the priority be earlier than the date of the order itself.⁵⁶ For more information about the priority system in Alberta, take a look at the section of this chapter on that subject.

Currently, there are two allocation orders in effect in Alberta, both of which are located in the southern part of the province. The first order—the *Oldman River Basin Water Allocation Order*⁵⁷—reserves 11,000 acre-feet of water for projects in the Municipal District of Pincher Creek, the Municipality of Crowsnest Pass, and the Municipal District of Ranchland.⁵⁸ The bulk of the water is reserved specifically for irrigation, with smaller amounts available for industrial and other uses.⁵⁹

Notably, the Government of Alberta is proposing to change the *Oldman River Basin Water Allocation Order*, so the water reserved under the *Order* could be used for any purpose, except for 20%

⁵¹ “Water conservation objectives” (2021), online: Government of Alberta <https://www.alberta.ca/water-conservation-objectives.aspx>.

⁵² *Ibid.*

⁵³ *Water Act*, *supra* note 1, s 35(1).

⁵⁴ *Ibid*, s 35(2)(c).

⁵⁵ *Ibid*, s 35(2)(a).

⁵⁶ *Ibid*, s 35(2)(b).

⁵⁷ *Oldman River Basin Water Allocation Order*, Alta Reg 319/2003.

⁵⁸ *Ibid*, s 2.

⁵⁹ *Ibid*, s 3.

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of the reserved water, which would be set aside for flow conservation.⁶⁰ As of the date of publication of this guide, it is unclear if or when these proposed changes would take place.

The second allocation order in Alberta—the *Bow, Oldman and South Saskatchewan River Basin Water Allocation Order*⁶¹—prohibits any new water allocations from the Bow River, the Oldman River, and the South Saskatchewan River, as well as their tributaries and any water that flows underground into one of these rivers or their tributaries.⁶²

Practically, this means that the government may not issue any new licences or other water use authorizations for these rivers or their tributaries, except under the *Oldman River Basin Water Allocation Order* or one of the exceptions listed in the *Bow, Oldman and South Saskatchewan River Basin Water Allocation Order*. The listed exceptions include allocations for some uses by First Nations, allocations for a water conservation objective, and allocations for storage purposes.⁶³ In the case of storage purposes, the underlying goal must be to protect the aquatic environment or to improve the availability of water for existing licence holders.

f. Surface Water Allocation Directive

The *Surface Water Allocation Directive*⁶⁴ is a planning document that can be used in the parts of the province where there is no other plan for water use management. In other words, it is applicable to any place where there is no water allocation order, water management plan, water conservation objective, regional land-use plan, or other legal instrument that provides guidance on how to allocate water.⁶⁵

⁶⁰ Alberta Environment and Parks, *Oldman River Basin Water Allocation Order: Information briefing* (20 November 2020), online: ABlawg at 11 https://ablawg.ca/wp-content/uploads/2020/12/Oldman_order_briefing_info-2020Nov20.pdf.

⁶¹ *Bow, Oldman and South Saskatchewan River Basin Water Allocation Order*, Alta Reg 171/2007.

⁶² *Ibid*, ss 1, 2.

⁶³ *Ibid*, ss 4, 6, 8.

⁶⁴ *Surface Water Allocation Directive* (February 2019), online: Government of Alberta <https://open.alberta.ca/dataset/ba87f44e-9bea-4430-84d8-d2ab41b5a4fb/resource/8e0258e7-ae43-41e3-b864-7867f5f7b38c/download/surfacewaterallocationdirective-2019.pdf>.

⁶⁵ See *ibid* at 5.

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In terms of content, the *Surface Water Allocation Directive* gives a methodology for setting allocation limits using a general characterization of the province's waters and a precautionary approach to allocation.⁶⁶ This allows the government to determine appropriate allocation limits where there is not any specific information about the amount of water needed to maintain the aquatic environment.⁶⁷

It is important to note that the *Surface Water Allocation Directive* is not binding law. However, it is very likely that the government will follow the *Directive* when making decisions about issuing licences or other water use authorizations under the *Water Act*, so it is still an important document to take into account.⁶⁸

g. Priority System

One of the most important tools the provincial government uses to manage water allocation is called the priority system. More than a mere tool or device used to allocate water, the priority system is the underlying structure of Alberta's water allocation regime under the *Water Act*. Under the priority system, water use authorizations issued by the government are assigned a priority number, and the authorization holders with lower priority numbers are entitled to take their full allocation of water before the authorization holders with higher priority numbers.⁶⁹ In other words, the authorization holders are entitled to take water in ascending order of priority numbers.

Practically, the priority system matters most when there is not enough water for all the water use authorizations that have been issued, for example, in a time of drought. In that case, the holders of authorizations with lower priority numbers get to fill their allocations before the holders of authorizations with higher priority numbers.⁷⁰ This means the earlier the priority number, the more likely the authorization holder will be able to take and use their entire allocation of water.

⁶⁶ *Ibid* at 5-6.

⁶⁷ See *ibid* at 9.

⁶⁸ *Ibid* at 5.

⁶⁹ *Water Act*, *supra* note 1, ss 27-31.

⁷⁰ See *ibid*, s 32.

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Under the *Water Act*, the rules for assigning priority numbers depend on the type of water use authorization. For more information about water use authorizations, including the way in which priority numbers are assigned, take a look at the section of this chapter on the types of water authorization, immediately below. Additionally, for more information about what to do if you think there is a problem with priority in your area, take a look at the Government of Alberta's website.⁷¹

ii. Types of Water Authorization

In Alberta, you are not allowed to take and use water unless you have an authorization from the provincial government to do so.⁷² You will also need a water use authorization to operate a works, which means any structure or device used to divert water from its normal course, including large-scale structures like dams and canals.⁷³

Under the *Water Act*, there are four different types of water use authorization that you can obtain:

1. Water licences;
2. Preliminary certificates;
3. Temporary diversion licences; and
4. Riparian and groundwater rights.

In the following sections, we will review the rules around each of these different types of authorization, including how to obtain them and in which circumstances each one can be obtained. We will also provide a list of the activities that use water but are exempt from the need for an authorization issued under the *Water Act*.

As you read the following sections, keep in mind that the *Water Act* authorization scheme does not apply to surface waters in national parks, which instead are governed by the federal government

⁷¹ See "Rural disputes – Water Act essentials" (2021), online: Government of Alberta <https://www.alberta.ca/rural-disputes-water-act-essentials.aspx>.

⁷² *Water Act*, *supra* note 1, ss 3, 49.

⁷³ *Ibid*, ss 1(1)(mmm), 49.

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under the *Canada National Parks Act*. Similarly, the *Water Act* probably does not apply on First Nations' reserve lands, although the law is a little less clear on this point. For more information about the rules that apply to reserves, and the reasons for the uncertainty in the law, take a look at the [chapter on water in Indigenous communities](#).

As well, as you review these sections, be aware that these are specifically the authorizations that allow a person to take and use water and to operate a works for diverting water. Depending on the circumstances, you may require other additional authorizations from the federal, provincial, or even local governments to carry out an activity in or around water.

Notably, under the *Water Act*, you may need to obtain an additional approval from the provincial government if your chosen activity will affect the flow of water in Alberta or if it has the potential to cause erosion or otherwise affect the aquatic environment. More information about this type of approval can be found in the section of this chapter on [activities affecting flow](#).

Likewise, depending on the activity that you are carrying out, you may need government approvals to go onto crown-owned beds and shores, which are, roughly speaking, the lands covered by water that are owned by the provincial government. For more information about what this means, as well as the authorizations you might need to carry out activities on both crown-owned and privately-owned beds and shores, take a look at the [chapter on land ownership and use](#).

Additionally, if the activity that you are carrying out has the potential to affect water quality, then you should be aware of the legal rules against polluting water and the government authorizations that are necessary for any activity that may impact water quality. More information about both these subjects can be found in the [chapter on water quality](#).

Finally, although this section will focus on the provincial *Water Act* and the authorization scheme to take and use water, it is possible that there are also local government bylaws that affect the taking and use of water, for example, by requiring a development permit. Since each local government may have different bylaws and different rules, these will not be dealt with in detail. Nevertheless, it is always important to check if a local government has additional rules in place.

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a. Water Licences

Water licences are the primary type of water use authorization the provincial government can issue under the *Water Act*. Water licences entitle the holder to take and use a certain amount of water for a certain period of time, the details of which are specified in the licence.⁷⁴ Water licences may also authorize the holder to operate a works, meaning a structure or device that changes the natural course of water.⁷⁵

When the government issues a water licence, it will specify the watercourse or waterbody the water may be taken from. It may also include the rate at which water may be taken and the time of year when the licence holder may take water.⁷⁶ As well, the government can issue the licence subject to any terms or conditions it thinks are appropriate, including requirements to keep records of the water actually used and to report those amounts to the government.⁷⁷

In terms of priority, water licences are assigned priority numbers based on the order in which they were applied for or, in other words, chronologically based on the date the government received a complete application for the water licence.⁷⁸ This means the earlier the date of application for the licence, the lower the priority number will be and, correspondingly, the higher the priority of the licence. For more information about how the priority system works, take a look at the section of this chapter on [water use planning](#).

In the following sections, we will discuss some of the more specific rules around water licences, including the permitted purposes of a water licence, the application process for obtaining a water licence, and the circumstances in which a water allocation may be transferred. Otherwise, for more information about water licences and how to apply for them, take a look at the Government of Alberta's

⁷⁴ *Ibid*, s 51. See also *Water (Ministerial) Regulation*, Alta Reg 205/1998, s 12.

⁷⁵ *Water Act*, *supra* note 1, s 51.

⁷⁶ See *ibid*, s 54(1)(b).

⁷⁷ *Ibid*, s 51(3).

⁷⁸ *Ibid*, ss 18, 29. But see *ibid*, ss 29(2), 35(2)(b).

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website.⁷⁹ Likewise, to look up existing water licences, take a look at the Government of Alberta’s online authorization viewer.⁸⁰

Permitted Purposes

When the provincial government issues a water licence, it will indicate the purpose or purposes for which the licence may be used.⁸¹ Under the *Water Act*, there is a wide range of permitted purposes for a water licence:

- municipal water supply;
- agricultural uses;
- irrigation;
- commercial or industrial uses;
- water power;
- dewatering;
- management of fish or wildlife;
- habitat enhancement;
- recreation;
- water management; and
- any other purpose specified by the government.⁸²

In addition, the government can issue a licence for the purpose of implementing a water conservation objective, which means effectively a licence to ensure a certain amount of water is left in a watercourse or waterbody.⁸³ Importantly, the government may only issue a licence for conservation purposes to itself, meaning that no other person or organization may obtain a water licence for this

⁷⁹ See “Water allocations and transfers” (2021), online: Government of Alberta <https://www.alberta.ca/water-allocations-and-transfers.aspx>; “Water Act forms” (2021), online: Government of Alberta <https://www.alberta.ca/water-act-forms.aspx>.

⁸⁰ “Authorization Viewer – Search” (2021), online: Government of Alberta <https://avw.alberta.ca/ApprovalViewer.aspx>.

⁸¹ *Water Act*, *supra* note 1, s 51(1).

⁸² *Water (Ministerial) Regulation*, *supra* note 74, s 11.

⁸³ *Water Act*, *supra* note 1, s 51(2).

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purpose.⁸⁴ Generally speaking, more information about water conservation objectives and their implementation can be found in the section on [water use planning](#).

Notably, even though the *Water Act* allows water licences for a wide range of purposes, it does not allow a licence for the purpose of transferring water outside of Canada, unless the government passes specific legislation to allow it.⁸⁵ Note that this rule does not apply to packaged water or water that is used in processed food or industrial products, where the water becomes part of the product: under the *Water Act*, water in these products may be sold outside of Alberta without the government passing legislation to allow it.⁸⁶

Applying for a Licence

To obtain a water licence, you must submit an application to the provincial government, using the Government of Alberta's online system.⁸⁷ If, for whatever reason, your application is incomplete, the government will notify you and request any outstanding information.⁸⁸ Note, however, that the government will not review the application until it is complete, and, if the outstanding information is not provided in a timely manner, the government will reject the application.⁸⁹

Once the government receives a complete application for a water licence, the applicant must give public notice of the application.⁹⁰ As part of the application process, the government will provide more information about how to give notice, including instructions for how it must be posted.⁹¹ Alternatively, in some circumstances, the government may waive the requirement for public notice, for

⁸⁴ *Ibid*; *Water Conservation Trust of Canada v Alberta (Environmental Appeals Board)*, 2015 ABQB 686 at para 54.

⁸⁵ *Water Act*, *supra* note 1, s 46; *Water (Ministerial) Regulation*, *supra* note 74, ss 1(3)(c), (e).

⁸⁶ *Ibid*.

⁸⁷ *Water Act*, *supra* note 1, s 50; "Water Act forms" (2021), online: Government of Alberta <https://www.alberta.ca/water-act-forms.aspx>. Note that water licence applications related to energy resource projects must go through the Alberta Energy Regulator instead: see *Responsible Energy Development Act*, SA 2012, ss 2, 24-25; *Specified Enactments (Jurisdiction) Regulation*, Alta Reg 201/2013.

⁸⁸ *Water (Ministerial) Regulation*, *supra* note 74, s 4.2(2).

⁸⁹ *Ibid*, ss 4.2(1), (3).

⁹⁰ *Water Act*, *supra* note 1, ss 50(1)(d), 108. See also *Water (Ministerial) Regulation*, *supra* note 74, s 13.

⁹¹ See "Digital Regulatory Assurance System" (2021), online: <https://www.alberta.ca/digital-regulatory-assurance-system.aspx>.

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example, where the licence is unlikely to have a significant effect on either the environment or other water users.⁹²

In normal circumstances, where public notice is required, the *Water Act* provides an opportunity for some members of the public to respond to the notice and provide feedback on the water licence application. Specifically, any person who is directly affected by the application has 30 days from the date of the last public notice to file a statement of concern outlining any concerns they have with the application.⁹³ More information about how to submit a statement of concern can be found on the Government of Alberta's website.⁹⁴ Likewise, for more information about who counts as directly affected by an application, take a look at the section of this chapter on [appeals](#).

In addition to the requirement for public notice, if an application for a water licence has the potential to affect the rights of any Indigenous groups, then the applicant may be required to carry out consultations with those groups. As part of the application process, the government will decide if consultation is required and, if it is, the government will provide the applicant with more information about how to conduct those consultations.⁹⁵ For more information about the consultation process, take a look at the resources on the Government of Alberta's website.⁹⁶ As well, for more information about Indigenous rights and the duty to consult, take a look at the [chapter on water in Indigenous communities](#).

After public notice has been given and consultations have been carried out, the government must decide whether to issue the licence. When making this decision, the *Water Act* requires the government to consider any factors listed in an applicable approved water management plan.⁹⁷

⁹² *Water Act*, *supra* note 1, s 108(6).

⁹³ *Ibid*, s 109.

⁹⁴ See "Digital Regulatory Assurance System" (2021), online: <https://www.alberta.ca/digital-regulatory-assurance-system.aspx>.

⁹⁵ *Ibid*.

⁹⁶ See "Indigenous consultations in Alberta" (2021), online: Government of Alberta <https://www.alberta.ca/indigenous-consultations-in-alberta.aspx>; *The Government of Alberta's Proponent Guide to First Nations and Metis Settlements Consultation Procedures* (1 December 2019), online: Government of Alberta <https://open.alberta.ca/publications/goa-proponent-guide-to-first-nations-and-metis-settlements-consultation-procedures-2019>.

⁹⁷ *Water Act*, *supra* note 1, s 51(4)(a).

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Generally speaking, more information about water management plans can be found in the section on [water use planning](#).

Additionally, when deciding whether to issue a water licence, the government may consider any number of the other factors listed in the *Water Act*. Most importantly, the government may consider the potential effects of the licence, including effects on:

- The aquatic environment;
- Water flow;
- Other licensees;
- Riparian and groundwater household users;
- Riparian and groundwater registered agricultural users; and
- Public safety.⁹⁸

For more information about what is meant by riparian and groundwater users, take a look at the section of this chapter on [riparian and groundwater rights](#).

If a licence is for irrigation, the government may also consider if the land involved is suitable for irrigated agriculture.⁹⁹ As well, regardless of the purpose of the licence, the government is allowed to consider any other matters that it thinks are relevant, including any applicable government policies, directives, or guidelines.¹⁰⁰ This may include any applicable water conservation objectives, as well as the *Surface Water Allocation Directive*, both of which are discussed in more detail in the section on [water use planning](#).

Finally, when deciding whether to issue a water licence, the government may consider if there are any circumstances that justify refusing to issue the licence. Most importantly, under the *Water Act*, the government is able to refuse to issue a licence if the applicant owes a debt to the government.¹⁰¹

⁹⁸ *Ibid*, s 51(4)(b)-(c).

⁹⁹ *Ibid*, s 51(4)(c)(ii).

¹⁰⁰ *Ibid*, s 51(4)(c)(iii).

¹⁰¹ *Ibid*, s 49.1.

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Once the government has made a decision about a licence application, it must give notice of the decision to the applicant, as well as anyone who submitted a statement of concern.¹⁰² If the government waived the requirement to give public notice, then it will also give notice of its decision to anyone who is directly affected by the water licence, although it will only do so if it has decided to issue the licence.¹⁰³

Depending on the decision, the applicant and the parties who are directly affected by the licence may be entitled to appeal the decision to a body called the Environmental Appeals Board.¹⁰⁴ For more information about the appeals process and who can bring an appeal, take a look at the section of this chapter on [appeals](#).

Transferring Water Allocations

Under the *Water Act*, a water licence runs with the land.¹⁰⁵ This is a legal phrase that means, simply, that every water licence is attached to either a piece of property or to a specific project, like a dam or an irrigation works. When that property or project is sold or otherwise transferred to a new owner, the licence is automatically sold along with it. The only exception is if the provincial cabinet issues an order that allows the licence to be separated from its assigned property or project.¹⁰⁶

Because water licences run with the land, it is normally not possible to transfer a licence to another person without also transferring the project or property it is attached to. In other words, you normally cannot keep the property or project, but sell the water licence that is attached to it. However, under the *Water Act*, there are two possible exceptions to this rule.

First, in some circumstances, it is possible to temporarily transfer a water allocation under a water licence to another licence holder. Specifically, under the *Water Act*, a licence holder can enter into

¹⁰² *Ibid*, s 110(1), 111(1)-(3). See also *Water (Ministerial) Regulation*, *supra* note 74, s 13.

¹⁰³ *Water Act*, *supra* note 1, s 111(1), (2)(a). See also *Water (Ministerial) Regulation*, *supra* note 74, s 13.

¹⁰⁴ See *Water Act*, *supra* note 1, s 115(1)(c), (d).

¹⁰⁵ *Ibid*, s 58.

¹⁰⁶ *Ibid*, s 58(2). See also *Canada Finance Corporation v Hirsche Herefords*, 2012 ABCA 315.

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an agreement with another licence holder to temporarily assign all or part of the allocation of water under the licence.¹⁰⁷

Notably, this type of assignment is only allowed if it will not have a negative impact on the aquatic environment. As well, the assignment cannot have an adverse effect on any holder of a water use authorization with a higher priority number than either of the licenses involved in the assignment.¹⁰⁸ Generally speaking, for more information about assigning water allocations, including when you might want to do so, take a look at the Government of Alberta's website.¹⁰⁹

The second exception to the general rule that you cannot transfer water licences is that, in some cases, the provincial government may choose to allow transfers of water allocations within a given region of the province. The government may do this either through a water management plan that has been approved by cabinet or directly through a cabinet order.¹¹⁰

When the government allows water allocation transfers, it is possible to transfer a water allocation to another person, even one who does not currently hold a licence. The transfer may be either temporary or permanent.¹¹¹ Additionally, it may be for all or part of the water allocated under the original licence.¹¹² Notably, when a water allocation is transferred, it retains the priority number of the licence it was transferred from.¹¹³

Under the *Water Act*, to actually transfer a water allocation, you must first obtain the permission of the provincial government, which means that you must submit an application for the transfer to the government.¹¹⁴ If you are thinking about applying for a water transfer or want to know

¹⁰⁷ *Water Act*, *supra* note 1, s 33.

¹⁰⁸ *Ibid*, s 33(1)(c), (e).

¹⁰⁹ See *Administrative Guideline for Transfer of Water Allocations* (1 November 2014), online: Government of Alberta at 9 <https://open.alberta.ca/publications/9781460115251>.

¹¹⁰ *Ibid*, s 81(7).

¹¹¹ *Ibid*, s 82(2).

¹¹² *Ibid*.

¹¹³ *Ibid*, ss 82(1), (6)-(8).

¹¹⁴ *Ibid*, s 81.

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more about the process, detailed information about water transfer applications is available from the Government of Alberta's website.¹¹⁵

Be aware that when the government approves a water transfer, it may have the option of taking a 10% holdback from the water being transferred if it is in the public interest to do so.¹¹⁶ This means that the government may be able to take back up to 10% of the water being transferred to meet water conservation objectives or to maintain the aquatic environment. For more information about water conservation holdbacks, take a look at the Government of Alberta's website.¹¹⁷ Likewise, for more information about water conservation objectives, take a look at the section of this chapter on water use planning.

b. Preliminary Certificates

A preliminary certificate is not itself a water use authorization, but rather a promise to issue a water licence pending the fulfillment of certain conditions. Under the *Water Act*, the government can choose to issue a preliminary certificate in response to an application for a water licence instead of issuing a water licence.¹¹⁸

It often does so when a licence requires the construction of structures to take water, and the government wants to ensure they are built properly and inspected before issuing the actual water licence.¹¹⁹ Alternatively, the government may issue a preliminary certificate if it wants the applicant to obtain and provide more information before issuing the licence, and the applicant needs a government authorization to be able to get that information.

¹¹⁵ See *Administrative Guideline for Transfer of Water Allocations* (1 November 2014), online: Government of Alberta at 12-15 <https://open.alberta.ca/publications/9781460115251>.

¹¹⁶ *Water Act*, *supra* note 1, s 83.

¹¹⁷ *Administrative Guideline for Transfer of Water Allocations* (1 November 2014), online: Government of Alberta at 14-15 <https://open.alberta.ca/publications/9781460115251>.

¹¹⁸ *Water Act*, *supra* note 1, s 51(1).

¹¹⁹ *Mountain View Regional Water Services Commission et al v Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy* (26 April 2004), Appeal Nos 03-116 and 03-118-121-R (AEAB) at 41-42.

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In terms of contents, a preliminary certificate will always include the set of conditions that must be met in order for the government to issue a full water licence.¹²⁰ In addition, the preliminary certificate will lay out the volume of water, the terms and conditions, and the priority number that will be assigned to the licence when it is issued.¹²¹ It will also include an expiry date, which means the deadline for when the applicant for the water licence must fulfill the conditions in the preliminary certificate.¹²²

When the holder of a preliminary certificate has met the terms and conditions necessary for a licence, the holder may submit a certificate of completion to the government.¹²³ If the government agrees that the terms and conditions in the preliminary certificate have been met, the government will issue a water licence.¹²⁴ Once the licence has been issued, the preliminary certificate ceases to have any legal effect.¹²⁵

c. Temporary Diversion Licences

A temporary diversion licence is basically a temporary licence to take and use water that the government will issue for short-term usages of water, such as dust control or drilling fluid. Under the *Water Act*, the government may issue a temporary diversion licence for a maximum period of one year.¹²⁶ The government may issue a temporary diversion licence to any person, subject to any terms and conditions it thinks are appropriate.¹²⁷

One important feature of temporary diversion licences is that they are not assigned a priority number, and, accordingly, they do not have priority over any other type of water use authorization.¹²⁸

¹²⁰ *Water Act*, *supra* note 1, s 66(4)(a).

¹²¹ *Ibid*, ss 66(4)(b), (d)-(e).

¹²² *Ibid*, ss 66(4)(c), 68(4). But see *ibid*, s 69.

¹²³ *Ibid*, s 67.

¹²⁴ *Ibid*, s 68(1).

¹²⁵ *Ibid*, s 68(4).

¹²⁶ *Ibid*, ss 63(2)-(3).

¹²⁷ *Ibid*, ss 63(1).

¹²⁸ *Ibid*, ss 29, 30, 63(5).

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Practically, this means that the holders of temporary diversion licences rank behind any water use authorizations that do have a priority number. As well, as between temporary diversion licences and other unranked water use authorizations, there is no order of priority, so, effectively, the system operates on a first come, first served basis. For more information about how the priority system works, take a look at the section of this chapter on [water use planning](#).

To obtain a temporary diversion licence, you must submit an application to the provincial government.¹²⁹ Generally speaking, more information about temporary diversion licences, including how to apply for one, can be obtained from the Government of Alberta's website.¹³⁰

d. Riparian and Groundwater Rights

Riparian rights and groundwater rights are two types of traditional rights to take and use water that have been incorporated into the modern *Water Act*. Instead of coming from a government authorization that you apply for, both types of rights have to do with the location of property you own relative to the location of water.

Specifically, riparian rights are rights to take and use water that are automatically granted to people who own property next to a waterbody or watercourse. For more information about how to confirm if a piece of property is riparian, take a look at the [chapter on the use and ownership of land](#). Similarly, groundwater rights are rights to take and use water that are automatically granted to people who own property with groundwater underneath it.

Currently, in Alberta, the *Water Act* groups riparian and groundwater rights, meaning that owners of land next to water and owners of land above water are granted, more or less, the same rights to take and use water. In particular, the *Act* authorizes riparian and groundwater owners to take and use

¹²⁹ *Ibid*, s 62. Note that applications for temporary diversion licences related to energy resource projects must go through the Alberta Energy Regulator instead: see *Responsible Energy Development Act*, *supra* note 87, ss 2, 24-25; *Specified Enactments (Jurisdiction) Regulation*, *supra* note 87.

¹³⁰ "Temporary Diversion Licence" (2021), online: Government of Alberta <https://www.alberta.ca/temporary-diversion-licence.aspx>; *Water Act: Temporary Water Diversions* (1 August 2015), online: Government of Alberta <https://open.alberta.ca/publications/water-act-temporary-water-diversions>.

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set amounts of water for household uses, as well as for some agricultural uses. In the following sections, we will discuss the specific rules around each of these two types of uses of water in turn.

Generally speaking, for more information about groundwater and riparian rights, take a look at the [chapter on land ownership and use](#), which goes into a more detailed discussion of some of the other rights and restrictions that apply to the owners of property above and next to water.

Household Uses

Under the *Water Act*, riparian and groundwater owners have the right to take a limited amount of water for household purposes.¹³¹ Specifically, under the *Act*, riparian and groundwater owners have “the use of a maximum of 1250 cubic meters of water per year per household for the purposes of human consumption, sanitation, fire prevention and watering animals, gardens, lawns and trees”.¹³² For riparian owners, the water must be taken from the watercourse or waterbody next to the riparian property.¹³³ For groundwater owners, the water must be taken from the groundwater beneath the property.¹³⁴

Notably, a riparian or groundwater owner does not have the right to take water for household purposes if they receive or are entitled to receive water from a municipal water utility.¹³⁵ This means that, if there is a municipal water supply available to you, you do not have the right to take water for household purposes, even if your property is next to water or above groundwater. For more information about water utilities, take a look at the section of this chapter on [licensees that distribute water](#).

In terms of priority, riparian and groundwater rights to take water for household purposes are at the very front of the priority system, which means they have priority over every other type of water use authorization.¹³⁶ The only exception is that a household user does not have priority over any other

¹³¹ *Water Act*, *supra* note 1, s 21.

¹³² *Ibid*, ss 1(1)(w)-(y), 21. See also *Water (Ministerial) Regulation*, *supra* note 74, s 1(3)(b).

¹³³ *Water Act*, *supra* note 1, s 21(1).

¹³⁴ *Ibid*, s 21(2).

¹³⁵ *Water (Ministerial) Regulation*, *supra* note 74, s 8.

¹³⁶ *Water Act*, *supra* note 1, s 27(b).

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household user, so that, as between household users, it is a matter of first come, first served.¹³⁷

Generally speaking, for more information about how the priority system works, take a look at the section on [water use planning](#).

Agricultural Uses

Under the *Water Act*, some riparian and groundwater owners have the right to take water for limited agricultural purposes. In particular, a riparian or groundwater owner who, on or before January 1, 1999, was using water to raise animals or apply pesticides to crops can continue using up to 6250 cubic meters per year for those same purposes.¹³⁸

Importantly, up until December 31, 2001, these riparian or groundwater owners were able to register their agricultural uses of water with the provincial government.¹³⁹ If they did so, they were issued a registration, which is a type of water use authorization that recognizes traditional agricultural uses of water and which is assigned a priority number based on the first known date when water was diverted for agricultural purposes.¹⁴⁰

By contrast, an unregistered agricultural use of water does not have any priority under the *Water Act*.¹⁴¹ Practically, this means that unregistered agricultural uses rank behind any water use authorizations that do have a priority number. For more information about how the priority system works, take a look at the section on [water use planning](#).

In addition, if an agricultural use was not registered, that use does not transfer to a subsequent owner of the riparian or groundwater property.¹⁴² Quite simply, this means that when the property transfers to a new owner, there is no more groundwater or riparian right to take water. By contrast, if the agricultural use was registered, that registration runs with the land.¹⁴³ This means if the property is sold, the new owner automatically obtains ownership of the registration along with it. The only

¹³⁷ *Ibid*, s 27(a).

¹³⁸ *Ibid*, s 19. But see *ibid*, s 19(1).

¹³⁹ *Ibid*, s 73.

¹⁴⁰ *Ibid*, ss 28, 30.

¹⁴¹ *Ibid*, s 19.

¹⁴² *Ibid*.

¹⁴³ *Ibid*, s 75.

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exception would be if the provincial cabinet issues an order allowing the registration to be separated from the property.¹⁴⁴

e. Exempted Uses

Some uses of water are exempted from the requirement to obtain a water use authorization under the *Water Act*.¹⁴⁵ This means there is no need to obtain an authorization to take and use water if you are carrying out an exempted activity. Likewise, if an activity is exempted, there is no need to obtain a licence for any structure or device used to divert water that is associated with the activity.¹⁴⁶

The full list of activities that are exempted from the need for a water use authorization can be found in Schedule 3 of the *Water (Ministerial) Regulation*. Notably, the list includes:

- Using water for firefighting;
- Using groundwater from a water well that uses a manual pump;
- Using saline groundwater;
- Using water taken from a dugout;¹⁴⁷
- In a camp for either industrial or recreational purposes, using up to 1250 cubic meters per year of water for drinking water, sanitation, fire prevention, and any other uses related to the camp;
- Using surface water for an alternative water system for watering livestock;
- Using water to apply pesticides;¹⁴⁸
- Dewatering a sand or gravel site;¹⁴⁹
- Dewatering a construction site;¹⁵⁰ and
- Temporarily diverting water for hydrostatic pipeline testing.¹⁵¹

¹⁴⁴ *Ibid*, s 75(2)(c).

¹⁴⁵ *Ibid*, s 49(2)(d), (e); *Water (Ministerial) Regulation*, *supra* note 74, s 5.

¹⁴⁶ *Ibid*.

¹⁴⁷ See *ibid*, Schedule 3, s 1(c) for the exceptions.

¹⁴⁸ See also *Pesticide Sales, Handling, Use and Application Regulation*, Alta Reg 24/1997, s 8(4).

¹⁴⁹ See *Water (Ministerial) Regulation*, *supra* note 74, Schedule 3, s 1(f) for the applicable conditions.

¹⁵⁰ See *ibid*, Schedule 3, s 1(f.1) for the applicable conditions.

¹⁵¹ See *ibid*, ss 6, 7 for the applicable requirements.

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Importantly, some of these exempted activities are subject to conditions, which are listed in the *Regulation*. This means you must meet the conditions listed in the *Regulation*, or you will not qualify for the exemption and, instead, will need to apply for a water use authorization. Be sure to check the *Regulation* to make sure you are in compliance with all of the listed conditions before you undertake one of these activities without an authorization.

In terms of priority, exempted activities do not have a priority number, which means they do not have priority over any other type of water use authorization. Practically, this puts exempted activities behind any water use authorizations that do have a priority number. As well, as between exempted activities and other unranked water use authorizations, there is no order of priority, so, effectively, the system operates on a first come, first served basis. For more information about how the priority system works, take a look at the section on [water use planning](#).

iii. Licensees That Distribute Water

For all this talk about needing a government authorization to take and use water, you may have noticed you are consuming water for household purposes without having ever applied for a water licence or other government authorization to take and use that water. The reason for this is that you are probably receiving water from a water utility, and that utility holds a water licence for the purpose of distributing water to other users. In this sense, your household water supply is provided for by a water licence, although there is no need for you to obtain one yourself.

In Alberta, there are two main types of water utilities: municipal water services and private water services. Municipal water services are, quite simply, water services that are run by a municipality, which includes water services run directly by the municipality, water services run by a corporation controlled by a municipality or municipalities, and water services provided by regional service commissions. By contrast, private water services are operated by private entities, which includes private corporations, rural utility associations, irrigation districts, and individual citizens.

In the following two sections, we will give a brief overview of the regulatory regime that governs each of these types of licence holders, with a focus on how they set their rates and who to contact if you have issues with the water services they are providing. Note that all providers of water intended for

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human consumption must meet the water quality standards for drinking water. Those standards, as well as who is in charge of enforcing them, will be discussed separately in the [chapter on water quality](#).

a. Municipal Utilities

In Alberta, municipalities have the power under the *Municipal Government Act*¹⁵² to supply water to residential and commercial properties within the municipality. A municipality may do this in three different ways: by providing its own water services, by providing water services through a controlled corporation, or by providing water services in conjunction with a regional services commission. In the following sections, we will discuss each of these options in turn.

Municipal Utilities

Under the *Municipal Government Act*, a municipality has the power to operate its own water services system.¹⁵³ When this happens, the municipality must provide water to any parcel of land that is adjacent to its water system, on request of the owner of that land.¹⁵⁴ It may also provide water services at the request of an occupant of the land who is not the owner.¹⁵⁵

In terms of fees, a municipal public utility has the power set its own rates for water services. In other words, the legislation does not place any restrictions on how much a municipal public utility can charge for water services or how it sets those charges, because the municipality is accountable to its citizens through municipal elections.¹⁵⁶ That said, in limited circumstances, the rates charged for municipal water services can be challenged by filing a complaint with the Alberta Utilities

¹⁵² *Municipal Government Act*, RSA 2000, c M-26.

¹⁵³ *Ibid*, Part 3, Division 3.

¹⁵⁴ *Ibid*, s 34(1).

¹⁵⁵ *Ibid*, s 34(2).

¹⁵⁶ See Nigel Bankes & Dana Poscente, “The Supervisory Jurisdiction of the Alberta Utilities Commission Over Municipally Owned Utilities” (2020) 57:4 Alta L Rev 853.

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Commission.¹⁵⁷ If you have an issue with the rates you are being charged for water, the Commission's resolution process is outlined in detail on their website.¹⁵⁸

Generally speaking, for more information about the terms of the water services provided by a municipality, you should consult with the municipality. You may also want to look at the municipal bylaw that creates the water utility, as well as any contract you have entered into with the municipality for water services.

Controlled Corporations

Many municipalities in Alberta choose to run their water services through something called a controlled corporation, which is literally a corporation that is controlled by one or more municipalities. Legally, this means the municipality or the group of municipalities owns more than 50% of the voting shares in the corporation, giving them the controlling interest in the corporation.¹⁵⁹ Where a controlled corporation is operated by a single municipality, it may also be referred to as a subsidiary of that municipality.

Under the *Municipal Government Act*, a controlled corporation has similar powers to a municipality that runs its own water utility. Specifically, a controlled corporation has the power to set its own rates for water services, similar to a water service operated by a municipality.¹⁶⁰ The idea behind this is that the controlled corporation is accountable to its users through the municipalities that run the corporation, and the municipalities are accountable through the political accountability of the elected municipal officials. That said, in limited circumstances, the rates charged by a controlled corporation can be challenged by filing a complaint with the Alberta Utilities Commission.¹⁶¹ If you have an issue with the

¹⁵⁷ *Municipal Government Act*, supra note 152, s 43. But see *Public Utilities Act*, RSA 2000, c P-45, ss 78(2), 111.

¹⁵⁸ "Questions, concerns or billing disputes", online: Alberta Utilities Commission <https://www.auc.ab.ca/Pages/questions-concerns.aspx>.

¹⁵⁹ *Municipal Government Act*, supra note 152, s 75.1(1)(a).

¹⁶⁰ *Ibid*, s 75.4(1).

¹⁶¹ *Ibid*, ss 43, 75.4(3). But see *Municipally Controlled Corporations Regulation*, Alta Reg 112/2018, s 8(2).

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rates you are being charged for water, the Commission's resolution process is outlined in detail on the their website.¹⁶²

Generally speaking, for more information about the terms of the water services provided by a municipally controlled corporation, you should consult with the municipality or the corporation itself. You may also look at the municipal bylaw that empowers the controlled corporation to operate, as well as any contract you have entered into with the corporation for water services.

Regional Services Commissions

When a group of municipalities wants to band together to provide municipal water services, they may do so through an organization called a regional services commission. Under the *Municipal Government Act*, a regional services commission is a not-for-profit corporation that may be established by two or more municipalities for the purposes of providing utility services within a region.¹⁶³

Technically speaking, a regional services commission supplies water services to its member municipalities, in exchange for a rate charged by the commission to those municipalities. In turn, each municipality charges its residents for the water services provided by the commission. If there is an issue with the rates charged by a regional services commission, the municipality can challenge those rates by submitting a complaint to the Alberta Utilities Commission.¹⁶⁴

At the individual level, you will not deal with the regional service commission. Instead, the rates you pay are set by the municipality, so if you have an issue with the rates you are being charged for water, you will be dealing with the municipality rather than the commission. In limited circumstances, you are able to challenge the rates set by a municipality by filing a complaint with the Alberta Utilities

¹⁶² "Questions, concerns or billing disputes", online: Alberta Utilities Commission <https://www.auc.ab.ca/Pages/questions-concerns.aspx>.

¹⁶³ *Municipal Government Act*, *supra* note 152, Part 15.1.

¹⁶⁴ *Ibid*, s 602.19.

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Commission.¹⁶⁵ To learn more about how to do so, the Commission's resolution process is outlined in detail on their website.¹⁶⁶

Otherwise, for more information about the terms of the water services provided by a municipality through a regional services commission, you should consult with the municipality. You may also look at the municipal resolution that establishes the regional services commission, any municipal bylaw that empowers the water utility in the municipality, and any contract you have entered into for water services.

b. Private Utilities

If a municipality does not provide water services, then households and businesses must obtain their water from a private water supply system. This means any provider of water services other than a municipality, and it includes private companies, rural utility associations, irrigation districts, and individual water systems. In the following sections, we will discuss each of these different types of systems in turn.

Private Water Companies

Private companies may choose to provide water services, especially where there are not any municipal water services.¹⁶⁷ When this occurs, to obtain water services, you will need to enter into a private contract with the company, which will set the terms of the water services, including the rates you will be charged for water.

To ensure the contracts offered by private water services companies are fair, these companies are regulated by the Alberta Utilities Commission. Under the *Public Utilities Act*, the Commission must approve all rates charged by private water services companies before those rates can come into

¹⁶⁵ *Ibid*, s 43.

¹⁶⁶ "Questions, concerns or billing disputes", online: Alberta Utilities Commission <https://www.auc.ab.ca/Pages/questions-concerns.aspx>.

¹⁶⁷ But see *Municipal Government Act*, *supra* note 152, ss 33, 45.

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effect.¹⁶⁸ As well, the Commission has the power to investigate the rates charged by a private water services provider and to set new rates if there is a need to do so.¹⁶⁹

If you have an issue with the rates you are being charged by a private water services company, you can make a complaint to the Alberta Utilities Commission. To learn more about how to do so, the Commission's complaint and resolution process is outlined in detail on their website.¹⁷⁰ Otherwise, for more information about the terms and conditions of water services provided by a private company, you should consult your services contract or contact your provider.

Rural Utility Associations

A rural utility association is a cooperative that may be formed by five or more people for the purpose of supplying water services to its members in a rural area.¹⁷¹ To obtain water services from a rural utility association, you must enter into a member services contract with the association, which will set the terms of the water services, including the rates you will be charged for water.

If you have an issue with the rates you are being charged by a rural utility association, will need to deal with the association itself. For more information about the terms and conditions of water services provided by a rural utility association, you should consult your services contract or contact the association directly.

Irrigation Districts

In Alberta, property owners are able to organize irrigation districts, which are cooperatives for the purpose of building and operating large scale irrigation works, such as dams and reservoirs.¹⁷² Currently, in Alberta there are thirteen operating irrigation districts, all located in the southern part of the province along the South Saskatchewan River Basin.¹⁷³

¹⁶⁸ *Public Utilities Act*, *supra* note 157, s 103.

¹⁶⁹ *Ibid*, ss 80, 81, 89.

¹⁷⁰ "Questions, concerns or billing disputes", online: Alberta Utilities Commission <https://www.auc.ab.ca/Pages/questions-concerns.aspx>.

¹⁷¹ *Rural Utilities Act*, RSA 2000, c R-21, s 3.

¹⁷² *Irrigation Districts Act*, RSA 2000, c I-11.

¹⁷³ *Ibid*, s 5.

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On a practical level, an irrigation district is responsible for maintaining its irrigation works and for distributing water to members of the district for the purposes of irrigation, according to the terms of its water licence.¹⁷⁴ In addition, irrigation districts may enter into agreements with non-members to supply water for household purposes.¹⁷⁵

The rates charged by an irrigation district for household water services are set out in the irrigation district's bylaws.¹⁷⁶ If the irrigation district changes the rates set out in its bylaws, and you have a water services agreement with the district, you can appeal the new rates to an organization called the Irrigation Council.¹⁷⁷ More information about the Irrigation Council can be obtained from the Government of Alberta's website.¹⁷⁸

Otherwise, for more information about how an irrigation district operates, you should contact the irrigation district or the Government of Alberta's Irrigation Secretariat.¹⁷⁹ You can also look at the bylaws of the irrigation district for more details about the district's operations.¹⁸⁰

Individual Water Systems

If you are not receiving your household water supply from any other water provider, then you will need a water licence or other authorization to take water from a water well or directly from a source of surface water, such as a nearby body of water. Detailed information about the water use authorizations you can obtain is provided in the section of this chapter on the types of water authorization.

If you are supplying your own water, be aware that there are rules about the placement of water wells, as well as the minimum water quality necessary for drinking water. Both of these topics are discussed in greater detail in the chapter on water quality.

¹⁷⁴ *Ibid*, s 6.

¹⁷⁵ *Ibid*, ss 1(p), 19.

¹⁷⁶ *Ibid*, s 115.

¹⁷⁷ *Ibid*, s 167(1)(e).

¹⁷⁸ "See "Irrigation Council" (2021), online: Government of Alberta <https://www.alberta.ca/irrigation-council.aspx>.

¹⁷⁹ *Ibid*.

¹⁸⁰ See *Irrigation Districts Act*, *supra* note 172, Part 9.

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II. ACTIVITIES AFFECTING FLOW

Under the *Water Act*, you need an approval from the provincial government to carry out any activity that affects the flow, location, or level of water in a waterbody or watercourse.¹⁸¹ As well, you need an approval for any activity that takes place in or around water that may cause erosion or siltation or otherwise cause a negative effect on the aquatic environment.¹⁸² Some common activities that require a *Water Act* approval include draining water, preventing erosion, realigning channels, and drilling water wells. Notably, you also need a *Water Act* approval for some more minor activities like putting down sand or gravel next to a water body or removing aquatic weeds.

In the following sections, we will outline some of the details of the approvals scheme under the *Water Act*, starting with the application process for obtaining an approval. Then, we provide a list of the activities that are exempted from the need for a *Water Act* approval, and, finally, we will give an overview of the other federal and provincial regulatory schemes that may apply to activities affecting the flow, location, or level of water, including the *Drainage Districts Act*¹⁸³, the *Hydro and Electric Energy Act*¹⁸⁴, the *Natural Resources Conservation Board Act*¹⁸⁵, the *Canadian Navigable Waters Act*¹⁸⁶, the

¹⁸¹ *Water Act*, *supra* note 1, ss 1(1)(b), 36. See also *Water (Ministerial) Regulation*, *supra* note 74, ss 1(4), (4.1).

¹⁸² *Ibid.*

¹⁸³ *Drainage Districts Act*, RSA 2000, c D-16.

¹⁸⁴ *Hydro and Electric Energy Act*, RSA 2000, c H-16.

¹⁸⁵ *Natural Resources Conservation Board Act*, RSA 2000, c N-3.

¹⁸⁶ *Canadian Navigable Waters Act*, RSC 1985, c N-22.

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Canada National Parks Act, the *Dominion Water Power Act*¹⁸⁷, the *International Boundary Waters Treaty Act*, and the *International River Improvements Act*¹⁸⁸.

As you read these sections, keep in mind that the *Water Act* authorization scheme does not apply to surface waters in national parks, which instead are governed by the federal government under the *Canada National Parks Act*.¹⁸⁹ Similarly, the *Water Act* probably does not apply on First Nations' reserve lands, although the law is a little less clear on this point. For more information about the rules that apply to reserves, and the reasons for the uncertainty in the law, take a look at the [chapter on water in Indigenous communities](#).

Additionally, as you review the following sections, be aware that we are specifically discussing the government approvals that allow a person to carry out activities that change the flow, location, or level of water. Depending on the circumstances, you may require other, additional authorizations from the federal, provincial, or even local governments for this kind of activity.

Notably, under the *Water Act*, you may need to obtain a water licence if your chosen activity requires you to take and use water. An approval can allow you to temporarily take and use water, so long as the water use is associated with the approved activity.¹⁹⁰ However, if an activity requires you to take and use water on a more than temporary basis, then you will need to apply for a water licence in addition to the approval. More information about water licences can be found in the section on the [types of water authorization](#).

Similarly, depending on the activity you are carrying out, you may also need government approvals to go onto crown-owned beds and shores, which are, roughly speaking, the lands covered by water that are owned by the provincial government. For more information about what this means, as well as the authorizations you might need to carry out activities on both crown-owned and privately-owned beds and shores, take a look at the [chapter on land ownership and use](#).

¹⁸⁷ *Dominion Water Power Act*, RSC 1985, c W-4.

¹⁸⁸ *International River Improvements Act*, RSC 1985, c I-20.

¹⁸⁹ See also *National Historic Parks General Regulations*, *supra* note 3, ss 8-11; *National Parks General Regulations*, *supra* note 3, ss 17-20.

¹⁹⁰ *Water Act*, *supra* note 1, s 38(4).

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Additionally, if the activity that you are carrying out has the potential to affect water quality, then you should be aware of the legal rules against polluting water and the government authorizations that are necessary for any activity that may impact water quality. More information about both of these subjects can be found in the [chapter on water quality](#).

Finally, although this section will focus on the provincial and federal legislation governing activities that affect the flow, location, and level of water, it is possible that there are local government bylaws that also govern these activities, for example, by requiring a development permit. Since each local government may have different bylaws and different rules, these will not be dealt with in detail. Nevertheless, it is always important to check if your local government has additional rules in place before engaging in an activity that affects the flow, location, and level of water.

i. Applying for an Approval

To obtain an approval for an activity that affects the flow, location, or level of water, you must submit an application to the provincial government, using the online system on the Government of Alberta's website.¹⁹¹ If, for any reason, your application is incomplete, the government will notify you and request any outstanding information.¹⁹² Note, however, that the government will not review an application until it is complete, and, if the outstanding information is not provided in a timely manner, the government will reject the application.¹⁹³

Once the government receives a complete application for an approval, the applicant must give public notice of the application.¹⁹⁴ As part of the application process, the government will provide more information about how to give notice, including instructions for how it must be posted.¹⁹⁵ Alternatively, in some circumstances, the government may waive the requirement for public notice, for example,

¹⁹¹ *Ibid*, s 37; "Water Act forms" (2021), online: Government of Alberta <https://www.alberta.ca/water-act-forms.aspx>. Note that approval applications related to energy resource projects must go through the Alberta Energy Regulator instead: see *Responsible Energy Development Act*, *supra* note 87, ss 2, 24-25; *Specified Enactments (Jurisdiction) Regulation*, *supra* note 87.

¹⁹² *Water (Ministerial) Regulation*, *supra* note 74, s 4.2(2).

¹⁹³ *Ibid*, ss 4.2(1), (3).

¹⁹⁴ *Water Act*, *supra* note 1, ss 37(1)(d), 108; *Water (Ministerial) Regulation*, *supra* note 74, s 13.

¹⁹⁵ See "Digital Regulatory Assurance System" (2021), online: <https://www.alberta.ca/digital-regulatory-assurance-system.aspx>.

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where the approval is unlikely to have a significant effect either on the environment or on holders of water use authorizations.¹⁹⁶

In normal circumstances, where public notice is required, the *Water Act* provides an opportunity for some members of the public to respond to the notice and provide feedback on the approval application. Specifically, any person who is directly affected by the application has 7 days from the date of the last public notice to file a statement of concern outlining any concerns they have with the application.¹⁹⁷ More information about how to submit a statement of concern can be found on the Government of Alberta's website.¹⁹⁸ Likewise, for more information about who counts as directly affected by an application, take a look at the section of this chapter on [appeals](#).

In addition to the requirement for public notice, if an application for an approval has the potential to affect the rights of any Indigenous groups, then the applicant may be required to carry out consultations with those groups. As part of the application process, the government will decide if consultation is required and, if it is, the government will provide the applicant with more information about how to conduct those consultations.¹⁹⁹ For more information about the consultation process, take a look at the resources on the Government of Alberta's website.²⁰⁰ As well, for more information about Indigenous rights and the duty to consult, take a look at the [chapter on water in Indigenous communities](#).

After public notice has been given and consultations have been carried out, the government must decide whether to issue the approval. When making this decision, the *Water Act* requires the government to consider any factors listed in an applicable water management plan.²⁰¹ More information about water management plans can be found in the section on [water use planning](#).

¹⁹⁶ *Water Act*, *supra* note 1, s 108(6).

¹⁹⁷ *Ibid*, s 109.

¹⁹⁸ See "Digital Regulatory Assurance System" (2021), online: <https://www.alberta.ca/digital-regulatory-assurance-system.aspx>.

¹⁹⁹ *Ibid*.

²⁰⁰ See "Indigenous consultations in Alberta" (2021), online: Government of Alberta <https://www.alberta.ca/indigenous-consultations-in-alberta.aspx>; *The Government of Alberta's Proponent Guide to First Nations and Metis Settlements Consultation Procedures* (1 December 2019), online: Government of Alberta <https://open.alberta.ca/publications/goa-proponent-guide-to-first-nations-and-metis-settlements-consultation-procedures-2019>.

²⁰¹ *Water Act*, *supra* note 1, s 38(2)(a).

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Additionally, to decide whether to issue an approval, the government may consider any number of the other factors listed in the *Water Act*. Most importantly, the government may consider the effects the approval would have on:

- The aquatic environment;
- Water flow;
- Water licence holders;
- Riparian and groundwater household users;
- Riparian and groundwater registered agricultural users; and
- Public safety.²⁰²

For more information about what is meant by riparian and groundwater users, take a look at the section of this chapter on [riparian and groundwater rights](#).

In addition to the factors listed in the *Water Act*, the government is allowed to consider any other matters it thinks are relevant, including any applicable government policies, directives, or guidelines.²⁰³ Notably, if an approval is for an activity that could affect a wetland, the government will very likely consider the *Alberta Wetland Policy*²⁰⁴, which lays out the government's approach to managing the province's wetlands, with a focus on minimizing wetland loss and, where necessary, replacing lost wetlands.²⁰⁵

Finally, when deciding whether or to issue an approval, the government may consider if there are any circumstances that justify refusing to issue the approval. Most importantly, under the *Water Act*, the government may refuse to issue an approval if the applicant owes an unpaid debt to the government.²⁰⁶

²⁰² *Ibid*, ss 38(2)(b)-(c).

²⁰³ *Ibid*, s 38(2)(c).

²⁰⁴ *Alberta Wetland Policy* (1 September 2013), online: Government of Alberta <https://open.alberta.ca/publications/9781460112878>.

²⁰⁵ *Ibid*.

²⁰⁶ *Water Act*, *supra* note 1, s 37.1.

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Once the government has made a decision about an application for an approval, it must give notice of the decision to the applicant, as well as anyone who submitted a statement of concern.²⁰⁷ If the government waived the requirement to give public notice, then it will also give notice of its decision to anyone who is directly affected by the approval, although it will only do so if it has decided to issue the approval.²⁰⁸

Depending on the decision, the applicant and the parties directly affected by the approval may be entitled to appeal the decision to a body called the Environmental Appeals Board.²⁰⁹ For more information about the appeals process and who can bring an appeal, take a look at the section of this chapter on [appeals](#). As well, for information about existing *Water Act* approvals, take a look at the Government of Alberta's online authorization viewer.²¹⁰

ii. Exempted Activities

Under the *Water Act*, some activities that affect the flow, location, or level of water are specifically exempted from the need for an approval, meaning that you can carry out these activities without having to obtain a *Water Act* approval from the provincial government.²¹¹ The full list of exempted activities can be found in the *Water (Ministerial) Regulation*.

Under the *Regulation*, there are three different categories of exempted activities. The first category is the general exempted activities, which can be found in Schedule 1 of the *Regulation*. These activities include:

- Constructing a floating platform;
- Constructing a portable or seasonal pier, boat launch, or dock;

²⁰⁷ *Ibid*, s 110(1), 111(1)-(3).

²⁰⁸ *Ibid*, s 111(1), (2)(a).

²⁰⁹ See *ibid*, s 115(1)(a), (d).

²¹⁰ "Authorization Viewer – Search" (2021), online: Government of Alberta <https://avw.alberta.ca/ApprovalViewer.aspx>.

²¹¹ *Water Act*, *supra* note 1, s 36(3); *Water (Ministerial) Regulation*, *supra* note 74, s 2. But see *ibid* s 4.1.

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- Landscaping;²¹²
- Removing debris;²¹³
- Removing a beaver dam;²¹⁴
- Constructing a dugout;²¹⁵
- Drilling a water well, if you own the land and the drilling machine, and you are entitled to take groundwater for household purposes;²¹⁶
- Reclaiming a water well;²¹⁷
- Installing a water supply line, portable pump, or portable aeration line in, under, or adjacent to a water body;²¹⁸
- Exploring for groundwater to obtain information to support a licence application;
- Constructing a water crossing;²¹⁹
- Dewatering a sand and gravel site;²²⁰ and
- Dewatering a construction site.²²¹

Importantly, some of these exempted activities are subject to conditions, which are listed in the *Water (Ministerial) Regulation*. This means you must meet the conditions listed in the *Regulation*, or you will not qualify for the exemption and, instead, will need to apply for an approval. Be sure to check the *Regulation* to make sure you are in compliance with all of the listed conditions before you undertake one of these activities without an approval.

²¹² See *ibid*, Schedule 1, s 2(d) for the exceptions.

²¹³ See *ibid*, Schedule 1, s 2(g) for the applicable conditions.

²¹⁴ See *ibid*, Schedule 1, s 2(h) for the applicable conditions.

²¹⁵ See *ibid*, Schedule 1, s 2(l) for the exceptions.

²¹⁶ See *ibid*, Schedule 1, s 2(k.1); *Water Wells and Ground Source Heat Exchange Systems Directive* (11 December 2018), online: Government of Alberta at 2.1.3 <https://open.alberta.ca/publications/9781460141588>.

²¹⁷ *Ibid*.

²¹⁸ See *Water (Ministerial) Regulation*, *supra* note 74, Schedule 1, s 2(e), (f) for the applicable conditions.

²¹⁹ See *ibid*, Schedule 1, s 2(c) for the applicable conditions.

²²⁰ See *ibid*, Schedule 1, s 2(p) for the applicable conditions.

²²¹ See *ibid*, Schedule 1, s 2(q) for the applicable conditions.

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The second category of exempted activities in the *Water (Ministerial) Regulation* is activities that are exempted from the need for an approval, but only if you follow the applicable codes of practice and give the government written notice at least 7 days before you start the activity.²²² These activities include:

- Constructing a pipeline or telecommunication line crossing;²²³
- Constructing a watercourse crossing;²²⁴
- Constructing an outfall structure that discharges to a water body;²²⁵
- Constructing works related to power lines that impact a wetland;²²⁶
- Drilling or reclaiming a borehole in a wetland;²²⁷ and
- Constructing or restoring wetlands.²²⁸

Finally, the third category of exempted activities in the *Water (Ministerial) Regulation* is activities that are exempted from the requirement for an approval, but only if they take place in a certain region of the province. Specifically, under Schedule 2 of the *Water (Ministerial) Regulation*, you do not need an approval to construct an ice bridge or snow fill, except on the rivers that are listed in the *Regulation*.

iii. Other Approval Schemes

In addition to the *Water Act*, there are other provincial and federal regulatory schemes that govern activities that affect the flow, location, or level of water. In this section, we will provide a brief overview of each of these regulatory schemes, with a focus on the type of activities they regulate. In particular, we will look at the *Drainage Districts Act*, the *Hydro and Electric Energy Act*, the *Natural*

²²² *Ibid*, ss 3, 4.

²²³ *Ibid*, s 3(1).

²²⁴ *Ibid*, s 3(3).

²²⁵ *Ibid*, s 3(5).

²²⁶ *Ibid*, s 3(7).

²²⁷ *Ibid*.

²²⁸ *Ibid*, s 3(9).

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Resources Conservation Board Act, the *Canadian Navigable Waters Act*, the *Canada National Parks Act*, the *Dominion Water Power Act*, the *International Boundary Waters Treaty Act*, and the *International River Improvements Act*.

As you read this section, keep in mind that these regulatory schemes apply over and above the *Water Act* approval scheme, which means that, even if you carry out an activity that is allowed under one of these pieces of legislation, you will still need a *Water Act* approval. The only exception is that the *Water Act* scheme does not apply to surface waters in national parks, which are instead governed by the *Canada National Parks Act*.²²⁹ As well, the *Water Act* probably does not apply on First Nations' reserve lands, although the law is less clear on that point. For more information about the rules that apply to reserves, and the reasons for the uncertainty in the law, take a look at the [chapter on water in Indigenous communities](#).

Drainage Districts Act

The *Drainage Districts Act* is provincial legislation that allows the creation of drainage districts, which are cooperatives for the purpose of building and operating drainage works. Under the *Drainage Districts Act*, a group of property owners may petition the government to establish a drainage district in their area.²³⁰ If they are successful, the drainage district is run by a board of trustees, who are responsible for constructing and operating the drainage works, while the property owners within the district pay annual fees to cover the costs.²³¹

Hydro and Electric Energy Act

The *Hydro and Electric Energy Act* is provincial legislation that regulates hydropower developments in Alberta.²³² Specifically, the *Act* gives the Alberta Utilities Commission the jurisdiction to review and decide applications for hydropower developments within the province, with the exception of

²²⁹ See also *National Historic Parks General Regulations*, *supra* note 3, ss 8-11; *National Parks General Regulations*, *supra* note 3, ss 17-20.

²³⁰ *Drainage Districts Act*, *supra* note 183, ss 5-8.

²³¹ See *ibid*, ss 14, 30, 55.

²³² *Hydro and Electric Energy Act*, *supra* note 184, ss 2, 9.

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any hydropower developments on federal lands.²³³ For more information about the Alberta Utilities Commission, take a look at the Commission's website.²³⁴

Natural Resources Conservation Board Act

The *Natural Resources Conservation Board Act* is provincial legislation that creates the Natural Resources Conservation Board and gives it the jurisdiction to review natural resource projects in the province.²³⁵ In terms of water, the Board is responsible for reviewing water management projects, which are defined as:

- Projects to construct a dam, reservoir, or barrier to store water and for which an environmental impact assessment report has been ordered; and
- Projects to construct a water diversion structure or canal for which an environmental impact assessment report has been ordered.²³⁶

For more information about environmental impact assessment reports, take a look at the [chapter on water quality](#). Likewise, for more information about the Natural Resources Conservation Board and its review process, take a look at the Board's website.²³⁷

Canadian Navigable Waters Act

The *Canadian Navigable Waters Act* is federal legislation that regulates the navigable waters in Alberta. Under the *Act*, you are not allowed to deposit any stone, gravel, earth, or other material on the bed of a navigable water where there is not a depth of at least 36 meters at all times.²³⁸ In addition, you are not allowed to lower the level of a navigable water to the point where it cannot be navigated by the type of boat or vessel that is likely to navigate that water.²³⁹

²³³ *Ibid*, s 9.

²³⁴ "Alberta Utilities Commission", online: <https://www.auc.ab.ca/Pages/default.aspx>.

²³⁵ *Natural Resources Conservation Board Act*, *supra* note 185, ss 2, 12.

²³⁶ *Ibid*, ss 1(j), 4(d).

²³⁷ "Natural Resources Conservation Board", online: <https://www.nrcb.ca/>.

²³⁸ *Canadian Navigable Waters Act*, *supra* note 186, s 22.

²³⁹ *Ibid*, s 23.

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For more information about how the *Canadian Navigable Waters Act* governs construction projects on waterbeds, take a look at the discussion in the [chapter on land ownership and use](#).

Canada National Parks Act

The *Canada National Parks Act* is federal legislation that creates and regulates national parks in Canada. The *Act* set out the rules for what you may or may not do in a national park, including the rules for what you can do around water. Notably, under the *Act* and its regulations, you are not allowed to obstruct or divert watercourse or waterbody within a national park.²⁴⁰

Dominion Water Power Act

The *Dominion Water Power Act* is federal legislation that governs the approval of all water power projects on federal lands.²⁴¹ In Alberta, functionally, this means water power projects that are situated within national parks. For more information about the projects that have been licensed under the *Dominion Water Power Act*, take a look at the *Astoria River Water Power Regulations*²⁴² and the *Kananaskis Falls and Horseshoe Falls Water Power Regulations*²⁴³.

International Boundary Waters Treaty Act

The *International Boundary Waters Treaty Act* is federal legislation that implements the *Boundary Waters Treaty*. To do this, the *Act* restricts any use, obstruction, or diversion of the waters along the border between Canada and the United States, in any way that affects the flow or level of water on the other side of the border.²⁴⁴ It also restricts the construction of any work, dam, or other obstruction in waters that would raise the water level on the other side of the border.²⁴⁵

²⁴⁰ *National Historic Parks General Regulations*, *supra* note 3, s 8; *National Parks General Regulations*, *supra* note 3, s 17.

²⁴¹ *Dominion Water Power Act*, *supra* note 187, ss 2, 3.

²⁴² *Astoria River Water Power Regulations*, SOR/76-40.

²⁴³ *Kananaskis Falls and Horseshoe Falls Water Power Regulations*, SOR/97-473.

²⁴⁴ *International Boundary Waters Treaty Act*, *supra* note 7, ss 10, 11.

²⁴⁵ *Ibid*, s 12.

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For more information about the *Boundary Waters Treaty*, take a look at the section of this chapter on [water use planning](#).

International River Improvements Act

The *International River Improvements Act* is federal legislation that implements the *Boundary Waters Treaty*. To do this, the *International River Improvements Act* regulates the construction of any projects that might affect the flow of water from any place in Canada to any place outside of Canada.²⁴⁶ Notably, the *International River Improvements Act* does not apply to projects for domestic or irrigation purposes or to projects within waters that are on the border between Canada and the United States but do not flow across the border.²⁴⁷

For more information about the *Boundary Waters Treaty*, take a look at the section of this chapter on [water use planning](#).

²⁴⁶ *International River Improvements Act*, *supra* note 188, s 2.

²⁴⁷ *Ibid*, s 7(1).

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III. APPEALS AND ENFORCEMENT

If you are directly affected by a decision or action taken by the provincial government under the *Water Act*, you may have the ability to appeal that decision. Likewise, if you are not following the rules and requirements under the *Water Act*, the government may have the power to take action to bring you into compliance.

In this section, we will cover both of these topics, starting with your ability to appeal a decision under the *Water Act* and, specifically, how to know if you are able to appeal a decision and what to do in order to initiate that appeal. Then, we will lay out the government's ability to enforce the rules in the *Water Act* by providing an overview of the different tools the government can use to correct non-compliant behaviour. We will also discuss the government's more general powers to require a person to take action to prevent or correct problems relating to water, regardless of whether there has been a contravention of the *Water Act*.

As you read this section, keep in mind that these are specifically the rules that apply to the regulatory scheme set out under the *Water Act*, which includes the rules that govern water use authorizations like water licences, as well as the rules around issuing approvals for activities that affect the flow, location, and level of water. Other federal or provincial regulatory schemes will have their own sets of rules for appealing decisions and for government enforcement, which will not be discussed in this publication.

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i. Appeals

If the government makes a decision under the *Water Act* that affects you, you may be entitled to appeal that decision to a specialized tribunal called the Environmental Appeals Board. This section will discuss the process for appealing decisions under the *Water Act*, with a focus on when you can appeal a decision to the Board and the process you must go through to initiate an appeal, including the relatively short deadlines to do so. For information about what the appeals process itself, you should consult the Environmental Appeals Board’s website or by contact the Board directly.²⁴⁸

a. Right to Appeal

Generally speaking, there are two components to knowing if you have the right to appeal a government decision under the *Water Act*: first, knowing if the decision you want to appeal is the sort of decision that can be appealed under the *Water Act* and, second, knowing if you are the sort of person who can appeal that decision. In the following sections, we will go through each of these two components in turn.

What Can Be Appealed

Under the *Water Act*, the only decisions that can be appealed are the ones that are specifically named in the *Act* as decisions that can be appealed. This means that, in the *Act*, there is literally a list of the decisions that can be appealed, and if a type of decision is not on that list, then it cannot be appealed.²⁴⁹

The type of decisions that can be appealed under the *Water Act* include:

- The decision to issue an approval, a preliminary certificate, or a licence;
- The decision to amend an approval, a preliminary certificate, or a licence;²⁵⁰
- The decision to renew a licence;

²⁴⁸ See “Environmental Appeals Board” (2004), online: <http://www.eab.gov.ab.ca/>.

²⁴⁹ *Alberta Wilderness Association v Alberta (Environmental Appeals Board)*, 2013 ABQB 44 at paras 15-16.

²⁵⁰ But see *Water Act*, *supra* note 1, ss 115(2)(c), (d).

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- The refusal to issue an approval or a licence;²⁵¹
- The refusal to amend an approval, preliminary certificate, or licence;²⁵²
- The refusal to renew a licence;
- The decision to suspend or cancel an approval, licence, registration, or preliminary certificate;
- The decision to not accept any further licence applications;
- The decision to issue or amend a water management order, except for an order about emergency measures;
- The decision to issue an enforcement order, in certain circumstances;²⁵³
- The decision to issue an administrative penalty; and
- The decision to approve or refuse a transfer of an allocation of water.²⁵⁴

If you want to appeal a decision under the *Water Act*, you should always start by checking section 115 to make sure the decision can be appealed.

Who Can Appeal

Under the *Water Act*, the only people who can appeal a decision are those who have been directly affected by the decision. In all cases, this includes the person who is literally subject to the decision, such as the applicant for an approval or a person who has received an administrative penalty.

In addition, in some cases, members of the public who are directly affected by a decision but are not literally subject to it may appeal the decision.²⁵⁵ Whether members of the public have this right to appeal a decision is indicated in the *Water Act*, which lists the types of decisions that can be appealed by members of the public alongside the general list of which decisions can be appealed.²⁵⁶

²⁵¹ But see *ibid*, s 115(2)(a).

²⁵² But see *ibid*, ss 115(2)(c), (d).

²⁵³ See *ibid*, s 115(1)(p).

²⁵⁴ But see *ibid*, s 115(2)(a).

²⁵⁵ *Water Act*, *supra* note 1, s 115.

²⁵⁶ *Ibid*.

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If you want to appeal a decision you are not subject to, you should start by checking section 115 of the *Water Act*. Usually, members of the public can appeal decisions when the government allows an authorization, such as issuing or amending an approval. By contrast, government decisions that refuse to issue or amend authorizations can usually only be appealed by the applicant.

Keep in mind that even if members of the public are allowed to appeal a given type of decision under the *Water Act*, you will still need to show the Environmental Appeals Board that you are directly affected by the decision in order to bring an appeal.²⁵⁷ In a recent case, the Alberta Court of Appeal set a new standard for deciding who is directly affected by a decision and who is not.²⁵⁸

Effectively, the Court broke the term “directly affected” into its two constituent parts: the decision must have a negative effect on you and the negative effect must result from the decision, such that the decision and its consequences are close in both time and causation.²⁵⁹ Ultimately, whether a person is directly affected by a decision is something the Environmental Appeals Board will decide based on the specific circumstances of the case.²⁶⁰

The major exception to this rule is that, if the applicant for an approval or licence gave public notice of the application, then only members of the public who filed a statement of concern can appeal the decision to grant the approval or licence.²⁶¹ This means that a person who did not file a statement of concern will not be entitled to appeal this type of decision, even if the person is directly affected by it. For more information about the application process for approvals and licences, including the process for giving public notice and filing a statement of concern, take a look at the sections of this chapter on [applying for a licence](#) and [applying for an approval](#).

²⁵⁷ See e.g., *ibid*, ss 115(1)(a)-(c).

²⁵⁸ *Normtek Radiation Services v Alberta Environmental Appeals Board*, 2020 ABCA 456.

²⁵⁹ *Ibid* at paras 79-81.

²⁶⁰ *Ibid* at paras 78-80.

²⁶¹ See *Water Act*, *supra* note 1, ss 108-9, 115.

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b. Notice of Appeal

To appeal a decision to the Environmental Appeals Board, you must submit a document called a notice of appeal.²⁶² You can obtain a paper copy of the notice of appeal from the Board or you can access an online version on their website.²⁶³

The most important thing to know about submitting a notice of appeal to the Environmental Appeals Board is that the deadlines are very tight.²⁶⁴

- To appeal a water management order or an enforcement order, the deadline is 7 days after you receive the order.
- To appeal a decision relating to an approval, the deadline is 7 days after you receive notice of the decision (or, if notice has been given more than once, 7 days after the last notice).
- To appeal any other decision, the deadline is 30 days after you receive notice of the decision (or, if notice has been given more than once, 7 days after the last notice).

The Environmental Appeals Board has the power to extend these deadlines, either before or after they expire.²⁶⁵ However, the Board must be of the opinion that there is sufficient reason to do so, which means there must be extenuating or special circumstances.²⁶⁶ Be aware that the Environmental Appeals Board sets a fairly high bar for what constitutes extenuating circumstances: failing to pick up your mail, needing more time to collect information relating to the appeal, and misunderstanding the deadline have all been found not to qualify.²⁶⁷

²⁶² *Ibid*, s 114.

²⁶³ “Appeal online: notice of appeal form”, online: Environmental Appeals Board <http://www.eab.gov.ab.ca/appeal2.aspx..>

²⁶⁴ *Water Act*, *supra* note 1, s 116(1).

²⁶⁵ *Ibid*, s 116(2).

²⁶⁶ See *O'Neill v Regional Director, Parkland Region, Alberta Environmental Protection*, re: *Town of Olds* (12 March 1999), Appeal No 98-250 (AEAB).

²⁶⁷ *Valleau v Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks*, re: *Town of Wainwright* (19 September 2016), Appeal No. 16-009-ID1 (AEAB); *Walls et al v Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks*, re: *Aurora Cannabis Enterprises Inc* (31 March 2016), Appeal Nos 15-022-026-ID1 (AEAB); *Olineck v Director, Red Deer-North Saskatchewan Region, Operations Division Alberta Environment and Sustainable Resource Development*, re: *Hutterian Brethren Church of Vegreville* (28 October 2014), Appeal No 14-012-D (AEAB).

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In terms of content, a notice of appeal must contain the following information.²⁶⁸

- *The section of the Water Act the notice is submitted under.* Note that all appeals under the *Water Act* are submitted under section 115.
- *The name and title of the person who made the decision that is being appealed.*
- *The details of the decision being appealed.* This may include the person the decision was about, the date of the decision, and the location of the activity that incurred the decision.
- *The grounds of appeal.* This means the reasons that you are appealing the decision or, in other words, what you think is wrong with the decision.
- *The relief that you would like.* This means, more or less, what you would like to happen as a result of the appeal or, put otherwise, how you would like the Environmental Appeals Board to solve the problem with the decision.
- *The signature of the person who is appealing the decision.* This may also be the signature of the lawyer or agent representing the person who is appealing.
- *The mailing address of the person who is appealing.* Note that the Environmental Appeals Board will send correspondence to this address, so it should be one you have regular access to.

Be aware that all of this information is included in the notice of appeal form available from the Environmental Appeals Board, so if you fill out that form, you will not need to worry about including any additional information. Otherwise, if you are thinking of filing a notice of appeal, you should consider consulting the Board's website for more information about their procedures.²⁶⁹

²⁶⁸ *Water Act*, *supra* note 1, s 116(3); *Environmental Appeal Board Regulation*, Alta Reg 114/1993, s 5.

²⁶⁹ See "Appeal online: filing a notice of appeal", online: Environmental Appeals Board <http://www.eab.gov.ab.ca/appeal.htm>.

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ii. Enforcement

Under the *Water Act*, the government has a range of legal tools to enforce compliance with the rules set out in the *Act*. As well, the government has some powers that let it manage the use and flow of water, even where there has been no wrongdoing or rule breaking.

In this section, we will outline the different enforcement and management mechanisms available to the government. We will start with the mechanisms that allow the government to manage water, even where there is no wrongdoing or rule breaking, including water management orders and the power to amend, cancel, or suspend authorizations and approvals under the *Water Act*. Then, we will turn to the legal tools the government can use to deal with anyone who breaks the rules under the *Water Act*, which include enforcement orders, administrative penalties, and regulatory charges.

Generally speaking, if you think another person is not in compliance with the *Water Act* or if you are dealing with a problem with water more generally, you can make a complaint to the provincial government, who may take steps to deal with the problem. More information about the complaints process is available from the Government of Alberta's website.²⁷⁰

a. Water Management Orders

Under the *Water Act*, the provincial government has the power to issue water management orders, which are almost exactly what they sound like: orders directing a person to take action to manage water. Water management orders are not punitive, so they are not necessarily targeted at people who have committed some sort of misconduct or broken one of the rules in the *Water Act*. Instead, water management orders are primarily corrective, meaning they allow the government to step in and require a person to take action to prevent or correct a problem relating to water.

²⁷⁰ See "Rural disputes – Water Act essentials" (2021), online: Government of Alberta <https://www.alberta.ca/rural-disputes-water-act-essentials.aspx>.

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The *Water Act* lists the circumstances when the government may issue a water management order and the people the order may be directed to. These include:

- To any person, to enforce the priority of different water use authorizations;
- To the holder of any authorization or approval under the *Water Act*, to maintain or repair a works;
- To the holder of a temporary diversion licence, to suspend the temporary diversion;
- To the owner or tenant of a piece of property, to prevent or remedy flooding;
- To a person in charge of any type of drilling, to prevent or remedy an adverse effect on groundwater;
- To a person responsible for a water well, to prevent or remedy an adverse effect on the environment, human health, property, or public safety;
- To the holder of an approval or licence or a household user, to prevent or remedy a significant adverse effect on human health, property, or public safety;
- To any person carrying out an activity that is exempt from the requirement for an authorization or approval under the *Water Act*, to prevent or remedy an adverse effect on the aquatic environment, human health, property, or public safety;
- To a person responsible for an activity, use of water, or operation of a works, to prevent or remedy a significant adverse effect on human health, property, or public safety; and
- To any person, to prevent that person from wasting water contrary to a water conservation guideline.²⁷¹

Note that, under the *Water Act*, a “person responsible” for something includes the person who carries out the involved activity, as well as the person who owns the land where the activity takes place.²⁷²

In terms of content, the *Water Act* allows the government to use a water management order to require a person to take any measures the government thinks is necessary.²⁷³ This is an extremely broad

²⁷¹ *Water Act*, *supra* note 1, s 97.

²⁷² See *Water (Ministerial) Regulation*, *supra* note 74, ss 1(5), (7).

²⁷³ *Water Act*, *supra* note 1, s 99(1).

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power and can include a wide range of activities, such as providing information to the government, making an emergency preparedness plan, removing or repairing a works, stopping an activity or use of water, preventing or remedying adverse effects, carrying out emergency measures, and restoring or reclaiming an affected area to conditions specified by the government.²⁷⁴

Keep in mind that if a person fails to carry out the terms of a water management order, the government may step in and meet the order's requirements in that person's place.²⁷⁵ When this occurs, the government can recover its costs from the person subject to the water management order, including by taking action in court to enforce the debt.²⁷⁶ The government can also issue an order requiring anyone who purchases land from that person to pay the person's debt out of the purchase price for the property.²⁷⁷

b. Amendments, Suspensions, and Cancellations

The government may amend, suspend, or cancel the authorizations and approvals issued under the *Water Act* to deal with any adverse effects caused by those authorizations or approvals, including adverse effects to the aquatic environment, human health, public safety, and other authorization holders.

Specifically, with respect to an approval, the government may amend, suspend, or cancel the approval to remedy or prevent:

- significant adverse effects on the aquatic environment, human health, or public safety, which were not reasonably foreseeable at the time the approval was issued;²⁷⁸ and
- adverse effects on a household user, licensee, or registered agricultural user.²⁷⁹

²⁷⁴ *Ibid.*

²⁷⁵ *Ibid.*, s 103(1).

²⁷⁶ *Ibid.*, s 103(2).

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.*, ss 42(1)(a)(vi), 43(1)(a)(viii).

²⁷⁹ *Ibid.*, ss 42(1)(a)(vii), 43(1)(a)(ix).

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Similarly, the government may suspend or cancel a licence or a preliminary certificate to prevent significant adverse effects on human health, public safety, or the aquatic environment, which were not reasonably foreseeable at the time the authorizations were issued.²⁸⁰ The government may also amend a licence to prevent adverse effects on human health, public safety, or the aquatic environment, which were not reasonably foreseeable at the time the licence was issued.²⁸¹

Notably, when the government amends, cancels, or suspends a licence or preliminary certificate to protect the aquatic environment, the authorization holder may be entitled to compensation from the government for any losses incurred as a result.²⁸² For more information about this type of compensation, you should consult the Government of Alberta website on land compensation procedures.²⁸³

Beyond the ability to amend, suspend, or cancel authorizations and approvals to prevent adverse effects, the provincial government also has the power to suspend or cancel authorizations and approvals under the *Water Act* if there is an emergency or there has been misconduct by the authorization or approval holder. Specifically, the government may suspend or cancel an approval, licence, or registration, if there is an emergency.²⁸⁴ Equally, the government may suspend or cancel an approval, licence, preliminary certificate, or registration, if:

- The authorization or approval holder owes a debt to the government;
- There is a serious breach of any term or condition in the authorization or approval; or
- The authorization or approval holder is convicted of an offence under the *Water Act*.²⁸⁵

For more information about regulatory offences under the *Water Act*, take a look at the section of this chapter on that [topic](#).

²⁸⁰ See *ibid*, ss 55(1)(j), 55(2), 71(1)(h)-(i).

²⁸¹ *Ibid*, ss 54(1)(a)(v), 54(2).

²⁸² *Ibid*, ss 54(2), 55(2), 71(1)(i), 158.

²⁸³ “Land and Property Rights Tribunal” (2021), online: Government of Alberta <https://www.alberta.ca/land-and-property-rights-tribunal.aspx>.

²⁸⁴ *Water Act*, *supra* note 1, ss 43(1)(a)(iii), 55(1)(c), 78(1)(c).

²⁸⁵ *Ibid*, ss 43(1)(a), 55(1), 71(1), 78(1).

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Finally, with respect to a temporary diversion licence, be aware that the government has a broad power to amend, suspend, or cancel the temporary diversion licence, in any circumstances.²⁸⁶ On the whole, for more information about approvals and water use authorizations under the *Water Act*, take a look at the sections of this chapter on the [types of water authorization](#) and on [activities affecting flow](#).

c. Enforcement Orders

If the government thinks a person has broken one of the rules in the *Water Act*, it has the power to issue an enforcement order to that person.²⁸⁷ In general terms, an enforcement order is an order that requires a person to correct any problems resulting from that person's contravention of the *Water Act*.

Notably, the government may issue an enforcement order even if a person has not been charged or convicted of a regulatory offence under the *Water Act*: the only requirement is for a government official to form the opinion that the person has broken one of the rules in the *Act*.²⁸⁸ For more information about regulatory offences, take a look at the section of this chapter on that [topic](#).

In terms of content, the government may use an enforcement order to require a person to take action to deal with any problems that may have been caused by their contravention of the *Water Act*. Specifically, the government may order a person to:

- Submit a plan for how the person will remedy the circumstances;
- Stop construction, maintenance, or repair of any works or stop carrying out a project;
- Remove a works or anything obstructing the flow of water;
- Repair a works, to protect human health, property, or public safety;
- Operate a works in a manner laid out in the order;

²⁸⁶ *Ibid*, s 64.

²⁸⁷ *Ibid*, s 135.

²⁸⁸ *Ibid*.

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- Minimize or remedy an adverse effect on the aquatic environment, human health, property, or public safety; and
- Restore or reclaim an area to whatever condition is specified in the order.²⁸⁹

In addition, in some cases, the provincial government has the power to stop any activities a person may be carrying out under the *Water Act*.²⁹⁰ The government also has the power to suspend or cancel an authorization or approval, but only if one of the conditions normally required to suspend or cancel an authorization or approval is present.²⁹¹ For more information about suspensions and cancellations, take a look at the section of this chapter on that subject.

Notably, if a person fails to follow the terms of an enforcement order, the government can step in and carry out the order's requirements in that person's place.²⁹² If this happens, the government can recover its costs from the person subject to the enforcement order, including by taking action in court to enforce the debt.²⁹³

As well, note that if several people are subject to an enforcement order, they are jointly responsible for carrying it out.²⁹⁴ They are also jointly and severally liable for the costs of doing so, which means the costs of carrying out the order should be split between them according to the degree each one is at fault. That said, if the government carries out the terms of the order on their behalf, it is entitled to collect the full amount of its costs from any one liable person, and the group has to sort out the uneven payments amongst themselves.²⁹⁵

²⁸⁹ *Ibid*, s 136.

²⁹⁰ *Ibid*, s 136(1)(b)-(c).

²⁹¹ *Ibid*, s 136(1)(a).

²⁹² *Ibid*, s 139.

²⁹³ *Ibid*, s 139(3).

²⁹⁴ *Ibid*, s 140.

²⁹⁵ *Ibid*.

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d. Administrative Penalties

An administrative penalty is a fine the government can issue to a person who, in the opinion of the government, has broken one of the administrative rules set out in the *Water Act*.²⁹⁶ The rules that count as administrative are listed in the *Water Act* and the *Water (Offences and Penalties) Regulation*²⁹⁷, and they include:

- Providing the government with false or misleading information relating to a matter under the *Water Act*;
- Failing to provide information as required under the *Water Act*;
- Contravening a water management order or an enforcement order;
- Contravening a term or condition of an approval, preliminary certificate, or licence;
- Carrying out an activity without an approval or other authorization under the *Water Act*;
- Taking and using water without a licence or other authorization under the *Water Act*;
- Failing to give public notice when required to do so under the *Water Act*; and
- Interfering with the work of an inspector or investigator acting under the *Water Act*.²⁹⁸

In terms of penalty amounts, the *Water (Offences and Penalties) Regulation* sets out a rubric with base amounts depending on the type of contravention and the potential for it to have an adverse effect.²⁹⁹ The government may adjust the amounts in the rubric according to any other relevant factors, including the degree of wilfulness or negligence involved, any steps the person took to prevent reoccurrence, and whether the person has a history of non-compliance with the *Water Act*.³⁰⁰

Notably, an administrative penalty can be issued as a daily amount for each day a rule is broken.³⁰¹ As well, it can include an additional payment to offset any economic benefit a person gained

²⁹⁶ *Ibid*, s 152.

²⁹⁷ *Water (Offences and Penalties) Regulation*, Alta Reg 193/1998.

²⁹⁸ *Ibid*, Schedule 1.

²⁹⁹ *Ibid*, s 5(1).

³⁰⁰ *Ibid*, s 5(2).

³⁰¹ *Water Act*, *supra* note 1, s 152(1.1).

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from breaking the rule in question. Importantly, if a person pays an administrative penalty, they cannot also be charged with a regulatory offence for the same behaviour.³⁰²

e. Regulatory Offences

Under the *Water Act*, the government can charge you with a regulatory offence if you break one of the rules set out in the *Act*. If you are charged with a regulatory offence, you will be subject to a prosecution and a trial, similar to a criminal charge. The difference is that regulatory offences are not actually criminal charges, so you will not have a criminal record if you are convicted. As well, the penalties for regulatory offences tend to be lower than criminal charges, insofar as they tend to involve fines rather than jail time. That said, it is possible for regulatory offences to result in jail time, especially if you commit an offence knowingly or repeatedly.

Under the *Water Act*, it is only an offence to break some of the rules that are set out in the *Act*. The full list can be found in the *Act* and its accompanying regulations, but notable examples include:

- Providing the government with false or misleading information relating to a matter under the *Water Act*;
- Failing to provide information as required under the *Water Act*;
- Contravening a water management order or an enforcement order;
- Contravening a term or condition of an approval, preliminary certificate, or licence;
- Carrying out an activity without an approval or other authorization under the *Water Act*;
- Taking and using water except under a licence or other authorization under the *Water Act*;
- Failing to give public notice when required to do so under the *Water Act*; and
- Interfering with the work of an inspector or investigator acting under the *Water Act*.³⁰³

Penalties for offences under the *Water Act* can vary depending on whether a person knowingly committed the offence or not. For most offences, the penalty is a maximum fine of \$50,000 for an

³⁰² *Ibid*, s 152(2).

³⁰³ *Ibid*, s 142. See also *Water (Offences and Penalties) Regulation*, *supra* note 297, s 2.

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individual or \$500,000 for a corporation.³⁰⁴ For some offences, if the person knowingly committed the offence, the maximum penalty increases to a fine of \$100,000 or a 2-year prison term for an individual or a fine of \$1,000,000 for a corporation.³⁰⁵ Note that these penalties may be imposed for each day or part of a day that the offence was committed.³⁰⁶

In addition, if a person who is convicted of a regulatory offence received an economic benefit from committing that offence, the court may order the person to pay a fine in an amount equal to the economic benefit.³⁰⁷ The court may also order any person convicted of an offence under the *Water Act* to stop any action that would continue the offence, take action to remedy any harm to the aquatic environment resulting from the offence, post a bond to ensure future compliance with the *Act*, or pay for any cost to the government to take any remedial or preventative action required because of the offence.³⁰⁸



³⁰⁴ *Ibid*, ss 2(1), (2); *Water Act*, *supra* note 1, ss 143(2).

³⁰⁵ *Ibid*, s 143(1).

³⁰⁶ *Ibid*, s 145.

³⁰⁷ *Ibid*, s 144.

³⁰⁸ See *ibid*, s 148.