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# **Water Law in Alberta**

## A Comprehensive Guide

### *Chapter 1: Land Ownership and Use*

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Environmental  
Law Centre

# Water Law in Alberta

## *Chapter 1: Land Ownership and Use*

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# Water Law in Alberta

## Chapter 1: Land Ownership and Use

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## CHAPTER ONE: LAND OWNERSHIP AND USE

This chapter will deal with the ownership of land relating to water, of which there are two types. The first is the land underneath waterbodies and watercourses, otherwise known as the beds and shores. The second is the land next to waterbodies and watercourses, which is referred to as riparian land. This chapter will deal with each type in turn, with a focus on determining who owns the land, as well as the specific rights and responsibilities that come with that ownership.

To carry out this discussion, this chapter will be divided into three parts. The first part will deal with the ownership of the beds and shores in Alberta. It will begin with a discussion of what it means in law to own land, as well as the way in which that ownership is documented through certificates of title. Then, the discussion will turn to the presumption that the provincial government owns all of the beds and shores in Alberta along with the possible exceptions to that presumption.

The second part of this chapter will deal with the public right to use land owned by the provincial government, also known as crown land and, specifically, the rules that apply to the use of crown-owned beds and shores. This part will include a discussion of the permits required to construct anything on submerged crown land. It will also include a discussion of the rules for recreational activities that take place on submerged crown land—or, often, in the water above them—including the general rules for being on crown land, as well as the specific rules pertaining to aquatic habitat, boating, and fishing.

Finally, the third part of this chapter will deal with the ownership of riparian lands, focusing on how to determine if a piece of property is truly riparian, as well as the nature of riparian ownership and the special rights that come with it. This discussion will also include an overview of some of the special statutory restrictions on riparian property, as well as other property located close to water. In particular, it will deal with pesticide application, sewage systems, and general restrictions on development.

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### I. BEDS AND SHORES

This section will discuss the ownership of the beds and shores in Alberta, meaning the land that is underneath water. To accomplish this task, this section will begin with a general discussion of what it means in law to own land, as well as a brief explanation of the land titles system in Alberta. Then, this section will explain how to identify the owner of submerged land, dealing specifically with the presumption that the provincial government is the owner, unless one of five exceptions applies. Each of those exceptions will be discussed in detail. Finally, this section will discuss how to determine the exact boundaries of the beds and shores in Alberta, as well as the ways that the ownership of beds and shores may be transferred.

#### i. Ownership of Land in General

This section will provide a brief overview of what it means in law to own a piece of property and how the land titles system works in Alberta, including how a certificate of title demonstrates property ownership. Each of these topics will be discussed in turn.

##### a. Legal Ownership

When dealing with ownership, it is important to keep in mind that, in law, the ownership of a piece of land means the right to do certain things with that land.<sup>1</sup> The central right associated with the ownership of land is the right to possess the land, meaning the right to be on the land and the right to prevent anyone else from

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<sup>1</sup> See *Canadian Pacific Railway v Vancouver (City of)*, 2006 SCC 5 at para 30.

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being on it.<sup>2</sup> In addition, ownership of a piece of land includes the right to sell, mortgage, or lease the land; the right to use or develop the land; and the right to give away some of the other rights to the land to others, such as through an easement or a right of way.

In addition to the rights that come with property ownership, there are also a number of legal obligations that property owners face. These obligations can be restrictions on how you exercise the rights that come with property ownership or, in some cases, positive obligations that require you to take care of your property or otherwise prevent harm to others, such as the obligation to shovel your sidewalk in winter.

Statutory limitations on property ownership are particularly important when dealing with the land under or next to water, because, quite simply, there are a lot of them. The specific obligations that attach to property next to water will be discussed in more detail in the [sections on riparian land](#), but for now it is enough to know that in law property ownership can be thought of as a collection of rights and responsibilities relating to a piece of land.

### **b. Certificates of Title**

In Alberta, to keep track of who owns a given piece of land, we use something called the Torrens system. Under the Torrens system, a certificate of title is issued to the owner of a piece of land. The original certificate is registered in a central land registry, and copies can be accessed by anyone for a small fee.<sup>3</sup> This makes it easy to find out who is the owner of a given piece of land, because the owner is whoever is registered in the land titles registry, which can be determined by a simple search.

One important characteristic of the Torrens system is that the government guarantees that the certificates of title registered in the land registry are an accurate reflection of who owns which property. This is different from a deed system, where ownership documents are registered in a central registry, but the government makes no guarantee of their accuracy.<sup>4</sup> Compared to the deed system, the Torrens system provides an increased level of legal certainty, because it is easy to know who has which legal rights to a piece of land. This

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<sup>2</sup> See Sarah E Hamill, “Common Law Property Theory and Jurisprudence in Canada” (2015) 40-2 Queen’s LJ 679.

<sup>3</sup> *Land Titles Act*, RSA 2000, c L-4, ss 15-17; *Tariff of Fees Regulation*, Alta Reg 120/2000, s 14.

<sup>4</sup> See *An Introduction to Alberta Land Titles* (13 May 2015), online: Government of Alberta at 12 <https://open.alberta.ca/publications/5649897>.

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can prevent a lot of confusion and legal difficulties, because contests of ownership can be settled directly by reference to the land titles registry.

In Alberta, the land registry is run by the provincial government through the Land Titles Office.<sup>5</sup> The Land Titles Office has two locations in the province, with one office in Calgary and the other in Edmonton. Paper copies of titles are kept on location at these offices, and copies can be obtained through registry services or an online search through the Government of Alberta's Spatial Information System.<sup>6</sup> More information about obtaining land titles documents can be found on the Government of Alberta's website.<sup>7</sup>

## ii. Ownership of Beds and Shores

This section will provide an explanation of who owns the land beneath water in Alberta, referred to as the beds and shores. It will begin with the presumption that the provincial government owns all beds and shores, along with a description of the five possible exceptions to that presumption. Then, this section will explain how to determine the bank of the beds and shores, meaning the boundary between the land underneath water and the land that surrounds it. Finally, this section will explain how ownership of beds and shores can be transferred from the provincial government to a private owner.

### a. Determining Ownership

Under the *Public Lands Act*<sup>8</sup>, the provincial government is the presumptive owner of all of the beds and shores in the Province of Alberta.<sup>9</sup> This means that when we want to know who owns the bed and shores of a given waterbody or a watercourse, we start with the assumption that the provincial government is the owner. We then look to a set of possible exceptions to determine if the land could be owned by someone other than the provincial crown.

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<sup>5</sup> *Land Titles Act*, *supra* note 3, s 2.

<sup>6</sup> See "Find land titles, documents or plans" (2021), online: Government of Alberta <https://www.alberta.ca/find-land-titles-documents-plans.aspx>.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Public Lands Act*, RSA 2000, c P-40.

<sup>9</sup> *Ibid.*, s 3.

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This may seem counterintuitive, since many watercourses and waterbodies appear to be on lands that are otherwise owned by private citizens or organizations. However, in Alberta, the provincial government is the legal owner of all of the land beneath water, unless one of the five exceptions laid out in the *Public Lands Act* applies. This means that, unless one of the exceptions applies, the land under water is subtracted out from the ownership of the land that surrounds it.

To identify the land under water that is not owned by the provincial government, it is necessary to determine if one of the five exceptions applies. Those exceptions are non-natural waterbodies and watercourses, non-permanent waterbodies, specific conveyances, federal lands, and rights settled by court cases prior to 1931. In the following sections, we will discuss each of these exceptions in turn.

### *Non-Natural Waters*

The provincial government only owns the beds and shores of waterbodies and watercourses that are naturally occurring.<sup>10</sup> This means that the government does not own the beds and shores of any artificial or human-made bodies of water, such as an irrigation reservoir or a constructed lake or stream.

Notably, under the *Public Lands Act*, a naturally occurring river, stream, or watercourse does not stop being natural just because it has been modified by a person.<sup>11</sup> This means that a naturally occurring watercourse will still be natural, even if it has been modified. Accordingly, the provincial crown remains the owner of the beds and shores of that watercourse.

The *Public Lands Act* is silent on whether a naturally occurring waterbody, rather than a watercourse, remains natural, even if it has been modified. However, it stands to reason that it would still be natural: it does not make sense that the addition of a boat launch to a wetland, for example, would render the wetland artificial.<sup>12</sup> Accordingly, the provincial government would probably remain the owner of the bed and shores of a modified waterbody.

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<sup>10</sup> *Ibid*, s 3(1).

<sup>11</sup> *Ibid*, s 3(3). See also *Erik v McDonald*, 2019 ABCA 217 at para 13.

<sup>12</sup> See Arlene Kwasniak, *Alberta's Wetlands: A Law and Policy Guide* (Edmonton: Environmental Law Centre, 2002) at 67.

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### *Non-Permanent Bodies of Waters*

The provincial government only owns the beds and shores of permanent waterbodies.<sup>13</sup> This means that the provincial crown does not own the beds and shores of temporary, seasonal, or ephemeral bodies of water. Notably, this rule does not apply to rivers, streams, watercourses, or lakes, such that the land underneath those waters belong to the provincial government, whether they are permanent or not.<sup>14</sup>

In the case of wetlands, the government relies on the *Guide for Assessing Permanence of Wetland Basins*<sup>15</sup> to assess whether a wetland is permanent, such that the government may assert ownership over the land beneath it. The main factor in assessing wetland permanence is the number of weeks in the year that the wetland is covered in water, although soil characteristics and vegetation may also be examined to assess permanence.<sup>16</sup> Generally speaking, the government takes the position that a wetland that is covered in water for most, but not all of the year, is a permanent wetland, such that the government is the owner of the beds and shores.<sup>17</sup>

### *Specific Conveyances*

Where the provincial government has granted ownership of the land beneath a waterbody or a watercourse to another person or organization, then that person or organization is the legitimate owner of the beds and shores.<sup>18</sup> Practically, this means that if a certificate of title states that a person other than the provincial government is the owner of the land beneath a waterbody or a watercourse, then that person is the owner of the beds and shores.

It is important to note that a certificate of title must explicitly state when someone other than the provincial crown owns the beds and shores. Otherwise, if the certificate of title is silent about the ownership of the beds and shores, it is presumed that the provincial crown is the owner.<sup>19</sup> This means that if you are the owner of a piece of land with a stream on it, and the certificate of title does not explicitly mention the stream, then the

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<sup>13</sup> *Public Lands Act*, *supra* note 8, s 3(1)(a).

<sup>14</sup> *Ibid*, s 3(1)(b).

<sup>15</sup> *Guide for Assessing Permanence of Wetland Basins* (29 January 2016), online: Government of Alberta <https://open.alberta.ca/publications/guide-for-assessing-permanence-of-wetland-basins>.

<sup>16</sup> *Ibid* at 5-6.

<sup>17</sup> *Ibid* at 6-8.

<sup>18</sup> *Public Lands Act*, *supra* note 8, s 3(2)(a).

<sup>19</sup> *Ibid*, s 3(1).

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provincial government is the owner of the land beneath it. This is an important exception to the general rule that a certificate of title accurately describes who owns a piece of land.<sup>20</sup>

### *Federal Lands*

Lands owned by the federal government are not affected by the provincial government's declaration that it owns all of the beds and shores in Alberta.<sup>21</sup> Practically, this means that the beds and shores located within federal lands continue to be owned by the federal government.

In Alberta, there are three main types of land that are owned by the federal government: military bases, First Nations' reserves, and national parks. The water rights on First Nations' reserves will be discussed in much greater detail in the [chapter on water in Indigenous communities](#). The water rights in national parks will be discussed throughout this publication, including in the section of this chapter on [recreational uses of crown land](#), as well as in the [chapter on water use and flow](#).

### *Court Decisions Prior to 1931*

Any court decision made prior to 1931 that decided someone other than the provincial government was the owner of land beneath water is valid, and that person, or the person or organization that has inherited title from that person, is the owner of those beds and shores.<sup>22</sup>

Note that 1931 is chosen as the relevant year, because in 1930 the federal government transferred ownership of Alberta's water resources to the provincial government through the *Alberta Natural Resources Act*<sup>23</sup>. In the following year, the Province of Alberta took advantage of its new jurisdiction over water and declared itself the owner of all of the beds and shores in the province.<sup>24</sup> This declaration was made subject to any previous court decision, making 1931 the relevant date.

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<sup>20</sup> See *Land Titles Act*, *supra* note 3, s 61(1)(a).

<sup>21</sup> *Public Lands Act*, *supra* note 8, s 3(2)(c).

<sup>22</sup> *Ibid*, s 3(2)(b).

<sup>23</sup> *Alberta Natural Resources Act*, SC 1930, c 3.

<sup>24</sup> *Water Resources Act*, SA 1931, c 71.

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### **b. Boundaries of Beds and Shores**

In order to determine the extent of the beds and shores, it is necessary to identify the boundaries of the waterbody or watercourse in question. If you own a piece of land with a waterbody or watercourse on it, you will want to know exactly where your land ends and crown land begins, quite simply, because there can be stiff penalties for treating crown land as your own. For a discussion of what you can and cannot do on crown lands, take a look at the section of this chapter on [public rights to crown land](#).

According to the *Surveys Act*<sup>25</sup>, the boundary between a watercourse or a waterbody and the land surrounding it is referred to as the bank.<sup>26</sup> Under that *Act*, the correct way to identify the bank is to determine where the bed and shores end. This is done by looking at the soil and vegetation to determine which land has been covered by water for so long that there is no vegetation, or the vegetation and soil have distinct characteristics compared to the land that has not been covered by water.<sup>27</sup> The area with distinct characteristics is the bed and shores, and the bank is the boundary between the bed and shores and the land that surrounds it.

In many circumstances, the location of the bank will be clear. However, in the case of wetlands, if the bank is not clear, the Government of Alberta relies on the *Alberta Wetland Identification and Delineation Directive*<sup>28</sup> for directions on how to identify the bank.

### **c. Transfers of Ownership**

There are three ways a private person or organization can acquire the ownership of beds and shores from the provincial government. The first is through a direct purchase or sale. The second and third ways are through the automatic operation of legal principles, through either the doctrine of accretion or by implication through a government authorization. In the following sections, we will discuss each of these different ways of transferring ownership in turn.

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<sup>25</sup> *Surveys Act*, RSA 2000, c S-26.

<sup>26</sup> *Ibid*, s 17(2).

<sup>27</sup> *Ibid*, s 17(3).

<sup>28</sup> *Alberta Wetland Identification and Delineation Directive* (1 June 2015), online: Government of Alberta <https://open.alberta.ca/publications/9781460123638>.

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### *Sale*

The first way that a private person or organization can acquire the land under water is by buying the land from the government. Under the *Public Lands Act* and its regulations, the provincial government can sell public land, so long as the price is not below the fair value of the land.<sup>29</sup> This power to sell public land includes the power to sell the land beneath waterbodies and watercourses, which means the government can put this land up for sale, whether by public auction, private sale, or tender.<sup>30</sup>

Notably, where beds or shores are owned by a private owner other than the provincial government, that owner can sell the beds and shores the same as any other privately owned property.

### *Accretion*

The second way the ownership of beds and shores can transfer from the government to someone else is through the common law doctrine of accretion. Under the doctrine of accretion, when the boundaries of a waterbody change over time, the newly exposed lands automatically belong to the riparian owner, which is the owner of the land next to the water. The doctrine of accretion and how exactly it applies to riparian lands are discussed in detail in the section of this chapter on [riparian land](#).

Notably, the doctrine of accretion also applies to privately owned beds and shores. However, in practice, private owners of beds and shores usually also own the land next to the beds and shores, so there would not be any change in ownership when the submerged land is exposed.

### *Authorization*

The third way the ownership of beds and shores can transfer from the government to a private owner is when someone modifies the location of a waterbody or watercourse in accordance with a government authorization. The law is not entirely settled on this point. However, when a person is legally authorized to change the location of a watercourse or waterbody, the owner of the land next to the water can probably claim ownership of any newly exposed land.<sup>31</sup> Equally, the provincial government could probably claim ownership of

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<sup>29</sup> *Public Lands Administration Regulation*, Alta Reg 187/2011, s 6. But see *Public Lands Act*, *supra* note 8, s 18(a).

<sup>30</sup> *Public Lands Administration Regulation*, *supra* note 29, s 6(2).

<sup>31</sup> See Kwasniak, *supra* note 12 at 69.

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any land that is newly submerged, since the government owns all of the land underneath water, subject to the exceptions discussed in the section on [determining ownership](#).

On the other hand, it is very unlikely the Land Titles Office or the courts would recognize a claim to the ownership of land that was exposed by modifying a waterbody or watercourse without government authorization to do so.<sup>32</sup> Instead, if a watercourse or body of water has been unlawfully modified, the government has the power to order that it be put back the way it was. For more information about the government's ability to regulate the modification of watercourses and waterbodies, take a look at the [chapter on water use and flow](#).

### *Adverse Possession*

Finally, it is important to mention that the law prevents any person from acquiring the ownership of beds and shores from the provincial government through the doctrine adverse possession, or what is colloquially known as “squatters’ rights”. The *Public Lands Act* explicitly states that adverse possession does not apply to public lands.<sup>33</sup> This includes beds and shores owned by the provincial government, which means you cannot acquire the ownership of beds and shores from the government through the long-term occupation and use of that land.

Notably, the doctrine of adverse possession does apply to private lands, so it would be possible to acquire the ownership of beds and shores from a private owner through “squatters rights”.<sup>34</sup>

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<sup>32</sup> *Ibid* at 67-68.

<sup>33</sup> *Public Lands Act*, *supra* note 8, s 4.

<sup>34</sup> See *Adverse Possession and Lasting Improvements to Wrong Land* (Edmonton: Alberta Law Reform Institute, 2019), online: <https://www.alri.ualberta.ca/2020/02/adverse-possession-and-lasting-improvements-to-wrong-land/>.

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## II. PUBLIC RIGHTS TO CROWN LAND

When the provincial government owns land, it has the right to control who is allowed to be on that land and what activities are allowed and not allowed on it. In Alberta, the rules and restrictions for using provincial government lands are set out in a number of provincial statutes, including the *Public Lands Act*, the *Provincial Parks Act*<sup>35</sup>, the *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*<sup>36</sup>, the *Wildlife Act*<sup>37</sup>, and the *Fisheries (Alberta) Act*<sup>38</sup>. In this section, we will review the rules set out in this legislation, with a focus on how it applies to provincially owned beds and shores.

In addition, even though the provincial government owns and controls most of the beds and shores in the province, the federal government is also able regulate these lands through its constitutional jurisdiction over navigation and shipping and fisheries.<sup>39</sup> Accordingly, there are additional rules for what you can and cannot do on beds and shores that are set out in federal legislation, including the *Canadian Navigable Waters Act*<sup>40</sup>, the *Canada Shipping Act, 2001*<sup>41</sup>, the *Canada National Parks Act*<sup>42</sup>, the *Fisheries Act*<sup>43</sup>, and the *Species at Risk Act*<sup>44</sup>. We will

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<sup>35</sup> *Provincial Parks Act*, RSA 2000, c P-35.

<sup>36</sup> *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*, RSA 2000, c W-9.

<sup>37</sup> *Wildlife Act*, RSA 2000, c W-10.

<sup>38</sup> *Fisheries (Alberta) Act*, RSA 2000, c F-16.

<sup>39</sup> *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5, s 91(10), (12) [*Constitution*].

<sup>40</sup> *Canadian Navigable Waters Act*, RSC 1985, c N-22.

<sup>41</sup> *Canada Shipping Act, 2001*, SC 2001, c 26.

<sup>42</sup> *Canada National Parks Act*, SC 2000, c 32.

<sup>43</sup> *Fisheries Act*, RSC 1985, c F-14.

<sup>44</sup> *Species at Risk Act*, SC 2002, c 29.

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also review the rules set out in this legislation as part of our discussion of what you can and cannot do on crown owned beds and shores.

In terms of structure, this section is divided into two parts: the first deals with the rules around construction activities on beds and shores, and the second deals with the rules around recreational activities on beds and shores, including the rules for boating and fishing.

As you read this section, keep in mind that the rules being discussed are specifically the rules for going onto submerged crown lands and engaging in activities on those lands. The rules for taking and using water, such as for irrigation or drinking water, or changing the flow of water, are covered under a separate regulatory scheme under the *Water Act*<sup>45</sup>. That scheme is discussed in detail in the [chapter on water use and flow](#).

Similarly, there are separate rules for any activity that may affect water quality, which are discussed in the [chapter on that subject](#). In many cases, an activity will require both going onto crown land and using or changing the flow of water, as well as affecting water quality, so keep in mind that all of these different regulatory schemes may apply to a single situation at the same time.

Finally, although this section will focus on the provincial and federal legislation that governs the use of crown lands covered by water, it is possible that local governments have also enacted bylaws governing the waterbodies and watercourses within their limits.<sup>46</sup> Since each local government may have different rules, these will not be dealt with in this publication. Nevertheless, it is always important to check if a local government has additional rules in place before engaging in an activity on submerged crown land.

### **i. Construction Activities**

Construction activities refer to any human activity that alters the bed or shores of a waterbody or watercourse, however minor that alteration may be. It is important to seek all necessary approvals before modifying beds or shores, because there can be significant penalties for making an alteration without the required approval.

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<sup>45</sup> *Water Act*, RSA 2000, c W-3.

<sup>46</sup> See *Municipal Government Act*, RSA 2000, c M-26, s 60.

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In Alberta, there are four overlapping regulatory schemes that govern construction activities on beds and shores. The first is managed by the Government of Alberta under the *Public Lands Act*, and it applies to any bed or shores that are owned by the provincial government.<sup>47</sup> This scheme applies to absolutely any activity that alters beds or shores owned by the government, whether it is major construction, like the construction of a marina, or a minor disturbance of the beds and shores, such as the removal of aquatic vegetation.

The second regulatory scheme that governs construction activities on submerged land is run by the federal government under the *Canadian Navigable Waters Act*. This scheme applies to anything constructed or placed on the bed or shores of a navigable water. It also includes any dredging or of dumping fill materials. Notably, the *Canadian Navigable Waters Act* scheme applies to any waters that are navigable by any sort of boat, regardless of who owns the beds and shores.

The third regulatory scheme that affects construction activities on submerged land is managed by the federal government under the *Fisheries Act*. This scheme protects fish and fish habitat from damage by any work, undertaking, or activity.<sup>48</sup> Notably, it applies to any waters where there are fish or fish habitat, regardless of who owns the beds and shores.<sup>49</sup>

Finally, the fourth regulatory scheme that affects construction activities on submerged land is managed by the federal government under the *Species at Risk Act*. This scheme protects threatened, endangered, and extirpated species and their habitat.<sup>50</sup> The *Species at Risk Act* primarily applies to federal government lands; however, the protections for aquatic species and migratory birds and their habitat also apply to provincially and privately lands, including beds and shores.<sup>51</sup>

In the next four sections, we will discuss the specific requirements of each of these four regulatory schemes in turn.

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<sup>47</sup> *Public Lands Act*, supra note 8, ss 20, 54(1)(e).

<sup>48</sup> *Fisheries Act*, supra note 43, ss 34.4, 35.

<sup>49</sup> *Ibid*, ss 2(1), 2.2.

<sup>50</sup> *Species at Risk Act*, supra note 44, s 6.

<sup>51</sup> *Ibid*, ss 32, 33, 58.

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### a. Public Lands Act

Under the *Public Lands Act*, the provincial government regulates all activities that may alter beds and shores owned by the province. It is important to keep in mind that this scheme applies to all activities that affect beds and shores, no matter how minor the alteration may be.<sup>52</sup> So, even something small like the removal of aquatic weeds requires a government approval.

Under the *Public Lands Act*, there are two types of government approvals that allow a person to alter government-owned beds and shores: authorizations and dispositions.<sup>53</sup> Authorizations are required for short-term activities that last less than a year, whereas dispositions are required for long-term or permanent activities. In the following sections, each of these two types of approvals will be discussed in turn.

#### *Authorizations*

An authorization is a government approval that gives a person permission to go onto crown land for whatever purpose is specified in the authorization.<sup>54</sup> A “Temporary Field Authorization” specifically allows a disturbance to crown-owned beds and shores for a period of less than a year. Activities that require a Temporary Field Authorization include controlling or removing aquatic vegetation, removing a beaver dam, and infilling or regrading a lot.<sup>55</sup>

In addition, some common seasonal activities—such as constructing a temporary boat lift, dock, mooring buoy, or swimming raft—also require an authorization, unless they meet the requirements in the *Disturbance Standard for Temporary Seasonal Docks and other Mooring Structures for Personal Recreational Purposes*<sup>56</sup>. Put otherwise, this means that temporary boat lifts, docks, mooring buoys, and swimming rafts that meet the requirements of the *Disturbance Standard* do not require an authorization under the *Public Lands Act*. For more

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<sup>52</sup> See *Public Lands Act*, *supra* note 8, s 54(1)(e).

<sup>53</sup> *Ibid*, s 54(2).

<sup>54</sup> *Ibid*, s 20.

<sup>55</sup> See “Shorelands – Approvals and regulatory requirements” (2021), online: Government of Alberta <https://www.alberta.ca/shorelands-approvals-and-regulatory-requirements.aspx>.

<sup>56</sup> *Disturbance Standard for Temporary Seasonal Docks and other Mooring Structures for Personal Recreational Purposes* (1 April 2021), online: Government of Alberta <https://open.alberta.ca/publications/disturbance-standard-temporary-seasonal-docks-mooring-structures-personal-recreational-purposes>.

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information about the *Disturbance Standard* and its requirements, take a look at the provincial government website on the subject.<sup>57</sup>

Practically, to apply for an authorization, you must submit an application to Alberta Environment and Parks.<sup>58</sup> More information about that process can be found on the Government of Alberta website.<sup>59</sup>

### *Dispositions*

A disposition is a general term for a grant of any right to use a piece of crown land, short of the right to actually own the land.<sup>60</sup> Common crown dispositions include grazing leases and surface leases for materials like gravel, clay, and marl.

A specific type of disposition, called a “Licence of Occupation” is required for construction activities that disturb crown land and last for longer than a year. Activities that require a Licence of Occupation include:

- Beach development at any point below the bank;
- Construction of a permanent boat launch, dock, or pier;
- Dredging or excavation;
- Erosion protection works;
- Watercourse re-alignments or crossings; and
- Construction of an in-lake marina or a dam.<sup>61</sup>

To apply for a disposition, you must submit an application to Alberta Environment and Parks.<sup>62</sup> More information about that process can be found on the Government of Alberta website.<sup>63</sup>

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<sup>57</sup> See “Mooring standards engagement” (21 April 2021), online: Government of Alberta <https://www.alberta.ca/mooring-standards-engagement.aspx>.

<sup>58</sup> Applications related to energy resource projects must go to the Alberta Energy Regulator instead: see *Responsible Energy Development Act*, SA 2012, c R-17.3, ss 2, 24-25; *Specified Enactments (Jurisdiction) Regulation*, Alta Reg 201/2013.

<sup>59</sup> See “Lakeshores” (2021), online: Government of Alberta <https://www.alberta.ca/lakeshores.aspx>; “Alberta Environment and Parks land forms” (2021), online: Government of Alberta <https://www.alberta.ca/alberta-environment-and-parks-land-forms.aspx>.

<sup>60</sup> See *Public Lands Act*, *supra* note 8, s 1(1)(e).

<sup>61</sup> See “Shorelands – Approvals and regulatory requirements” (2021), online: Government of Alberta <https://www.alberta.ca/shorelands-approvals-and-regulatory-requirements.aspx>.

<sup>62</sup> Applications related to energy resource projects must go to the Alberta Energy Regulator instead: see *Responsible Energy Development Act*, *supra* note 58, ss 2, 24-25; *Specified Enactments (Jurisdiction) Regulation*, *supra* note 58.

<sup>63</sup> “Public Land Dispositions” (2021), online: Government of Alberta <https://www.alberta.ca/public-lands-dispositions.aspx>.

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### **b. Canadian Navigable Waters Act**

Under the *Canadian Navigable Waters Act*, the federal government manages all activities that could impede the navigation of a waterway. The *Act* applies to a broad range of activities, including the construction, placement, or modification of any human-made structure or device in, over, under, or through a navigable water.<sup>64</sup>

Under the *Act*, the structures, devices, or other things that may be placed in a navigable water are referred to as a “works”.<sup>65</sup> Works may be temporary or permanent, and, notably, they include dumping any fill material, such as stone, gravel, or earth, in a navigable water, as well as excavating or dredging materials from the waterbed.<sup>66</sup>

Unlike the *Public Lands Act* regime, which only applies to provincially owned beds and shores, the *Canadian Navigable Waters Act* regime applies to any body of water, whether natural or artificial, so long as it is navigable. For the purposes of the *Act*, a waterbody or watercourse is navigable if there is a reasonable likelihood it will be used by some sort of boat at some point in the year and if the public, or at least two individuals, have the right to access the water.<sup>67</sup> Access to waterbodies is discussed further in the section on recreational activities and in the section on riparian rights.

In substance, the *Canadian Navigable Waters Act* sets out an approvals scheme for any activity that involves building, placing, altering, or removing a work in a navigable water. Under the scheme, you may need to obtain a government approval or give public notice before carrying out an activity under the *Act*. Which of these is required depends on the type of work and, specifically, whether the work qualifies as major, minor, or another type of work. In the following sections, we will discuss each of these three different types of work and the requirements of each type in turn.

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<sup>64</sup> *Canadian Navigable Waters Act*, *supra* note 40, ss 2, 3.

<sup>65</sup> See *ibid*, s 2.

<sup>66</sup> *Ibid*.

<sup>67</sup> *Ibid*.

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For more practical information on how to apply for an approval or give public notice under the *Canadian Navigable Waters Act*, you should take a look at the Government of Canada website.<sup>68</sup>

### *Major Works*

Major works are structures that are likely to substantially interfere with navigation.<sup>69</sup> A work counts as major if it is listed in the *Major Works Order*<sup>70</sup>. Currently, the *Order* lists dams, ferry cables, bridges, causeways, and aquaculture facilities.<sup>71</sup> To carry out an activity involving a major work, the owner or proponent of the work will either need to give public notice or to obtain a government approval, depending on whether the activity will interfere with navigation.

In the first case, if an activity involving a major work will not interfere with navigation, then the owner or proponent of the work must give public notice of the intended activity.<sup>72</sup> This would be the case, for example, when a bridge owner is making alterations to the bridge and those alterations will not impact navigation.

On the other hand, if an activity involving a major work will—or even just may—interfere with navigation, then the owner or proponent must apply to the responsible Minister for an approval.<sup>73</sup> That would be the case, for example, where a proponent is building a new bridge that would have a significant impact on navigation.

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<sup>68</sup> See Transport Canada, “A Guide to the Navigation Protection Program’s Notification, Application and Review Requirements” (10 October 2020), online: Government of Canada <https://tc.canada.ca/en/programs/navigation-protection-program/guide-navigation-protection-program-s-notification-application-review-requirements>.

<sup>69</sup> *Canadian Navigable Waters Act*, *supra* note 40, ss 2, 28(2)(b).

<sup>70</sup> *Major Works Order*, SOR/2019-320.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Canadian Navigable Waters Act*, *supra* note 40, s 4.1.

<sup>73</sup> *Ibid.*, s 5.

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### *Minor Works*

Minor works are works that are unlikely to significantly interfere with navigation.<sup>74</sup> A work counts as minor if it is listed in the *Minor Works Order*<sup>75</sup>. The *Order* was recently updated and, currently, it includes:

- Erosion protection works;
- Docks and boathouses;
- Slipways and boat-launching ramps;
- Aerial and submarine cables for power and telecommunications;
- Buried pipelines;
- Pipelines or cables attached to existing works for power or telecommunications;
- Works within a boomed off area of an existing work for water control;
- Outfalls and water intakes;
- Dredging;
- Mooring systems;
- Watercourse crossings;
- Swim areas; and
- Scientific equipment.<sup>76</sup>

Additionally, some temporary works that are installed exclusively for the construction, maintenance, repair, or removal of a minor work qualify as a minor work.<sup>77</sup> For more information about which temporary works qualify, take a look at the details in the *Minor Works Order*.

In terms of regulatory requirements, it is not necessary to obtain a government approval for any activity involving a minor work. However, for some types of minor works, the owner or proponent of the work must give public notice.<sup>78</sup> More information about which minor works require notice and which do not can be found in the *Minor Works Order*.

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<sup>74</sup> *Ibid*, ss 2, 28(2)(a).

<sup>75</sup> *Minor Works Order*, SOR/2021-170.

<sup>76</sup> *Ibid*.

<sup>77</sup> *Ibid*, s 9.

<sup>78</sup> *Ibid*, s 3.

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Generally speaking, be aware that works only qualify as minor if they meet the detailed specifications listed in the *Minor Works Order*. Any work that does not meet these criteria will be considered an other work and will require either an approval or public notice, according to the rules that apply to other works.

### *Other Works*

Other works are any works that are not major or minor. When an activity involves a work that falls into this category, the owner or proponent must either obtain a government approval or give public notice of the activity. Which of these two options is required depends primarily on whether the work is located in a water listed in the Schedule to the *Canadian Navigable Waters Act*, which are referred to as the “listed waters”.

In Alberta, the listed waters are:

- the Bow River from Ghost Lake to the South Saskatchewan River;
- the Peace River from the British Columbia border to the Slave River;
- the Clearwater River from the Mirror River to the Athabasca River;
- the Athabasca River from the confluence with the Whirlpool River to Lake Athabasca;
- the North Saskatchewan River from the confluence with Ram River to the Saskatchewan border;
- and
- the South Saskatchewan River from the confluence of the Bow River and the Oldman River to the Saskatchewan border.<sup>79</sup>

When an other work is located in a listed water, then the requirements are the same as for major works. Namely, if an activity involving an other work will not interfere with navigation, then the owner or proponent must give public notice of the activity, but does not need to obtain a government approval.<sup>80</sup> By contrast, if the activity will—or even just may—interfere with navigation, then the owner or proponent must get a government approval for the activity.<sup>81</sup>

There is a similar but slightly different set of requirements for when another work is located in non-listed waters. Specifically, if an activity involving another work will not interfere with navigation, then the owner or

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<sup>79</sup> *Canadian Navigable Waters Act*, *supra* note 40, Schedule.

<sup>80</sup> *Ibid*, s 4.1

<sup>81</sup> *Ibid*, s 5.

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proponent is only required to give public notice and no approval is necessary.<sup>82</sup> By contrast, if the activity may interfere with navigation, then the owner or proponent gets a choice between applying for a government approval and giving public notice.<sup>83</sup>

In the latter case, the proponent must invite the public to provide written comments on the proposed activity as part of the public notice.<sup>84</sup> If someone responds with a concern relating to navigation, then the proponent must attempt to resolve that concern.<sup>85</sup> If the proponent is unable to resolve the concern, then the person who submitted it can apply to the responsible Minister and ask the Minister to require the owner or proponent of the work to apply for a government approval.<sup>86</sup>

### **c. Fisheries Act**

Under the *Fisheries Act*, the federal government manages all activities that could affect fish and fish habitat. The *Act* applies to all fisheries in Canadian waters, meaning all waters where there are fish or fish habitat.<sup>87</sup>

Under the *Fisheries Act*, you need a government authorization for any work, undertaking, or activity that will:

- Result in the death of fish—other than through fishing;<sup>88</sup> or
- Result in the harmful alteration, disruption, or destruction of fish habitat.<sup>89</sup>

Additionally, the federal government has the power under the *Fisheries Act* to require authorizations for works, undertakings, or activities in ecologically significant areas.<sup>90</sup> However, to date, this power has not been exercised.

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<sup>82</sup> *Ibid*, s 9.1.

<sup>83</sup> *Ibid*, s 10(1).

<sup>84</sup> *Ibid*, s 10(3).

<sup>85</sup> *Ibid*, s 10.1(1).

<sup>86</sup> *Ibid*, s 10.1(3).

<sup>87</sup> *Fisheries Act*, *supra* note 43, s 2(1).

<sup>88</sup> *Ibid*, s 34.4.

<sup>89</sup> *Ibid*, s 35.

<sup>90</sup> *Ibid*, s 35.2.

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If your project has the potential to cause the death of fish or to alter or damage fish habitat, you should start by trying to modify the project to avoid these impacts, rather than applying for an authorization. To help with this, the federal government has developed general recommendations for measures that can be used to avoid killing fish and altering habitat.<sup>91</sup> In addition, the government has developed standards and codes of practice for specific types of projects to prevent the death of fish or the harmful alteration of habitat.<sup>92</sup>

If your project is not covered by any of these measures, standards, or codes of practice, then you should request a review from Fisheries and Oceans Canada. As part of this review, the government will help you identify the risks of your project and figure out how to manage the impacts on fish and fish habitat.<sup>93</sup> Then, if there is still a risk of killing fish or affecting habitat, you should apply for a *Fisheries Act* authorization.

More information on how to apply for an authorization under the *Fisheries Act* can be found in the *Authorizations Concerning Fish and Fish Habitat Protection Regulations*<sup>94</sup> and by contacting Fisheries and Oceans Canada.<sup>95</sup>

### **d. Species at Risk Act**

Under the *Species at Risk Act*, the federal government manages activities that could affect species at risk or their habitat.<sup>96</sup> Species at risk include endangered species, extirpated species, and threatened species, meaning species that are likely to become endangered if nothing is done to protect the species.<sup>97</sup> The exact species that fall into each of these categories are listed in the Schedules to the *Species at Risk Act*.

The *Species at Risk Act* primarily applies to lands owned or managed by the federal government, which include national parks, migratory bird sanctuaries, Indigenous reserves, and military bases. It also applies to provincial lands, although only with respect to migratory birds and aquatic species, such as marine plants and

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<sup>91</sup> “Measures to protect fish and fish habitat” (28 August 2019), online: Government of Canada <https://www.dfo-mpo.gc.ca/pnw-ppe/measures-mesures-eng.html>.

<sup>92</sup> “Standards and codes of practice” (10 February 2021), online: Government of Canada <https://www.dfo-mpo.gc.ca/pnw-ppe/practice-pratique-eng.html>.

<sup>93</sup> “Request a review of your project near water” (17 June 2021), online: Government of Canada <https://www.dfo-mpo.gc.ca/pnw-ppe/reviews-revues/request-review-demande-d-examen-001-eng.html>.

<sup>94</sup> *Authorizations Concerning Fish and Fish Habitat Protection Regulations*, SOR/2019-286.

<sup>95</sup> See “Applicant’s Guide Supporting the ‘Authorizations Concerning Fish and Fish Habitat Protection Regulations’” (4 November 2021), online: Government of Canada <https://www.dfo-mpo.gc.ca/pnw-ppe/reviews-revues/applicants-guide-candidats-eng.html>.

<sup>96</sup> See *Species at Risk Act*, *supra* note 44, s 6.

<sup>97</sup> See *ibid*, s 2(1).

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fish.<sup>98</sup> In this context, note that provincial lands include lands owned by the provincial government, as well as lands owned by individuals, corporations, and municipal governments.

Additionally, be aware that in some cases, the federal government can extend the protections for other species to provincial lands.<sup>99</sup> So far, this has only been done to protect the greater sage-grouse, which is a type of non-migratory bird that can be found in the southeastern corner of Alberta.<sup>100</sup>

In terms of substance, the *Species at Risk Act* sets out a number of prohibitions or, in other words, things you may not do that affect species at risk. Most importantly, under the *Species at Risk Act*, you may not do anything that:

- Kills or harms an individual of an extirpated, endangered, or threatened species;<sup>101</sup>
- Damages or destroys the residence of one or more individuals of an extirpated, endangered, or threatened species;<sup>102</sup> or
- Destroys any critical habitat of any extirpated, endangered, or threatened species.<sup>103</sup>

In some circumstances, the *Act* allows the responsible Minister to issue a permit allowing activities that contravene these prohibitions.<sup>104</sup> Specifically, to issue a permit, the Minister must be of the opinion that:

- The activity is scientific research relating to the conservation of the species;
- The activity benefits the species or is necessary to enhance its chances of survival in the wild; or
- Affecting the species is incidental to carrying out the activity.<sup>105</sup>

Additionally, in order to issue a permit, the Minister must be satisfied that:

- All reasonable alternatives to the activity have been considered and the best solution adopted;

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<sup>98</sup> *Ibid*, ss 2(1), 32, 33, 58.

<sup>99</sup> See *ibid*, ss 34, 61, 80.

<sup>100</sup> *Emergency Order for the Protection of the Greater Sage-Grouse*, SOR/2013-202. See also “Greater sage-grouse: emergency protection order” (27 October 2016), online: Government of Canada <https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/orders/greater-sage-grouse-emergency-protection.html>.

<sup>101</sup> *Species at Risk Act*, *supra* note 44, s 32.

<sup>102</sup> *Ibid*, s 33.

<sup>103</sup> *Ibid*, s 58.

<sup>104</sup> *Ibid*, s 73.

<sup>105</sup> *Ibid*, s 73(2).

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- All feasible measures will be taken to minimize the impact of the activity; and
- The activity will not jeopardize the survival or recovery of the species.<sup>106</sup>

More information about the *Species at Risk Act* permitting process, including how to apply for a permit, can be found on the federal government’s website.<sup>107</sup> As well, more information about the location of critical habitat in Alberta is available on the federal government’s website.<sup>108</sup>

### ii. Recreational Activities

Public land is an important resource for Albertans to use for recreational activities, and the land covered by water is no exception. Legislation in Alberta sets out the rules for when you can be on beds and shores owned by the provincial government, which effectively means when you are allowed to carry out recreational activities on or in provincially owned waterbodies and watercourses. For more information about how to determine who owns the beds and shores in Alberta, take a look at the section of this chapter on the [ownership of beds and shores](#).

In terms of recreation, there are many different activities that can take place on submerged crown lands, including fishing, boating, swimming, and other water sports, as well as sports like skating that take place on frozen waters. Importantly, an activity is not recreational if it is done for a commercial purpose, which means if it is done for money.<sup>109</sup> In that case, a government approval would be necessary to carry out the activity, and a completely different set of rules apply, which will not be discussed in this publication.

Instead, to deal with the rules around recreational activities on submerged crown lands, this section will start by describing the rules for when you are allowed to access crown lands for recreational activities. Then, it will provide a brief description of the rules for which recreational activities you are allowed to carry out on

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<sup>106</sup> *Ibid*, s 73(3).

<sup>107</sup> “Species at Risk Act permits: general questions and answers” (3 October 2014), online: Government of Canada <https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/permits-agreements-exceptions/general-questions-answers.html>; “Permitting under the *Species at Risk Act*” (10 March 2020), online: Government of Canada <https://www.dfo-mpo.gc.ca/species-especes/sara-lep/permits-permis/index-eng.html>.

<sup>108</sup> See “Aquatic species at risk map” (15 December 2021), online: Government of Canada <https://www.dfo-mpo.gc.ca/species-especes/sara-lep/map-carte/index-eng.html>. See also “Species at Risk Act (SARA) Orders, Arranged by Type” (17 November 2017), online: Government of Canada <https://sararegistry.gc.ca/default.asp?lang=En&n=9DA84FC7-1&pedisable=false>.

<sup>109</sup> *Public Lands Administration Regulation*, *supra* note 29, s 30(d).

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submerged crown lands, the specific rules against disturbing aquatic habitat, and, finally, the rules that apply to fishing and boating, both of which are highly regulated activities.

### a. Accessing Public Land

There are two ways you can gain entry to submerged crown lands for recreational activities. The first is to go to a public park or other recreation area that is open to the public. The second is to use vacant public land or, put otherwise, land owned by the provincial government that is not being used for anything else. In the following sections, we will discuss the rules around each of these two options in turn.

#### *Public Parks, Recreation Areas, and Conservation Areas*

The first way to access public land for recreational purposes is to go to a park or other recreation or conservation area that has been specifically set aside for that purpose. In Alberta, there are many public parks, as well as recreation and conservation areas, which more often than not include submerged lands that can be used for recreational purposes. Notably, there are many different types of parks and conservation areas, each of which has a slightly different purposes and, accordingly, may have slightly different rules for access.

The legal regime surrounding the different types of parks, recreation areas, and conservation areas in Alberta is surprisingly complicated, so we will not go into detail in this publication. Instead, the best thing to do is to consult the website of the level of government that administers the park, recreation area, or conservation area for information about how to access it.

To that end, be aware that the Government of Alberta administers provincial parks;<sup>110</sup> provincial recreation areas;<sup>111</sup> public land recreation areas, provincial trails, and public land use zones;<sup>112</sup> designated trails and designated trail areas;<sup>113</sup> wilderness areas, ecological reserves, natural areas, and heritage rangelands;<sup>114</sup> and

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<sup>110</sup> *Provincial Parks Act*, *supra* note 35, ss 3,6. See also *Willmore Wilderness Park Act*, RSA 2000, c W-11.

<sup>111</sup> *Provincial Parks Act*, *supra* note 35, ss 4, 6(1).

<sup>112</sup> *Public Lands Act*, *supra* note 8, ss 71.01, 71.1.

<sup>113</sup> *Trails Act*, SA 2021, c T-6.2, s 4.

<sup>114</sup> *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*, *supra* note 36, ss 3, 4, 4.01, 4.1.

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habitat conservation areas.<sup>115</sup> More information about these parks can be found on the provincial government's website.<sup>116</sup>

Correspondingly, the Government of Canada administers national parks<sup>117</sup> and migratory bird sanctuaries.<sup>118</sup> More information about these areas can be found on the federal government's website.<sup>119</sup>

Finally, local governments—perhaps unsurprisingly—operate local parks.<sup>120</sup> For more information about local parks, you should contact your local government or take a look at any relevant bylaws. In a pinch, most parks, recreation areas, and conservation areas will post information about accessing the park, recreation area, or conservation area at the location itself.

### *Vacant Public Land*

The second way you can gain entry to public land for recreational purposes is to go to vacant public land, which the *Public Lands Administration Regulation* allows any person to enter onto for a recreational purpose.<sup>121</sup>

Roughly speaking, vacant public land is what it sounds like: any land owned by the provincial government that is not being used for anything else. From a technical perspective, it includes provincial crown land that no one has a formal right to occupy or develop.<sup>122</sup> It also includes land that someone has the right to develop, but where no development is likely to occur for 90 days.<sup>123</sup> Effectively, this means that you are allowed to use provincial government lands that are not being used for anything else for recreational purposes, including submerged crown lands.

To use vacant submerged crown lands for recreational purposes, be aware that you must be able to access those lands. That means simply that you must be able to get to the submerged lands without trespassing

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<sup>115</sup> *Wildlife Regulation*, Alta Reg 143/1997, s 9.

<sup>116</sup> See Alberta Parks, online: <https://albertaparks.ca/>; "Public land recreation areas and trails" (2021), online: Government of Alberta <https://www.alberta.ca/public-land-recreation-areas-and-trails.aspx>.

<sup>117</sup> *Canada National Parks Act*, *supra* note 42, ss 4-5.

<sup>118</sup> *Migratory Bird Sanctuary Regulations*, CRC, c 1036, s 3.

<sup>119</sup> See Parks Canada, online: <https://www.pc.gc.ca/en/index>; "Migratory bird sanctuaries" (19 May 2021), online: Government of Canada <https://www.canada.ca/en/environment-climate-change/services/migratory-bird-sanctuaries.html>.

<sup>120</sup> *Municipal Government Act*, *supra* note 46, s 671. See also *Metis Settlements Act*, RSA 2000, c M-14.

<sup>121</sup> *Public Lands Administration Regulation*, *supra* note 29, s 32.

<sup>122</sup> *Ibid*, s 1(1)(ff) – (gg).

<sup>123</sup> *Ibid*.

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on private property. Importantly, where the beds and shores are located within vacant crown land, you are allowed to cross that land to access the waters, in the same way that you are entitled to use the vacant beds and shores.

Equally, keep in mind that the shores of crown-owned waterbodies and watercourses are also crown land, so you are entitled to be on the shores, so long as it is crown land, you remain below the bank, and it is vacant land. For more information about figuring out what counts as the shores of a waterbody or watercourse, take a look at the section of this chapter on the [ownership of beds and shores](#).

Finally, take note that there are specific rules that apply to crown land being used for an agricultural disposition, such as a grazing lease. In that case, you may gain access to the land for recreational activities, including to access any beds and shores for recreational purposes, but only if notice is given to the disposition holder and certain rules are followed.<sup>124</sup> For more information about accessing agricultural public land, you should refer to the information provided by the provincial government.<sup>125</sup>

Importantly, always keep in mind that you may not cross private lands to access crown-owned beds and shores, unless you have the permission of the private property owner. Note that the owner is under no obligation to allow you onto the property, as is generally the case with privately owned property.

### **b. Using Public Land**

As with most areas of water law, there are many different sets of rules that apply to recreational activities that take place on submerged lands, such as swimming, boating, and fishing. In this section, we will review the rules that apply to these activities, with a focus on the different rules that apply to each of the different types of public land that are available for recreational activities.

To do this, we will start with the general rules that apply to vacant crown lands, as well as parks, conservation areas, and recreation areas. After that, we will go over some of the specific rules against disturbing the habitat of aquatic fish, animals, and plants. Finally, we will outline the specific rules that apply to fishing and boating in Alberta.

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<sup>124</sup> *Recreational Access Regulation*, Alta Reg 228/2003.

<sup>125</sup> See “Recreation on agricultural Crown land”, online (2021): Government of Alberta <https://www.alberta.ca/recreation-on-agricultural-crown-land.aspx>.

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As you read this section, keep in mind that even though the focus will be on provincial and federal legislation, there may also be local government bylaws that regulate recreational activities on lands covered by water. Since any bylaws will vary from place to place, we will not explore the content of those bylaws in this publication. Nevertheless, it is always important to check if there are any local government bylaws that apply to any recreational activities you want to carry out on submerged crown lands.

### *General Rules*

The rules that apply to recreational activities on submerged crown lands depend on the type of land that you will be visiting. This means that there are slightly different rules that apply to vacant crown lands, as opposed to provincial parks, conservation areas, and recreation areas, as opposed to federal parks and conservation areas. In this section, we will briefly outline the rules that apply in each of these three circumstances or, at the very least, how to find more information about the rules in the area you would like to visit. For more information about the different types of public lands, take a look at the section of this chapter on [accessing public land](#).

Starting with vacant crown lands, there are only minor limits on the recreational activities you are allowed to carry out in these areas. Specifically, you cannot:

- travel on frozen ground or ice in a way that makes a depression or breaks the ice; or
- do anything that involves any sort of vehicle, motorized or otherwise, that has wheels or tracks.<sup>126</sup>

Additionally, while carrying out recreational activities on vacant public lands, you have a general obligation not to do anything that damages the land.<sup>127</sup>

If you are planning to be on crown land for a period of longer than 14 days, you will need to obtain an access permit from the provincial government.<sup>128</sup> Otherwise, for more information about what you can and cannot do on vacant public lands, you should take a look at the Government of Alberta's website.<sup>129</sup>

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<sup>126</sup> *Public Lands Administration Regulation*, *supra* note 29, s 43. Note the exception for the exercise of Indigenous rights: *ibid*, s 43(1)(d).

<sup>127</sup> *Public Lands Act*, *supra* note 8, s 54.

<sup>128</sup> *Public Lands Administration Regulation*, *supra* note 29, s 32(2).

<sup>129</sup> "Public land enforcement" (2021), online: Government of Alberta <https://www.alberta.ca/public-land-access.aspx>.

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With respect to provincially administered parks, conservation areas, and recreation areas, all of the same rules that apply to vacant public lands also apply. As well, each type of park, conservation area, or recreation area has additional rules that apply to recreational activities taking place within those areas, such as restrictions on opening times and use of off-road vehicles.<sup>130</sup> Most of these rules will be posted on signs at the parks, recreation areas, and conservation areas in question. However, for more information, you can also consult the Government of Alberta's website.<sup>131</sup>

Lastly, for federally administered parks and conservation areas, such as national parks and migratory bird sanctuaries, take note that the general rules for vacant public lands do not apply. Instead, there are separate rules that apply to recreational activities within each of these types of areas.<sup>132</sup> As with provincial parks and conservation areas, most of the rules are posted on signs at the parks and conservation areas themselves. However, you can also find more information about what is allowed in national parks and conservation areas on the Government of Canada's website.<sup>133</sup>

### *Habitat Disturbance*

Any time you are engaging in recreational activities in or around submerged lands, it is important to ensure you do not damage the habitat of any aquatic fish, animals, plants, or birds. In this section we will outline the legislation that exists to protect aquatic habitat and where it applies, but keep in mind that, from a practical perspective, it is best to avoid damaging aquatic habitat whenever possible.

As with many areas of water law, the detailed rules around aquatic habitat are set out by both the provincial and federal governments. In terms of provincial legislation, the primary protection of aquatic habitat can be found in the *Wildlife Act*. Specifically, that *Act* prohibits disturbing any house, nest, or den of the wildlife protected under the *Act*, unless you have specific authorization from the government to do so.<sup>134</sup> Take note that

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<sup>130</sup> See *Provincial Parks (General) Regulation*, Alta Reg 102/1985; *Public Lands Administration Regulation*, *supra* note 29, Part 9; *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*, *supra* note 36; *Wildlife Regulation*, *supra* note 115, s 129.

<sup>131</sup> See Alberta Parks, online: <https://albertaparks.ca/>; "Public land recreation areas and trails" (2021), online: Government of Alberta <https://www.alberta.ca/public-land-recreation-areas-and-trails.aspx>.

<sup>132</sup> See *National Parks General Regulations*, SOR/78-213; *National Historic Parks General Regulations*, SOR/82-263.

<sup>133</sup> See Parks Canada, online: <https://www.pc.gc.ca/en/index>; "Migratory bird sanctuaries" (19 May 2021), online: Government of Canada <https://www.canada.ca/en/environment-climate-change/services/migratory-bird-sanctuaries.html>.

<sup>134</sup> *Wildlife Act*, *supra* note 37, s 36.

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this prohibition is against wilful or intentional damage to a house, nest, or den, so you will not be punished for any accidental damage.

Roughly speaking, the *Wildlife Act* protections apply to upland game birds, migratory game birds, bats, snakes, and beaver.<sup>135</sup> It also includes the animals, birds, plants, and fish that are listed under the *Wildlife Regulation* as endangered.<sup>136</sup> For the complete list of wildlife protected under the *Wildlife Act*, you should take a look the *Wildlife Regulation*.

In contrast to the provincial scheme, the federal government's rules for habitat protection are set out in several different pieces of federal legislation, each of which creates a somewhat different level of protection for aquatic habitat. Perhaps the strongest protection is created by the federal *Fisheries Act*, which prohibits any activity that results in the harmful alteration, disruption, or destruction of fish habitat, unless you have a permit or are otherwise authorized to do so.<sup>137</sup> Notably, the prohibitions under the *Fisheries Act* apply to any waters in Alberta where fish habitat exists, regardless of who owns those lands. For more information about the *Fisheries Act* scheme, including the permits that may be obtained under the *Fisheries Act* to allow otherwise prohibited activities, take a look at the section of this chapter on [construction activities](#).

In addition to the *Fisheries Act* protections, the federal *Species at Risk Act* also establishes protections for aquatic habitat, although only for animals that are endangered, threatened, or extirpated. In particular, the *Act* prohibits damaging or destroying the residence of any species that is listed under the *Act* as endangered, threatened, or extirpated.<sup>138</sup> Additionally, under the *Species at Risk Act*, you may not destroy the critical habitat of any endangered, threatened, or extirpated species, unless you have a permit to do so.<sup>139</sup> More information about the aquatic critical habitat in Alberta can be found on the federal government's website.<sup>140</sup>

For the most part, the protections under the *Species at Risk Act* only apply to lands owned by the federal government. The big exception is the protections for migratory birds and aquatic species, which apply on lands

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<sup>135</sup> *Wildlife Regulation*, *supra* note 115, s 96.

<sup>136</sup> *Ibid*, Schedule 6.

<sup>137</sup> *Fisheries Act*, *supra* note 43, s 35.

<sup>138</sup> *Species at Risk Act*, *supra* note 44, s 33. See also *ibid*, s 36.

<sup>139</sup> *Ibid*, ss 58, 73.

<sup>140</sup> See "Aquatic species at risk map" (15 December 2021), online: Government of Canada <https://www.dfo-mpo.gc.ca/species-especies/sara-lep/map-carte/index-eng.html>. See also "Species at Risk Act (SARA) Orders, Arranged by Type" (17 November 2017), online: Government of Canada <https://sararegistry.gc.ca/default.asp?lang=En&n=9DA84FC7-1&pedisable=false>.

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owned by the provincial government, as well as private land owners.<sup>141</sup> Additionally, in some cases, the federal government has the ability to extend the protections for other species beyond federal lands.<sup>142</sup> Currently, in Alberta, this is only the case for the greater sage-grouse, which is a non-migratory bird that can be found in the southeastern corner of the province.<sup>143</sup> More information about the *Species at Risk Act* in general, including the permits that may be obtained to allow otherwise prohibited activities, can be found in the section on construction activities.

Beyond the protections provided by the *Species at Risk Act*, the federal *Migratory Birds Regulations*<sup>144</sup> provide additional protections for the residences of migratory birds. Specifically, the *Regulations* prohibit disturbing, destroying, or taking a nest, egg, nest shelter, or duck box of any migratory bird, unless you have a permit to do so.<sup>145</sup> Note that the *Migratory Birds Regulation* applies to federal, provincial, and privately owned lands, and, moreover, it applies all year round, which means that it applies even when the migratory birds are not nesting.

Finally, in terms of federal rules for protecting aquatic habitat, there are rules against disturbing habitat in each of the different types of parks that are administered by the federal government. In particular, the *Migratory Birds Sanctuary Regulations* prohibit disturbing any of the nests in a migratory bird sanctuary, unless you have a permit to do so.<sup>146</sup> Similarly, the *National Parks Wildlife Regulations*<sup>147</sup> prohibit disturbing or destroying a nest, lair, den, or beaver house or dam in a national park.<sup>148</sup>

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<sup>141</sup> *Ibid*, ss 2(1), 32, 33, 58.

<sup>142</sup> See *ibid*, ss 34, 61, 80.

<sup>143</sup> *Emergency Order for the Protection of the Greater Sage-Grouse*, SOR/2013-202. See also “Greater sage-grouse: emergency protection order” (27 October 2016), online: Government of Canada <https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/orders/greater-sage-grouse-emergency-protection.html>.

<sup>144</sup> *Migratory Birds Regulations*, CRC, c 1035.

<sup>145</sup> *Ibid*, s 6(a).

<sup>146</sup> *Migratory Birds Sanctuary Regulations*, *supra* note 118, s 3(2)(b).

<sup>147</sup> *National Parks Wildlife Regulations*, SOR/81-401.

<sup>148</sup> *Ibid*, s 4(1)(e). See also *Wood Buffalo National Park Game Regulations*, SOR/78-830, ss 5(a), 6(a).

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### *Boating*

Boating is a common recreational activity on water and, unlike other water sports such as swimming or snorkelling, it is highly regulated.

The rules for operating boats, whether motorized or otherwise, are established by the federal government under its jurisdiction over navigation and shipping under the *Constitution*.<sup>149</sup> The *Canada Shipping Act, 2001* is a lengthy piece of legislation that sets out the rules for boats in any Canadian waters, including commercial shipping vessels, large passenger vessels, and small personal watercraft.<sup>150</sup> The *Act* and its regulations set out detailed rules for every aspect of operating a watercraft: licencing, inspections, pollution prevention, and navigation and safety requirements. They also establish speed limits for motorized boats and limit the use of boats on some waters.<sup>151</sup> Detailed information on the rules for operating watercraft in Alberta can be obtained from federal government through Transport Canada and the Office of Boating Safety.<sup>152</sup>

In addition to these general rules, there are also special rules for boating in some parks, including national parks, as well as provincial ecological reserves and public land use zones. The rules for national parks are set out in the *National Parks General Regulations*.<sup>153</sup> Notably, the use of any motorized watercraft, water-skiing equipment, or diving equipment is not allowed in a national park unless a posted sign says otherwise.<sup>154</sup>

Similarly, the use of motorboats is also prohibited in ecological reserves established by the provincial government.<sup>155</sup> As well, in a provincial public land use zone, you may only operate a motorized watercraft with a permit or where there are signs saying it is permitted.<sup>156</sup> Other provincial parks and conservation areas, as well as migratory bird sanctuaries, follow the general rules for boating established under the *Canada Shipping Act*. For more information about the different types of parks in Alberta, take a look at the section of this chapter on [accessing public lands](#).

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<sup>149</sup> *Constitution Act, 1867*, *supra* note 39, s 91(10).

<sup>150</sup> The notable exception is naval vessels: see *Canada Shipping Act*, *supra* note 41, s 7.

<sup>151</sup> See *Vessel Operation Restriction Regulations*, SOR/2008-120.

<sup>152</sup> See “Office of Boating Safety”, online (25 July 2019) Government of Canada <https://tc.canada.ca/en/marine-transportation/marine-safety/office-boating-safety>.

<sup>153</sup> See also the *National Historic Parks General Regulations*, *supra* note 132.

<sup>154</sup> *National Parks General Regulations*, *supra* note 132, s 21.

<sup>155</sup> *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*, *supra* note 36, s 8(1)(g.1)(i).

<sup>156</sup> *Public Lands Administration Regulation*, *supra* note 29, s 185(6).

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Finally, in addition to the rules for operating boats, be aware that there are also rules from the provincial government around transporting and inspecting boats, to prevent the spread of invasive aquatic species. Most importantly, under the *Fisheries (Alberta) Act*, the government is able to set up inspection stations along the highway to inspect watercraft for invasive species.<sup>157</sup> If you encounter one of these stations and you are transporting a watercraft, then you must stop for an inspection.<sup>158</sup>

As well, under the *Fisheries (Ministerial) Regulation*<sup>159</sup>, note that you are not allowed to transport a watercraft with a drainage hole with the plug still in the drainage hole.<sup>160</sup> You also have an obligation to report any invasive organisms that you find in the wild and must do so within 14 days of finding the invasive organism.<sup>161</sup> Generally speaking, for more information about these reporting requirements, as well as the other rules around transporting boats and preventing invasive species, you should consult the Government of Alberta's website.<sup>162</sup>

### *Fishing*

Fishing is another common recreational activity that is highly regulated by both the federal and provincial governments. Generally speaking, the two governments have split the responsibilities for regulating fishing. The federal government sets the rules for how you are allowed to fish, including close times, fishing quotas, limits on the size and weight of fish caught, and acceptable equipment used for fishing.<sup>163</sup> The provincial government sets out the licencing scheme for fishing and is responsible for issuing licences.<sup>164</sup> More information about the licencing requirements and the rules surrounding recreational fishing can be found in the *2021 Alberta Guide to Sportfishing Regulations*.<sup>165</sup>

As with boating, it is important to note that there are separate rules for fishing in some parks, including national parks, as well as provincial wilderness areas and ecological reserves. In the case of the latter two, fishing

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<sup>157</sup> *Fisheries (Alberta) Act*, *supra* note 38, s 33.2.

<sup>158</sup> *Ibid*, s 33.2(3). See also "Watercraft inspections" (2021), online: Government of Alberta <https://www.alberta.ca/watercraft-inspections.aspx>.

<sup>159</sup> *Fisheries (Ministerial) Regulation*, Alta Reg 220/1997.

<sup>160</sup> *Ibid*, s 6.1.

<sup>161</sup> *Ibid*, s 6.2.

<sup>162</sup> See "Aquatic invasive species – Overview" (2021), online: Government of Alberta <https://www.alberta.ca/aquatic-invasive-species-overview.aspx>; "Clean, drain, dry your gear" (2021), online: Government of Alberta <https://www.alberta.ca/clean-drain-dry-your-gear.aspx>.

<sup>163</sup> *Alberta Fishery Regulations, 1998*, SOR/98-246.

<sup>164</sup> *Fisheries (Alberta) Act*, *supra* note 38; *General Fisheries (Alberta) Regulation*, Alta Reg 203/1997.

<sup>165</sup> "2021 Alberta Guide to Sportfishing Regulations" (2021), online: Government of Alberta <https://albertaregulations.ca/fishingregs/>.

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is completely banned.<sup>166</sup> All other provincial parks and conservation areas, as well as migratory bird sanctuaries, fall under the general rules for fishing. For more information about the different types of provincial parks in Alberta, take a look at the section of this chapter on [accessing public land](#).

For national parks, the rules for fishing are set out in the *National Parks of Canada Fishing Regulations*<sup>167</sup>. These rules institute limits on the type of bait and tackle that can be used, as well as the timing and methods that can be used in national parks. Importantly, the *Regulations* also mandate a specific national park fishing permit in order to fish in a national park. More detailed information about the rules for fishing in a national park, as well as how to obtain a national park fishing permit can be obtained from the federal government's website.<sup>168</sup>

Lastly, it is important to keep in mind that there are different rules that apply to the exercise of Indigenous fishing rights, including different rules for obtaining a fishing licence. Specifically, under the *Alberta Fishery Regulations, 1998*, First Nations are entitled to sportfish without a licence and, additionally, may obtain a fishing licence from the province to fish for food.<sup>169</sup> Similarly, Metis individuals are entitled to obtain fishing licences to fish for food, so long as they are either a member of a Metis Settlement or recognized as a Metis harvester under the Government of Alberta's *Métis Harvesting in Alberta Policy (2018)*<sup>170</sup>.

Generally speaking, more information about Indigenous fishing rights, including the specific rules and conditions that apply to Indigenous fishing licenses, can be found on the Government of Alberta's website.<sup>171</sup> Otherwise, Indigenous fishing rights will be discussed further in the [chapter on water in Indigenous communities](#).

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<sup>166</sup> *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*, *supra* note 36, s 8(1)(c).

<sup>167</sup> *National Parks of Canada Fishing Regulations*, CRC, c 1120.

<sup>168</sup> See "National Parks" (25 August 2020), online: Government of Canada <https://www.pc.gc.ca/en/pn-np>.

<sup>169</sup> *Alberta Fishery Regulations, 1998*, *supra* note 163, ss 13(2)-(3).

<sup>170</sup> *Métis Harvesting in Alberta Policy (2018)*, (25 February 2019), online: Government of Alberta <https://open.alberta.ca/publications/metis-harvesting-in-alberta-policy-2018>.

<sup>171</sup> See "Indigenous hunting and fishing in Alberta" (2021), online: Government of Alberta <https://www.alberta.ca/indigenous-hunting-and-fishing-in-alberta.aspx>.

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### III. RIPARIAN LAND

Riparian land is a legal name for the land next to water.<sup>172</sup> It is treated differently from other land, because of its proximity to water, which attracts both benefits and consequences. Traditionally, riparian land was important because of the access it gave to water, both as a resource to use and as a means of transportation. Increasingly, riparian lands are also important because of their significance to maintaining water quality, as well as preserving aquatic habitat and species. As a consequence, the ownership of riparian land comes with additional rights to use and divert water compared to the ownership of other property, as well as additional restrictions.

In this section, we will provide an overview of the legal rules around the ownership of riparian land. To do this, we will start by setting out the rules for what qualifies in law as riparian property and what does not. Then, we will set out the special rights that come with the ownership of riparian property, with a brief description of the similar rights that are held by the owners of property above groundwater. Lastly, we will address the statutory restrictions that modern governments have imposed on riparian lands. Keep in mind that some of these restrictions will also apply to land that is near water, even if it is not technically riparian. Also, note that this chapter will provide information on the land above groundwater and the right to use that groundwater, even though that property is not technically riparian and is not subject to exactly the same rights and restrictions.

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<sup>172</sup> Riparian may also be used in some contexts as a scientific term, albeit with a slightly different meaning.

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### i. Defining Riparian Land

Despite the unusual word used to describe riparian lands, the concept is fairly simple. Riparian property is any property that is immediately next to water. More technically, it is the property on the other side of the bank of a waterbody or watercourse, which is the line that marks the separation between the bed and shores and the land that surrounds it—or in other words, the riparian land.<sup>173</sup> For more information about how to determine the location of the bank, take a look at the section on the [boundaries of beds and shores](#).

With riparian property, the big trick is determining whether you are really the owner of the land next to the water. This is important, because the extra rights that come with riparian property are only available to you if you are the true riparian owner, meaning you own the land right next to the beds and shores of a waterbody or watercourse. Unfortunately, it often appears that privately owned land is right next to the bank when that is not actually the case. Most often, this occurs in four circumstances: where the boundary of the property is not the bank, where there is an environmental reserve, where there is a road allowance, and where the waterbody is artificial rather than natural.

To help you determine if your property counts as riparian, this section will begin with a description of how a certificate of title will indicate riparian ownership. Then, it will discuss the four common circumstances where property is not actually riparian.

#### a. Identifying Riparian Land

To be the riparian owner, you must own the property right up to the bank of a waterbody or watercourse. To ensure that this is the case, you should start by looking at the property description on your certificate of title, which will help you identify if your property is riparian. There are two main instances where this will likely be the case.

The first instance where you are likely to be the riparian owner is where your certificate of title says that you own your property except for anything covered by water. In this case, you own everything described in the certificate of title, except for the beds and shores. This means that you own the property up to the bank or edge of the beds and shores, and, consequently, you are likely to be the riparian owner.

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<sup>173</sup> *Surveys Act*, *supra* note 25, s 17.

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The situation is the same when there are watercourses or waterbodies within your property, but the property description on the certificate of title does not mention them. This is because the provincial government automatically owns the beds and shores of those watercourses or waterbodies under the operation of the *Public Lands Act*.<sup>174</sup> As a result, you own all of the property described in the certificate of title, except for the beds and shores. This means that you own the property up to the bank or edge of the beds and shores, and, accordingly, you are likely to be the riparian owner.

The second main situation where you are likely to be the riparian owner is when a watercourse or waterbody is the boundary of your property. Specifically, where the boundary is the natural boundary—i.e., where the boundary follows the bank of the watercourse or waterbody—then the property is riparian. To be riparian, note that the boundary does not need to follow the bank for its entire distance, so long as it follows the bank for at least part of it.<sup>175</sup>

The same rules apply where the boundary follows the location where the bank used to be, so long as the change in the bank's location falls under the common law doctrine of accretion. In this latter case, you can apply to the Land Titles Office to amend your certificate of title to show the new location of the bank.<sup>176</sup> For more information about the doctrine of accretion, take a look at the section of this chapter on [riparian rights](#).

### **b. Non-Riparian Land**

There are four common circumstances where you may appear to be the riparian owner, but actually are not. In three of these circumstances, you may appear to own the property up to the bank, but, in reality, there is another property owner between you and the bank. That may occur where your property has a boundary other than the bank, where there is an environmental reserve, or where there is a road allowance. In each of these cases, since you do not own the property up to the bank, you are not the riparian owner. In addition, where you own the property up to the bank, but the waters are artificial, you are also not a true riparian owner, due to some fairly old principles of law that restrict riparian rights to natural waters. In the following sections, we will discuss each of these four circumstances in turn.

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<sup>174</sup> *Public Lands Act*, *supra* note 8, s 3. For more information about crown ownership of the beds and shores in Alberta, take a look at the section of this chapter on the [ownership of beds and shores](#).

<sup>175</sup> See *Gerard V La Forest QC, Water Law in Canada* (Ottawa: Information Canada, 1973) at 200.

<sup>176</sup> *Land Titles Act*, *supra* note 3, s 89.

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### *Other Property Boundaries*

One case where you may appear to be the riparian owner but are not is where your property is close to a waterbody or watercourse but has a boundary other than the bank of the beds and shores. In that case, the property is not riparian property, no matter how close the boundary is to the water.<sup>177</sup>

To the contrary, the boundary must coincide with the bank for at least part of the boundary for your property to be truly riparian.<sup>178</sup> Alternatively, the boundary must coincide with the location where the bank used to be, and the change in the bank's location must meet the requirements of the common law doctrine of accretion. For more information about the doctrine of accretion, take a look at the section of this chapter on [riparian rights](#).

### *Environmental Reserves*

Another case where you may appear to be the riparian owner but are not is where there is an environmental reserve. An environmental reserve is a piece of land that has been set aside by a municipality to create a small park or natural area next to the water.<sup>179</sup>

If you own property that you think includes a natural area or park next to water, then you should check if there is an environmental reserve. This is important, because, if there is an environmental reserve, then the municipality owns the reserve, meaning that the municipality is the actual owner of the land next to the waterbody or watercourse. Note that the existence and location of an environmental reserve will be indicated on the local subdivision plan, which can be obtained from the Land Titles Registry.<sup>180</sup> As well, if there is an environmental reserve, then your certificate of title will not include that property since it is not part of the property that you own.

On this topic, it should be mentioned that, in addition to environmental reserves, there is also something called an environmental reserve easement. It is similar to an environmental reserve, because it is a legal

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<sup>177</sup> *Nastajus v North Alberta Land Registration District*, 1989 ABCA 8.

<sup>178</sup> *La Forest*, *supra* note 175 at 200.

<sup>179</sup> *Municipal Government Act*, *supra* note 46, ss 664, 671(1).

<sup>180</sup> See "Find land titles, documents or plans" (2021), online: Government of Alberta <https://www.alberta.ca/find-land-titles-documents-plans.aspx>.

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instrument that preserves the land next to water in a natural state.<sup>181</sup> However, with an environmental reserve easement, the private landowner retains ownership of the property, even though the easement restricts how the property may be used.

Practically, this means that, if your property has an environmental reserve easement on it, then you are still the owner of the land subject to the easement. If that land is next to water, then you are the riparian owner. Note that, unlike an environmental reserve, an environmental reserve easement will not show up on a subdivision plan. Instead, it will be registered as an instrument against the certificate of title to the property, and you can request the easement document from the Land Titles Registry in the same way that you would look up a certificate of title.<sup>182</sup>

### *Road Allowances*

Another case where you may appear to be the riparian owner but are not is where there is a public road or a road allowance between your property and a watercourse or waterbody.<sup>183</sup> In that case, the road or road allowance is next to the water, so the local government or the provincial government that owns the road or road allowance is the owner of the riparian property.<sup>184</sup>

If you think there might be a road allowance next to your property, then you can confirm by looking at either the local subdivision plan, if the land is subdivided, or the plan of survey, if the land is not subdivided. Both of these documents are available from the Land Titles Registry.<sup>185</sup> As well, take note that if there is a road or a road allowance, then your certificate of title will not include that property, since it is not part of the property that you own.

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<sup>181</sup> *Municipal Government Act*, *supra* note 46, ss 664(2)-(3).

<sup>182</sup> *Ibid*, s 664(5)-(9). See also “Find land titles, documents or plans” (2021), online: Government of Alberta <https://www.alberta.ca/find-land-titles-documents-plans.aspx>.

<sup>183</sup> *Red Deer (City of) v Pitt*, 1998 ABQB 724, *aff’d* 2000 ABCA 281.

<sup>184</sup> See *Municipal Government Act*, *supra* note 46, s 16. But see *ibid*, s 26. See also *Metis Settlements Act*, *supra* note 120.

<sup>185</sup> See “Find land titles, documents or plans” (2021), online: Government of Alberta <https://www.alberta.ca/find-land-titles-documents-plans.aspx>.

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### *Artificial Waters*

The final situation where you may appear to be the riparian owner but are not is where the property is next to artificial waters. This is because, based on some fairly old principles of law, the property next to artificial waters does not count as riparian property, unless the waters were meant to be permanent and accessible to adjacent owners.<sup>186</sup> So, for example, any property that is next to an irrigation reservoir, which was not created for general use, is not riparian and will not attract the rights of a riparian owner.

Unfortunately, the law is a little unclear about whether a watercourse or waterbody that has been altered by a person's actions would be considered natural or artificial for the purpose of defining riparian ownership. On the traditional view, modified waters would follow the same rules as apply to artificial waters.<sup>187</sup> However, a recent case from the Alberta Court of Appeal found that a modified waterbody automatically counts as natural for the purpose of defining riparian ownership.<sup>188</sup> This makes it likely, although not entirely certain, that the courts will continue to find that modified waters are natural for the purpose of determining riparian ownership.

A further complication to the artificial waters exception is created by the *Water Act*, which gives the provincial government the power to declare that some artificial waters, including drainage ditches, channel realignments, and oxbow cutoffs, are naturally occurring.<sup>189</sup> Note, however, that this power is only relevant to the *Water Act*, which means that it only applies to the riparian rights that have been incorporated into the *Water Act*—i.e., the rights to take and use water. For more information about these rights, take a look at the section of this chapter on riparian rights, immediately below.

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<sup>186</sup> *Trost v Western Irrigation District* (1990), 103 AR 65 (QB).

<sup>187</sup> *Ibid.*

<sup>188</sup> *Erik v McDonald*, *supra* note 11 at paras 13-14.

<sup>189</sup> See *Water Act*, *supra* note 45, s 79.

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### ii. Riparian Rights

Under the traditional English common law, the owner of riparian property had special rights to use the water located next to it. These rights were adopted into Canadian law and still exist today, although in some cases they have been limited by modern legislation.<sup>190</sup>

This section will start with an overview of the general characteristics of riparian rights. It will then review each of the rights that are held by the owner of riparian property, with consideration of the traditional content of riparian rights, as well as the law as it currently stands in Alberta. Finally, this section will provide a brief discussion of the rights of the owners of property above groundwater, which are similar to, but somewhat different from, the rights of riparian owners.

#### a. General Characteristics

Riparian rights come from traditional English law, and, as a consequence, they have some characteristics that make them a bit different from the other property rights that we deal with on a more regular basis. In this section, we will review two of the main legal characteristics that are shared by riparian rights; namely, that they attach to riparian property and that they can be enforced with a legal claim.

Looking to the first of these two legal characteristics, riparian rights attach to riparian property.<sup>191</sup> This is a legal phrase that means that the owner of riparian property automatically holds riparian rights. It also means that these rights cannot be given away to anyone else, unless that person also acquires the riparian property.<sup>192</sup> Likewise, if riparian property is sold, then the original owner automatically loses the riparian rights and the new owner gains the rights through the sale of the land. In other words, you cannot separate riparian rights from riparian property.

The second legal characteristic shared by riparian rights is that a riparian owner is able to enforce them by bringing a lawsuit against any person who interferes with those rights. This is a special type of legal claim that only applies to riparian rights and, accordingly, has its own legal rules and requirements. Most importantly,

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<sup>190</sup> *Ibid*, ss 19, 22.

<sup>191</sup> La Forest, *supra* note 175 at 200.

<sup>192</sup> Alastair R Lucas, *Security of Title in Canadian Water Rights* (Calgary: Canadian Institute of Natural Resources Law, 1990) at 6; La Forest, *supra* note 175 at 206.

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riparian rights can be enforced with a lawsuit even if you have not suffered any damage or injury.<sup>193</sup> This means that you can sue if someone has infringed a riparian right, even if it has not actually affected you in any way. This is unlike many actions in law, which require you to have suffered some sort of loss or injury to bring a successful lawsuit.

In a legal claim to enforce riparian rights, there are two possible remedies you can sue for. The first is damages, which means monetary compensation for any losses or injuries you experienced because of the infringement of your riparian rights. The second possible remedy is an injunction, which is a court order that requires the defendant to stop infringing your riparian rights or to refrain from doing so in the future.<sup>194</sup> Notably, where legislation has modified traditional riparian rights, it may also have changed the rules for how you can enforce those rights. Any such change will be noted in the discussion of each specific riparian right in the section immediately following.

### **b. List of Rights**

There are seven basic riparian rights: the right to access the water, the right to take and use water, the right to continued water quality, the right to accretion, the right to flow, the right to drainage, and the right to prevent flooding and erosion. In the following sections, we will discuss each of these rights briefly in turn.

#### *Access*

The riparian owner has the right to access the water next to the riparian property.<sup>195</sup> This means what it sounds like: the riparian owner has the right to be able to get to the useful part of the water adjacent to the riparian property.

#### *Use*

Traditionally, riparian property owners had the right to take water for domestic uses, as well as some basic agricultural uses like watering livestock.<sup>196</sup> In addition, riparian owners were entitled to take and use water for any other purpose, but in that case only so long as they did not noticeably diminish the flow of the water.

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<sup>193</sup> See Kwasniak, *supra* note 12 at 13; La Forest, *supra* note 175 at 214.

<sup>194</sup> *Ibid.*

<sup>195</sup> La Forest, *supra* note 175 at 201; *Erik v McDonald*, *supra* note 11 at paras 7-8.

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Currently, in Alberta, the use of water is governed by the statutory scheme established under the *Water Act*, which replaces the traditional right to take and use water.<sup>197</sup> Now, under the *Water Act*, riparian owners have the right to take a limited amount of water for domestic purposes and, specifically, “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”.<sup>198</sup> Importantly, under the *Water Act*, this right only exists if the riparian owner is not entitled to receive water from a municipal water utility.<sup>199</sup> For more information about municipal water utilities, take a look at the [chapter on water use and flow](#).

In addition to the right to take water for domestic purposes, under the *Water Act*, a riparian owner who, on or before January 1, 1999, was taking water for the purposes of raising animals or applying pesticides to crops, is entitled to continue diverting up to 6250 cubic meters per year for those purposes.<sup>200</sup> Notably, this right to take water does not pass to a subsequent owner of the riparian land, unless the right was registered under the *Water Act*.<sup>201</sup> For more information about water registrations, take a look at the [chapter on water use and flow](#).

Interestingly, under the *Water Act*, a riparian owner retains the right to sue someone who interferes with the riparian’s right to take and use water, which usually means someone who reduces the flow of water available to the riparian owner. However, under *Water Act*, a riparian owner may only sue only a person who takes water without having an authorization to do so under the *Water Act* or who takes in excess of what the person is authorized to take under the *Water Act*.<sup>202</sup> For more information about the water use authorizations under the *Water Act*, take a look at the [chapter on water use and flow](#).

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<sup>196</sup> La Forest, *supra* note 175 at 208.

<sup>197</sup> *Water Act*, *supra* note 45, s 22.

<sup>198</sup> *Ibid*, ss 1(1)(w)-(y), 21.

<sup>199</sup> *Water (Ministerial) Regulation*, Alta Reg 205/1998, s 8.

<sup>200</sup> *Water Act*, *supra* note 45, s 19.

<sup>201</sup> *Ibid*, ss 19, 24, 73-78.

<sup>202</sup> *Water Act*, *supra* note 45, s 22(2). See David R Percy, “Seventy-Five Years of Alberta Water Law: Maturity, Demise & Rebirth” (1996) 35:1 Alta L Rev 221 at 224.

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### *Quality*

A riparian owner has the right to have the water next to his or her property remain of the same quality.<sup>203</sup> Effectively, this means that riparian property owners have the right to sue anyone who pollutes the water next to their riparian property.

Importantly, this right to quality is subject to something called the defence of statutory authority. This means that the riparian owner cannot enforce the right to quality against someone who has a government authorization to carry out the polluting activity or a government authorization for another activity, and the pollution is necessary to that activity.<sup>204</sup> In other words, so long as the polluter is acting within the scope of a government authorization or doing something necessary to an authorized activity, the polluter is entitled to interfere with the riparian owner's right to quality, and the riparian owner cannot sue over it.

Generally speaking, for more information about issues around water quality, take a look at the [chapter on that subject](#).

### *Accretion and Erosion*

A riparian owner has the right to accretion, which means the right to own any property next to the riparian property that was formerly submerged but has gradually become exposed over time. Note that there are a number of technical requirements to qualify for accretion.

- For accretion to occur, the newly exposed property must be next to the riparian property, or it will remain the property of the owner of the bed and shores. This would happen, for example, where an island forms in the middle of a waterbody.<sup>205</sup> That said, if the water is located within a property rather than along one of its boundaries, the operation of the Torrens system may mean that the island becomes the property of the riparian owner anyway. For more information about the Torrens system, take a look at the section of this chapter on the [ownership of land in general](#).

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<sup>203</sup> La Forest, *supra* note 175 at 218.

<sup>204</sup> *Ibid* at 222.

<sup>205</sup> *Chuckry v The Queen* (1972), 27 DLR (3d) 164 at 175(MBCA).

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- For accretion to occur, the change must take place gradually, so that it is imperceptible.<sup>206</sup> This means that a rapid change, such as through a single incident of flooding, would not count as accretion. Instead, in that case, any newly exposed lands would remain the property of the owner of the bed and shores. That said, if the water is located within a property rather than along one of its boundaries, the operation of the Torrens system may mean that the newly exposed land becomes the property of the riparian owner anyway. For more information about the Torrens system, take a look at the section of this chapter on the ownership of land in general.
- Accretion may be caused by natural or human-caused events. However, if it is the result of human activity, then for accretion to occur, the activity must have been lawful, and it cannot have been for the purpose of causing the accretion.<sup>207</sup>
- Accretion cannot expand a certificate of title past its boundaries, unless the boundary is the bank of the waterbody or watercourse.<sup>208</sup> So, for example, where a person owns a quarter section except for what is covered by water, that person cannot gain any property outside of the quarter section through accretion. Conversely, where the boundary of a property on a certificate of title follows the bank of a waterbody or watercourse, that boundary can change through accretion.<sup>209</sup> For more information about locating the bank, take a look at the section of this chapter on the boundaries of beds and shores.

Where accretion or erosion has occurred along the boundary of a property, you can apply to the Land Titles Office to amend your certificate of title to show the new location of the property boundary.<sup>210</sup> Any such application must include a plan of survey showing the new location, the consent of the Minister responsible for the land, and the consent of any other private owners that may be adversely affected by the change.<sup>211</sup> Practically, the best course of action is to contact the Land Titles Office for more information on how to apply.<sup>212</sup>

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<sup>206</sup> *Clarke v Edmonton (City of)*, [1930] SCR 137.

<sup>207</sup> *Ibid.*

<sup>208</sup> *Johnson v Alberta*, 2005 ABCA 10, citing *Red Deer (City of) v Pitt*, 2000 ABCA 281 at para 3.

<sup>209</sup> *Ibid.* See also *Land Titles Act*, *supra* note 3, s 89.

<sup>210</sup> *Ibid.*

<sup>211</sup> *Ibid.*, s 89(3).

<sup>212</sup> Alberta Land Titles & Surveys, “Surveys – Natural Boundry Changes” (1 January 2021), online: Service Alberta <https://www.servicealberta.ca/pdf/ltmanual/SUR-12.pdf>.

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Finally, take note that the right to accretion is matched by an equivalent obligation on riparian ownership, which is called erosion. Erosion means that if any of the riparian property becomes gradually submerged over time, the riparian owner will lose the ownership of that property to the owner of the bed and shores of the watercourse or waterbody. Erosion is subject to the same technical requirements as accretion.

### *Flow*

Traditionally, a riparian owner had the right to divert the flow of water so that it ran onto the riparian property, so long as the flow returned to its normal channel before leaving the riparian property.<sup>213</sup> As well, a riparian owner had the right to alter the rate of flow of the water, so long as it did not impact the flow of water away from an upstream riparian owner's property.<sup>214</sup>

Currently, the riparian right to alter the flow of water has been completely removed by the *Water Act*. This means that a riparian owner now requires a government approval to make any changes to the flow of water next to or onto the riparian property.<sup>215</sup> For more information about the *Water Act* approvals scheme, take a look at the [chapter on water use and flow](#).

As well, beyond the matter of riparian rights, be aware that an activity that affects the flow of water may also require other provincial, federal, and sometimes local government approvals. For more information on other approvals that may be necessary, take a look at the section of this chapter on [construction activities](#).

### *Drainage*

Traditionally, a riparian owner had the right to drain water from the riparian property into the adjoining waterbody or watercourse, so long as the drainage was reasonable, meaning no more water than the watercourse could carry off at its natural capacity.<sup>216</sup>

Currently, the riparian right to drain water has been completely removed by the *Water Act*.<sup>217</sup> This means that a riparian owner now requires a government approval to drain any water from the riparian property into the

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<sup>213</sup> La Forest, *supra* note 175 at 207.

<sup>214</sup> *Ibid* at 208-211.

<sup>215</sup> *Water Act*, *supra* note 45, ss 1(1)(b), 36.

<sup>216</sup> La Forest, *supra* note 175 at 205.

<sup>217</sup> See *Water Act*, *supra* note 45, ss 1(1)(b), 36.

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adjoining waterbody or watercourse. For more information about the *Water Act* approvals scheme, take a look at the [chapter on water use and flow](#).

As well, beyond the matter of riparian rights, be aware that some drainage activities may also require other provincial, federal, and sometimes municipal approvals. For more information on other approvals that may be necessary, take a look at the section of this chapter on [construction activities](#).

### *Flood Mitigation and Erosion Prevention*

Traditionally, a riparian owner had the right to divert water to prevent flooding and erosion. This could mean taking measures to prevent erosion or flooding, for example, by constructing a berm or digging a ditch. It could also mean redirecting water back into a watercourse or waterbody to mitigate flooding, or even suing anyone whose activities might cause erosion or flooding.<sup>218</sup>

Interestingly, under the traditional legal rules, the right to prevent flooding and erosion was limited by the riparian rights of other owners. This means that a riparian owner was not allowed to undertake any actions to prevent flooding or erosion if it would cause harm to others, such as by flooding their lands instead.<sup>219</sup>

Currently, it is likely, although not completely certain, that the *Water Act* has done away with the riparian right to prevent flooding and erosion and, instead, requires a riparian owner to apply for an approval before carrying out any flood mitigation or erosion prevention.<sup>220</sup> For more information about the *Water Act* approvals scheme, take a look at the [chapter on water use and flow](#).

As well, regardless of whether the riparian right continues to exist, be aware that flood mitigation and erosion prevention measures may also require other provincial, federal, and sometimes local government approvals. For more information on other approvals that may be necessary, take a look at the section of this chapter on [construction activities](#).

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<sup>218</sup> La Forest, *supra* note 175 at 232.

<sup>219</sup> Ibid at 232; Kwasniak, *supra* note 12 at 54.

<sup>220</sup> See *Water Act*, *supra* note 45, ss 1(1)(b), 36. But see *Tottrup v Alberta (Environment)* (1979), 17 AR 563, 1979 ALTASCAD 189 (CanLII).

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### c. Groundwater Rights

Groundwater rights are not technically riparian rights, because they apply to the land above water instead of the land next to water. However, it makes sense to deal with them here, since groundwater rights are also water rights that are automatically acquired by owning property near water—in this case, the property that is above groundwater.<sup>221</sup> As well, although the owners of the property above groundwater do not have as many rights as riparian owners do, the rights they do have are similar to those possessed by riparian owners, so it makes sense to deal with them together.

Accordingly, in this section, we will take a look at the rights that attach to the property above groundwater; namely, the right to take and use groundwater, the limited right to sue to enforce the flow of groundwater, and the quasi-right to sue to enforce the continued quality of groundwater. In the following sections, we will discuss each of these three rights in turn.

#### *Right to Take*

Traditionally, an owner of the property above groundwater had the right to take an unlimited amount of groundwater, for any purpose and with no regard to how it would affect any other person who was entitled to take groundwater.<sup>222</sup> However, as with riparian rights, the use of groundwater is now entirely governed by the *Water Act*, which replaces the traditional rules for taking and using groundwater.

Currently, under the *Water Act*, groundwater owners have the right to take water for domestic purposes and use 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”.<sup>223</sup> Importantly, under the *Water Act*, this right only exists if the groundwater owner is not entitled to receive water from a municipal water utility.<sup>224</sup> For more information about municipal water utilities, take a look at the [chapter on water use and flow](#).

In addition, a groundwater owner who, on or before January 1, 1999, was diverting water for the purposes of raising animals or applying pesticides to crops, is entitled to continue diverting up to 6250 cubic meters per year for those purposes.<sup>225</sup> Notably, this right to take water does not pass to a subsequent owner of

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<sup>221</sup> See David Percy, *The Regulation of Groundwater in Alberta* (Edmonton: Environmental Law Centre, 1987) [Percy, *Groundwater*].

<sup>222</sup> *Ibid* at 1-2.

<sup>223</sup> *Water Act*, *supra* note 45, ss 1(1)(w)-(y), 21(2).

<sup>224</sup> *Water (Ministerial) Regulation*, *supra* note 199, s 8.

<sup>225</sup> *Ibid*, s 19.

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the land, unless the right was registered under the *Water Act*.<sup>226</sup> For more information about water registrations, take a look at the [chapter on water use and flow](#).

Otherwise, all other uses of groundwater require a licence or water use authorization granted under the *Water Act*.<sup>227</sup> For more information about water use authorizations under the *Water Act*, take a look at the [chapter on water use and flow](#).

### *Right to Sue*

Traditionally, a groundwater owner did not have any right to sue another person for taking too much groundwater, because the right to groundwater was unlimited and, accordingly, not restricted by anyone else's interests.<sup>228</sup> The only exception was if the groundwater ran in a defined stream, in which case, the groundwater owner had the same right to sue as a riparian owner would have.<sup>229</sup> For more information about the riparian right to sue a person who takes too much water, take a look at the section of this chapter that lists the [riparian rights](#).

Currently, the *Water Act* preserves the right of a groundwater owner to sue someone who changes or interrupts the flow of water, if the water runs in a defined stream. However, under the *Water Act*, a groundwater owner cannot sue anyone who takes water under the authority of a *Water Act* authorization, regardless of whether the water runs in a defined stream.<sup>230</sup> For more information about the *Water Act* authorization scheme, take a look at the [chapter on water use and flow](#).

### *Quasi-Right to Quality*

A groundwater owner does not have a direct right to have the quality of the groundwater remain the same. However, the courts have found that a groundwater owner is able to sue someone who pollutes groundwater through a private law claim called nuisance.<sup>231</sup> Nuisance is a type of tort or civil claim that can be used to sue a person who unreasonably interferes with the use or enjoyment of property.<sup>232</sup> When you sue for nuisance, you can ask for monetary compensation for any harm you have suffered because of the pollution. You

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<sup>226</sup> *Ibid*, ss 19, 24, 73-78.

<sup>227</sup> *Ibid*, s 22(1).

<sup>228</sup> See Percy, *Groundwater*, *supra* note 221 at 9.

<sup>229</sup> *Ibid* at 2.

<sup>230</sup> *Water Act*, *supra* note 45, s 22(2).

<sup>231</sup> Percy, *Groundwater*, *supra* note 221 at 31-32.

<sup>232</sup> *Antrim Truck Centre Ltd v Ontario (Transportation)*, 2013 SCC 13 at paras 18-19.

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can also ask for an injunction, which is a court order for the other person to stop polluting or to refrain from polluting in the future.<sup>233</sup>

Like the riparian right to water quality, nuisance is subject to the defence of statutory authorization.<sup>234</sup> This means that you can only use nuisance to sue a person or organization for an activity if that activity was not authorized by the government. Notably, for the defence of statutory authorization to apply, the activity in question must be either specifically mandated by the authorization or a necessary implication of it.<sup>235</sup> Practically, this means that if two different approaches were possible under a statutory authorization, and only one of those approaches was unreasonable, then the defence does not apply to protect a person who took the unreasonable approach.

Generally speaking, for more information about issues surrounding water quality, take a look at the [chapter on that subject](#).

### iii. Restrictions on Riparian Lands

Activities that take place on riparian lands can have a significant effect on the quality of the water they are next to, which in turn can have a significant effect on both human health and aquatic ecosystems. For this reason, the lands next to water are subject to additional rules and restrictions. In this section, we will discuss three of the main areas of regulation of riparian lands: rules for local development, public health requirements for sewage systems, and the rules around pesticide application.

When reading this section, keep in mind that only true riparian property comes with riparian rights. However, the additional legal rules and restrictions that apply to the land next to water may apply to property even if it is not technically riparian. This can happen, because most of the legislation that limits the use of riparian property sets out rules based on the distance from the water rather than based on whether the property is riparian. As a result, the rules apply within those distances regardless of whether the land is technically riparian or not.

As well, as you read this section, keep in mind that any land beneath the bank of a watercourse or waterbody is likely owned by the provincial government. Accordingly, any activities that take place on this land

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<sup>233</sup> Lewis N Klar & Cameron S G Jefferies, *Tort Law*, 6th ed (Toronto: Thomson Reuters, 2017) at 896.

<sup>234</sup> *Ibid* at 888-892.

<sup>235</sup> *Ibid*.

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will require additional government authorizations, which are discussed in detail the section on [construction activities on crown land](#). For more information on the crown ownership of beds and shores, take a look at the section of this chapter on the [ownership of beds and shores](#).

### *Development*

Municipal governments are responsible for the rules around development within a municipality, including the rules for what sort of development is permitted on riparian lands. Under the *Municipal Government Act*, municipalities are required to pass a land use bylaw to regulate the use and development of land within the municipality.<sup>236</sup> As part of the land use bylaw, municipalities must divide the municipality into districts and identify the acceptable land uses of land within each district.<sup>237</sup> The municipality may choose to specify standards for a given district, including standards for density, as well as building and landscaping design standards.<sup>238</sup>

Generally speaking, municipal land use bylaws and any restrictions they place on development on lands near water will vary from municipality to municipality, so the details will not be discussed here. For more information about the local development rules that apply to riparian land, you should contact your local municipality.

As well, be aware that Metis Settlements and First Nations' Band Councils are governed by separate legislation and, accordingly, have slightly different powers to manage development and land use within their communities. For more information about how water is managed in Indigenous communities in Alberta, take a look at the [chapter on Indigenous water issues](#).

### *Sewage Systems*

Provincial legislation establishes limits on the placement of private sewage systems near waterbodies and watercourses. In particular, the *Private Sewage Disposal Systems Regulation*<sup>239</sup>, which regulates private sewage systems in Alberta, adopts the standards set out in the *Alberta Private Sewage Systems Standard of Practice*<sup>240</sup>. This includes the standards for the distances that different components of a private sewage system must be from a waterbody or watercourse.

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<sup>236</sup> *Municipal Government Act*, *supra* note 46, s 640.

<sup>237</sup> *Ibid*, s 640(2)

<sup>238</sup> *Ibid*, s 640(1.1). But see *ibid*, s 619.

<sup>239</sup> *Private Sewage Disposal Systems Regulation*, Alta Reg 229/1997, s 4.

<sup>240</sup> See "Alberta Private Sewage Systems – Standards of Practice – Third Edition 2015" (2021), online: Queen's Printer [https://www.qp.alberta.ca/570.cfm?frm\\_isbn=9780779788620&search\\_by=link](https://www.qp.alberta.ca/570.cfm?frm_isbn=9780779788620&search_by=link).

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More detailed information can be found by consulting the *Standard of Practice* or the Government of Alberta's website.<sup>241</sup> As well, for more information about the rules around sewage systems in general, take a look at the [chapter on water quality](#).

### *Pesticide Application*

The provincial government regulates the application of pesticides in or near an open body of water. Specifically, under the *Pesticide (Ministerial) Regulation*<sup>242</sup>, you need a special use approval to:

- Apply a pesticide in or on an open body of water;
- Apply certain listed pesticides within 30 meters of an open body of water, except for on cultivated or agricultural lands;
- Store a pesticide within 30 meters of an open body of water; or
- Wash equipment or vehicles used to apply pesticides within 30 meters of an open body of water.<sup>243</sup>

For the purposes of the *Pesticide (Ministerial) Regulation*, an open body of water includes irrigation and drainage canals, reservoirs, rivers, streams, creeks, lakes, marshes, and other bodies of water.<sup>244</sup> However, it does not include wastewater systems, storm drainage systems, waterworks systems, golf course water hazards, roadside ditches, and some small waterbodies with no outflow.

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<sup>241</sup> See also "Minimum separation distances for sewage treatment systems" (27 April 2016), online: Government of Alberta <https://www.alberta.ca/assets/documents/ma-separation-distances-for-sewage-treatment-systems.pdf>.

<sup>242</sup> *Pesticide (Ministerial) Regulation*, Alta Reg 43/1997.

<sup>243</sup> *Ibid*, s 9.

<sup>244</sup> *Ibid*, s 1(2); *Pesticide Sales, Handling, Use and Application Regulation*, Alta Reg 24/97, s 1(II).

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For more information about applying for a special use approval, you should contact the Government of Alberta or consult their website.<sup>245</sup> As well, be aware that even if you obtain a special use approval for pesticide application, you will still need to follow the rules and restrictions on pesticide usage that are set out in the federal *Pest Control Products Act*<sup>246</sup>. Most importantly, this means that you must follow the instructions on the label of any pesticide, in addition to any requirements that may be laid out in the special use approval.<sup>247</sup>



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<sup>245</sup> See “Using Pesticides – Applying pesticides near water” (2021), online: Government of Alberta <https://www.alberta.ca/using-pesticides-applying-pesticides-near-water.aspx>.

<sup>246</sup> *Pest Control Products Act*, SC 2002, c 28.

<sup>247</sup> *Ibid*, s 6(5).