

1971 Bill 106

Fourth Session, 16th Legislature, 20 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 106

An Act to amend The Water Resources Act

THE HON. MR. RUSTE

First Reading

Second Reading

Third Reading

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BILL 106

1971

AN ACT TO AMEND THE WATER RESOURCES ACT

(Assented to _____, 1971)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1. *The Water Resources Act is hereby amended.*

2. *Section 2, subsection (1) is amended by striking out clause 6 and by substituting the following:*

6. "divert" means

(i) to impound, store, take or remove water for any purpose, or

(ii) to do any act that has the effect of altering the flow of water or changing the location of water or the course of flow of water,

and "diversion" has a corresponding meaning;

3. *Section 5 is amended*

(a) *by striking out subsection (2),*

(b) *as to subsection (3) by striking out the words "subsection (2)" and by substituting the words "section 6, subsection (1)".*

4. *Section 6 is amended by striking out subsection (1) and by substituting the following:*

G. (1) No person shall

(a) divert or use any water, or

(b) construct or cause to be constructed any works for the diversion of water, or

(c) operate or use any works for the diversion of water, or

(d) lay, place, build or erect in, over, under, upon or adjacent to any water any structure, device, contrivance or thing, or any earth, sand, gravel or other material, which interferes with or is capable of interfering with the present or future development, conservation or management of water, or

1. This Bill amends chapter 388 of the Revised Statutes of Alberta 1970.

2. Section 2(1)6 presently reads:

6. "diversion"

(i) means the taking or removing of water from any river, stream, lake or body of water that is the property of the Province, by means of any mechanical contrivance or works, and

(ii) includes the impounding of water, and "divert" has a corresponding meaning;

The definition is rewritten in order to tie in with the re-enactment of sections 6(1) and 11(1) of the Act by this Bill.

3. Section 5(2) and (3) presently read:

(2) Subject to subsection (3), no person has the right to divert any water, the property in which is vested in the Province, otherwise than by virtue of a licence issued pursuant to this Act.

(3) Subsection (2) does not affect the rights of taking, diverting, impounding and using any water vested in the Province where the rights existed in a person on the first day of April, 1931, by virtue of a valid and subsisting application made or authority granted pursuant to the Irrigation Act (Canada), or by virtue of a valid and subsisting agreement, licence or interim licence granted pursuant to the Dominion Lands Act, or the Dominion Water Power Act.

Subsection (2) is removed as being redundant to the new section 6(1) enacted by section 4 of this Bill, and subsection (3) is amended as a consequence.

4. Section 6(1) presently reads:

6. (1) No person

(a) shall divert any water in the Province, or

(b) shall construct or cause to be constructed

(i) any works for the diversion of, or

(ii) any works that interfere with the flow of, any water in any river, stream, watercourse, lake, spring, ravine, canyon, lagoon, swamp, marsh, or other body of water in the Province,

otherwise than under the provisions of this Act and the regulations, except in the exercise of a legal right existing at the time of the diversion or construction.

The provision is re-enacted to broaden the scope of the prohibition and also to specify the prohibitions in more detail. As to clause (a), see the new definition of "divert" in section 2 of this Bill.

Subsection (1.1) is added as a result of the re-enactment of section 65 of the Act by this Bill.

- (e) remove or disturb any earth, sand, gravel or other material forming part of the bed, shore or banks of any water, where such removal or disturbance interferes with or is capable of interfering with the present or future development, conservation or management of water,

except under the authority of this Act, the regulations or a licence, interim licence or permit issued under this Act.

(1.1) Any person who contravenes subsection (1) is guilty of an offence.

(1.2) Each day or portion thereof that a person contravenes subsection (1) shall be deemed to be a separate offence.

5. Section 11 is amended

- (a) *by striking out subsection (1) and by substituting the following:*

11. (1) Upon application being made therefor as provided in this Act and the regulations, a person may acquire, subject to any valid and subsisting rights,

- (a) a licence to divert and use water for any or all of the following purposes:
 - (i) domestic purposes;
 - (ii) municipal purposes;
 - (iii) industrial purposes;
 - (iv) irrigation purposes;
 - (v) water power purposes;
 - (vi) other purposes;
- (b) a licence to impound water for the purpose of water management, flood control, erosion control, flow regulation, conservation, recreation or the propagation of fish or wildlife or for any like purpose, or
- (c) a licence to use water in its natural state for the purpose of conservation, recreation or the propagation of fish or wildlife or for any like purpose, or
- (d) a licence to divert water, otherwise than by impoundment or storage, for the purpose of water management, flood control, drainage, erosion control or channel re-alignment or for any like purpose, or
- (e) a permit
 - (i) to lay, place, build or erect in, over, under, upon or adjacent to any water any structure, device, contrivance or thing, or any

5. Section 11(1) and (3) presently read:

11. (1) Upon application being made therefor as provided in this Act and the regulations

(a) the right may be acquired to divert any water for domestic, municipal, industrial, irrigation, waterpower and other purposes, and

(b) permission may be granted to erect fishways, dams, piers, booms and other necessary works in any non-navigable stream to facilitate the passage of logs, timber and other products of the forest or stream along the stream.

(3) Where applications are filed on the same date they have precedence in the following order: first, domestic purposes; second, municipal purposes; third, industrial purposes; fourth, irrigation purposes; fifth, water-power purposes; and sixth, other purposes.

The effect of the re-enactment of subsection (1) is to distinguish four classes of licences and also to add another category of permission — a permit — for the construction of anything that interferes with the flow of water without the actual diversion of it.

The new section 11(1) is rewritten to tie in with the new section 6(1) in section 4 of this Bill.

The amendment to subsection (3) is made to refer to applications for licences only, as the new subsection (1) also refers to permits.

earth, sand, gravel or other material, which will interfere with or will be capable of interfering with the present or future development, conservation or management of that water, or

- (ii) to remove or disturb any earth, sand, gravel or other material forming part of the bed, shore or banks of any water, where the removal or disturbance will interfere with or will be capable of interfering with the present or future development, conservation or management of water.

(b) *as to subsection (3) by striking out the words "where applications" and by substituting the words "where two or more applications for licences under subsection (1)".*

6. *Section 13 is amended by striking out the portion following clause (b).*

7. *Section 14 is amended*

(a) *by striking out subsection (1),*

(b) *as to subsection (2) by striking out the words "The applicant for any such right or permission" and by substituting the words "An applicant for a licence or permit referred to in section 11, subsection (1)",*

(c) *by adding the following subsection:*

(9) Notwithstanding anything in this Act, no person is entitled to apply for a licence under section 11, subsection (1) to divert and use ground water unless he has

(a) obtained a preliminary permit under this section pertaining to an examination and survey of the source of such ground water, and

(b) has complied with the preliminary permit, this section and the regulations,

and subsections (2) to (7) apply to the application and the preliminary permit.

8. *Section 16, subsection (1) is amended by adding after the words "with such changes and variations" the words "and subject to such conditions".*

9. *Section 59 is struck out.*

10. *Section 65 is struck out and the following is substituted:*

6. Section 13 presently reads.

13. Notwithstanding any other provision of this Act, the Lieutenant Governor in Council may authorize the Minister by agreement with the licensee to amend

- (a) the terms of any existing licence for the diversion of any water, the property in which is vested in the Crown in the right of the Province, whether such licence has been granted pursuant to the Dominion Water Power Act or this Act, or
- (b) the terms of any regulations that are incorporated in a licence referred to in clause (a),

with respect to control by the Minister of stream flow or of the surface level of any reservoir authorized by the licence or regulations or with respect to the termination of the licence, by reason of the water being subsequently required for any other purpose, upon such terms as to compensation and otherwise as the Minister deems best in the public interest and as shall be set out in the agreement, and from and after the making of the agreement section 11, subsections (3), (4), (5) and (6) do not apply to the licence or to any renewal or extension thereof.

The effect of the amendment is to allow for the amendment of a licence in any case and not just in those cases presently specified in the section.

7. Section 14 (1) and (2) presently read:

14. (1) The right to divert any water and permission to erect fishways, dams, piers, booms and other necessary works in any stream to facilitate the passage of logs, timber and other products of the forest or stream along the stream may be obtained in the manner provided in this section and not otherwise.

(2) The applicant for any such right or permission shall file with the Minister an application in writing in such form and containing such particulars as the Minister may from time to time prescribe and shall set out the nature of the proposed diversion or works and the purpose thereof.

Subsection (1) is removed as being redundant to the new section 11(1). Subsection (2) is amended as a consequence in order to refer to section 11(1). The new subsection (9) will make it mandatory to complete an exploration program for ground water under a preliminary permit as a condition precedent to applying for a licence to divert and use that ground water.

8. Section 16(1) presently reads:

16. (1) Upon receipt of the application and plans, properly approved, together with proof

- (a) that the proper notice of the filing of the application and plans has been given, and
- (b) that, if such is the case, the permission referred to in section 14, subsection (9), clause (b), has been granted,

and after considering all protests filed, the Minister may grant an interim licence authorizing the construction of the proposed works with such changes and variations as the Minister deems necessary, and fixing a term within which the construction of the works is to be completed.

9. Section 59 sets out detailed requirements for returns by corporate licensees supplying water for irrigation purposes, that is, the railway companies and irrigation companies that were in the irrigation business until the 1940's. This is replaced by an amendment to section 76 to allow for regulations dealing with returns by licensees generally.

10. Section 65 presently reads:

65. Every person who, wilfully without authority, diverts any water that is the property of the Province or diverts any water from any works constructed and operated under the authority of this Act or the Irrigation Act (Canada), and every licensee or other person who takes water and diverts therefrom any greater quantity of water than is authorized, is guilty of an offence and liable upon summary conviction to a fine not exceeding \$5 for each acre foot or fraction of an acre foot of water per day or fraction of a day, improperly diverted, or to imprisonment for a term not exceeding 30 days, or to both fine and imprisonment.

65. Every person who commits an offence under this Act or the regulations for which no penalty is expressly provided is guilty of an offence and liable on summary conviction

- (a) in the case of a natural person, to a fine of not more than \$1,000, and in default of payment to a term of imprisonment not exceeding six months, or
- (b) in the case of a corporation, to a fine of not more than \$5,000.

11. Section 76, subsection (1), clause (b) is amended by striking out subclause (xxix) and by substituting the following:

- (xxix) requiring licensees or any class thereof to submit returns to the Minister at such times as may be prescribed in the regulations,
- (xxx) governing applications for permits under section 11, subsection (1), clause (e), prescribing the duties of the holders of such permits and the powers of the Minister in respect of any structures, devices, contrivances or things laid, placed, built or erected by permittees,
- (xxxii) prescribing cases where any act otherwise prohibited by section 6, subsection (1) may be done without the necessity of a licence or permit,
- (xxxiii) governing the registration of wells under section 99, and
- (xxxiiii) for any other purpose considered necessary for carrying out the provisions of this Act.

12. Section 89, subsection (1) is amended

- (a) by striking out the words “, with the approval of the Lieutenant Governor in Council”,
- (b) by adding the following subsection:

(3) The Minister may impose and collect charges in accordance with the regulations for services or facilities provided through works or undertakings constructed under this section.

13. Section 96 is amended

- (a) by striking out subsection (1) and by substituting the following:

96. (1) Notwithstanding any other Act, the Minister may enter into an agreement with a local authority or other person, or with two or more local authorities jointly, to provide for any works or undertakings.

11. Section 76(1)(b) enumerates the subject matters of regulations made by the Lieutenant Governor in Council. Subclauses (xxix) and (xxx) and (xxxii) are new, while subclause (xxxiii) is a re-enactment of the present subclause (xxix).

12. Section 89(1) presently reads:

89. (1) Where the Minister in his absolute discretion deems it advisable and in the best interest of the Province, he may, with the approval of the Lieutenant Governor in Council, construct, operate, maintain and repair works and undertakings within the meaning of this Act.

13. Section 96(1) presently reads:

96. (1) Notwithstanding any other Act, the Minister, with the approval of the Lieutenant Governor in Council, and any one or more cities, towns, villages, drainage districts, municipal districts, improvement districts or counties, upon the passing of a by-law approving the terms, may enter into an agreement providing for works or undertakings in the nature of

- (a) a drainage project or irrigation project or a drainage and irrigation project, or
 - (b) a water-power project, or
 - (c) a water supply project, or
 - (d) a river project or flood control project or a river and flood control project, or
 - (e) a water supply development project,
- within or without the city, town, village, drainage district, municipal district, improvement district or county.

The new subsection (1) extends the scope of the section so that agreements for water projects may be now made with irrigation district boards and other persons or groups involved in works or undertakings of public interest.

It also removes the need for the approval of the Lieutenant Governor in Council in each case as the funds for these projects are in any event financed from appropriations by the Legislature.

Subsections (2)(c) and (4) are amended as a consequence of the new definition of "local authority".

- (1.1) In this section "local authority" means
- (a) a city, town, new town, village, municipal district or county, or
 - (b) the Minister of Municipal Affairs, in the case of an improvement district or special area, or
 - (c) the board of directors of an irrigation district, or
 - (d) the board of trustees of a drainage district.

(1.2) Where a local authority is a party to an agreement under subsection (1), the works or undertaking may be inside or outside its boundaries.

- (b) *as to subsection (2), clause (c) by striking out the words "each city, town, village, drainage district, municipal district, improvement district or county, respectively" and by substituting the words "the other party or each of the other parties to the agreement",*
- (c) *as to subsection (4) by striking out the words "A city, town, village, drainage district, municipal district, improvement district or county" and by substituting the words "A local authority".*

14. The following sections are added after section 97:

98. (1) The Minister may establish and administer a stock advance fund for the purposes of this Act.

(2) The Provincial Treasurer upon the requisition of the Minister may make advances from the General Revenue Fund to the stock advance fund of such sums as the Minister may require to pay for machinery, equipment, services, stock or material required by the Water Resources Division.

(3) The net amount of the advances under subsection (2) at any time shall not exceed the amount determined by the Lieutenant Governor in Council.

99. (1) Where a person owns a well for the supply of water used for any purpose other than domestic purposes and the ground water was put to use before the commencement of this section, that person shall on or before June 30, 1973 apply to the Director of Water Resources to have the well registered.

(2) An application under subsection (1) shall be

(a) filed with the Director in the form prescribed by the Director, and

(b) made in accordance with the regulations.

(3) The Director, upon payment to him of any prescribed fee, shall register the well of the applicant.

98. Stock Advance Fund.

99. Requirement to register all existing water wells by June 30, 1973 so that licences can be issued to well owners. This will facilitate the future management of water supplies on the same aquifer.

(4) Where a well is registered under this section, the Minister may issue a licence under Part 1 in respect of that well as though the application for registration of the well had been an application for a licence in respect of the well.

(5) Where the Minister issues a licence in respect of a well registered under this section, the licence shall, unless the Minister otherwise decides, have priority according to the date on which the well first came into production, except that, if the application for registration is made after June 30, 1973, the priority of any licence shall be determined by the date of filing the application.

(6) A person who is required to register a well under subsection (1) shall be deemed to be the holder of a licence to divert and use water from that well

(a) until June 30, 1973, and

(b) if he registers the well in accordance with subsection (1), until a licence is issued to him under subsection (4).

100. Her Majesty is bound by this Act.

14. This Act comes into force on the day upon which it is assented to.

100. Her Majesty is bound by the Act. Among the consequences of this amendment will be the fact that all Government projects affecting water resources will be regulated under the Act and the applications for licences of various departments will be a matter of public record.