

1981 BILL 29

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Third Session, 19th Legislature, 30 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 29**

**THE WATER RESOURCES AMENDMENT ACT, 1981**

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MR. BATIUK

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First Reading .....  
Second Reading .....  
Committee of the Whole .....  
Third Reading .....  
Royal Assent .....

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Bill 29  
Mr. Batiuk

## BILL 29

1981

### THE WATER RESOURCES AMENDMENT ACT, 1981

(Assented to \_\_\_\_\_, 1981)

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

1 *The Water Resources Act is amended by this Act.*

2 *Section 2 is amended*

(a) *in subsection (1)*

(i) *by adding the following after clause 9.1:*

9.2 “ground water” means all water that exists under the surface of the ground;

(ii) *by repealing clause 19;*

(iii) *by repealing clause 21 and substituting the following:*

21 “water” means all water on or under the surface of the ground;

(b) *by repealing subsection (2).*

3 *Section 5 is repealed and the following is substituted:*

**5(1)** The property in and the right to the diversion and use of all water in the Province is hereby vested in Her Majesty in right of Alberta.

(2) Nothing in this Act requires a person who owns or occupies

(a) land that adjoins a river, stream, lake or other body of

## Explanatory Notes

**1** This Bill will amend chapter 388 of the Revised Statutes of Alberta 1970.

**2** Section 2 presently reads in part:

*2(1) In this Act,*

*19. "stream" or "water" means any river, brook, lake, pond, creek or other flowing or standing water;*

*21. "water", when used in relation to any property therein or to any right in respect thereof or to the diversion or usage thereof, means any water in any river, stream, watercourse, lake, spring, ravine, canyon, lagoon, swamp, marsh or other body of water in the Province;*

*(2) All reference in this Act to water in any river, stream, watercourse, lake, creek, spring, ravine, canyon, lagoon, swamp, marsh, or other body of water, applies to water under the surface of the ground, commonly referred to as ground water, but does not apply to water obtained incidentally as a result of drilling for oil or the operation of an oil well.*

**3** Section 5 presently reads:

*5(1) The property in any water in the Province to which the legislative authority of the Province extends and that is not vested in the Province by virtue of The Natural Resources Transfer Agreement, dated the fourteenth day of December, 1929, and made between the Government of Canada of the first part and the Government of the Province of Alberta of the second part, as varied by an agreement dated the fifth day of March, 1938, and made between the same parties, is hereby declared to be vested in the Province.*

water, or

(b) land under which ground water exists

to obtain a licence or permit under this Act for the use of as much of that water as he requires for domestic purposes on that land.

(3) A person in the exercise of a right under subsection (2) may pump or otherwise convey water to fill a tank, cistern, trough or dugout without a permit or licence.

*4 Section 7 is repealed.*

*5 Section 12(1) is amended by striking out “unappropriated” and substituting “unallocated”.*

*6 Section 16 is amended by adding the following after subsection (2):*

(3) If it appears to the Minister from the application, plans or other information available to him

(2) *Repealed.*

(3) *Section 6, subsection (1) 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.*

(4) *The provisions of this Act do not affect the right of a person owning or occupying any land that adjoins a river, stream, lake or other body of water upon provincial lands, to use such quantity of that water as he requires for domestic purposes on the land.*

(5) *A person in the exercise of the right referred to in subsection (4) may pump or otherwise convey water for domestic purposes to fill a tank, cistern, trough or a small dugout without a permit, interim licence or licence.*

(6) *Every person who acquires the legal right to take, use and develop ground water by virtue of this Act shall do so in accordance with such relevant regulations under The Ground Water Control Act as may from time to time be in force.*

(7) *Nothing in this Act or in The Ground Water Control Act or in the regulations under either of those Acts, restricts the right of a person owning or occupying land to use such quantity of ground water as he may require for domestic purposes on the land.*

**4** Section 7 presently reads:

*7 Notwithstanding any other provisions of this Act, the Minister may declare any surface water in a specified area to be water for the purposes of this Act, and upon such declaration being made and published in one issue of The Alberta Gazette, the surface water shall be deemed to be water within the meaning of section 2, subsection (1), clause 21.*

**5** Section 12(1) presently reads:

*12(1) Notwithstanding any other provision of this Act, the Lieutenant Governor in Council may reserve any unappropriated water, the property in which is vested in the Crown in the right of the Province, in order that he can determine how the water may be used to the best advantage, and may thereafter authorize the allocation of the whole or any part of the water so reserved among the applicants therefor or otherwise, as he deems best in the public interest.*

**6** Section 16 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*

(a) that land, other than land owned or occupied by the applicant, may or will be affected by the works,

(b) that it would place an undue burden on the applicant to require him to obtain any right of way in connection with the works, and

(c) that the registered owner and all other persons shown on the certificate of title to the land that may or will be affected by the works as having an interest in the land have consented in writing to the construction, operation and maintenance of the works and to the registration in the Land Titles Office of a certificate issued in respect of the land pursuant to this subsection,

the Minister may grant an interim licence under subsection (1) and shall, on granting the interim licence, forthwith forward to the Registrar of Titles for the land registration district in which the affected land is situated a certificate signed by him

(d) stating that the interim licence has been issued,

(e) stating the date of the interim licence and the name and address of the licensee,

(f) containing a description of the land on which the works will be located, and

(g) containing a description of the land that may or will be affected by the works.

(4) In a certificate issued under subsection (3) the land shall be described by reference to its legal description or by reference to a plan registered in the land titles office.

(5) The Registrar shall, without fee, register a certificate issued under subsection (3) against the land that may or will be affected by the works, and thereupon an easement is created in which the owner of the servient tenement grants to the owner of the dominant tenement the right to use his land for the purposes and to the extent shown in the application and plans.

(6) An easement under subsection (5) runs with the land and is binding on the owner of the servient tenement and his heirs, executors, administrators, successors and assigns.

(7) If no licence under section 35 is subsequently issued or if such a licence is issued but is thereafter cancelled or is amended so that all or part of the land referred to in subsection (5) is no longer affected by the works, the Minister shall direct the Registrar to cancel the registration of the certificate registered under subsection (5) as to all or part of the land, as the case may be, and the Registrar shall cancel the registration accordingly without fee.

*(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 and such changes and variations and subject to such conditions as the Minister deems necessary, and fixing a term within which the construction of the works is to be completed.*

*(2) The term of an interim licence shall be one year from its date unless a longer or shorter term is prescribed in the interim licence but the Minister may from time to time extend the term*

*(a) for a period not exceeding one further year, and*

*(b) if he is satisfied that the completion of the works has been retarded by physical conditions over which the holder of the interim licence has no control, for such additional period or periods as he thinks fit.*

7 *Section 25 is repealed and the following is substituted:*

**25** Notwithstanding anything in this Act or the regulations, the Minister may, subject to any terms and conditions he prescribes, grant permission to a person for the temporary diversion and use of water by that person or for the temporary supply of water by that person to others.

8 *Section 26 is amended*

(a) *by repealing subsection (2);*

(b) *by repealing subsection (3) and substituting the following:*

(3) The licensee shall proceed with the construction of the works diligently until they are completed in accordance with the terms and conditions of the interim licence.

(c) *in subsection (4) by striking out “prosecuted with sufficient vigour” and substituting “performed in accordance with this section”.*

9 *Section 35 is repealed and the following is substituted:*

**35**(1) On the expiration of the time fixed for the construction of any works, or on completion of construction of the works if completion of construction occurs before that time, an inspection shall be made by an engineer or other officer appointed in writing by the Minister for that purpose, and that person shall forward to the Minister a report of the results of his inspection.

(2) If, on receipt of the inspection report, the Minister is satisfied

(a) that the works have been completed in accordance with the interim licence,

(b) that

(i) any right of way required for the works has been obtained, or

(ii) in a case where section 16(3) applies, the required consents have been obtained,

and

(c) that any necessary agreements have been entered into for the use of the works of, or the supply of water by the applicant



**7** Section 25 presently reads:

*25 Notwithstanding any provision of this Act or the regulations, the Minister may, if he considers it expedient to do so and subject to such terms and conditions as he may prescribe, grant permission to an applicant for a licence for the temporary diversion and use of water by the applicant or for the temporary supply of water by the applicant to others.*

**8** Section 26 presently reads in part:

*(2) The construction of any works authorized under any interim licence shall be commenced not later than two months after the date of the interim licence, unless the two months expire between the first day of November and the first day of May following, in which case the time of commencement shall not be later than the first day of May following.*

*(3) The licensee shall proceed with the construction of the works continuously until they are completed sufficiently to supply water, if there is sufficient water for the purpose, to all persons applying therefor within the area described in the interim licence.*

*(4) The Minister, or such officer as he designates, is the sole arbiter as to whether the work is being prosecuted with sufficient vigour.*

**9** Section 35 presently reads:

*35(1) Upon the expiration of the time fixed for the construction of any works, or at any time before that date if the construction is sooner completed, an inspection shall be made by an engineer or such other officer as the Minister appoints.*

*(2) If the engineer or other officer upon the inspection is satisfied*

*(a) that the works have been completed in accordance with the application,*

*(b) that the right of way for the works has been obtained,*

*(c) that agreements have been entered into for the supply of water by the applicant to other persons, and*

*(d) that the works as constructed are capable of carrying and utilizing a stated quantity of water,*

*he shall issue and forward to the Minister a certificate setting out the facts.*

*(3) Upon receipt of the certificate the Minister shall issue a licence to the applicant for the quantity of water to which he is entitled, subject to such conditions as the Minister prescribes and the licence shall be recorded in the Department.*

to, other persons,

the Minister shall issue a licence to the applicant for the diversion or use, or both, of the water, subject to any terms and conditions the Minister prescribes.

*10 Section 36 is repealed.*

10 Section 36 presently reads:

*36(1) Where*

*(a) it appears from the application filed or the engineer's or other officer's inspection that land other than that on which the works are located is or will be flooded,*

*(b) the registered owner of the land that is or will be flooded, and any purchaser thereof who has filed a caveat, have by writing consented to the construction of the works and the flooding of the land, and*

*(c) a right of way has not been obtained as required by section 35, subsection (2),*

*the Controller of Water Resources may issue a certificate setting out the facts and forward it to the Minister.*

*(2) Upon receipt of the certificate the Minister may issue a licence, and when such licence is issued the Controller of Water Resources shall forthwith issue and forward to the Registrar of Titles for the land registration district in which the lands are situated, a certificate*

*(a) stating that the licence has been issued,*

*(b) stating the date of the licence and the name and address of the licensee,*

*(c) containing a description of the land on which the works are located, and*

*(d) containing a description of the portion of the land that will be affected by the works.*

*(3) In any certificate issued under subsection (2) the lands shall be described by reference to the legal description of the lands affected or by reference to a plan or plans registered in the land titles office.*

*(4) A certificate issued under subsection (2) shall be signed by the Controller of Water Resources in the presence of a witness who shall duly attest it, but no other formality is required as a condition of the acceptance of the certificate for registration.*

*(5) Upon receipt of the duly attested certificate of the Controller of Water Resources, the Registrar shall without fee register the certificate against the land therein described, and thereupon an easement is created whereby the owner of the servient tenement grants to the owner of the dominant tenement the right to use his land for the purposes and to the extent shown in the application or plans.*

*(6) Such right runs with the land and is binding upon the owner of the*

*11 Section 52(1), (2) and (3) are amended by striking out "and continuously".*

*12 Section 92(2) is repealed and the following is substituted:*

*(2) The Minister is not bound to accept the lowest or any tender, but he shall obtain the authority of the Lieutenant Governor in Council before accepting a tender other than the lowest one.*

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*In accordance with section 4(1) of The Interpretation Act, 1980, this Bill comes into force on the date it receives Royal Assent.*

*servient tenement, his heirs, executors, administrators and assigns.*

*(7) Where a licence issued under subsection (2) is cancelled, the easement created under subsection (5) is terminated and the Controller of Water Resources shall direct the Registrar of Land Titles to cancel the endorsement of the registration of the certificate issued in respect of the licence from the certificate of title to any lands against which the certificate was registered and the Registrar shall cancel the endorsement accordingly without fee.*

**11** Section 52(1), (2) and (3) presently read:

*52(1) The Minister may cancel an exploration permit if he is satisfied that the permittee is not diligently and continuously carrying out the examination and survey authorized by the permit.*

*(2) The Minister may cancel an interim licence if he is satisfied that the licensee is not diligently and continuously carrying out the construction of the works authorized by the interim licence.*

*(3) No cancellation shall be made by the Minister under subsection (1) or (2) unless the permittee or licensee has been given at least thirty days' notice of the Minister's intention to cancel the exploration permit or interim licence and the permittee or licensee within that period fails to submit proof satisfactory to the Minister that he is diligently and continuously carrying out the examination and survey or construction of the works, as the case may be.*

**12** Section 92(2) presently reads:

*(2) Where, in the opinion of the Minister, it is not expedient to give the work of construction, operation, maintenance or control of a work or undertaking to the lowest bidder, the Minister shall report the matter to and obtain the authority of the Lieutenant Governor in Council before rejecting the lowest tender.*