

1993 BILL 228

First Session, 23rd Legislature, 42 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 228

WATER TRANSFER CONTROL ACT

DR. NICOL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 228
Dr. Nicol

BILL 228

1993

WATER TRANSFER CONTROL ACT

(Assented to , 1993)

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

Definitions

1 In this Act,

- (a) "approval" means the approval of the Minister under sub-section 4(1);
- (b) "inspector" means a person who is appointed by the Minister as an inspector under section 10;
- (c) "Minister" means the Minister of Environmental Protection;
- (d) "prescribed" means prescribed by the regulations;
- (e) "provincial drainage basin" means a part of Alberta the water of which drains into,
 - (i) the Arctic Ocean via the Liard, Hay, Buffalo, Slave, Peace and Athabasca River Basins and the Lake Athabasca Basin;
 - (ii) to Hudson Bay via the Beaver, North Saskatchewan, Battle, Red Deer, Sounding Creek, Bow, Oldman and South Saskatchewan River Basins;

(iii) the United States of America via the Milk River Basin.

(f) "water" means natural surface and ground water in liquid, gaseous or solid state, but does not include bottled or otherwise packaged spring water or mineral water.

Transfers	<p>2(1) No person shall do any work to increase the natural transfer of water out of a provincial drainage basin to any other drainage basin in Canada without public hearings and approval of the Minister pursuant to section 4.</p> <p>(2) No person shall do any work to increase the natural transfer of water out of a provincial drainage basin to a drainage basin outside Canada.</p>
Information required	<p>3 A person who requests approval to transfer water out of a provincial drainage basin in an amount exceeding the amount set by the regulations, shall submit to the Minister plans, reports, studies and other information as are prescribed or as may be requested by the Minister.</p>
Approval subject to conditions and payment	<p>4(1) After holding public hearings, the Minister may approve a transfer of water out of a provincial drainage basin to another Canadian drainage basin subject to such conditions and subject to payments to the Crown in such amount as the Minister orders.</p>
Manner and terms of payment	<p>(2) The amount to be paid to the Crown for a transfer of water under subsection (1) may be a lump sum, a fixed periodic payment, an amount calculated according to the quantity of water transferred, or any combination thereof, and may be made payable on such terms as are prescribed by the regulations or, if not so prescribed, as the Minister determines.</p>
Approval not transferable	<p>5 An approval is not transferable.</p>
Refusal	<p>6 The Minister shall refuse to give approval to a transfer of water out of a provincial drainage basin if, in the Minister's opinion, the transfer may be detrimental to ensuring a secure water supply for Alberta or Canada or any part thereof.</p>
Conditions changed	<p>7 The Minister may not at any time, alter a condition attached to an approval without public hearings.</p>

Revocation	<p>8 If at any time after the Minister has given an approval, the Minister is of the opinion that the transfer is or may be detrimental to ensuring a secure water supply for Alberta or Canada or any part thereof, the Minister shall revoke the approval.</p>
Act applies despite trade agreement	<p>9 This Act applies despite the trade agreement signed on the 2nd day of January, 1988 by the Government of Canada and the Government of the United States of America or any law of Canada implementing the agreement.</p>
Inspectors	<p>10(1) The Minister may appoint in writing one or more employees of the Ministry or other persons as inspectors.</p>
Limitation	<p>(2) In an appointment under subsection (1), the Minister may limit the duties of the authority, or both, of an inspector in such manner as the Minister considers appropriate.</p>
Inspectors duties	<p>11(1) An inspector shall determine,</p> <ul style="list-style-type: none"> (a) if section 2 is being or has been contravened; (b) if the conditions attached to a consent are being complied with; (c) if the amount of money owed to the Crown is or has been paid to the Crown; or (d) if an order issued under subsection 15(5) or 16(1) is being complied with.
Powers	<p>(2) An inspector, for the purpose of carrying out his or her duties,</p> <ul style="list-style-type: none"> (a) may enter any place at any reasonable time; (b) may stop any vehicle or vessel at any reasonable time; (c) may inspect any place or thing; (d) may require that any machine or thing be operated or used; (e) may request the production for inspection of any documents or things;

(f) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (e) for the purpose of making copies or extracts and shall promptly return them to the person who produced them; and

(g) may record or copy any information by any method.

Entry to dwellings 12(1) A person shall not exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant under this section.

Warrant for search (2) Where a judge is satisfied on evidence upon oath that there are in a place documents or things that there is reasonable ground to believe will afford evidence relevant to the carrying out of an inspector's duties under this Act, the judge may issue a warrant in the prescribed form authorizing the inspector named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Warrant for entry (3) Where a judge is satisfied on evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that an inspector may carry out his or her duties under this Act, the judge may issue a warrant in the prescribed form authorizing such entry.

Authority given by warrant (4) A warrant issued under subsection (3) authorizes the inspector to whom it is issued, by force if necessary, and together with such police officers as the inspector calls upon for assistance, to do anything set out in section 11 and specified in the warrant.

Execution of warrant (5) A warrant issued under this section shall specify the hours and days during which it may be executed.

Expiry of warrant (6) A warrant issued under this section shall state the date on which it expires, which shall be a date not later than 15 days after the warrant is issued.

Application without notice (7) A judge may receive and consider an application for a warrant under this section without notice to and in the absence of the owner or occupier of the place named in the warrant.

Admissibility of copies	13 Copies of, or extracts from, documents and things removed from a place under this Act and certified as being true copies of the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.
Obstruction of inspector	14(1) No person shall hinder, obstruct or interfere with an inspector in the execution of a warrant or otherwise impede an inspector in carrying out duties provided under this Act.
Idem	(2) A person who refuses to produce documents or things, or to operate or use machines or things, where no warrant has been issued under section 12, does not contravene subsection (1).
False information	(3) No person shall furnish an inspector with false information or neglect or refuse to furnish information required by an inspector for the purpose of carrying out his or her duties under this Act.
Offences	15(1) Every person who contravenes section 2 or 14 is guilty of an offence.
Breach of condition	(2) Every person who breaches a condition attached to an approval is guilty of an offence.
Penalty for individuals	(3) Every individual who is convicted of an offence under this section is liable, <ul style="list-style-type: none"> (a) on a first conviction, to a fine of not more than \$50 000 for each day or part of a day on which the offence occurs or continues; and (b) on each subsequent conviction, to a fine of not more than \$100 000 for each day or part of a day on which the offence occurs or continues.
Penalty for corporations	(4) Every corporation that is convicted of an offence under this section is liable, <ul style="list-style-type: none"> (a) on a first conviction, to a fine of not more than \$250 000 for each day or part of a day on which the offence occurs or continues; and (b) on each subsequent conviction, to a fine of not more than \$500 000 for each day or part of a day on which the offence

occurs or continues.

Restraining order upon conviction (5) In addition to any penalty imposed under subsection (3) or (4), the court that convicts a person of an offence under this Act, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

Restraining order 16(1) Upon the application of the Attorney General to the Court of Queen's Bench, the court may make an order restraining a person from transferring water out of a provincial drainage basin without an approval.

Idem (2) An order under subsection (1) is in addition to any penalty that may be imposed and may be made whether or not proceedings have been commenced for a contravention of section 2.

Regulations 17 The Lieutenant Governor in General may make regulations,

- (a) prescribing forms and providing for their use;
- (b) governing applications for an approval;
- (c) prescribing plans, reports, studies and information to be submitted by applicants;
- (d) prescribing and governing the books, records and accounts that shall be kept by persons transferring water out of a provincial drainage basin;
- (e) prescribing and governing the reports and returns to be made to the Minister;
- (f) prescribing methods of calculating the amount of the payment required to be paid to the Crown for a transfer of water under this Act;
- (g) prescribing the terms of the payment required to be paid to the Crown for a transfer of water under this Act;
- (h) requiring that security be deposited by a person who has obtained an approval and prescribing the form, terms, conditions and amount of such security.

(i) setting an amount of a water transfer below which this Act does not apply.

Commencement 18 *This Act comes into force on proclamation.*