

The Water Power Act

being

Chapter W-6 of *The Revised Statutes of Saskatchewan, 1978* (effective February 26, 1979) as amended by the *Statutes of Saskatchewan*, 1980-81, c.33; 1983, c.11; 1983-84, c.63; 1989-90, c.5 and 54; 2002, c.S-35.02; 2005, c.S-35.03; and 2013, c.32.

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER W-6

An Act respecting Provincial Water Powers

SHORT TITLE

Short title

- 1 This Act may be cited as *The Water Power Act*.

INTERPRETATION

Interpretation

- 2 In this Act:

- (a) **“corporation”** means the Water Security Agency continued pursuant to *The Water Security Agency Act*;
- (b) **“Crown”** means Her Majesty the Queen in right of Saskatchewan;
- (c) **“provincial lands”** means provincial lands as defined in *The Provincial Lands Act*;
- (d) **“provincial water powers”** means water powers on provincial lands, or any other water powers which are the property of Saskatchewan and which have been or may be placed under the control and management of the corporation;
- (e) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (f) **“stream”** or **“water”** means and includes a river, brook, lake, pond, creek and any other flowing or standing water;
- (g) **“undertaking”** means the undertaking required or proposed to be established or carried on in pursuance of this Act or the regulations, by the Crown or by any applicant, licensee or other person in the development of any provincial water power or in the transmission, distribution or utilization of the force or energy produced from such water power, and includes, insofar as authorized or required in any case;
 - (i) the storage, pondage, penning back, regulation, augmentation, carriage, diversion and use of water or of the flow thereof;
 - (ii) the generation of energy at any plant used as an auxiliary to the water power plant;
 - (iii) the surveying, laying out, construction, maintenance and operation of works, including dams, flumes, penstocks, power stations, transmission lines, terminal stations and substations;
 - (iv) the surveying of provincial or other lands, the carrying on of investigations, and the collection of data;

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- (v) the acquisition and use of lands and properties or any interest therein;
- (vi) the administration and management of the required lands, works and properties, and the business connected therewith;
- (h) **“water power”** includes any force or energy of whatever form or nature contained in or capable of being produced or generated from any flowing or falling water in such quantity as to make it of commercial value.

R.S.S. 1978, c.W-6, s.2; 1983-84, c.63, s.17;
 2002, c.S-35.02, s.160; 2005, c.S-35.03, s.121;
 2013, c.32, s.14.

Administration

- 3** This Act and the regulations shall be administered by the corporation.

R.S.S. 1978, c.W-6, s.3; 1983-84, c.63, s.17.

Application of Act

- 4** This Act applies:

- (a) to all provincial water powers;
- (b) to all provincial lands required in connection with the development or working of those water powers, or for purposes incidental thereto;
- (c) to all lands and properties that may be acquired or authorized to be acquired under the terms and for the purposes of this Act, or that may heretofore have been acquired and are still used or may be required in connection with provincial water powers;
- (d) to the power and energy produced or producible from the waters on or within the said lands, whether the power or energy derived therefrom or any portion thereof is distributed upon or utilized on provincial lands or not;
- (e) to all undertakings established or carried on in respect of any provincial water powers; and
- (f) to all matters incidental thereto.

R.S.S. 1978, c.W-6, s.4.

Water powers vested in Crown

- 5** The property in and the right to use all provincial water powers are hereby declared to be vested in and remain in the corporation, saving any rights of property in or to the use of such powers which before the first day of April, 1931, had been granted by the Crown in right of Canada.

R.S.S. 1978, c.W-6, s.5; 1983-84, c.63, s.17.

Essential lands also remain Crown property

- 6** Provincial lands:

- (a) upon or within which there is water power;
- (b) required for the protection of any water power;
- (c) required for the purposes of any undertaking;

and the water powers and waters thereon shall not be open to sale, and, except as hereinafter otherwise provided, no interest therein shall be leased or otherwise granted or conveyed by the corporation; and any grant or conveyance hereafter made of any such lands or any interest therein, except in pursuance of this Act and the regulations, shall not vest in the grantee any exclusive or other property or interest with respect to such lands, or the water powers or waters thereon.

R.S.S. 1978, c.W-6, s.6; 1983-84, c.63, s.17.

Certain leases, etc. to be approved by legislation

7(1) No interest in any water power capable of developing more than 12,500 continuous horse power or in any land required for such undertaking or necessary for creating, protecting or developing such water power shall be leased or otherwise granted or conveyed by the corporation under the provisions of this Act and the regulations, unless and until prior approval or subsequent ratification thereof has been given by the Legislature.

(2) Subsection (1) does not apply and shall be deemed never to have applied to a lease, licence, grant or conveyance given, issued or made before the first day of April, 1944, by the Crown to a licensee holding a water power licence.

R.S.S. 1978, c.W-6, s.7; 1983-84, c.63, s.17.

Implied condition in leases, etc.

8(1) There shall be implied in every permit, licence, lease or other concession granted by the corporation under this Act or the regulations, for any interest in water power or land required or necessary for the creation, protection or development thereof, in addition to such other provisions as are contained in the regulations or in the conditions under which the permit, licence, lease or other concession was disposed of, a provision that no power generated in Saskatchewan from any provincial water power shall be exported across the international boundary.

(2) If the holder of a permit, licence, lease or other concession or any servant or agent of such holder, or any person acting for him or under his authority or permission, violates or refuses to observe the condition named in subsection (1), the permit, licence, lease or other concession shall be suspended, and such suspension shall not be withdrawn unless so ordered by the Lieutenant Governor in Council, and then only upon such terms and conditions as he may impose; and if the permittee, licensee or lessee fails to observe such terms and conditions or any of them the permit, licence, lease or other other concession may be cancelled.

R.S.S. 1978, c.W-6, s.8; 1983-84, c.63, s.17.

Lease, etc. of lands within park or forest reserve

9 No permit, licence, lease or other concession shall be made for or of any lands within a park or forest reserve until a senior forestry officer or other officer authorized by the minister has reported upon the effect of such permit, licence, lease or other concession upon the park or forest reserve concerned, and the minister has decided whether it is necessary to insert any provision or provisions in such permit, licence, lease or other concession to protect the use and enjoyment of the park or forest reserve.

R.S.S. 1978, c.W-6, s.9.

Disposal of lands which may be submerged

10 Where small areas only of any parcel or subdivision of provincial lands are required to be submerged along the bank of a stream in connection with any undertaking, and where it has not been found practicable or expedient to make surveys for the purpose of setting out the exact limits of the area to be flooded, the minister may dispose of such parcel or subdivision in accordance with the provisions of any other Act or regulation applicable to the disposal of such lands, reserving, however, the right at any time to raise the water surface to such elevation as may be required in connection with such undertaking.

R.S.S. 1978, c.W-6, s.10.

Expropriation of lands by corporation

11 If land or any interest therein is required by the corporation for any undertaking or is necessary for creating, protecting or developing any water power, the land or interest may be acquired by agreement or expropriated by the corporation pursuant to *The Water Security Agency Act*.

1983-84, c.63, s.17; 2002, c.S-35.02, s.161; 2005, c.S-35.03, s.121; 2013, c.32, s.8.

Taking of private lands by applicants

12(1) A person who, in pursuance of this Act or the regulations, is authorized to carry out any undertaking may, after receiving written authority from the corporation, enter upon, use, occupy, take and acquire any lands other than provincial lands, or any interest therein that may, in the opinion of the minister, be required for such undertaking, and thereupon all the provisions of *The Expropriation Act* that are applicable to the taking and acquisition of lands shall apply as if they were included in this Act.

(2) This section applies and extends to any person prior to the first day of April, 1931, who had obtained from the Minister of the Interior, under the *Dominion Water Power Act*, a licence to carry out an undertaking in the province and who, under the said licence and *Dominion Water Power Act*, had the right and power to enter upon, use, occupy, take and acquire any lands other than provincial lands or any interest therein.

(3) This section does not apply or extend to lands belonging to any railway company that are used or required by such company for the purposes of its railway.

R.S.S. 1978, c.W-6, s.12; 1983-84, c.63, s.17.

Cancellation of entries, leases, etc., in certain cases

13(1) If a permit, lease or licence has been granted or issued, or the corporation has entered into any agreement or other form of conveyance under which provincial lands that are required, or any interest in which is required, for an undertaking, are occupied or held in a manner inconsistent with the carrying out of such undertaking, the Lieutenant Governor in Council may order and direct the cancellation of such permit, lease, licence or agreement, in whole or in part, or may direct that the terms thereof be so modified as to reserve to the corporation such lands or such rights in the said lands as may be required for the undertaking.

- (2) In every case compensation shall be paid to the permittee, lessee, licensee or part to such agreement or other form of conveyance.
- (3) In the case of a complete cancellation, the compensation shall include such sums as have been actually paid to the corporation on account of the lands and expended for improvements thereon, with interest at the rate of six per cent per annum, as well as an amount to cover the estimated actual loss or damage, if any, sustained by reason of such cancellation.
- (4) In the case of partial cancellation, such compensation shall include the actual reasonable value, if any, of the lands or interest therein taken.
- (5) The minister shall in each case fix the amount of the compensation to be paid, subject to appeal only as to the amount of compensation to the Court of Queen's Bench.

R.S.S. 1978, c.W-6, s. 13; 1983-84, c.63, s.17.

Joint development of water powers

- 14(1) Where two or more water powers are so situated that they can be more economically and satisfactorily utilized by being developed jointly and operated under one control, and if such water powers have not been granted by the corporation, the Lieutenant Governor in Council may, subject to section 7, order that they be disposed of in such manner and subject to such conditions as will, in his opinion, secure such joint development and single control.
- (2) If the right to develop one or more of such water powers has been granted to or is held by any person, and if the Lieutenant Governor in Council is of the opinion that the public interest will best be served by reserving the remaining water power or water powers so as to bring about the joint development and single control of all such water powers, the Lieutenant Governor in Council may order the said remaining water power or water powers to be reserved for such period or periods as he deems necessary in order to secure such joint development and single control, and may authorize the corporation to enter into an agreement with the person holding the water power or water powers first mentioned for the said purposes, and may prescribe the terms, conditions and covenants to be included in such agreement.

R.S.S. 1978, c.W-6, s. 14; 1983-84, c.63, s.17.

Surveys, measurements, etc.

- 15(1) The corporation may order:
 - (a) such surveys and such other proceedings as may, in its opinion, be required to ascertain the provincial lands or any other lands or any interests in any lands that it may be necessary to reserve or acquire for any undertaking, and the decision of the corporation, as to the lands or interests therein that may in any case be required, shall be final;
 - (b) a survey of all streams and all necessary investigations with respect to water powers to determine the total utilized and available water power and the maximum that can be made available by storage, regulation or other artificial means;

- (c) that the volume or discharge of any stream or body of water, or the economic availability or usefulness thereof for power purposes, be ascertained;
 - (d) that the flow or quantity of water used and of the output of electrical or other form of energy produced from the use of water by any licensee or other person, be ascertained;
 - (e) the establishment of gauges, weirs, meters or other devices for water or water power measurements or for measuring the output of electrical or other form of energy.
- (2) The corporation shall keep on file the records and plans of surveys and investigations mentioned in subsection (1) and may publish those records and plans in any form and to any extent that it may determine.
- (3) The corporation, or a person appointed by it for the purpose, shall have free access, in connection with any of the matters mentioned in subsection (1), to all works, books, plans and records insofar as they relate to any undertaking, and may take such observations, make such measurements, and do such other things on, upon within or with respect to the said undertaking, books, plans and records as may be considered necessary or expedient for:
- (a) ascertaining the quantity of water stored, diverted or used, or capable of being stored, diverted or used;
 - (b) ascertaining the amount of power developed or capable of being developed;
 - (c) ascertaining the condition of the works, or any of them;
 - (d) determining whether the conditions to be observed or performed by any licensee, lessee or other person are being satisfactorily observed and performed;
 - (e) any other purpose connected with the administration of this Act;
- and the findings of the corporation, with respect to the quantity of water stored, diverted or used, or capable of being stored, diverted or used, or the amount of power developed or capable of being developed, shall be final.
- (4) The corporation may enter into co-operative agreements with the proper authorities of Canada for the making of stream measurements, the carrying on of investigations, and the collection and publication of data respecting water and power resources, and the best methods of utilizing the same.

R.S.S. 1978, c.W-6, s.15; 1983-84, c.63, s.17.

Regulations

- 16(1)** The Lieutenant Governor in Council may make such regulations not inconsistent with this Act as are necessary to carry out its provisions according to their obvious intent, or to meet any cases which arise and for which no provision is made in this Act, and without restricting the generality of the foregoing may make regulations:
- (a) for the storage, pondage, regulation, diversion, carriage or utilization of any water for power purposes and for the protection of any sources of water supply;
 - (b) for the development, transmission, distribution, sale, exchange, disposal or use of water power on, through or over provincial lands or any other lands;

- (c) for the construction, maintenance, operation, purchase and taking over of all works that may be deemed necessary or desirable for any of the purposes set out in this Act, whether on, over or through provincial lands or any other lands, and for the regulation and control, in the interests of all water users, of the flow of water that may, from time to time, pass through, by or over any such works;
- (d) for the use and occupancy of provincial lands and other lands or of any interest therein for any of the purposes set out in this Act;
- (e) for the withdrawal from disposal under any other Act, of any provincial lands or of any interests therein required for any purpose under this Act;
- (f) for granting and administering rights, powers and privileges in or with respect to water powers, or undertakings, and administering such rights, powers and privileges acquired before the first day of April, 1931;
- (g) prescribing the conditions upon which the works, lands and properties held in respect of any undertaking may be taken over upon the expiration of the term of any agreement, lease or licence or upon the termination thereof for non-compliance with any of the covenants, terms or conditions contained in such agreement, lease or licence, or for any other reason;
- (h) for the construction by, or at the instance of the corporation, of regulation or storage works for regulating or augmenting the flow of water required for power and other purposes, for the purchase or taking over of works already constructed, and for dividing and collecting the cost of constructing, maintaining and operating such works among all persons benefiting or in a position to benefit therefrom;
- (i) for the securing of such power output at any site, within the limits of its capacity, as may be required to supply the public demand; and the securing of the maximum power resources of all streams;
- (j) for fixing the rentals, royalties, fees, dues or charges to be paid for the diversions, use or storage of water, for the use or occupancy of lands, or for any other privileges granted in pursuance of this Act, including charges for any additional flowage created by storage or regulation works constructed by or at the instance of the corporation;
- (k) for regulating the passage of logs, timber and other products of the forest through or over any dams or other works erected under the authority of this Act;
- (l) for requiring any person authorized to carry out an undertaking to construct fishways, to permit the free and unobstructed passage of fish up and down stream at any season of the year and requiring their operation in accordance with the provisions of any Act respecting fisheries, from time to time in force, and the regulations thereunder;
- (m) for the appraisal, for any of the purposes of this Act, of the works, lands and properties required or used in connection with any undertaking;

(n) for regulating and controlling the stock and bond issues of persons establishing or conducting undertakings; for regulating and controlling the service given to the public by persons engaged in supplying water power; for regulating and controlling the rates or charges for such service; for appointing or designating the Saskatchewan Municipal Board to regulate and control the said stock and bond issues, service, rates and charges; and for the appointing of a person to act with any existing authority constituted for the purposes of regulating and controlling the said matters or any of them;

(o) prescribing the manner in which accounts shall be kept for the purposes of this Act by persons conducting or managing undertakings, and requiring such persons to submit statements and reports, annual or otherwise;

(p) prescribing the forms to be used in proceedings under this Act; and

(q) for any purpose deemed necessary for giving full effect to this Act.

(1.1) Notwithstanding any terms or conditions upon which any rentals, royalties, fees, dues or charges are fixed pursuant to clause (1)(j), the Lieutenant Governor in Council may change any rentals, royalties, fees, dues and charges which are fixed pursuant to that clause by rescinding, revoking, amending or varying any regulations made under that clause or by making other regulations under that clause.

(1.2) Notwithstanding any other provision of this Act or any provision of any other Act, no action lies against the Crown, any member of the Executive Council, the corporation or any officer or employee of the Crown or the corporation for damages or compensation with respect to a rental, royalty, fee, due or charge that is changed as a result of a rescission, revocation, amendment or variation of any regulations made under clause (1)(j) or as a result of the making of other regulations under that clause.

(2) **Repealed.** 1989-90, c.54, s.5.

(3) **Repealed.** 1989-90, c.54, s.5.

R.S.S. 1978, c.W-6, s.16; 1980-81, c.33, s.2;
1983-84, c.63, s.17; 1989-90, c.5, s.10; 1989-90,
c.54, s.5 and 6.

Board for control of inter-provincial boundary waters

17(1) The Lieutenant Governor in Council may enter into arrangements or agreements with any province or provinces and with Canada for the establishment and constitution of a board which, when established and constituted, shall have jurisdiction to regulate and control the use of interprovincial boundary waters or boundary waters between the province and the Northwest Territories and waters in any stream or streams that flow through more than one of the provinces or through one or more than one of the provinces and the Northwest Territories, and to provide penalties for breach of or failure to obey any order of the board.

(2) After the establishment and constitution of the board the corporation may, out of moneys appropriated by the Legislature for that purpose, defray the share of the province of the expenses incurred or to be incurred by the board.

(3) The Lieutenant Governor in Council may appoint a representative or representatives of the province on any such board.

(4) The board shall have such power and authority as is vested in it by provisions of the agreement establishing and constituting it.

R.S.S. 1978, c.W-6, s.17; 1983-84, c.63, s.17.

Rules of Court

18(1) The Court of Queen's Bench may make, alter or annul rules of court for the purpose of carrying into effect the provisions of this Act conferring powers or jurisdiction upon the court and in particular for regulating the pleading, practice or procedure relating to matters brought before it under this Act whether by way of appeal or otherwise.

(2) All rules and amendments thereto shall be published forthwith after the making thereof in the *Gazette*.

(3) All rules made hereunder and all forms, tariffs and schedules appended thereto shall be part of this Act.

(4) The court shall have the same jurisdiction as to costs or otherwise as in matters in court under its jurisdiction.

R.S.S. 1978, c.W-6, s.18.

Saskatchewan Watershed Authority Act, 2005 not affected

19 If any right, power or privilege or any authority to do any act, matter or thing is or has been granted or given by or pursuant to this Act or any regulations or order made pursuant to this Act, no further or other compliance with *The Water Security Agency Act* is required with respect to that right, power, privilege or authority.

2005, c.S-35.03, s.121; 2013, c.32, s.8.

20 Repealed. 1983-84, c.63, s.17.

Act to be read subject to certain enactments

21 Nothing in this Act or the regulations shall be deemed to restrict or impair the powers or authority of the Saskatchewan Municipal Board under *The Municipal Board Act*, but this Act and the regulations shall be read subject thereto.

R.S.S. 1978, c.W-6, s.21; 1989-90, c.5, s.10;
1989-90, c.5, s.11.

