

Environment and Parks — Managing Water Act Partnerships and Regulatory Activities Follow-up

SUMMARY

Alberta's water is a public resource the Government of Alberta must manage for the benefit of present and future generations. Specifically, the 1999 *Water Act*¹ requires the Minister of Environment and Parks to manage the diversion, allocation, use and conservation of Alberta's water. It also allows the minister to manage the water supply by using tools such as water management plans and the water allocation transfer market.²

The Act requires Albertans who undertake activities that affect water to obtain authorizations from the Department of Environment and Parks before they begin. The department's responsibility for administering the Act includes making sure that the authorization holders comply with the terms of their authorization.

What we examined

We followed up on four recommendations from our April 2010³ report in which we reported on how the department managed its regulatory activities and partnerships under the *Water Act*. In 2010 we recommended that the department improve:

- the timeliness with which it processes licences and approvals
- how it monitors users' compliance with the terms of their licences and approvals
- how it controls grants and contracts with watershed planning and advisory councils
- how it monitors agencies that receive funding to restore wetlands

Overall conclusion

The department has improved some of its systems that support the effective management of activities under the *Water Act*. With three of the four recommendations implemented, the department's systems are now more reliable and robust. This is encouraging; however, we found progress in one area to be slow. Five years after our original audit, the department still does not have sufficient monitoring in place to ensure that wetland restoration agencies are in fact restoring the wetland as required.

¹ *Water Act*, S.A. 2000.

² A water allocation transfer occurs when a water licence holder transfers all or a portion of their water licence to another party, which often involves a financial transaction. Generally, a transferred water allocation maintains the same seniority and terms and conditions of diversion as stated in the original water licence. Because the water right is bought and sold between willing buyers and sellers, the term 'water market' is often used.

³ *Report of the Auditor General of Alberta—April 2010*, nos. 4–7, pages 65–75.

What we found

The most significant improvements we identified include the department:

- reducing its backlog of *Water Act* applications and implementing changes to cut processing times
- updating its approach to monitoring licence and approval holders' compliance with the terms of their authorizations, and developing performance indicators to measure the effectiveness of its compliance assurance program
- improving its controls for watershed planning and advisory council grants and contracts, to ensure the agencies use the funding for the intended purposes

Our follow-up examination of the department's systems to manage the restoration of Alberta's wetlands identified a number of weaknesses. Overall, the department lacks effective monitoring to ensure that restoration agencies are meeting their responsibilities. The department does not have signed agreements with all agencies that restore wetlands and does not have sufficient evidence that the agencies are restoring the wetlands as required.

Why this is important to Albertans

In the absence of effective monitoring of wetland losses and restoration, the government cannot know whether it is managing Alberta's wetlands to sustain the benefits they provide to the environment, society and economy. Efficient and effective application processing and monitoring of approval and licence holder activities, and well managed partnerships will improve the management of Alberta's water supply.

AUDIT OBJECTIVE AND SCOPE

Our audit objective was to determine if the department has implemented the four recommendations from our April 2010 report.⁴

We conducted our field work from December 2014 to June 2015 and substantially completed our audit on June 19, 2015. We conducted our audit in accordance with the *Auditor General Act* and the standards for assurance engagements set out in the CPA Canada Handbook—Assurance.

FINDINGS AND RECOMMENDATIONS

Wetland restoration—repeated

Background

When planned development activities might disturb or reduce wetland areas, the department requires developers to compensate for these effects by restoring previously drained or altered, naturally occurring wetlands.⁵ The department's 1993 interim policy and 2007 restoration guide governed wetland restoration until June 2015, when Alberta's new wetland policy took effect.^{6,7}

⁴ *Report of the Auditor General of Alberta—April 2010*, nos. 4–7, pages 65–75.

⁵ Wetlands are low-lying areas of land covered by areas of water long enough to support aquatic plants and wildlife for part of their life cycle. They store and slowly release water and reduce the damaging effects of flooding. They also purify run-off and help keep lakes and rivers clean. Approximately 20 per cent of Alberta's surface area is covered by wetlands.

⁶ Alberta Wetland Policy, September 2013.

<http://aep.alberta.ca/water/programs-and-services/wetlands/documents/AlbertaWetlandPolicy-Sep2013.pdf>

⁷ Alberta Wetland Policy was released in September 2013 and took effect in June 2015.

Under both policies, the government’s preferred response is to make sure developers avoid or minimize their effects on wetlands. When these approaches are not feasible, the department requires the developer to provide funding to restore wetlands. The 2015 policy allows replacement to include restorative work (such as restoration or enhancement of existing wetland, or construction of another wetland) and non-restorative measures (such as wetland research and education).

Wetland restoration agencies restore wetlands in Alberta. The agencies are also responsible for collecting the funds from approval holders, maintaining restored wetlands, keeping records of their restoration activities and regularly reporting on the results of their activities to the department.

Three wetland restoration agencies operate in Alberta:

- Ducks Unlimited Canada (since 2005)
- City of Calgary (since 2007)
- County of Vermilion River (since 2013)

In our 2010 audit we found that the department did not have a formal agreement with Ducks Unlimited Canada, which had been the only agency responsible for wetland restoration in Alberta for some time. Also, the department did not monitor whether DUC appropriately used the funds they collected from approval holders. DUC’s annual reports to the department indicated that the agency collected \$24 million from approval holders between 2005 and 2014, and spent \$18.5 million on wetland restoration.

In 2010 we also found that the City of Calgary acted as a restoration agency under its own wetland policy and guidelines, which did not meet the standards in Alberta’s policy. The department could not provide support for why it accepted the lower standards.

RECOMMENDATION 6: MONITOR WETLAND RESTORATION—REPEATED FROM 2010

We again recommend that the Department of Environment and Parks formalize its wetland restoration relationships and control procedures.

Criteria: the standards for our audit

The department should ensure its partnerships to restore Alberta’s wetlands are efficient and effective. There should be clear, enforceable agreements between parties. The department should periodically monitor its partners’ progress, through prompt year-end reporting, for example.

Our audit findings

KEY FINDINGS

- The department signed agreements with two of the three wetland restoration agencies. It has no agreement with the City of Calgary.
- Between 2007 and 2014, the City of Calgary collected \$25 million from approval holders but has not done any wetland restoration.
- The department does not require agencies to report all the information it needs to assess if wetlands are properly restored.
- The department still lacks effective monitoring to ensure wetland restoration agencies are meeting their responsibilities.

New wetland policy planned to be fully implemented by 2016

The department has been redesigning its strategies and tools for wetland conservation since 2010. In 2013 it released a new wetland policy, which took effect in June 2015. The department expects to fully implement the policy by 2016.

No agreement in place with one of the restoration agencies

The department's agreements with Ducks Unlimited Canada (signed in 2014) and the County of Vermilion River (signed in 2013) will expire in March 2018. It still does not have an agreement with the City of Calgary.

The two signed agreements require annual reporting to the department on restoration projects the agencies initiated but do not require reports on key aspects of wetland restoration, such as wetland area disturbed or lost and area restored. The agreement with DUC does not require the agency to provide evidence that restored areas are properly functioning wetlands. The agreement with the County of Vermilion River requires this information.

Lack of effective monitoring processes

In 2015 the City of Calgary provided its first annual report to the department. Between 2007 and 2014 the city has collected \$25 million from approval holders but has not done any wetland restoration work. The department told us this was because there are few opportunities for wetland restoration in the municipal area. At the conclusion of our audit the department stated it was finalizing an agreement with the city that will define how it must spend the funds and what areas the city is allowed to claim as wetland restoration.

The department still does not have an effective process to monitor that restoration agencies are meeting their responsibilities. For example, the department's review of the agencies' 2014 annual reports did not detect the following:

- DUC did not provide evidence that the sites it restored are properly functioning wetlands. It did not provide a full accounting of its income and expenses, including income from other sources. The 2007 wetland restoration guide required DUC to report this information annually.⁸
- The County of Vermilion River submitted its first annual report to the department in November 2014, nine months after it was due.

The department does not check the amount the funding agencies receive with the amount of funding the department's records say approval holders must provide. Therefore, the department does not know whether the agencies fully accounted for the funds they collected.

The department did not always retain evidence it had assessed an applicant's compliance with the policy before issuing an approval. For example, the policy requires applicants to:

- meet a minimum wetland replacement ratio
- provide evidence that it is not possible to avoid or minimize the development's effects on wetland
- provide enough funding to compensate for the development's wetland impacts

For one of the two samples we tested the department could not show us how it ensured the applicant met those requirements.

⁸ The 2007 Wetland Restoration Guide governed wetland restoration until June 2015.

The department told us it is developing processes to make sure that wetland restoration meets the department's requirements. These processes will include:

- certification of wetland restoration agencies
- monitoring to make sure that agencies are fulfilling their responsibilities
- a database that integrates the department's approvals and monitoring with the agencies' wetland restoration data

We were unable to evaluate the design or implementation of these processes because they were still being developed when our audit concluded. If well designed and effective, we would expect such processes to provide assurance to the department that agencies restore wetlands as required.

Implications and risks if recommendation not implemented

Without controls such as clear agreements and effective monitoring, the department cannot ensure that agencies complete wetland restoration as required. In the absence of effective monitoring of developers' wetland losses and agencies' restoration work, the government cannot know whether it is meeting its policy goals and outcomes for managing Alberta's water supply.⁹

Assessing compliance with the Water Act—implemented

Background

Regional staff process applications for *Water Act* authorizations.¹⁰ They also monitor the authorized activities, to make sure authorization holders comply with the Act and their approval and licence requirements. The department's monitoring includes proactive¹¹ and reactive inspections¹² and compliance sweeps.¹³

Our 2010 audit found that the department did not use its information systems to identify when authorization holders did not submit certificates of completion¹⁴ or water use data as required. Often an unrelated renewal, amendment or inspection identified the non-compliance. We expected the department to detect non-compliance through effective and timely use of available data.

Certificate of completion

The department's approvals managers have discretion to decide if an approved structure needs a certificate of completion. They base their decisions on the structure's specific conditions and its potential effect on the environment. Two per cent of approvals the department issued in 2014 and eight per cent of approvals issued in 2013 required a certificate of completion.

⁹ The goal of this policy is to conserve, restore, protect and manage Alberta's wetlands to sustain the benefits they provide to the environment, society and the economy.

<http://aep.alberta.ca/water/programs-and-services/wetlands/documents/AlbertaWetlandPolicy-Sep2013.pdf>

¹⁰ Authorizations include approvals and licences. Any activity, as defined in the *Water Act*, Section 1(1) (b) (including works), that impacts water or a water body requires an approval. Licences permit individuals or organizations to divert water or operate a works to divert water. If the water diversion lasts less than one year, the applicant may qualify for a temporary diversion licence.

¹¹ Proactive inspections include annual inspections of drinking water facilities. These inspections are to determine if a facility complies with the legislation and its approval and licence conditions.

¹² Reactive inspections are conducted in response to operational issues or non-compliance reported by a facility, public complaint, incident response, emergency situations and referrals from other department's staff or outside agencies.

¹³ Compliance sweeps focus on a geographic area or specific industry. These focused efforts give the department an opportunity to work together with local businesses and ensure they understand the environmental laws and their purposes, how to comply with the law and the consequences of non-compliance.

¹⁴ Where a licence application involves a project that is not yet constructed, the department may issue a preliminary certificate. The certificate is a "promise" for a volume of water if the applicant fulfills the certificate conditions. To receive the licence, the applicant must submit the certificate of completion to the department indicating that it has met the specified conditions.

Water use reporting system

The department developed an online Water Use Reporting System in 2006, to support the implementation of Water for Life: Alberta’s Strategy for Sustainability.¹⁵ The system lets licence holders submit water use data online so the department can collect data in a centralized and secured database. The data informs the development of water conservation strategies that promote a healthy aquatic environment and better water management in water use sectors, as well as continued economic growth in Alberta.

The department stated that since 2009 it amended over 4,000 *Water Act* licences, accounting for 80 per cent of licensed water use in Alberta. The amended licences include water use reporting conditions requiring licence holders to submit water use data directly to the Water Use Reporting System.

Our audit findings

The department tracks its requirement for certificates of completion in its Environmental Management System and in the approval’s paper file. For all five approvals we tested, approval holders submitted the certificates of completion when they were due.

The department has used a risk-based approach to monitor compliance with legislation since 2007. Under this approach, the department uses inspections of drinking water and industrial facilities¹⁶ under the *Environmental Protection and Enhancement Act*¹⁷ to also monitor compliance with *Water Act* licence conditions, including those for mandatory reporting of water use.¹⁸ Our review of the annual inspection plan for the South Saskatchewan region confirmed that this was the planned approach for 2014–2015.

This audit did not examine if the department followed its inspections plans or if the compliance monitoring was effective, because the processes have not changed since our previous audit.

However, in 2014 the department began a review of its approach to compliance monitoring. The review involves assessing the 2007 risk ratings and inspection targets for activities and facility types, to ensure alignment with the department’s new Compliance Assurance Management Framework.¹⁹ The 2013 framework articulates the department’s philosophy and approach to compliance assurance for all activities the department regulates. The department expects to implement it by 2016. When our audit concluded, the department was updating the 2007 risk assessment and developing performance indicators to measure the effectiveness of its compliance assurance program.

Although the department’s implementation of the framework and its supporting processes was still underway when our audit was completed, our view is that the department has taken key steps toward ensuring it delivers an effective, consistent and coordinated compliance assurance program that is based on risk.

¹⁵ Water for Life Strategy: A Renewal, November 2008. <http://environment.gov.ab.ca/info/library/8035.pdf>

¹⁶ The *Environmental Protection and Enhancement Act* regulates municipal and industrial facilities. Many of these facilities need both the *Environmental Protection and Enhancement Act* and *Water Act* authorizations to operate.

¹⁷ *Environmental Protection and Enhancement Act (2003)*. <http://www.qp.alberta.ca/documents/acts/e12.pdf>

¹⁸ The department proactively inspects approximately 600 drinking water facilities and 10 per cent of industrial facilities annually for compliance with the *Environmental Protection and Enhancement Act*. It also performs reactive inspections in response to about 8,500 complaints per year, a significant portion of which are *Water Act* related.

¹⁹ This policy document describes the business of compliance assurance for the department. It sets out goals, core principles and supporting policies, and provides a detailed program guide.

Backlog of Water Act applications—implemented

Background

The department's approvals staff process applications for *Water Act* authorizations and maintain data in paper files and on its computer system. Our 2010 audit found a backlog of over 3,500 open applications in 2009. We also found that the online data was not always accurate and up to date.

There are about 28,000 issued licences under the *Water Act*²⁰ and 6,500 approvals for activities on surface water and groundwater bodies. The department receives about 3,000 applications annually.

Our audit findings

The department implemented the following changes to improve the efficiency of *Water Act* applications processing:

- standardized processing and approval procedures
- central data entry and periodic checks for data completeness and accuracy
- target processing timelines and weekly monitoring of actual processing against targets

Our testing of 2013 and 2014 applications found that the department followed its processing and approval procedures, computer data agreed to paper files and processing met target timelines.

The department had 5,500 applications still open in 2010.²¹ The department's review found that half of these applications were in various stages of processing; many had slower processing times than expected. The other half were open because of missing or incorrect data. The department corrected the processing and data deficiencies and reduced the backlog to 650 applications by 2013. By December 2014, a new backlog²² of 1,200 applications had accumulated. The department stated that the recent backlog was largely a result of fewer staff available to process incoming applications. The department established the Approvals Program Standing Committee in 2014 to identify strategies and provide direction for developing an effective and integrated provincial approvals program, and an optimal staff mix to deliver the program.

The department stated that most of the 650 applications open since 2010 require complex data such as hydrological assessments and policy or legal decisions. Our testing found that some of these applications were outstanding simply because the department had not updated its records. The department could further reduce the 2010 backlog by reviewing, once again, whether its information systems accurately reflect the status of applications.

We consider our recommendation implemented because the department reduced the previous backlog to a reasonable level. Although a new backlog has begun to accumulate, the department is working to identify further improvements that will help sustain its effort to process applications efficiently.

²⁰ This does not include temporary diversion licences, which are valid for one year.

²¹ Our 2010 audit found a backlog of 3,500 applications in 2009. The department's own process found 5,500 open applications in 2010, including applications that were open for less than six months.

²² The department considers backlog applications as those that remain open (in process) for over six months. The department considers applications to be current if they are open for six months or less.

WPAC grants and contracts—implemented

Background

Watershed Planning and Advisory Councils are multi-stakeholder organizations established under the Water for Life Strategy.²³ Their mandate includes watershed planning and management, reporting on the state of the watershed and providing advice to stakeholders, including government. There are 11 WPACs in Alberta, one for each of Alberta's major river basins. Since 2003 the department has supported the councils through grants totaling \$24 million (\$4 million in 2014–2015).

In 2010 we recommended that the department strengthen its control of grants and contracts with WPACs.

Our audit findings

To improve the consistency and efficiency of its monitoring of WPAC compliance with grant agreements, the department assigned responsibility for managing WPACs to one executive director. Previously, regional managers shared this responsibility.

The department's grant agreements with WPACs for 2014–2015 clearly define eligible and non-eligible expenses. Starting in 2014–2015 the department funds WPAC core operations and specific projects through grants, rather than using contracts for project work. It uses the same process to manage both types of agreements. The department expects WPACs to use standard templates for their regular reports to the department. It also uses standard checklists to document its review of reports that WPACs submit.

Our testing confirmed that WPACs used the department's templates for annual and interim reporting on 2014 and 2015 grants, and that the department consistently documented its review of these reports to assess compliance with grant agreements.

²³ Alberta Water for Life: Alberta's Strategy for Sustainability. 2003. <http://environment.gov.ab.ca/info/library/8035.pdf>