

Who owns the water?

November 8, 2012, Jason Unger, Staff Counsel
Environmental Law Centre

About the ELC

- Mission: To ensure that Alberta's laws, policies and legal processes sustain a healthy environment for future generations.

Public Programs

- Information and referral
- Community outreach
- Law reform

Alberta **LAW**
FOUNDATION

Outline

- Brief history of water law
 - Riparian rights
 - Government control – licencing systems
 - First in time first in right
- Where the law stands today
 - Water, land and the law.

Riparian rights – common law comes to Canada

- Right to access and use water that runs adjacent to property
- Restrictions:
 - Reasonable domestic purposes/use
 - flow & quality for downstream users
- Transfers to parcels away from waterways was not allowed

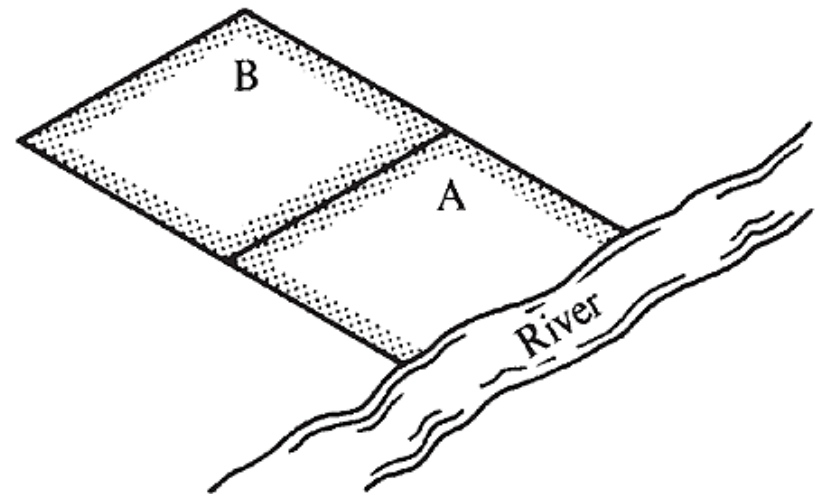
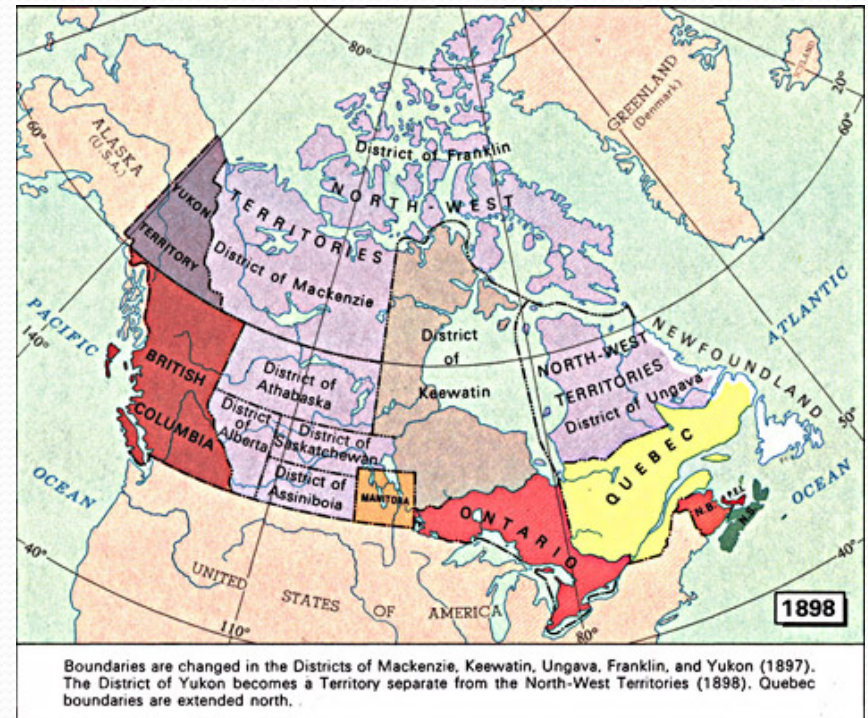


FIG. 168. RIPARIAN OWNER

Settlement of the west

- Riparian rights gave way to government allocation of use rights in late 19th century
- Water short areas made settlement tenuous

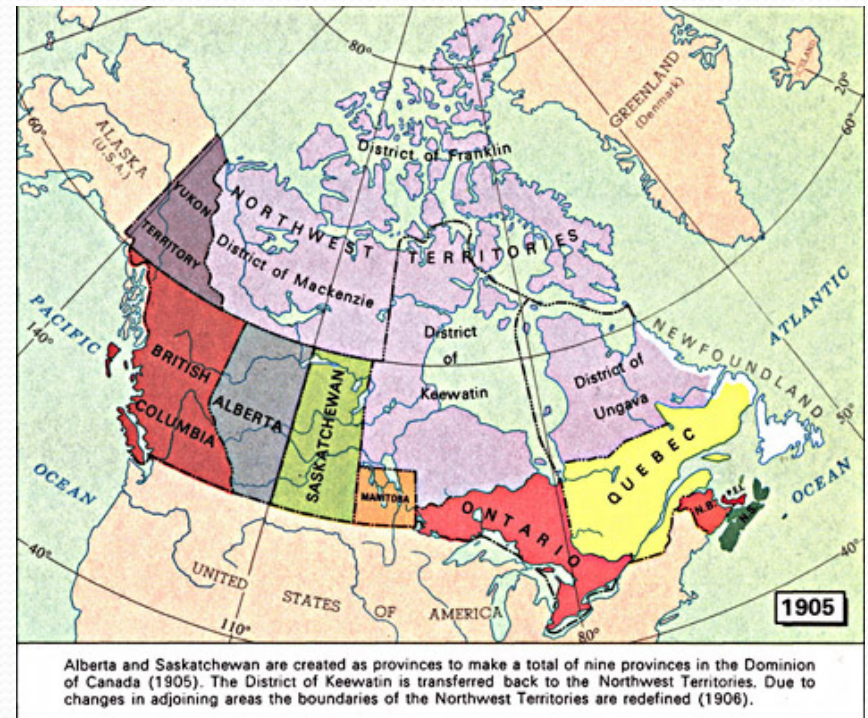


Government intervention brings flexibility

- *Northwest Irrigation Act 1894*(Canada) (see Percy, Water Rights in Alberta, Alberta Law Review 1977)
 - Granted the government control over water uses
 - Allowed licences to divert away from riparian lands
 - First in Time First in Right “FITFIR” appears
 - Created certainty in allocations and allowed irrigators to expand
 - Carried forward to today’s licence and registration system

History of water law

- Alberta (1905)
- Natural Resources Transfer Agreement 1930 (and amendments)
- Water Resources Act 1931
 - Confirms Crown ownership
 - licences issued were permanent
 - Priorities among uses distinguished
 - Limited ability to transfer licences



Library and Archives Canada:
<http://www.collectionscanada.gc.ca/confederation/023001-3020-e.html>

Water law today

The water

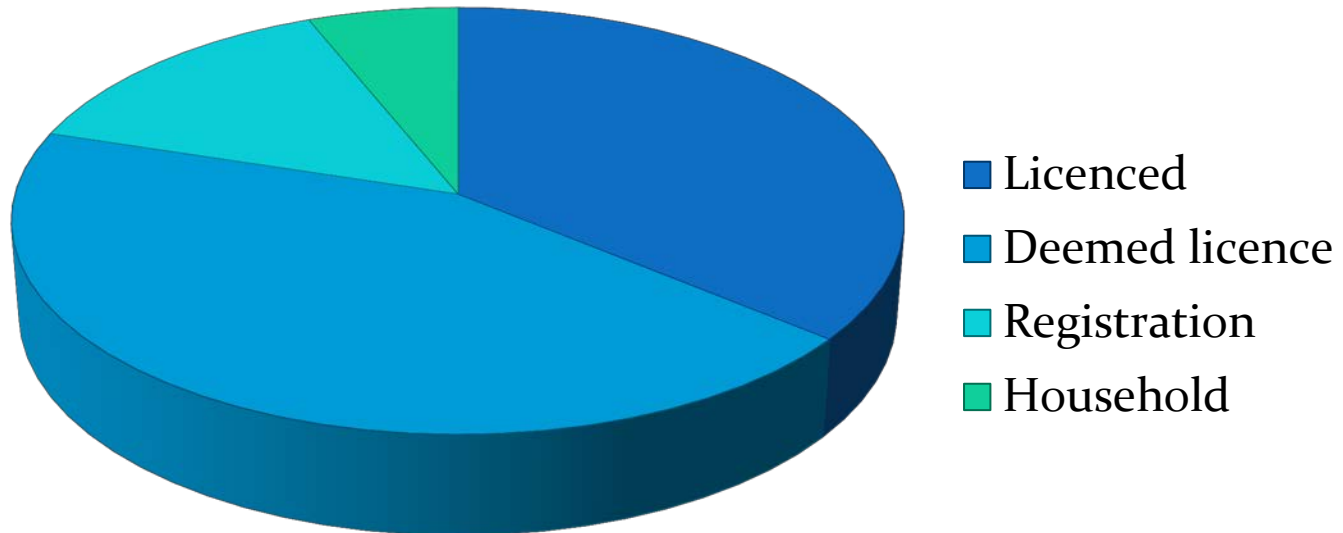
- Water Act
 - *The property in and the right to the diversion and use of all water in the Province is vested in the Crown (s. 3(2))*
- Diversion rights granted are time limited (and renewable)
- Transfers are enabled

The land

- Public Lands Act
 - *The title to the beds and shores of all permanent and naturally occurring bodies of water, and all naturally occurring rivers, streams, watercourses and lakes, is vested in the Crown in right of Alberta*
- Water Act
 - Altering land in a way that impacts water require authorizations

Water use under the Act

Diversions



Licences under *Water Act*

- Licence required for diversion of water or “works”
- No licence required to divert for
 - household purposes
 - traditional agricultural use (registration)
 - other statutory exemptions
- licences & registrations “run with the land”
- FITFIR

Household use exemption

- own/occupy land adjacent to water body, or under which groundwater exists
- 1250m³/year/household
- Use
 - human consumption, sanitation, fire prevention and watering animals, gardens, lawns and trees
- “runs with the land”
- highest priority of all users

Riparian rights and the Water Act

- Are maintained but limited
 - Flow of water can be altered by licences (i.e. supply can be limited by GOA)
 - Limitations on civil remedies related to riparian rights.

Agricultural users and registrations

Exempt agricultural user

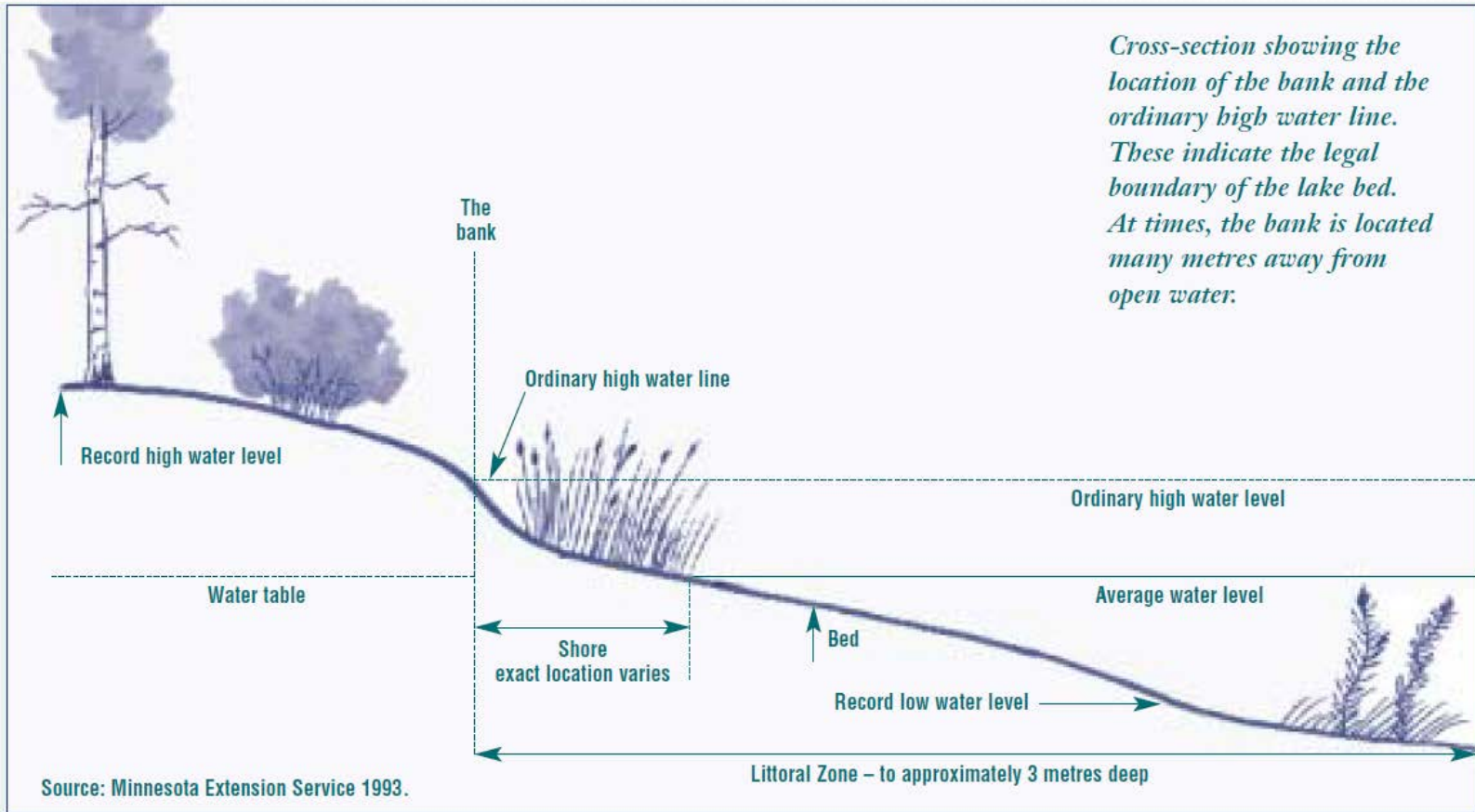
- Owned or occupied land January 1, 1999
- May continue to divert 6250 cubic metres for raising animals or applying pesticides to crops
- No priority
- If not registered right ends with transfer of land – new land owner needs a licence

Traditional agricultural user

- Agricultural user registered with government
- Applications had to be made by December 31, 2001
- Priority of registrations is enforceable

Land and water connection

- What is “bed and shore” – Crown owned
 - *Surveys Act* – “the land covered so long by water as to wrest it from vegetation or as to mark a distinct character on the vegetation where it extends into the water or on the soil itself” – i.e. no vegetation or distinct character of vegetation
- PLA prohibits activities that may result in “injury to the bed and shore (among other prohibitions)
- Changes with climate and weathering/erosion



Alberta Conservation Association, *Caring for Shoreline Properties* (Edmonton: Alberta Conservation Association, 1999), online: <http://environment.alberta.ca/documents/ACA-Caring-for-Shoreline-Properties.pdf>

Land – water connection

- Water Act requires authorizations for “activities”
 - Includes disturbance of land with possible consequences for flow direction/quantity, siltation, or impacts on the aquatic environment.

Authorizations through AESRD

- To divert water
- To undertake activities impacting water drainage & water bodies
- To impact public land and be granted ownership of former bed and shore where diversion is authorized
- Enforcement
 - Water management orders
 - Enforcement orders

Questions?

- Phone: 780-424-5099 or 1-800-661-4238
- E-mail: elc@elc.ab.ca or junger@elc.ab.ca
- Web: www.elc.ab.ca
- Blog: <http://environmentallawcentre.wordpress.com>
- Facebook: <http://www.facebook.com/environmentallawcentre>
- Twitter: https://twitter.com/ELC_Alberta
- To sign up for e-mail updates, visit:
<http://www.elc.ab.ca/pages/home/Notification.aspx>.