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Q & A - Water Act

APPLICATIONS & NOTICES

[Notices \(/applications-and-notices/notices\)](/applications-and-notices/notices)

[Application Process \(/applications-and-notices/application-process\)](/applications-and-notices/application-process)

[Winter Drilling Season \(/applications-and-notices/application-process/winter-drilling-season\)](/applications-and-notices/application-process/winter-drilling-season)

[Mines & Minerals Act \(/applications-and-notices/application-process/mma\)](/applications-and-notices/application-process/mma)

[Public Lands Act \(/applications-and-notices/application-process/pla\)](/applications-and-notices/application-process/pla)

[Environmental Protection & Enhancement Act \(/applications-and-notices/application-process/epea\)](/applications-and-notices/application-process/epea)

[Water Act \(/applications-and-notices/application-process/water-act\)](/applications-and-notices/application-process/water-act)

[Forms & Guides \(/applications-and-notices/application-process/wa-forms-guides\)](/applications-and-notices/application-process/wa-forms-guides)

[Q & A - Water Act \(/applications-and-notices/application-process/qa-water-act\)](/applications-and-notices/application-process/qa-water-act)

[Codes of Practice \(/applications-and-notices/application-process/codes-of-practice\)](/applications-and-notices/application-process/codes-of-practice)

[How Do I Get Involved? \(/applications-and-notices/how-do-i-get-involved\)](/applications-and-notices/how-do-i-get-involved)

[Statement of Concern \(/applications-and-notices/statement-of-concern\)](/applications-and-notices/statement-of-concern)

[Hearings & Proceedings \(/applications-and-notices/hearings-and-proceedings\)](/applications-and-notices/hearings-and-proceedings)

[Appeals \(/applications-and-notices/appeals\)](/applications-and-notices/appeals)

[Decisions \(/applications-and-notices/decisions\)](/applications-and-notices/decisions)

Q & A - Water Act

These are a series of questions from the AER Phase 3 Implementation Industry Presentations held in Calgary in March 2014. This page will be updated as questions pertaining to EPEA and Water Act are asked and answered by our subject matter experts.

Q: What is the *Water Act*?

A: The *Water Act* is Alberta legislation that allocates and manages Crown owned water. The purpose of the *Water Act* is to support and promote the conservation and management of water, including the wise allocation and use of water while recognizing those matters set out in Section 2 of the *Water Act*.

Q: What authority does the AER have over the *Water Act*?

A: Through the *Responsible Energy Development Act* and associated regulations, the AER has *Water Act* authority over all energy resource activities; include approvals, licences, and codes of practice. Environment and Sustainable Resource Development (ESRD) retains its *Water Act* authority over all other sectors, and for related policy, regulation, and legislation development, and administration of priority in the event of a shortage.

Q: Does the AER agree to all requests for water?

A: No, each request requires a licence application, which is reviewed for its potential impacts on other water users and on the aquatic environment, among other considerations. While many of these applications can be authorized with a licence and appropriate conditions designed to mitigate against potential impacts the authority to refuse a licence application continues to exist, and is used.

Q: What if there is a spill in a waterway, who is responsible for the cleanup?

A: The basic responsibility for cleanup rests with the party responsible for the spill. The AER will rely on *EPEA* and the *Water Act* provisions to determine the most effective way to address a spill.

Q: How does an operator apply for water use?

A: The procedure is similar to that used by ESRD, except that the licence applications will now be submitted to the AER at EPEA.WA.Applications@aer.ca (mailto:EPEA.WA.Applications@aer.ca). The AER will only accept electronic applications, in pdf form.

Q: How do they determine how much water they need?

A: Operators are required to specify the amount of water they are applying for based on a present and reasonable need. The AER will review these applications, and will set the amount that is allocated when making a decision on the licence application.

Q: How does hydraulic fracturing affect the water supply and aquifers?

A: The AER requires that any hydraulic fracturing fluids used above the base of groundwater protection (BGWP) be nontoxic and that the operator reveal the contents of the fluids to the AER upon request. The AER also requires that the type and volume of all additives used in fracturing fluids be recorded in the daily record of operations for any well. This information must be submitted to the AER.

The AER's regulatory requirements are designed to prevent any hydraulic fracturing fluid from mixing or entering groundwater or surface water. These requirements include ensuring the use of steel casing and full cementing of the wellbore so that any fluid inside the casing cannot mix with water in the formations through which the well passes. Any produced fluids that are returned to surface, such as hydraulic fracturing fluid and salt water from the producing geologic formation, must be handled, stored, and disposed of under the strict regulations of the AER. No fluids, including those that have been treated, are ever allowed to be released into a natural water body.

Q: Will the AER issue temporary diversion licences?

A: Yes, including using the same WATERS tool that is used by ESRD, as relates to energy resource projects.

Q: Why does the AER have responsibility for the *Water Act*?

A: This is part of the Government of Alberta's overall Regulatory Enhancement Project which included the *Water Act*, *EPEA*, Part 8 of the *Mines and Minerals Act* and the *Public Lands Act*, and is enabled through the passage of the *Responsible Energy Development Act* and its regulations.

Q: Who do I contact if I have questions?

A: The AER Customer Contact Centre at 1-855-297-8311.

Q: With the multiple governing agencies for water boundaries, is there a plan to consolidate the definitions of water body? If not, how should we determine which definition to use?

A: The *Water Act* includes a very broad definition of "water body," which is the one that would apply UNLESS a Code of Practice or other regulatory document defines its own scope differently

In the interest of continuous improvement, the AER will work with ESRD and other agencies toward clearer, more effective, more efficient, and more consistent approaches to managing water bodies and other issues, where appropriate. ESRD is the lead for such initiatives.

Q: Is there a plan to consolidate the allowable/required setbacks?

A: This relates more to the *Public Lands Act* and other legislation (or old ERCB Directives) than to the *Water Act*. In the interest of continuous improvement, the AER will work with ESRD and other agencies toward clearer, more effective, more efficient, and more consistent approaches to managing water bodies and other issues, where appropriate. ESRD is the lead for such initiatives.

Q: How does AER plan to document and track wetland banking requirements under the *Water Act* and *EPEA* when there is currently no government data base to do so?

A: The AER will follow the provincial *Wetland Policy*, for which implementation plans are currently under development under the lead of ESRD. The AER is participating in this work, which includes improved tracking.

Q: How does the AER plan to address the inconsistencies or combine the three approval processes that are currently in place?

A: In the interest of continuous improvement, the AER will work towards clearer, more effective, more efficient, and more consistent approaches to the authorization processes.

Q: Will all existing water licenses with AESRD be automatically transferred to AER?

A: Within the AER's authority, yes: the licences currently held by energy resource operators automatically transfer to the AER to administer. Approvals, preliminary certificates (etc.) will also transfer to the AER.

Q: Will the AER be handling ALL EPEA/Water Act approvals?

A: Through the *Responsible Energy Development Act* and associated regulations, the AER has *EPEA* and *Water Act* authority over all energy resource activities; include approvals, licences, and codes of practice. ESRD retains its *EPEA* and *Water Act* authority over all other sectors, and for related policy, regulation, and legislation development and the administration of priority in the event of a shortage. For key large and lengthy *EPEA/Water Act* renewal applications that are in flight and under active deliberation; for continuity it is imperative that the Individual ESRD Industrial Approvals Reviewer who has been coordinating the deliberation remain on the file through to its conclusion. Will this be a priority for the AER during the transition?

New hires were selected through a competitive process, not just transferred over from ESRD, but many of the past ESRD coordinators are joining the AER, where they will be able to mentor some newer staff. Both the AER and ESRD have committed to making this transition as smooth as possible, including having access to coordinators who will remain with ESRD, for continuity.

Q: Are the approval coordinators that are currently reviewing applications moving over to the AER or are they brand new people?

A: New hires were selected through a competitive process, not just transferred over from ESRD, but many of the past ESRD coordinators are joining the AER, where they will be able to mentor some newer staff. Both the AER and ESRD have committed to making this transition as smooth as possible, including having access to coordinators who will remain with ESRD, for continuity.

Q: Will water course crossing compliance on energy dispositions be managed by the AER or ESRD?

The AER will manage these.

Q: What type of authorization should be acquired for a water storage area with and without water wells?

A: Depending on the specifics of the proposal, both a *Water Act* approval and licence may be required, and other legislation may also apply.

Q: Are First Nations also included in responses to applications for water licenses?

A: First Nations are able to submit Statements of Concern in response to public notice of water licence and approval applications.

Q: There is currently a large discrepancy within the province on which types of water bodies require approval under the Water Act, depending on the region where the project is located. Is the AER going to provide clear direction on its definition of water body and which type(s) require approval under the Water? When?

A: The *Water Act* includes a very broad definition of "water body," which is the one that would apply unless a Code of Practice or other regulatory document defines its own scope differently.

In the interest of continuous improvement, the AER will work with ESRD and other agencies toward clearer, more effective, more efficient, and more consistent approaches to managing water bodies and other issues, where appropriate. ESRD is the lead for such initiatives.

Q: Is there an update or revision planned for the Codes of Practices under the Water Act? If yes, when are they planned for and what should we expect?

A: In the interest of continuous improvement, the AER will work with ESRD and other agencies toward clearer, more effective, more efficient, and more consistent approaches to managing water bodies and other issues, where appropriate. ESRD is the lead for such initiatives.

[HOME \(/\)](#) > [APPLICATIONS & NOTICES \(/APPLICATIONS-AND-NOTICES\)](#) > [APPLICATION PROCESS \(/APPLICATIONS-AND-NOTICES/APPLICATION-PROCESS\)](#) > [WATER ACT \(/APPLICATIONS-AND-NOTICES/APPLICATION-PROCESS/WATER-ACT\)](#) > Q & A - WATER ACT

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