

Policy and Procedure: Water Bodies Subject to the Irrigation Act and How They Affect Surveys

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Owner Ministry of Justice - Controller of Surveys	Manual Surveys	Last Revision
Policy Name Water Bodies Subject to the Irrigation Act and How They Affect Surveys	Effective Date February 26, 2007	Revised Date

Policy Statement:

Often water bodies in a quarter section are not shown on a plan, or referred to in the title, but may nevertheless be excluded from private ownership under the provisions of *The Irrigation Act*. The question was raised as to whether *The Irrigation Act* can continue to be used to exclude unsurveyed water bodies on subsequent subdivisions within a quarter section or whether the water body must be surveyed and shown as a separate parcel on a plan.

ISC recognizes that water bodies can continue to be excluded by use of *The Irrigation Act* and are not required to be shown on subsequent plans provided that:

- The bank of the water body does not represent a boundary of one of the parcels
- Stakeholders such as the property owner, Community Planning, Municipalities or others do not require the boundary to be identified on the ground

There are situations where a bank simply cannot be identified on the ground as a boundary and therefore there would be no alternative but to rely on the provisions of *The Irrigation Act* to exclude the water body. In these cases if a boundary and separate parcel were still required, a channel surveyed as a separate parcel would be an alternative, which would require consent of all owners.

By *The Irrigation Act*, the Crown reserved the beds and shores of all water bodies granted after July 23, 1894 unless a prior agreement excluded a party from application of the Act. Land Titles' practice treated the Hudson's Bay Company and the Canadian Pacific Railway Company as having had such agreements. No matter when land was granted to these two companies Land Titles has treated the grants as conveying the beds and shores of water bodies unless specifically excluded from the grant.

From a Land Titles' perspective, the rules around ownership of the beds and shores of water bodies may be outlined as follows: Unless there is language to the contrary:

- Grants to individuals before July 23rd, 1894 - beds and shores are included in the grant
- Grants to individuals July 23rd, 1894 and after - beds and shores are reserved to the Crown
- Grants to CPR or HBC at any time - beds and shores are included in grant

Background:

Throughout this document reference is made to *The Irrigation Act*. Although this is the common term used when discussing the ownership of the beds and shores of water bodies, The Irrigation Act has been incorporated into other various acts.

In 1906 *The North West Irrigation Act* was incorporated into *The Irrigation Act*.

In 1931 an Order in Council transferred the control of the beds and shores of water bodies from the Federal Government to the Provincial Government and *The Irrigation Act* became *The Water Rights Act*.

In 1984 *The Water Rights Act* was incorporated into *The Water Corporation Act*. Section 178 refers to reserving the rights of beds and shores of water bodies to the Crown (Saskatchewan).

In 2002 *The Water Corporation Act* was incorporated into *The Saskatchewan Watershed Authority Act*, which was again amended in 2005.

Section 39 refers to reserving the rights of beds and shores of water bodies to the Crown (Saskatchewan).

Purpose:

This policy provides clarification as to what is required when a Surveyor performs a survey in a parcel of land where an unsurveyed water body exists that is not shown on an approved plan of survey and for which there is no reference made to it on the title. It also directs attention to the fact that in some situations title to water bodies can continue to be excluded by virtue of the Irrigation Act on subsequent subdivisions without having to be surveyed and shown on a plan.

Approved By: Controller of Surveys

Date: February 26, 2007