

# Water Allocation & Transfers

## Water Availability Engagement



Population growth, economic growth and water variability are challenging the water management system in Alberta. New policy and regulatory tools could be used to increase water availability for Albertans and optimize the water management system to better address these issues while continuing to protect the aquatic environment.

This document provides background information on just one type of water management opportunity identified through conversations with stakeholders. It is intended to spark ideas and generate conversation.

The Government of Alberta invites your feedback on any opportunity to increase water availability in the province.

### Current situation

Water diversion is the process of capturing, storing, consuming, taking, or removing water for any purpose.

Unless there is a specific exemption, anyone that wants to divert (use) surface or groundwater in Alberta requires a licence under the *Water Act*. A licence identifies:

- the water source
- location of the diversion site
- volume, rate, and timing of water to be diverted
- priority date of the licence and
- any conditions of the licence that describe or affect when or how water may be diverted.

Licences are issued with a maximum quantity allowable, however the licensing process has always recognized that for most licensees, use of an allocation will vary from year to year. For example, allocations may not be used as much during wet years, but full allocations may be required during drought years. However, licence holders often elect not to use their full allocation by adjusting according to the available water supply at that time. Water use is often impacted by weather conditions, economic and market factors impacting production output, crop rotations, operational outages, etc. Allowance for operational flexibility is a key consideration in making decisions.

Licences have been issued in Alberta since 1894 under different acts. Any licences prior to the *Water Act* were issued without a specific term and do not expire. Since 1999, all new licences have a term and must be renewed or will expire. Since older licences do not have a provision for periodic renewal, regulators have limited ability to amend or update these licences if the circumstances under which they originally asked for water have changed. This was done to continue the principle of certainty for licensees that made investments based on a known water supply risk.

### Ownership of water

Ownership of water is vested in the Crown as a natural resource managed for the benefit and use of all Albertans. This is a founding principle of the system, established under federal legislation (the 1894 *Northwest Irrigation Act*) even before Alberta became a province. Water is managed by government for the benefit of all Albertans and all use of water must be recognized or authorized under the provisions of the act.

The *Water Act* includes provisions of “use it or lose it” that can be applied to all licences, including older pre-*Water Act* licences. A licence can be cancelled by the Director if:

- no water under the allocation has been diverted, or the rights granted under a licence have not been used, over a three-year period, and
- there is no reasonable prospect the licensee will resume diverting all or part of the allocation or resume an exercise of the rights granted under the licence.

Cancelling licences is rare because every opportunity is given to licensees to show they could and intend to use water allocated to them. A more typical scenario is a licensee that consistently uses some portion of their allocated water and is unable to demonstrate the need for their current full allocation. In this case, the Act does not give authority for an overallocated amount to be reduced to reflect the actual use or need. Currently, outright cancellation is the only option generally available.

### How does cancellation impact water availability?

The amount of water that can be allocated from a water source is limited. When a licence is issued it is assumed the licensee, at any given time, would be able to take the maximum of what they are entitled to. The next licence application therefore assumes that previously allocated water is unavailable or can't be relied upon to be available. Unused allocations can therefore prevent new water applicants from receiving a licence.

### Cornerstones of allocation: availability, reliability, and flexibility

The *Water Act* reinforces the importance of water as a resource and that water use be justified and not be wasteful. The allocation in a licence specifies a maximum annual diversion quantity. This amount is the maximum a licensee could take under any circumstance regardless of priority, rate, timing, or any other condition of the licence. If potential changes occur, regulators will continue to issue licences knowing an allocation has to consider a range of expected operational needs within a project or purpose and will account for factors such as weather and climate (needing more water in a dry year, for example), economic factors that can change production levels and water demand from year to year, and other contingencies.

## Water licence transfers

When the Bow, Oldman, and South Saskatchewan sub-basins were closed to new water allocations in 2007, water for future population and economic growth was to be accommodated through licence transfers by existing licensees who have opportunities to invest in conservation and efficiency or make other business, operational, and investment decisions that free up existing water. Water transfers enable both temporary and permanent reallocations of water, allowing flexibility in water use without compromising existing rights or environmental health.

When a licensee is willing to transfer all or part of their allocation to another party, the Director under the *Water Act* can approve the transfer, provided there are no adverse impacts on the environment or other water users.

Transferring a water licence could impact the existing priority rights of other users, which is why transfers must be enabled by the Lieutenant Governor in Council, generally by an approved water management plan as was done for the South Saskatchewan basin. When a licensee agrees to a transfer, an application to the department is submitted and is reviewed on technical and regulatory grounds. Directors under the *Water Act* must consider, and fully mitigate, impacts on other water users' rights and the aquatic environment, prior to approving a transfer. Government can withhold up to ten per cent of water from a transfer for conservation if it is in the public interest to protect the aquatic environment or to meet a Water Conservation Objective, as long as this authority is outlined in an approved water management plan or by an order of the Lieutenant Governor in Council. This holdback is generally avoided and only occurs in specific situations.

Since 2006, approximately 400 water licence transfers have occurred. The Government of Alberta does not participate in the contractual details or negotiations of these transfers, leaving buyers and sellers to handle transactions privately, often through brokers or direct business dealings.

## The opportunity

Alberta Environment and Protected Areas could consider potential amendments to the *Water Act* and streamlining to address fairness and transparency of the existing licensing and transfer system and reflect actual demonstrated need or demand, and not just the current remedy of cancelling a licence, acknowledging that licensee flexibility must be preserved.

This potential change could improve the fairness of the existing licensing system, recognizing that some licensees currently hold what is in effect “paper” water that is unavailable for other users that may need it. This issue is most acute in the Bow, Oldman and South Saskatchewan River sub-basins, where new water allocations are not available and water must be found from an existing, willing licensee including a negotiation of cost to acquire a licence, which can then be transferred to a new use. Simplifying the water allocation transfer system may encourage greater water use efficiency, and moving water allocations between different uses. Difficulty in sourcing water to support population growth in communities as well as expanding and emerging industries is a factor impacting economic opportunity across the region.

## **We want to hear from you**

Consider these questions on water allocation and transfers before providing your feedback:

- Should government be able to review a water licence if the circumstances, assumptions, or policies under which they were originally issued have changed?
- Once issued, should licensees be able to benefit from a water licence without any further expectations to ensure or demonstrate a beneficial use back to the province?
- Are there impacts or benefits to introducing authority to review or revise water allocations to support more water transfers to new or different users?

## **Get engaged**

Learn more about the Water Availability engagement and have your say at [alberta.ca/water-availability-engagement](https://alberta.ca/water-availability-engagement)