



Agricultural Water Management Strategy

Drainage Problems and Complaints

The Water Security Agency is a provincial Crown corporation that has been established to manage, administer, develop, control and protect the water, watersheds and related land resources of Saskatchewan. Included in this mandate, the Water Security Agency has the responsibility for administering the resolution of water disputes relating to drainage.

Right to File a Complaint

Any person who claims to have suffered or anticipates suffering any damage, loss or injury caused by construction, extension, alteration, or operation of any drainage works may file a written complaint with the Water Security Agency. The Water Security Agency's investigation will focus on verifying if works are present, whether the works have an approval and whether the approval conditions are being followed. The Water Security Agency does not have powers to determine liability or award damages or other compensation with respect to a complaint.

Complaint Process

Procedures for the filing and handling of complaints are outlined in Sections 79 to 88 of The Water Security Agency Act (the Act). With respect to dealing with drainage works constructed without approvals, Sections 59 through 70 of the Act apply. The Water Security Agency's powers of entry and removal of illegal dams and works and the ability to lay charges are described in Sections 89 through 93 of the Act. The legislation provides a framework for a process which encourages early resolution of complaints before a formal process is initiated. If the complaint cannot be resolved in the initial phase of the investigation,

a formal complaint may be filed. The following outlines the procedure for the filing and the handling of complaints.

Request for Assistance in Resolving a Complaint

Before a complaint is accepted, an individual must make a reasonable effort to resolve the problem through recent contact with the person or party considered responsible. The Water Security Agency may waive this requirement under certain circumstances.

If the problem is not resolved through contact with the party considered responsible, the complainant can submit a written request to the Water Security Agency for assistance in resolving the complaint. This request must include the following information:

- the name of the person or authority that the complainant considers to be responsible for the cause of the complaint;
- the complainant's efforts to resolve the complaint through contacts described above;
- the location of drainage works the construction, extension, alteration or operation of which the complainant claims has caused or will cause injury, loss or damage;
- the injury, loss or damage suffered or anticipated.

A "Request for Assistance in Resolving a Complaint" form is available from your nearest Water Security Agency Regional Office or online at www.wsask.ca.

Upon receipt of a written request, the Water Security Agency will conduct a preliminary investigation to determine if the drainage works exist and whether an approval of those works has been issued. If the drainage works do not exist, the Water Security Agency will dismiss the complaint.

If the drainage works exist and do not have an approval, a recommendation letter will be issued. The letter will indicate that the owner must obtain an approval or close the works. The letter will indicate timelines to get into the approval process or to close works. If the owners do not apply for an approval within the timelines, the Water Security Agency will follow-up, using Sections 59 through 70 of the Act, and issue an order to close the works.

If, in the investigation, the Water Security Agency determines that the drainage works exist with an approval, further investigation work will be done to determine if the approval conditions are being met.

- If the approval conditions are not being met, the recommendation letter will outline that the conditions of approval need to be followed and specify a timeline for compliance. Further violation will result in an order to close works (Section 69 of the Act). The letter will also indicate that the owner will need to supply verification of compliance.
- If the approval conditions are being met and there are still impacts, the Water Security Agency will determine whether alterations to the works, or to the operation of the works should resolve the impacts. Based on the above, a recommendation will be made to the project owner to complete the alterations to mitigate the impacts of the project. Alternatively, if there are no means to mitigate the impacts of the project, the recommendation will be for the owner to close the project. If the recommendation is not followed, the complainant must move to formal complaint process under section 81 to give WSA the jurisdiction to make an order.

Any information forwarded to the Water Security Agency on a Request for Assistance in Resolving a Complaint or supporting information will be subject to disclosure under The Freedom of Information and Protection of Privacy Act. This means that the written information supplied in the filing process, obtained in the investigation phase and, the findings and recommendations can be disclosed

to individuals who request the information under the Freedom of Information process.

If supporting information contains a confidentiality provision, the Complainant must provide a letter from the author of the information acknowledging the information is being provided to the Water Security Agency and authorizing it to be made public. For instance an engineering report may have a confidentiality clause in the report.

Formal Complain Process

If the complainant is not satisfied with the recommendation of the Water Security Agency or if the person or authority that the complainant considers to be responsible for the cause of the complaint does not implement the recommendations, the complainant may file a formal complaint. The formal complaint is initiated by completing and filing a prescribed complaint form with a Water Security Agency regional office, along with a filing fee of \$200. The filing fee is not refundable unless the complaint is withdrawn prior to the Water Security Agency serving the Notice of Filing a Complaint.

A formal complaint can only be filed once the Water Security Agency has completed its preliminary investigation and provided a recommendation. If the complaint is dismissed through the preliminary investigation process, or an order is issued under another section of the Act, a formal complaint cannot be filed with the Water Security Agency.

A complainant can only name one respondent (or joint owners) per complaint form. If impacts are from works located on more than one parcel of land owned by different respondents, a separate complaint form must be filed against each landowner. Complaint forms are available from any of the Water Security Agency regional offices.

The complaint form provides space for a sketch plan to show legal boundaries and land descriptions, specifies the location of the works being complained against and the areas being impacted. If available, attach photograph(s) to support significant damages. Indicate where and when the photograph was taken.

In some cases, the party filing a complaint may be leasing the land being impacted. In this situation, the Water Security Agency requires that proof of landowner support be provided, either in the form of the landowner's

signature on Page 4 of the complaint form, or on an accompanying written document.

When a complaint form and deposit are received and the complaint form is reviewed for completeness and validity, the Water Security Agency will, within 30 days of the receipt of the complaint, serve a Notice of Filing of the Complaint on the respondent and any other party the Water Security Agency believes may be directly impacted by the complaint. A copy of the Notice is also provided to the complainant(s).

On receipt of a formal complaint, the Water Security Agency may register an interest against the title on which the drainage works complained against are located. This registration binds future landowners to the obligations arising from the complaint.

As soon as possible after the issuance of a Notice of Filing of the Complaint, the Water Security Agency will contact the complainant and the respondent to set up a time to begin the formal investigation. This investigation will include interviews with the parties to the complaint, field inspections and preparation of a report.

If necessary the Water Security Agency will complete surveys, plans, hydrology studies and review aerial photographs. The timing for the completion of the investigation and rendering a Decision depends on the availability of staff resources and the complexity of the situation. The Water Security Agency goal is to render a Decision within 18 months from the date of filing the complaint.

At any time, after the filing of a complaint but before a Decision is rendered, a complainant may withdraw the complaint. To do so, the complainant must submit a written request to the Water Security Agency requesting the complaint be withdrawn. The filing fee will be refunded upon acceptance of a request to withdraw a complaint only up to the point when the Notice of Filing a Complaint is served.

Upon completing the investigation, the Water Security Agency will render a Decision on the complaint. If corrective action or closure is required, an Order will be issued that requires a specified action to be undertaken within a given time frame. If the Order issued by the Water Security Agency is not complied with by the specified time frame, the Water Security Agency has the authority to carry out the work ordered and recover the costs of undertaking the work from the individual failing to comply with the Order.

Subject to the outcome of any appeal, the Water Security Agency may register an interest based on the Order against the title for the land on which the drainage works complained against are located. The Order to close, remove, or otherwise render works inoperable is binding upon any future owners or occupants of the land. The landowner is required to maintain the terms of the Order until such time modifications or other activities occur that meet the requirements under the Act and permit the issuance of an approval.

Similar to the Request for Assistance process, any information forwarded to the Water Security Agency on a Formal Complaint will be subject to disclosure under The Freedom of Information and Protection of Privacy Act. If supporting information contains a confidentiality provision, the Complainant must provide a letter from the author of the information acknowledging the information is being provided to the Water Security Agency and authorizing it to be made public. For instance an engineering report may have a confidentiality clause in the report.

Right to File an Appeal

Under Section 84 of The Water Security Agency Act, any party to the complaint has the right to appeal a Decision or Order made by the Water Security Agency relating to the formal complaint. There is no appeal mechanism for Requests for Assistance to Resolve Complaints. The appeal is scheduled and heard by the Water Appeal Board, as authorized under The Water Appeal Board Act. The Notice of Appeal must be filed within 30 days of the date of the Water Security Agency's Decision and Order, and must be accompanied by the \$200.00 fee.

The Water Appeal Board may stay any action, Decision, or Order of the Water Security Agency that is appealed to the Board. The stay may remain in effect until the Board hears the appeal and renders a Decision. If the Water Appeal Board does not grant a stay, the provisions of the Water Security Agency Decision and Order may be implemented.

The Water Appeal Board will schedule a hearing to allow all affected parties to be heard. Evidence provided at a Water Appeal Board hearing is under oath. Following the hearing, the Water Appeal Board will render a Decision.

The Water Appeal Board registers their decision with the court. Decisions and Orders by the Water Appeal Board may be appealed to the Court of Queen's Bench on a point of law within 30 days of the Decision. If the appellant does not obtain a stay of proceedings from the Court of Queen's Bench within 30 days following the filing of the appeal, the Water Security Agency may enforce the Water Appeal Board Decision.

Questions?

Contact:

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Water Security Agency Regional Offices

Southeast Area

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Fax: 306.848.2356

Southwest Area

Water Security Agency
Swift Current Regional Office
3rd Floor, E.I. Wood Building
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SWIFT CURRENT SK S9H 4G3
Phone: 306.778.8257
Fax: 306.778.8271

East Central Area

Water Security Agency
Yorkton Regional Office
2nd Floor, 120 Smith Street East
YORKTON SK S3N 3V3
Phone: 306.786.1490
Fax: 306.786.1495

Northeast Area

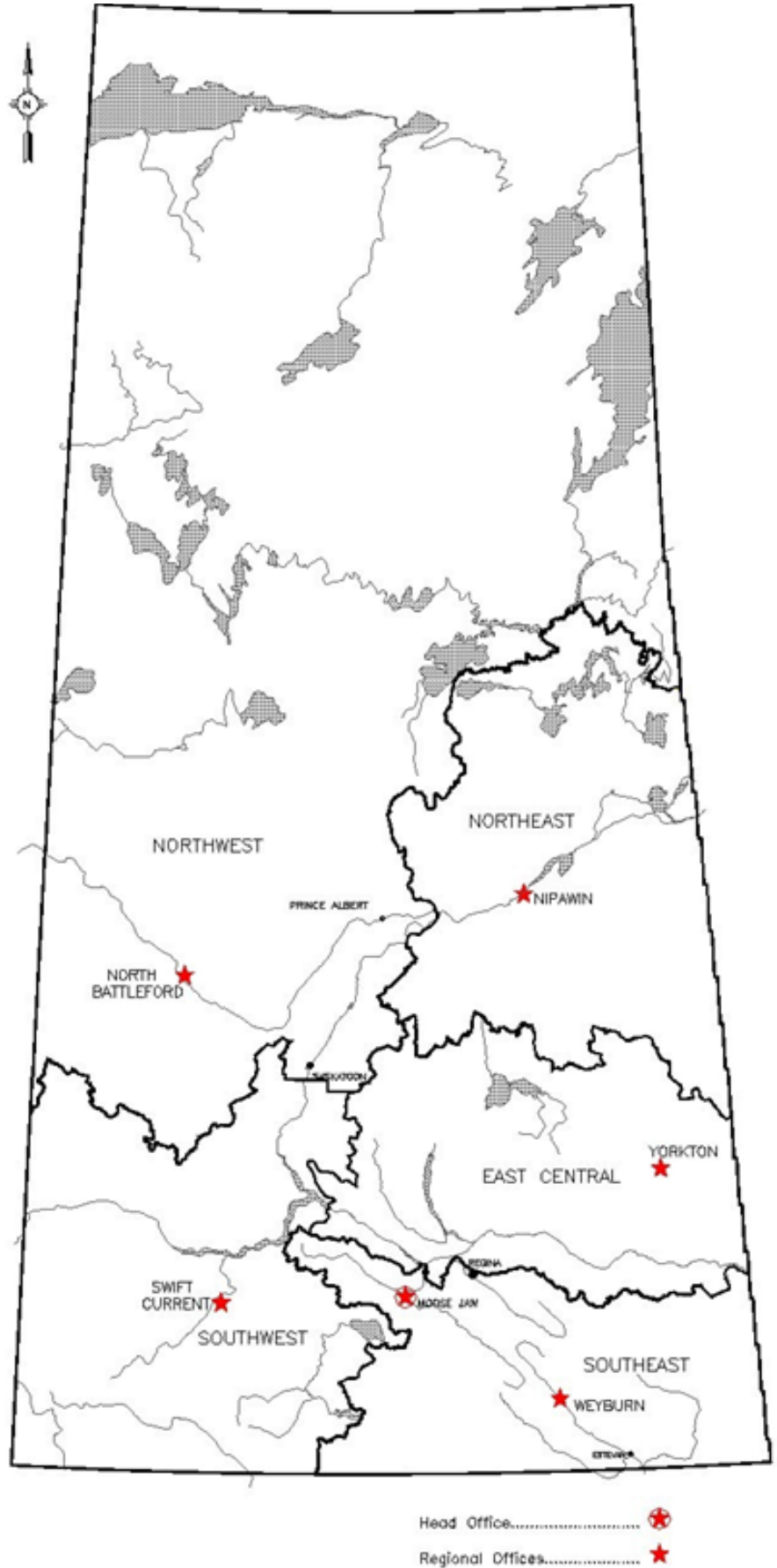
Water Security Agency
Nipawin Regional Office
201 - 1st Avenue East
NIPAWIN SK S0E 1E0
Phone: 306.862.1750
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Northwest Area

Water Security Agency
North Battleford Regional Office
402 Royal Bank Tower
1101 - 101st Street
NORTH BATTLEFORD SK S9A 0Z5
Phone: 306.446.7450
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General information about the Water Security Agency, our programs, Fact Sheets and forms can be found on our website at wsask.ca or contact Head Office at:

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400 - 111 Fairford Street East
MOOSE JAW SK S6H 7X9
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Head Office.....★
Regional Offices.....★