

TERMS OF REFERENCE

PEMBINA RIVER INTEGRATED WATERSHED MANAGEMENT PLAN

1. INTRODUCTION

Manitoba's vision for water is "The best water for all life and lasting prosperity". Working towards this vision, Manitoba has undertaken many water related initiatives including the review and consolidation of existing water legislation. As a result, Manitoba developed *The Water Protection Act* which was proclaimed in January of 2006. The purpose of *The Act* is to provide for the protection and stewardship of Manitoba's water resources and aquatic ecosystems.

Part 3 of *The Water Protection Act* relates to watershed management. It describes the designation, role and responsibilities of a Water Planning Authority, required content of a watershed management plan, required consultations, process for plan approval and amendments, establishment and purpose of the Water Stewardship Fund, and the establishment, role and responsibilities of the Manitoba Water Council. Further, it identifies the importance of developing plans to address land drainage and flood control, protecting drinking water sources, and identifying ways that the plan can be implemented, monitored and evaluated.

In February 2008, through a Memorandum of Understanding signed with Manitoba Water Stewardship, the Pembina Valley Conservation District (PVCD) became the Water Planning Authority for the Pembina River Watershed (050A – Upper Pembina and 050B – Lower Pembina). The Planning Area for the Pembina River Integrated Watershed Management Plan is shown in Figure 1.

The mandate of the PVCD is to "promote the sustainable use and management of the land, water and related resources within their watersheds". The PVCD maintains a good working relationship with the Turtle Mountain CD and Assiniboine Hills CD and partners on many projects each year.

2. PURPOSE

The purpose of developing the Pembina River Integrated Watershed Management Plan is to identify logical and attainable actions aimed at addressing some of the water related issues raised by watershed stakeholders.

The goal of the integrated watershed management planning process is to work cooperatively with all watershed stakeholders in creating a management plan for the protection, conservation and restoration of water resources, aquatic

ecosystems and drinking water sources in the Pembina River Watershed. Public education and the development of surface water management plans and source water protection plans will be an integral part of this process.

3. PARTICIPANTS AND RESPONSIBILITIES

WATER PLANNING AUTHORITY (WPA)

The Water Planning Authority is the Board of the Pembina Valley Conservation District.

The key roles and responsibilities of the WPA are identified in *The Water Protection Act* (Appendix A).

PROJECT MANAGEMENT TEAM (PMT)

The Project Management Team, also known as the Steering Committee or Planning Team, is the secretariat to the Water Planning Authority and guides the overall management and development of the plan.

Responsibilities:

- Identify a Chairperson to plan meetings, agendas, lead discussions, and be the spokesperson for the group;
- Coordinate all plan related meetings and advertising;
- Establish a technical advisory group and stakeholders group;
- Facilitate and lead the public consultation and stakeholder meetings;
- Manage the budget and plan schedule;
- Record and distribute meeting minutes to the Water Planning Authority, technical advisory group and stakeholders group;
- Collect and compile all information submissions, technical reports and consultation inputs;
- Engage participation and interest from the watershed community;
- Ensure that all aspects of *The Water Protection Act* are considered and incorporated into the plan;
- Provide input and edits to the plan (draft and final);
- Develop a communications strategy to inform watershed residents of the IWMP;
- Complete other tasks as required.

The Watershed Planner from Manitoba Water Stewardship is an integral part of the Project Management Team and provides general guidance and assistance throughout the planning process.

TECHNICAL ADVISORY GROUP (TAG)

The Technical Advisory Group is comprised of agency representatives with specialization in certain areas of land, water, agriculture or natural resource management. They are initially expected to provide an overview of existing information to facilitate stakeholder discussions and understanding of the watershed, and later to identify issues, assess options, and provide recommendations and approaches to address specific watershed issues.

STAKEHOLDERS

The Stakeholders group is comprised of watershed residents, people and organizations that have an interest or stake in the current or planned activities in the watershed. The group is identified by the Project Management Team.

MINISTER OF WATER STEWARDSHIP

The final approval of the Pembina River Integrated Watershed Management Plan lies with the Minister of Water Stewardship. Upon receiving a proposed plan, the minister may refer it to the Manitoba Water Council for review and comment.

4. INTEGRATED WATERSHED MANAGEMENT PLANNING PROCESS

	KEY ACTIVITY	DELIVERABLE	TIMELINE
PRE-PLANNING	Designate a Water Planning Authority to develop the Pembina River IWMP	Signed Memorandum of Understanding (MOU)	Feb 2008
	Identify purpose, participants, roles and responsibilities and process schedule	Signed Terms of Reference	May - July 2008
PLAN PREPARATION	Utilize existing Pembina River Watershed plans and additional information from TAG to develop watershed information document	"Watershed Characterization" section of IWMP	Aug – Sept 2008
	Develop Source Water Assessments for all Public Water Supply systems in watershed	Source Water Protection Assessments	Aug – Oct 2008
	Develop Surface Water Management Plans	Surface Water Management Plans	Aug 2008 – Feb 2009
	Hold first round of public consultations	List of well-defined issues and suggested options, goals, objectives, and measures of success from the public	Oct - Nov 2008
	Request to TAG and Stakeholders group to identify specific water-related issues	Input from TAG and Stakeholders group identifying issues, assessing options, providing recommended activities to address issues, and suggesting indicators to measure success	Oct 2008 – Jan 2009
	Summarize information from first round of public consultations, TAG and stakeholder involvement	1 st Draft IWMP	Nov 2008 – Feb 2009
	Hold second round of public, TAG and stakeholder consultations to ask if the Draft IWMP accurately captures the watershed issues and identifies logical and attainable goals and actions	Comments received on Draft IWMP	Feb – Mar 2009
	Edit Draft IWMP based on feedback received	2 nd Draft IWMP	Mar - May 2009
	Present Draft IWMP to Water Planning Authority for review and approval	Letter approving IWMP from Water Planning Authority	May 2009
	Submit IWMP to Minister of Water Stewardship for review and approval	Provincially approved IWMP	June 2009
IMPLEMENTATION	Implement the IWMP	Review Programs, establish and maintain partnerships, measure success and do projects	2008 - 2018
	Inform the watershed community about the completed IWMP	Communications strategy	Aug 2009
	Develop annual plans to adopt targeted programming to address priority issues identified in plan	Strategic (Business) Plan	Annually

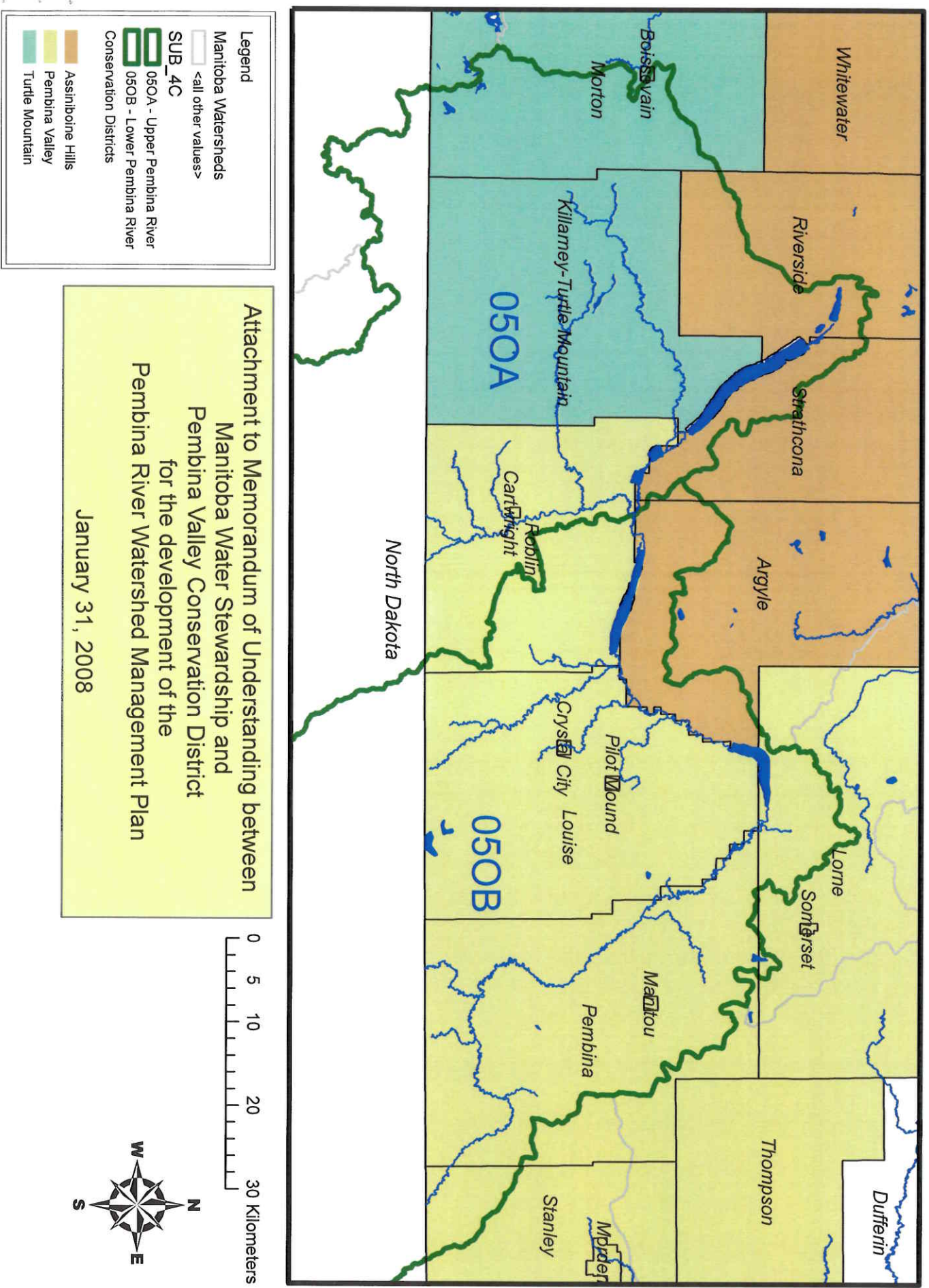
5. BUDGET

Task	Direct Cost to PVCD	In-Kind Cost from PVCD	In-Kind Cost from Province	Total
Project Mgmt. Team meetings (12)	\$4000	\$3000	\$5000	\$12000
Public consultations advertisement brochure	\$7000	\$1000	\$3000	\$11000
General IWMP advertising (info, meetings)	\$8000	\$1500	\$1000	\$10500
1 st round of public consultation meetings (3)	\$4000	\$1000	\$2000	\$7000
Technical Advisory Group input and meetings (2)	\$2000	\$1000	\$5000	\$8000
Stakeholders group meetings (4)	\$3000	\$1000	\$3000	\$7000
Issue summary document from Public consultations meetings		\$500	\$3000	\$3500
IWMP information updated on PVCD website		\$1500		\$1500
Source Water Assessments	\$1000	\$1500	\$5000	\$7500
Surface Water Management Plans	\$1000	\$1500	\$5000	\$7500
1 st Draft IWMP	\$2000	\$1500	\$6000	\$9500
2 nd round of public consultation meetings (3)	\$4000	\$1000	\$2000	\$7000
Edits to Draft IWMP		\$500	\$2000	\$2500
Final IWMP	\$12000	\$500	\$1000	\$13500
IWMP communications strategy	\$2000	\$1000	\$1000	\$4000
	\$50,000	\$18,000	\$44,000	\$112,000

6. ENDORSEMENT

The Pembina Valley Conservation District and Manitoba Water Stewardship – Watershed Planning and Programs section agree to these terms of reference for the preparation of an Integrated Watershed Management Plan for the Pembina River Watershed (050A & 050B).

Figure 1 - PEMBINA RIVER WATERSHED



Attachment to Memorandum of Understanding between
 Manitoba Water Stewardship and
 Pembina Valley Conservation District
 for the development of the
 Pembina River Watershed Management Plan
 January 31, 2008

Appendix A

S.M. 2005, c. 26
Bill 22, 3rd Session, 38th Legislature

The Water Protection Act

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(Assented to June 16, 2005)

WHEREAS an abundant supply of high quality water is essential to sustain all ecological processes, life-support systems and food production, and is paramount to the environmental, economic and social well-being of Manitoba now and in the future;

AND WHEREAS access to sufficient, safe, acceptable, and affordable water for personal and domestic uses is internationally recognized as a fundamental right of citizens;

AND WHEREAS the Government of Manitoba recognizes the importance of the Canada-United States Boundary Waters Treaty and other inter-jurisdictional agreements protecting water, and the shared right and responsibility of all jurisdictions in the Hudson Bay drainage basin to protect water resources within the basin;

AND WHEREAS to most effectively ensure that drinking water is kept clean, safe and reliable, it is necessary to complement the provisions of *The Drinking Water Safety Act* with additional measures to protect drinking water sources;

AND WHEREAS Manitobans recognize that many human activities, including the use and consumption of water for all purposes, the production of waste and wastewater effluent, and industrial, agricultural and recreational activities, may impair the quality and quantity of our water resources, and that stewardship of these invaluable resources is a responsibility shared by all;

AND WHEREAS the Government of Manitoba is committed to watershed planning as an effective means to address risks to water resources and aquatic ecosystems, and believes that residents of watersheds should be consulted when watershed plans are developed;

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

PART 1 - INTRODUCTORY PROVISIONS

Definitions

1(1) The following definitions apply in this Act.

"**approved watershed management plan**" means a watershed management plan approved under Part 3. (« plan de gestion d'un bassin hydrographique approuvé »)

"**aquatic ecosystem**" means the components of the earth related to, living in or located in or on water or the beds or shores of a water body, including but not limited to

(a) all organic and inorganic matter, and

(b) all living organisms and their habitat,

and their interacting natural systems. (« écosystème aquatique »)

"**conservation district**" means a district as defined in *The Conservation Districts Act*. (« district de conservation »)

"**development plan**" means a development plan as defined in *The Planning Act*. (« plan directeur »)

"**director**" means a person designated under section 3 as a director of water protection. (« directeur »)

"**groundwater**" means all water under the surface of the ground, whether in solid or liquid form. (« eaux souterraines »)

"**invasive species**" means an organism designated in the regulations as an invasive species. (« espèce envahissante »)

"**minister**" means the minister appointed by the Lieutenant Governor in Council to administer this Act. (« ministre »)

"municipality" includes a community as defined in *The Northern Affairs Act*. (« municipalit  »)

"nutrient" means any substance that provides nourishment and promotes growth of aquatic organisms when transmitted to water. (« nutriant »)

"person" includes a municipality, partnership, limited partnership, limited liability partnership, syndicate, trustee and joint venture, and an association of persons. (« personne »)

"planning district" means a planning district as defined in *The Planning Act*. (« district d'am nement »)

"prescribed" means prescribed by regulation.

"riparian area" means an area of land on the banks or in the vicinity of a water body, which due to the presence of water supports, or in the absence of human intervention would naturally support, an ecosystem that is distinctly different from that of adjacent upland areas. (« zone riveraine »)

"water" means all surface water and groundwater, whether in solid or liquid form. (« eaux »)

"water body" means any body of flowing or standing water, whether naturally or artificially created, and whether the flow or presence of water is continuous, intermittent or occurs only during a flood, including but not limited to a lake, river, creek, stream, slough, marsh, swamp and wetland, including ice on any of them. (« plan d'eau »)

"water council" means the Manitoba Water Council established in section 24. (« Conseil des eaux »)

"water planning authority" means a water planning authority designated for a watershed under section 14. (« organisme de planification des eaux »)

"watershed" means an area designated as a watershed under section 14. (« bassin hydrographique »)

Reference to "Act" includes regulations

1(2) A reference to "this Act" includes the regulations made under this Act.

Purpose of the Act

2 The purpose of this Act is to provide for the protection and stewardship of Manitoba's water resources and aquatic ecosystems, recognizing

(a) that Manitoba's social and economic well-being is dependent upon the sustained existence of a sufficient supply of high quality water;

(b) the importance of comprehensive planning for watersheds, with respect to water, land and ecosystems, on a basis that acknowledges and considers their interdependence;

(c) that water resources and aquatic ecosystems require protection to ensure the high quality of drinking water sources;

(d) the importance of applying scientific information in decision-making processes about water, including the establishment of standards, objectives and guidelines;

(e) the need to protect riparian areas and wetlands; and

(f) the benefits of providing financial incentives for activities that protect or enhance water, aquatic ecosystems or drinking water sources.

Director of water protection

3 The minister may designate one or more persons as directors of water protection.

PART 2 - WATER PROTECTION

WATER QUALITY STANDARDS, OBJECTIVES AND GUIDELINES

Water quality standards, objectives and guidelines

4(1) The Lieutenant Governor in Council may make regulations setting or adopting water quality standards, objectives or guidelines.

Standards, etc. for use in approvals under other Acts

4(2) A regulation under subsection (1) may provide that a person issuing an approval or making a decision under *The Environment Act* or any other specified Act or regulation must

- (a) consider the standard, objective or guideline; or
- (b) in circumstances specified in the regulation, refuse to issue an approval or make a decision unless its effect will ensure compliance or consistency with the standard, objective or guideline.

WATER QUALITY MANAGEMENT ZONES

Water quality management zones

5(1) On the recommendation of the minister, the Lieutenant Governor in Council may make regulations

- (a) designating any area of the province as a water quality management zone for the purpose of protecting water, aquatic ecosystems or drinking water sources;
- (b) governing, regulating or prohibiting any use, activity or thing in a water quality management zone or any part of a zone.

Considerations in recommending regulations re zone

5(2) Before recommending that a regulation be made under subsection (1), the minister may consider scientific and other information relating to

- (a) the physical characteristics of land in the area, including its topography and soil types;
- (b) the ability of the soil or water in the area, or water downstream of the area, to assimilate nutrients and other pollutants;
- (c) water bodies or groundwater in the area, including information relating to
 - (i) the water quality characteristics of the water,
 - (ii) the susceptibility of the water to contamination or adverse changes in level or in-stream flow, and
 - (iii) the extent to which the water is pristine or relatively undisturbed by human activity;
- (d) the area's aquatic ecosystems;
- (e) whether the area contains a source, or a potential source, of drinking water;
- (f) whether the area supports species that are sensitive to alterations in water quality or quantity resulting from human activity;
- (g) whether the area provides habitat for endangered species; and
- (h) any other matter that the minister considers relevant.

Additional considerations

5(3) Before recommending that a regulation be made under subsection (1), the minister must also consider

- (a) water quality standards, objectives and guidelines that apply to the area;
- (b) approved watershed management plans that apply to the area; and
- (c) the proximity of the area to a national park, provincial park, ecological reserve or other protected area.

Maps of zones

5(4) A regulation made under subsection (1) may contain a map showing

- (a) the boundaries of a zone; and
- (b) areas within a zone where a use, activity or thing is governed, regulated or prohibited.

Consultation with water planning authority

6 Before a regulation is made under subsection 5(1), the minister may consult with any water planning authority that has been designated in respect of an area proposed to form all or part of the water quality management zone. This consultation does not affect any requirement for other consultation under this Act.

Advertising proposed regulations

7(1) At least 90 days before a regulation is made under subsection 5(1), the minister must, in a newspaper of general circulation in the affected area, advertise the fact that a draft of the proposed regulation has been filed in the public registry.

Written objections

7(2) Within 60 days after an advertisement is published under subsection (1), and subject to subsection (3), any person may refer a written objection to the proposed regulation to a director, in a form approved by the minister.

Scientific or technical information

7(3) An objection under subsection (2) must be based on written scientific or technical information relating to an area proposed to form all or part of the water quality management zone. This information must be provided to the director at the time the objection is referred.

Director's actions

7(4) Upon receiving an objection under subsection (2), the director must

- (a) notify the minister that an objection has been received; and
- (b) consider the objection, and the supporting scientific or technical information.

Advice to the minister

7(5) Within 60 days after notifying the minister of the objection, the director must give advice to the minister as to whether the proposed regulation should be varied or revised.

Expert advice re scientific or technical issues

7(6) Before providing advice under subsection (5), if the director determines that there is an unresolved scientific or technical issue, he or she must obtain expert advice in such a manner as may be set out in the regulations.

Review of regulation

8 The minister must, not later than five years after the date on which a regulation under section 5 comes into force, require the water council to

- (a) review the effectiveness of the regulation and, in the course of that review, consult with any persons affected by the regulation that the council considers appropriate; and
- (b) recommend, if it considers it advisable, that the regulation be amended or repealed.

The minister may, in addition, require the council to undertake such a review at any other time.

INVASIVE SPECIES

Invasive species

9 The Lieutenant Governor in Council may make regulations governing, regulating or prohibiting the importation, possession, transfer or release of invasive species.

WATER CONSERVATION

Regulations re water conservation

10 The Lieutenant Governor in Council may make regulations

- (a) establishing water conservation programs;

(b) generally respecting the reduction of water usage in Manitoba.

SERIOUS WATER SHORTAGE

Declaration of serious water shortage

11(1) If the minister considers that extraordinary measures are necessary to ensure a reasonable water supply, the minister may declare a serious water shortage in respect of all or part of Manitoba.

Actions by minister during serious water shortage

11(2) If a serious water shortage is declared, the minister may take any action, make any regulation or issue any order that in his or her opinion is necessary to prevent, minimize or alleviate the water shortage.

Communication of serious water shortage

11(3) Immediately after

(a) a serious water shortage is declared under subsection (1); or

(b) a regulation is made or an order is issued under subsection (2);

the minister must ensure that the details of the declaration, regulation or order are communicated by the most appropriate means to persons affected by it.

Declaration that shortage has ended

11(4) The minister may declare that a serious water shortage has ended.

Regulations Act does not apply

11(5) *The Regulations Act* does not apply to

(a) a declaration of a serious water shortage made under subsection (1) or a declaration that a serious water shortage has ended made under subsection (4); or

(b) a regulation made or an order issued under subsection (2).

Order prevails over *The Water Rights Act*

11(6) Unless otherwise stated in the regulation or order, a regulation or order under this section prevails over a permit or licence issued under *The Water Rights Act*.

No injunction

11(7) No injunction lies against the minister, or any person acting under the authority of a regulation or order, to restrain or prevent a person from taking measures under this section.

Action by minister if order not complied with

12(1) If a person fails to comply with an order issued by the minister, the minister may

(a) cause anything to be done that is required by the order; and

(b) take any other measures that the minister considers necessary to prevent, minimize or alleviate the water shortage.

Order to pay costs

12(2) Upon taking any action under clause (1)(a), the minister may order the person to whom the order was directed to pay the costs of taking that action.

Enforcing cost-recovery order

12(3) An order to pay costs made under subsection (2) may be filed in the Court of Queen's Bench and enforced as if it were an order of the Court.

Compensation where allocation cancelled or reduced

13(1) Where the effect of any action taken or regulation or order made under subsection 11(2) is to

- (a) cancel or reduce the allocation of water at any point or place to a person holding a licence under *The Water Rights Act*; and
- (b) allocate or increase the allocation of water at that point or place to another person who does not hold a licence, or whose licence is, relative to the licence referred to in clause (a), lower in precedence under section 8 (precedence of licences) of *The Water Rights Act*;

the person whose allocation is cancelled or reduced is entitled to receive from, and shall be paid by the other person, compensation for any loss or damage resulting from the cancellation or reduction.

No compensation in certain circumstances

13(2) Despite subsection (1), no compensation is payable where the action is taken, or the regulation or order is made, for a purpose relating to public health or the provision of drinking water. The determination of the purpose of the action, regulation or order is to be made by the minister.

Agreement respecting compensation

13(3) Within 60 days after action is taken or an order or regulation is made that has the effect described in subsection (1), the persons described in that subsection may make an agreement setting out

- (a) the amount of compensation payable and the terms of payment; and
- (b) the undertaking of one person to pay that compensation, on those terms, to the other person.

Arbitration

13(4) Where an agreement under subsection (3) is not made, the amount of compensation and the terms of payment must be determined in accordance with *The Arbitration Act*.

PART 3 - WATERSHED MANAGEMENT

WATERSHED MANAGEMENT PLANS

Designation of watersheds and authorities

14 The Lieutenant Governor in Council may by regulation

- (a) designate a watershed for the purposes of this Act, and specify its boundaries;
- (b) designate a water planning authority for a watershed, which may be
 - (i) the board of a conservation district,
 - (ii) the board of a planning district,
 - (iii) the council of a municipality,
 - (iv) any other person or entity, or
 - (v) a joint authority consisting of two or more entities or persons described in subclauses (i) to (iv);
- (c) prescribe the date by which the authority must submit a watershed management plan for approval, terms of reference for the preparation of the plan, and any other terms or conditions that the Lieutenant Governor in Council considers necessary.

Considerations in preparing a plan

15 In preparing a watershed management plan, a water planning authority must consider the following:

- (a) water quality standards, objectives and guidelines that apply to the watershed;
- (b) whether a water quality management zone is included within any part of the watershed, and if so, any regulations made under section 5 respecting the zone;

- (c) studies that the authority considers relevant relating to water, land use, demographics, the capacity of the environment to accommodate development, and any other matter related to present or future physical, social or economic factors;
- (d) comments received through public consultation or public meetings held under section 17;
- (e) prescribed water management principles;
- (f) relevant provincial land use policies, development plans, and zoning by-laws;
- (g) any other information that the authority considers relevant.

Content of a watershed management plan

16(1) A watershed management plan must

- (a) identify issues relating to the protection, conservation or restoration of water, aquatic ecosystems and drinking water sources in the watershed;
- (b) contain objectives, policies and recommendations respecting some or all of the following:
 - (i) the protection, conservation or restoration of water, aquatic ecosystems and drinking water sources,
 - (ii) the prevention, control and abatement of water pollution, including wastewater and other point-source discharges, and non-point sources of pollution,
 - (iii) land drainage and flood control, including the maintenance of land drainage and flood control infrastructure,
 - (iv) activities in water quality management zones, riparian areas, wetlands, flood areas, flood plains and reservoir areas,
 - (v) water demand management, water use practises and priorities, the conservation of water supplies, and the reduction of water use and consumption during droughts and other periods of water shortage,
 - (vi) the supply, distribution, storage and retention of water, including measures to ensure persons in the watershed have access to clean potable water,
 - (vii) emergency preparedness to address spills, accidents and other emergencies that may affect water, an aquatic ecosystem or a drinking water source;
- (c) specify linkages between water management and land use planning so as to facilitate the adoption, in a development plan or other planning instrument, of some or all of the provisions of the watershed management plan; and
- (d) identify ways in which the plan can be implemented, monitored and evaluated, recognizing the need to implement the plan with the assistance of individuals, groups, and organizations.

Additional content

16(2) A watershed management plan may also

- (a) contain maps to assist in its interpretation; and
- (b) specify a date by which the plan must be reviewed.

Consultation

17(1) In preparing a watershed management plan, the water planning authority must consult with the following:

- (a) if land within the watershed is in a conservation district or planning district, the board of that district;
- (b) the council of any municipality located wholly or partly within the watershed;
- (c) any band, as defined in the *Indian Act* (Canada), that has reserve land within the watershed; and
- (d) any other person or entity specified by the minister.

Public meetings

17(2) The water planning authority must hold one or more public meetings to consult with residents of the watershed on the preparation of the plan.

Plan to be submitted to minister for approval

18 A water planning authority must submit its watershed management plan to the minister for approval.

Referral of plan to the water council

19(1) After receiving a proposed plan, the minister may refer it to the Manitoba Water Council for its review and advice.

Approval of the minister

19(2) If the proposed plan is satisfactory to the minister, the minister may approve it in the form in which the water planning authority submitted it.

Referral of plan back to authority

19(3) If the proposed plan is not satisfactory to the minister, the minister may refer it back to the water planning authority to be revised in accordance with any directions that the minister makes.

Revision of plan

19(4) The water planning authority must revise a proposed plan that is referred back to it in accordance with the minister's directions, and re-submit it to the minister for approval within the time required by the minister.

Amending a plan after approval

20(1) If a water planning authority proposes to make any amendments to an approved plan, it must submit them to the minister for approval.

Minister may require amendments

20(2) In addition, the minister may require a water planning authority to make amendments to an approved plan about any matter the minister specifies, and the authority must prepare the amendments and submit them to the minister for approval.

Section 19 applies

20(3) Section 19 applies to amendments under this section.

Notice of an approved plan

21 The minister must provide notice of the approval or amendment of a watershed management plan in accordance with any requirements specified in the regulations.

Periodic review

22 A water planning authority must review its approved watershed management plan, in accordance with the regulations,

- (a) when directed to do so by the minister; and
- (b) on or before any review date specified in the plan.

Sections 15 to 21 apply to the review of a plan, and its approval, with the necessary changes.

Plan to be considered in decision-making

23 The Lieutenant Governor in Council may, by regulation, require that an approved watershed management plan be considered before a prescribed decision is made or a prescribed approval is issued under this or any other specified Act or regulation.

MANITOBA WATER COUNCIL

Manitoba Water Council

24 The "Manitoba Water Council" is established.

Responsibilities of the water council

25 The water council has, subject to the direction of the minister, the following responsibilities:

- (a) to monitor the development and implementation of watershed management plans in the province;
- (b) to review regulations respecting water quality management zones, and provide advice to the minister;
- (c) to advise the minister about matters relating to water generally;
- (d) to coordinate the activities of advisory boards and similar entities that perform functions relating to water, including advisory boards and other entities specified by regulation;
- (e) to assist in reporting sustainability indicators relating to water.

The water council must also perform any other duties assigned to it by an Act or regulation.

Members

26(1) The water council is to consist of at least five members appointed by the Lieutenant Governor in Council, who in the opinion of the Lieutenant Governor in Council are representative of the regional diversity of Manitoba and of local government, agricultural and environmental perspectives.

Term of office

26(2) The term of a member is as specified by the Lieutenant Governor in Council in the appointment, and a member continues to hold office until he or she is reappointed, a successor is appointed or the appointment is revoked.

Chair and vice-chair

26(3) The Lieutenant Governor in Council must designate one of the members of the water council as chair and may designate another member as vice-chair.

Expenses

27 Each member of the water council may be reimbursed for such reasonable expenses as may be approved by the minister.

Minister may refer matter to water council

28 The minister may refer any matter within the water council's responsibilities to the water council. The water council must, in accordance with the terms of reference, consider the matter and give the minister a written report of its findings and recommendations.

WATER STEWARDSHIP FUND

Water Stewardship Fund

29(1) The "Water Stewardship Fund" is established, consisting of

- (a) amounts appropriated by an Act of the Legislature for the fund;
- (b) contributions received from any source by way of grant, gift, donation or bequest;
- (c) interest or other income earned from the investment of money in the fund;
- (d) amounts received under a Federal-Provincial agreement or any other agreement; and
- (e) any other money received by the fund.

Fund to be held in separate trust account

29(2) The fund is to be under the control and supervision of the Minister of Finance and must be held in trust for the purposes specified in subsection (3), in a separate account in the Consolidated Fund.

Purposes of the fund

29(3) The purposes of the fund are

- (a) to provide grants in support of research, projects and activities that further the purpose of this Act;
- (b) to provide grants to assist in the implementation of watershed management plans or water conservation programs; and
- (c) to support any other water management or water quality purpose that the Lieutenant Governor in Council considers advisable.

Payments out of fund

29(4) Subject to the regulations, payments may be made out of the fund for

- (a) the amount of any grant made by the minister that is consistent with the purpose of the fund, on any terms and conditions he or she considers appropriate;
- (b) the cost of marketing and promoting the fund or a funded project; and
- (c) administrative and reporting costs associated with the fund, including salaries and contract expenses.

Fund not public money

29(5) The money contained within the fund, other than amounts credited to the fund under clause (1)(a), is not public money within the meaning of *The Financial Administration Act*.

Regulations respecting the fund

29(6) The Lieutenant Governor in Council may make regulations

- (a) respecting grants, including the terms and conditions on which grants may be made by the minister; and
- (b) respecting the fund and any payments authorized by subsection (4) to be made from the fund.

PART 4 - COMPLIANCE AND GENERAL PROVISIONS

Designation of officers

30 The minister may designate any persons, or the members of any class of persons, as officers for the purposes of this Act.

Inspection authority of officers

31(1) When reasonably required to administer or determine compliance with this Act, an officer may enter and inspect any place or premises, other than a dwelling, at any reasonable time.

Entry into dwelling with consent

31(2) Despite subsection (1), an officer may enter and inspect a dwelling with the consent of the owner or occupant.

Warrant for entry into dwelling

31(3) On application by an officer, a justice may at any time issue a warrant authorizing the officer and any other person named in the warrant to enter and inspect a dwelling, if the justice is satisfied there are reasonable grounds to believe that

- (a) entry to the dwelling is necessary for the purpose of administering or determining compliance with this Act; and
- (b) in respect of the dwelling,
 - (i) entry has been refused or there are reasonable grounds to believe that entry will be refused,
 - (ii) the occupant is temporarily absent, or
 - (iii) the dwelling is unoccupied.

Conditions

31(4) A warrant may be made subject to any conditions specified in it.

Assistance to officials

31(5) In exercising a power under this section, an officer may use such force or obtain such assistance from a peace officer or other person as he or she considers necessary.

Additional inspection powers

32(1) In addition to the powers referred to in section 31, when reasonably required to administer or determine compliance with this Act, an officer may

- (a) make any inspection, investigation, examination, test, analysis or inquiry that he or she considers necessary;
- (b) require any substance, thing, solid, liquid, gas, plant, animal or other organism to be produced for inspection, examination, testing or analysis;
- (c) take samples of or seize any substance, thing, solid, liquid, gas, plant, animal or other organism; and
- (d) take photographs or other images of a place or premises, or any condition, process, substance, thing, solid, liquid, gas, plant, animal or other organism located at or in it.

Use of data processing system and copying equipment

32(2) In carrying out an inspection under this Act, an officer may

- (a) use a data processing system at the place where the records, documents or things are kept to examine any data contained in or available to the system;
- (b) reproduce, in the form of a printout or other intelligible output, any record from the data contained in or available to a data processing system at the place; and
- (c) use any copying equipment at the place to make copies of any record or document.

Assistance to officials

32(3) A person who has custody or control of a record, document or thing referred to in subsection (1) or (2) must give the officer

- (a) all reasonable assistance to enable the officer to carry out his or her duties; and
- (b) any information that the officer may reasonably require.

OFFENCES AND PENALTIES

Offences

33(1) A person is guilty of an offence who

- (a) contravenes a provision of this Act, or fails to comply with a provision of an order issued under this Act;
- (b) makes a false statement to an officer or any other person acting under the authority of this Act;
- (c) provides a false statement in an application, record or other document given or required under this Act; or
- (d) hinders, obstructs or interferes with or attempts to hinder, obstruct or interfere with an officer or any other person acting under the authority of this Act.

Continuing offence

33(2) When a contravention of this Act or a failure to comply with an order issued under this Act continues for more than one day, the person is guilty of a separate offence for each day the contravention or non-compliance continues.

Directors and officers of corporations

33(3) If a corporation commits an offence under this Act, a director or officer of the corporation who authorized, permitted or acquiesced in the commission of the offence is also guilty of the offence.

Penalties for individuals

33(4) Except as provided in subsection (5), a person who is guilty of an offence under this Act is liable on summary conviction,

(a) for a first offence, to a fine of not more than \$50,000. or imprisonment for a term of not more than six months, or both; and

(b) for each subsequent offence, to a fine of not more than \$100,000. or imprisonment for a term of not more than one year, or both.

Penalties for corporations

33(5) A corporation that is guilty of an offence under this Act is liable on summary conviction,

(a) for a first offence, to a fine of not more than \$500,000.; and

(b) for each subsequent offence, to a fine of not more than \$1,000,000.

Limitation period

33(6) A prosecution for an offence under this Act may not be commenced later than one year after the day on which evidence sufficient to justify a prosecution for the offence came to the knowledge of an officer; and the certificate of an officer as to the day on which the evidence came to his or her knowledge is evidence of that date.

Certificate of analyst admissible

34(1) A certificate appearing to be signed by an analyst — or a copy or extract of the certificate certified by the analyst as a true copy or extract — stating that the analyst has analyzed a sample of water or other substance, and giving the results, is admissible in evidence in any proceeding as proof of the facts stated, unless the contrary is shown. Proof of the analysts's appointment or signature is not required.

Serving certificate on other parties

34(2) A party intending to produce a certificate in a proceeding must give notice of that intention and a copy of the certificate to each other party at least seven days before the date fixed for the hearing.

REPORTING VIOLATIONS

Persons may report suspected violation

35(1) Any person who reasonably believes that a violation of this Act has occurred, or may occur, may report the circumstances leading to that belief to an officer.

Protection from liability

35(2) No action or other proceeding may be brought against a person for providing information in good faith under this section.

Adverse employment action prohibited

35(3) No employer shall take adverse employment action against an employee because that person provided information in good faith under this section.

No interference or harassment

35(4) No person shall interfere with or harass a person who provides information under this section.

GENERAL PROVISIONS

Protection from liability

36 No action or proceeding may be brought against the minister, an officer or any other person acting under the authority of this Act for anything done or not done, or for any neglect

(a) in the performance or intended performance of a duty under this Act; or

(b) in the exercise or intended exercise of a power under this Act;

unless the person was acting in bad faith.

Act binds the Crown

37 This Act binds the Crown.

PUBLIC REGISTRY

Public registry

38 The minister must maintain a public registry, which may be in electronic form, containing a copy of each of the following:

(a) a draft of each proposed regulation or amendment to a regulation under this Act;

(b) every declaration, order or regulation made under section 11 (serious water shortages);

(c) every order respecting a commercial or agricultural operation made under a regulation described in section 40;

(d) each watershed management plan approved by the minister under Part 3;

(e) such other information as the minister may from time to time direct.

REGULATIONS

Regulations

39(1) The Lieutenant Governor in Council may make regulations

(a) designating as an invasive species any non-indigenous organism that places or may place an aquatic ecosystem at risk of harm if it is introduced into or otherwise enters that ecosystem;

(b) governing, regulating or prohibiting the discharge or other release of a pollutant into water;

(c) respecting the siting, construction or operation of onsite wastewater management systems;

(d) governing, regulating or prohibiting the access of livestock to water bodies or areas adjacent to water bodies;

(e) respecting the providing of notice of an approval of, or amendment to, a watershed management plan under section 21;

(f) respecting the review of an approved watershed management plan under section 22;

(g) specifying advisory boards and other entities that perform functions relating to water for the purpose of the water council's coordinating role under clause 25(d);

(h) prescribing water management principles that are consistent with the purposes of this Act;

(i) respecting the establishment of programs to provide financial incentives to protect or enhance water, aquatic ecosystems or drinking water sources;

(j) respecting the manner in which the director must obtain expert advice for the purpose of section 7;

(k) defining any word or phrase used but not defined in this Act;

(l) respecting any other matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the purposes of this Act.

Regulation may apply to all or any part of province

39(2) A regulation made under this Act may apply to the whole province or part of it, and may apply to one or more water bodies.

Public consultation in regulation development

39(3) Except in circumstances that the minister considers to be of an emergency nature, in the formation or substantive review of regulations made under Part 2 other than section 11, or under any of clauses 39(1)(a) to (d), the minister must provide an opportunity for public consultation regarding the proposed regulation or amendment.

Transitional orders re existing operations

40(1) A regulation made under Part 2 other than section 11, or under any of clauses 39(1)(a) to (d), may provide that an owner or operator of a commercial or agricultural operation affected by the regulation may apply to a director for an order

- (a) specifying a transitional plan by which the applicant may, over a specified period, come into compliance with the regulation; and
- (b) exempting the applicant from the application of all or part of the regulation for that period, or any part of it.

Requirements of regulation

40(2) Where a regulation provides the right to apply for an order as described in subsection (1), the regulation must also provide

- (a) that a director may issue an order only if he or she is satisfied that
 - (i) the applicant will suffer serious economic hardship unless an order is issued, and
 - (ii) issuing an order will not result in activities that
 - (A) present or may present an unacceptable risk of significant harm to water or an aquatic ecosystem, or
 - (B) place a drinking water source or public health at risk;
- (b) that an order may be subject to terms and conditions;
- (c) a process for appealing, to the minister,
 - (i) a director's decision whether to issue an order; and
 - (ii) a provision, term or condition of an order; and
- (d) a process for varying an order, on the application of the government or the person subject to the order, if there has been a change in circumstances.

PART 5 - AMENDMENTS TO OTHER ACTS

C.C.S.M. c. G110 amended

41(1) **The Ground Water and Water Well Act** is amended by this section.

41(2) Subsection 2(2) is amended by striking out "except sections 9 and 10" and substituting the following:
"except

- (a) sections 7 to 11; and
- (b) regulations made under section 12, other than regulations respecting certification or licensing;"

41(3) Subsection 10(2) and section 13 are amended by striking out "The Clean Environment Act" and substituting "The Environment Act".

41(4) The following is added after subsection 10(2):

Order re well abandonment or improper seal or cap

10(3) If the director is satisfied that, due to a well having been abandoned or not properly sealed or capped,

- (a) water in the well; or
- (b) ground water in the area of the well;

is or may become polluted, contaminated or diminished in purity, the director may order the owner of the well to rehabilitate, seal or cap the well in a manner satisfactory to the director.

- 41(5) *Section 11 is amended by striking out everything after "summary conviction," and substituting the following:*
- (a) in the case of an individual, to a fine of not more than \$10,000. or imprisonment for a term of not more than three months, or both; and
 - (b) in the case of a corporation, to a fine of not more than \$25,000.
- 41(6) *The following is added after clause 12(d):*
- (d.1) respecting the certification of well drillers and of installers of equipment related to wells, including prohibitions against uncertified persons drilling a well or installing equipment;

C.C.S.M. c. W80 amended

42(1) *The Water Rights Act is amended by this section.*

42(2) *Section 1 is amended by adding the following definition:*

"aquatic ecosystem" means the components of the earth related to, living in or located in or on water or the beds or shores of a water body, including but not limited to

- (i) all organic and inorganic matter, and
- (ii) all living organisms and their habitat,

and their interacting natural systems; (« écosystème aquatique »)

42(3) *Subsection 4(6) is repealed.*

42(4) *Subsection 4(7) is amended by striking out "subsection (6)" and substituting "subsection 24(2)".*

42(5) *The following is added after section 9:*

Protecting and maintaining aquatic ecosystems

9.1(1) In considering an application for a licence

- (a) to use or divert water; or
- (b) to construct, establish, operate or maintain works, other than works relating to the drainage of water;

the minister shall consider scientific and other information relating to the groundwater and water body levels, and the in-stream flows, that are necessary to ensure that aquatic ecosystems are protected and maintained.

Licence may be denied

9.1(2) The minister may refuse to issue a licence if, in the opinion of the minister, the action authorized by the licence would negatively affect an aquatic ecosystem.

Suspending licence for aquatic ecosystem purposes

9.2 The minister may suspend or restrict the rights under a licence for a specified period if

- (a) in the minister's opinion,
 - (i) a groundwater level,
 - (ii) a water body level, or
 - (iii) an in-stream flow,

is insufficient to ensure that aquatic ecosystems are protected and maintained; and

- (b) the minister's opinion is based on scientific information about protecting and maintaining an aquatic ecosystem of the type under consideration.

42(6) *Subsection 14(1) is amended by adding "or in the opinion of the minister further allocation would negatively affect an aquatic ecosystem" after "allocated to other licensees".*

42(7) *The following is added after section 14:*

Investigations re levels and in-stream flows

14.1 Using scientific methods, the minister may undertake investigations into groundwater or water body levels, or in-stream flows, anywhere in Manitoba, to determine whether aquatic ecosystems are being negatively affected by insufficient levels or flows.

42(8) Section 24 is renumbered as subsection 24(1), and the following is added as subsection 24(2):

Appeal does not act as a stay

24(2) An appeal of an order or decision does not stay the order or decision, or affect the power of the minister to take authorized steps pending the appeal. But if the appeal is successful the minister may enter into an agreement with the appellant to compensate him or her for any loss or damage that the appellant incurred as a result of the order or decision.

42(9) Section 25.1 is amended

(a) in the section heading, by striking out "and Protection"; and

(b) in the section, by striking out "and Protection".

PART 6 - CONSEQUENTIAL AMENDMENTS, REPEAL AND COMING INTO FORCE

Consequential amendments, C.C.S.M. c. E125

43(1) **The Environment Act** is amended by this section.

43(2) The following is added after section 12:

Water quality standards, objectives and guidelines

12.1 A licence, or an alteration to a licence, issued under section 10, 11 or 12 after the date that this section comes into force, in respect of a development that affects or may affect water, must, in circumstances specified in *The Water Protection Act* or regulations made under it, include specifications, terms, limits or conditions as necessary to ensure compliance or consistency with a water quality standard, objective or guideline set or adopted under that Act.

43(3) Section 54.1 is amended

(a) in the section heading, by striking out "and Protection"; and

(b) in the section, by striking out "and Protection".

Consequential amendments, C.C.S.M. c. P80

44(1) **The Planning Act** is amended by this section.

44(2) Section 1 is amended by adding the following definitions:

"approved watershed management plan" means a watershed management plan approved under *The Water Protection Act*; (« plan de gestion d'un bassin hydrographique approuvé »)

"water quality management zone" means an area designated as a water quality management zone under *The Water Protection Act*; (« zone de gestion de la qualité de l'eau »)

44(3) The following is added after clause 25(1)(c):

(c.1) to serve as a framework for the implementation of an approved watershed management plan that relates to land within the district or municipality;

44(4) The following is added after subsection 25(3):

Water quality zones and watershed plans

25(3.1) In the preparation or amendment of a development plan, the board or council must also consider any of the following that relate to land within the district or municipality:

(a) any regulations made under section 5 of *The Water Protection Act* governing, regulating or prohibiting any use, activity or thing in a water quality management zone or any part of a zone; and

(b) any approved watershed management plans.

44(5) *The following is added after subclause 25(4)(a)(iii):*

(iii.1) the implementation of any approved watershed management plans described in subsection 25(3.1),

Consequential amendments, C.C.S.M. c. W72

45(1) *The Water Resources Conservation and Protection Act is amended by this section.*

45(2) *The title is replaced with "THE WATER RESOURCES CONSERVATION ACT".*

45(3) *Section 9 is amended by striking out "and Protection".*

Repeal

46 *The Water Commission Act, R.S.M. 1987, c. W50, is repealed.*

C.C.S.M. reference

47 *This Act may be referred to as Chapter W65 of the Continuing Consolidation of the Statutes of Manitoba.*

Coming into force

48 *This Act comes into force on a day to be fixed by proclamation.*

