

manitoba wildlands

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Bill 22 – Manitoba Water Protection Act

Manitoba Wildlands / Gaile Whelan Enns comments to
Manitoba Legislative Committee
September 13, 2004

Preamble - Manitoba Wildlands:

- supports establishment of Manitoba protected areas, including protection of water sources
- activity of director, Gaile Whelan Enns for over 12 years
- continues the work of WWF Canada and Canadian Nature Federation for protected areas, national parks in Manitoba
- associated with a variety of conservation and environmental organizations, national, international and regional
- participates in public policy reviews, license reviews, crown lands designation, and protected areas establishment
- suggest visit to two of our web sites: manitobawildlands.org & energymanitoba.org

Bill 22: The Manitoba Water Protection Act

Documents/Attachments:

We are providing a **set of recommendations**, and speaking to these in the time allowed. Attached are:

- list of terms present but not defined in Bill 22;
- terms that are absent from the Bill which should be defined, and included in the Bill;
- list of Acts referenced in the Bill – as these are not all included in the explanatory note;
- our comparative analysis of the Manitoba Water Strategy documents, 2003

All of the contents/ attachments are relevant to this committee's review of Bill 22.

Recommendations:

Our overarching concern about Bill 22 is that it is essentially reactive in terms of planning and protection of watersheds. We would like to see this Act have as its starting point, the identification of headwaters and sensitive water areas throughout the province that require protection from development and should not be ecologically compromised. Planning for each watershed as a whole should occur following the identification and protection of these critical areas. All watershed plans must include protection of these critical water sources. All of our recommendations below are oriented towards addressing this concern.

- Definitions are lacking in Bill 22. Problems associated with the failure to adequately define key terms before starting to consult or plan are evident from the East Side Planning Initiative process. **We recommend a review of all terms used in Bill 22, and an update to the existing definitions in Bill 22, with a comparison of definitions that are being included in other Acts as part of the amendment process.** (We note that certain definitions not present in Bill 22 are being added in the Water Rights Act, as part of amendment due to Bill 22.) **We further recommend that Bill 22 be amended to define what 'water protection' means.**
- Bill 22 defines 'watershed' as "an area designated as a watershed under section 9". However, section 9 gives the Lieutenant Governor in Council the power to specify watershed boundaries. **Bill 22 should be amended such that watershed boundaries are defined based on scientific analysis, and designation as a watershed should follow from this definition.**
- Like the charter of rights legislation and regulation compliance review undertaken in Manitoba during the 1980s, today we have significant societal risk and expectations regarding quantity, quality, and management of water. Similar to the legislative compliance review undertaken during the 1980s **the Manitoba government needs to immediately review all existing legislation that may involve or affect water protection/water regulation** so that the goals of Bill 22, and other legislation regarding water quality, quantity, and management are consistently delivered throughout the Manitoba legislative framework.

- While Bill 22 is about protection of water / quality / sources it appears to be subservient to an Act that is for development planning. It may be that Bill 22 will be subservient to other Acts. **We recommend clarification of the legislative intent of Bill 22 and the relationship between it and the Planning Act. We also recommend that the government provide a tracking chart of the various acts mentioned in Bill 22, clearly providing intent as to which Act(s) supercede which Acts.**
- **We recommend a review and update of the Planning Act** before making Bill 22 or other new Acts subservient to the Planning Act, or sections of that Act. Regulations added in the mid 1990s may contradict the intention of this Bill.
- **We recommend a review of the recommendations from the Water Strategy** to make sure none are contradicted or limited by Bill 22.
- **Fulfill incomplete actions described in the Manitoba Water Strategy and address outstanding actions from the advisory committee's report - prior to Bill 22, or any further legislation affecting water use, water quality or water conservation in the province is proclaimed.** Make sure that Aboriginal communities, Manitoba Hydro developments, and northern Manitoba issues are addressed while completing the Water Strategy.
- **Establish consultation standards for Manitoba government staff, contractors to government, crown corporations, developers, and any entity that is directed to conduct or responsible for consultations in relation to Manitoba's public policy, legislative and regulatory framework. This also applies specifically to consultations as referenced in the Water Protection Act, Bill 22.**
- **Complete and uphold First Nation consultation standards and guidelines** (currently being developed by Manitoba Conservation). In addition, Aboriginal consultation standards are needed. **These steps are needed for Bill 22 to be operational.**

- Manitoba Protected Areas policy, commitments, regulation, and protection standards are public and unmistakable. Protected areas are established under several acts. Crown land designations are established under these and several more acts. Some of these acts are mentioned in Bill 22, while it is silent on others – despite repeatedly referencing ‘designation’ of lands and waters. In fact Manitoba already has protected waterways and water ecosystems. **We recommend that Bill 22 acknowledge water ecosystems already protected from development. Waterways and lakes inside non-protected crown land designations should be immediately reviewed in relation to the objectives of the Water Protection Act.** Staff, associates, and I made recommendations to this effect during the consultation leading to the 2003 Water Strategy.
- System planning – for water, lands, or water and lands - includes having tools for planning.** Bill 22 is weak in this regard, and creates concern. Nowhere is there description of reviewing our waters/lakes/rivers/ aquatic ecosystems, etc to identify those that must be protected to secure our future clean water supplies. Why? Why do we instead have a Bill that is weighted in favour of several layers of process and ‘planning’ in relation to development planning? **We recommend that Bill 22 mandate serious preventative scientific and planning work which includes review of our waterways, lakes, etc inside all current crown land designations, and open crown land to identify those water sources that need protection. We recommend that Bill 22 be corrected so that any watershed plan must include identification of waterways to be protected. We recommend Bill 22 include interim protection mechanisms, similar to those in the Parks Act, to allow for protection while planning for watersheds takes place. We recommend that Bill 22 include emergency actions to protect water sources.**
- Make sure the Water Stewardship Fund in Bill 22 will be subject to public reporting, and accounting,** as the funds are not all government funds. **It is our recommendation that transparency regarding this fund be written into Bill 22.**

- **Explain how the Manitoba Water Council in Bill 22 will be supported in its responsibilities and workload.** Today's per diems for Manitobans appointed to boards and commissions are probably 30 years old, and insufficient for the responsibilities outlined in Bill 22. The future Manitoba Water Council will need independence to be able to fully deliver its mandate. Nothing in Bill 22 concretely states that independence will exist. **Given the current lack of 'resources' and independence for the Lake Winnipeg Stewardship Board, we suggest that the operational model for the Water Council must be made clear in Bill 22**
- Bill 22 lacks any confirmation or explanation about access to information. **Manitoba needs to make public all permits and dispositions, under all Acts, preferably through posting on the Internet.** Actions on the 1999 COSDI recommendations regarding improvements to Manitoba's public registry system are also long overdue.
- An example/pattern in Bill 22 that is troubling is the suggestion that the minister 'may' make information available. Imagine no maps, while undertaking watershed planning! **For Bill 22, and associated legislation referenced in the Bill, we recommend that the public sees confirmation that permits, orders, decisions, board and council minutes, transcripts, plans, etc about use and protection of Manitoba's waters will be available publicly – including during planning, before hearings etc. We further recommend that any emergency decision taken by the minister will be filed, through Manitoba's public registry system, and that all decisions regarding watershed plans be filed, with notice for public comments before final decisions.**
- **End the new pattern of appointing civil servants to Manitoba boards and commissions,** as these staff should only be technical assistants and service providers to board, commissions, and councils. This should apply to any boards, councils, or other entities established in respect to the Manitoba Water Protection Act. We suggest that it should also apply to any boards, commissions or entities regarding both/either land use planning and watershed planning. It should also apply immediately to the Lake Winnipeg Stewardship Board.

- **Clarify confusion that exists as to the differences between: development planning, land use planning/broad area planning, and watershed planning.** According to Committee on Sustainable Development Implementation (COSDI) recommendations – which have been adopted as core land use policies by this government – development planning should occur as a secondary stage of planning, after land use or watershed planning.
- Currently we have one broad area land use planning initiative in Manitoba, where boundaries were mapped on a watershed basis. Inconsistent in maintaining its terms of reference, working with insufficient technical information, and having no independence in its deliberations, the East Side Planning Initiative (ESPI) will report later this month. **We recommend that an independent review of ESPI operation since 2001** be undertaken before the Bill 22 ‘planning models’ or ‘planning regulations’ be tried, or enacted for Manitoba’s lands and waters. **We recommend that the Manitoba government establish clear operational standards for planning processes, including with clear definitions, terms of reference, and transparency, for inclusion in Bill 22.**
- **Establish a public registry for contractors or consultants who provide services to the Manitoba government including in respect to Bill 22.** This would include such services as, for instance: delivery of public policy, legislative, or regulatory programs and goals, or who speak for government in these kinds of matters, or who undertake ‘consultations’ with Manitoba communities, stakeholders, and affected groups. Currently it is impossible to know which contractors and consultants are doing what, and who they report to. It is also impossible to know if such contractors are undertaking other services which compete with, or conflict with ‘consultation’ services. The registry would:
 - indicate which services any company or individual provides to the Manitoba government, or has provided in the past;
 - indicate which government initiative they are working for;
 - indicate whether they are appointees to any provincial board or commission;
 - be Internet based;
 - be accessible, understandable, up to date, and cross-referenced.

- See 30(1) to 30(4) references in Bill 22 regarding **protection from liability** for those who report a violation. **The Manitoba government needs to review and update all Acts, in order to fulfill its commitments since 1999 regarding whistle blower's protection across the Manitoba legislative framework.**

Summary of Recommendations for Bill 22 – The Manitoba Water Protection Act

1. Review all terms used in Bill 22, update the existing definitions in Bill 22, and compare with definitions that are being included in other Acts as part of the amendment process. See attachment.
2. Amend Bill 22 such that watershed boundaries are defined based on scientific analysis, and designation as a watershed should follow from this definition.
3. Clarify the legislative intent of Bill 22 and the relationship between it and the Planning Act, and other Acts regarding regulation of water in Manitoba, especially regarding which Act(s) take precedence.
4. Conduct a legislative compliance review of all existing legislation that may involve or affect water protection/water regulation to identify and address the goals of Bill 22, and societal goals and expectations, so that legislation is compliant with the intent of Bill 22
5. Review and update the Planning Act to ensure that none of its provisions are in conflict with Bill 22, before making new Acts (including Bill 22) subservient to the Planning Act. See above.
6. Develop a tracking chart of the various acts mentioned in Bill 22, clearly providing intent as to which Act(s) supercede.
7. Review the recommendations from the Water Strategy to make sure none are contradicted or limited by this Bill.
8. Consultations as referenced in the Water Protection Act, Bill 22 should be undertaken as per the provincial standard, once developed, and should be consistent with federal judicial decisions and standards.
9. Reconcile any contradictions between Bill 22 and the ESPI terms of reference and public policy regarding land use planning in Manitoba by establishing clear operational standards for planning processes, including with clear definitions, terms of reference, and transparency. This must occur before Manitoba's Water Protection Act is proclaimed.
10. Amend Bill 22 to define 'water protection'. See attachment for other definitions to include.

11. Bill 22 should acknowledge water ecosystems already protected from development.
12. Waterways and lakes inside non-protected crown land designations, and on open crown land should be immediately reviewed in relation to the objectives of the Water Protection Act to protect water sources, and water quality.
13. Bill 22 should include serious preventative scientific and planning activity for review of our waterways, lakes, etc inside all current crown land designations to identify those water sources that need protection. Interim protection mechanisms to be in place while planning occurs.
14. Bill 22 should be amended so that any watershed plan must include identification of waterways to be protected.
15. Bill 22 should include emergency actions to protect water sources.
16. Bill 22 must be explicit about the Water Stewardship Fund and indicate that it will be subject to public reporting, and accounting.
17. Explain how the Manitoba Water Council will be supported in its responsibilities and workload, including to maintain independence.
18. Bill 22 should require permits, orders, decisions, board and council minutes, transcripts, plans, etc about use, quality and protection of Manitoba's waters to be available publicly – including during planning, before hearings etc.
19. Any emergency decision taken by the minister must be filed, through Manitoba's public registry system, and all decisions regarding watershed plans be filed, with notice for public comments before final decisions.
20. Civil servants should be excluded from being appointed to any boards, councils, or other entities established in respect to the Manitoba Water Protection Act. This policy should also be applied to any boards and commissions appointments, especially in relation to new public policy entities regarding Manitoba waters.

General Recommendations, Applicable to Bill 22

1. Fulfill incomplete actions described in the Manitoba Water Strategy, including decisions about northern Manitoba, Aboriginal communities, and Manitoba Hydro, and address outstanding actions from the advisory committee's report - prior to any further water legislation in the province.
2. Establish consultation standards for any entity that is directed to conduct consultations in relation to Manitoba's public policy, legislative and regulatory framework, especially for our lands and waters.
3. Complete and uphold First Nation and Aboriginal consultation standards and guidelines.
4. Clarify confusion that exists as to the definitions and differences between: development planning, land use planning/broad area planning, and watershed planning.
5. Undertake an independent review of ESPI operation since 2001 before any other 'planning models' or 'planning regulations' be tried, or enacted for Manitoba's lands and waters.
6. Establish a public registry for contractors or consultants who provide services to the Manitoba government, especially regarding our lands and waters.
7. Review all Manitoba Acts, regarding whistle blower's protection provisions in Bill 22, to identify other steps needed, similar to Bill 22 provisions.