



Land Control Requirements for Drainage

Water Security Agency (WSA) has revised its land control requirements for lands that may be impacted by drainage works. WSA now requires that drainage approval holders maintain land control for any affected land that they do not own. The form of land control, in most cases, will be up to the proponent.

What is meant by the term “land control”?

Land control refers to ownership or interest in lands. In the context of drainage, land control is the right of the approval holder to drain from, across, or onto a parcel of land owned by another, or through ditches downstream. There are various forms of land control that are relevant to impacting lands from drainage. From highest to lowest degree of control, the range is:

1. ownership of land,
2. an easement registered on title to the land,
3. joint application,
4. written agreement between landowners.

An easement is registered on a title and is permanent even if the land changes hands. Joint application means that every land owner in the network has signed the application and the application is the land control mechanism. On the other hand, a written agreement will be lost when land ownership changes. Saskatchewan law does not recognize a continued right to use someone else’s land, even if it has been used for decades. A verbal agreement for any land agreement is not acceptable.

Why is a new approach to land control needed?

The potential for directly impacting neighbours with a drainage project makes it important that land control be a consideration in the drainage approval process. *The Water Security Agency Act* requires that proponents of drainage projects provide “proof of land control satisfactory to the corporation [WSA].”

For the past three decades, WSA has required proponents of drainage projects to acquire a registered easement on any lands that the proponent does not own that may be affected by the project. Although this form of land control offers proponents the certainty of being able to operate their project into the future, this has been a challenging requirement to satisfy.

What is the proposed new approach to land control?

1. WSA has made ongoing maintenance of land control a condition of all drainage approvals. Where the approval holders do not own or hold easements over affected lands and works, a written agreement will be the minimum requirement.
2. A written agreement will be required in the following circumstances:
 - Drainage into approved privately owned ditches or into a watercourse that may not have adequate capacity to carry the water without spilling;
 - Drainage of wetlands that are situated on more than one legal land parcel;

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- Drainage into municipal ditches, or Conservation and Development or Watershed Association ditches.
3. Joint application, ownership, or a registered easement will still be required in the following circumstances:
 - Drainage works built and/or maintained with public funds;
 - Conservation and Development Area Authority or Watershed Association works.
 4. The holder of the drainage approval is responsible for providing evidence of land control to WSA, when requested where a Request for Assistance has been accepted by the WSA. WSA will require proof of the written land control agreement. Where evidence cannot be provided, WSA may order closure of the works. Where evidence cannot be provided, WSA may order closure of the works.

What are my risks?

If you have a written agreement with your neighbour your land control is safe until either you or your neighbour disposes of the land to someone else or changes the names on title - that could include adding a spouse, son, daughter or other relative to the title. Once the registered owners of either of the parcels changes, the written agreement is not enforceable and you no longer have land control. This will mean you are out of compliance with your drainage approval and may be ordered to close your works.

If the owners of all affected lands and works apply jointly for a drainage approval, all will be named on the approval and the rights and obligations in the approval will pass to subsequent landowners for the duration of the approval. This provides a greater level of security that the project will endure.

The most certainty comes with a registered easement on title or ownership of all affected lands and works. However, with an extensive project this is rarely a practical option.

Where can I get more information about land control agreements?

WSA has developed templates for written agreements and legal easements that you can download and print for your use. Go to:
wsask.ca/Water-Programs/Agricultural-Drainage-/Land-Control-Requirements-for-Drainage.

If you have any further questions, please contact your local regional WSA office. Visit wsask.ca for office locations or call 306-694-3900.