

Notice of Proposed Legislation

Confirming the Common Law of Accretion in Saskatchewan

Background

The Government of Saskatchewan's Accretion Working Group is comprised of ministries and Crown agencies that administer public lands and waterbodies, including the Ministries of Agricultural, Energy and Resources, Environment, Government Relations, Justice, Parks Culture and Sport, and the Water Security Agency. The Accretion Working Group is engaging stakeholders on proposed legislative changes to recognize the Common Law of Accretion in Saskatchewan.

Accretion occurs when a formerly submerged area becomes permanently dry and attains the soil and vegetative characteristics of the adjoining surface land. Under the Common Law of Accretion, when land becomes permanently dry due to natural processes, ownership of the dry land accrues to the adjacent landowner to ensure this owner's continued legal access to the waterbody.

To date, Saskatchewan is the only western Canadian Province to not explicitly recognize the Common Law of Accretion. Instead of permanently dry land accruing to the adjacent surface owner, Saskatchewan legislation and regulations have suggested that accreted land becomes Crown property. The surface owner is thus separated from the waterbody and their legal right to access the waterbody is effectively extinguished.

Erosion is the opposite of accretion and occurs when a waterbody gradually expands over a formerly dry area or if water gradually washes away the bank of the upland parcel. In the instance of erosion, the Crown gains ownership of the formerly dry area. The acceptance of the Common Law of Accretion also includes erosion, the latter of which the province has previously accepted and currently practices. The legislative changes that are being contemplated are for both accretion and erosion. This is also consistent with other provinces.

Summary of Proposed Changes

Government proposes to confirm a landowner's interest in land adjacent to a waterbody by explicitly recognizing the Common Law of Accretion in Saskatchewan in certain circumstances. Recognizing the Common Law of Accretion will be subject to government consent, and various other conditions. If these specific conditions are met, the individual owner of a parcel adjacent to accreted lands can apply to claim ownership of the accreted land without purchase.

Some of the specific conditions for recognizing the Common Law of Accretion on a parcel include but are not limited to:

- Accretion is natural and not caused by human intervention.



- Accreted lands are not within a general area comprised of flood-prone lands that could constitute a public risk.
- Accreted lands are not on terminal lakes (i.e. lakes with no outlet).
- Underlying subsurface mineral parcel affected by surface accretion is not subject to a pre-existing freehold or Crown mineral disposition, to a pooling/unit agreement, or to any site reclamation and remediation procedures. In these cases, the surface owner may still be able to apply.

To affect the recognition of the Common Law of Accretion in Saskatchewan, the government will amend various Acts that govern surface, subsurface, and water dispositions. The mechanics of how land will be determined to be permanently dry and the process of applying to claim title to accreted land will be determined through follow-up regulatory and policy changes.

The Process

Please send written comments regarding this proposal by **July 31, 2022** to:

Kyle Schutz, Senior Program Support, Ministry of Energy and Resources: kyle.schutz@gov.sk.ca

If you would like to arrange a meeting to discuss these proposed changes, or you have questions, please contact the above by June 14, 2022.

