

Report on Public Meetings:

The Red River Floodway Act – Proposed Regulations

- 1. Floodway Operations Report, and**
- 2. Compensation for Artificial Flood Damage and Economic Loss**

Manitoba Water Stewardship
Manitoba Emergency Measures Organization
July 1, 2006

Manitoba 

Building for the Future

Table of Contents

Executive Summary	3
Purpose of Report.....	5
The Red River Floodway Act	5
Public Meetings.....	5
Objectives	5
Schedule	5
Notification	5
Format.....	6
Who Attended.....	6
What Was Said.....	7
Issues Raised.....	8
1. Compensation – Regulations.....	8
2. Floodway - Operating report	9
3. Floodway - Current design & expansion	9
4. Compensation - Valuation of property loss	10
5. Compensation - Business & income loss.....	11
6. Communications	11
7. The Red River Floodway Act – General	12
8. Compensation - Claimant duties & responsibilities	12
9. Floodway - Operating rules.....	13
10. The Red River Floodway Act - Spring & summer	13
11. City of Winnipeg.....	13
12. Floodway - Seine River Diversion.....	14
13. Floodway - James Avenue water elevation.....	14
14. Compensation – Appeals.....	14

Executive Summary

The Red River Floodway Act was proclaimed on June 20, 2005. It entrenches in law the right of a person to claim for full compensation for damage to real and personal property, and/or economic loss as a result of artificial spring flooding caused by operation of the Red River Floodway.

Approximately 200 people attended a series of public meetings held in March of 2006. These meetings were intended to provide information on *The Red River Floodway Act*; and to obtain feedback from the public on the development of regulations under the Act.

There are two regulations under the Act that are being considered:

1. Compensation Regulation, and
2. Floodway Operations Report Regulation

The Compensation Regulation may specify such things as:

- the compensation application procedure
- the length of time permitted for submitting a claim
- the claimants' responsibilities
- the valuation of property damage
- the valuation of economic loss
- claim processing and inspection of damaged property
- the compensation process including payment, and
- the appeal process

The Floodway Operations Report Regulation may specify such things as:

- the contents of the report, and
- the manner in which the report will be made available to the public.

Sessions were designed to provide information to participants on the Act, to allow an opportunity for questions and answers, and to conclude with breakout workshops to obtain information on specific areas related to developing the regulations. At the request of participants, breakout workshops were not held during the March 6 (Howden) and March 11 (Ste. Agathe) meetings to allow for a longer question and answer period. A fourth meeting on March 28 (Howden) was added to the schedule to make up for the break-out workshops that were missed.

Participant emotions were high as this has been and continues to be a very sensitive subject. Positive comments were received but most were negative. A total of 294 questions, points or comments were recorded as part of the summary record of the meetings.

It is clear that, when dealing with the many aspects of the Red River Floodway, overall trust in government is low. Statements were made by some participants that government is violating basic Canadian and international human rights. There were challenges to the legality of the Floodway itself, a number of which relate to the original construction but most toward the current expansion project. Other legal issues raised surround the government's right to flood private property, the position being that storage of water on private land without the owner's permission is an act of trespass.

Particular attention was paid to the fact that compensation for summer flooding was not included in the Act. Participants could see no reason why compensation is legislated for spring operation of the Floodway but is not legislated for summer operations. Many participants suggested that summer damage is actually greater than what occurs in the spring.

It was suggested that flood easements or a formal flood agreement should be implemented and that compensation should be broader than just the physical damage and economic loss, it should address the psycho-social costs of being flooded.

The question of what is natural flooding and what is artificial flooding rated much discussion. Some participants wanted to know at what elevation natural flooding becomes artificial, others understand that the natural level of each flood will vary but believe that government's calculation of the natural level is flawed.

The meetings concluded with many participants suggesting that much more consultation is needed. Some participants felt that there is no need to rush this process, that we should take all the time necessary and involve all the right people to make sure this is done right. After all, this affects not only the people living in the Red River Valley today, but also those of the future.

The public meetings were not recorded nor will there be a written transcript produced. This report was compiled based on the summary record of the public meetings, produced by a private consultant hired for that specific purpose; no effort has been made to validate any of the statements made.

Purpose of Report

The purpose of this report is to provide a faithful and accurate summary of what was said at the public meetings. At this time, there has been no effort to comment on the validity of statements made by the public or to present conclusions or recommendations relating to the development of the proposed regulations.

The Red River Floodway Act

The Red River Floodway Act (the Act) was proclaimed on June 20, 2005. The Act entrenches in law:

- the right of a person to claim compensation for spring-time flood damage and economic loss caused by artificial flooding due to Red River Floodway operation,
- the authority to flood any real property and to store water on the property when an extreme flood occurs,
- the requirement to produce a Floodway Operations report for any year in which the government operates the Red River Floodway (Floodway), and
- provisions to make regulations.

Public Meetings

Objectives

The objectives of the public meetings were:

1. To provide information on *The Red River Floodway Act*, and
2. To obtain feedback from the public on the development of regulations under the Act.

Schedule

Public meetings were held in March 2006 in St. Adolphe (March 4), Howden (March 6 and 28), and Ste. Agathe (March 11).

Notification

Notification of the public meetings was mailed to property owners in the geographic area most likely to be affected by spring-time artificial flooding due to

the operation of the Floodway (from the inlet structure south to the Town of Morris). Notification was also sent to municipal offices in the Rural Municipalities of Ritchot, MacDonald, Morris, and the Town of Morris. The government also issued two media releases which resulted in some amount of media coverage.

Format

The format of the first three meetings consisted of introductory remarks by the contracted facilitator (Richard P. Sawchuk & Associates Management Consultants), presentations on the Act, the operation of the Floodway, and compensation issues by representatives of Manitoba Water Stewardship and Manitoba Emergency Measures Organization, followed by a question and answer period to clarify issues arising from the presentations. The final segment of the first three public meetings was to be a breakout group workshop designed to encourage discussion on several particular aspects of the proposed regulations. The workshop segment was undertaken only at the first of the first three meetings. At the second and third meetings, breakout workshops were not held at the request of the participants, to allow for a longer question and answer period. A fourth meeting was added to the schedule to make up for the break-out workshops that were missed; a breakout workshop took place during the entire fourth meeting.

The meetings were not taped and no written transcript will be produced. A summary record of the meeting was kept by a representative of Richard P. Sawchuk & Associates Management Consultants. The summary record was used to develop this report.

Who Attended

The public meetings were attended by approximately 200 individuals representing a wide range of interests including property and business owners, farmers, market gardeners, elected officials, and several key stakeholder organizations.

Table 1 - Estimated attendance at public meetings:

Location	Date	Estimated Attendance
St. Adolphe	March 4	55
Howden	March 6	60
Ste. Agathe	March 11	50
Howden	March 28	45
Total		200

What Was Said

The summary record of the four meetings identified 294 questions, points or comments. The following table (Table 2) categorizes the questions, points or comments into common issues and indicates a frequency for each issue. Expanded comments on each of the issues follows in the order in which they appear in Table 2.

Table 2 – Issue Frequency:

	Issue	Frequency
1	Compensation – Regulations	115
2	Floodway - Operating report	24
3	Floodway - Current design & expansion	22
4	Compensation - Valuation of property loss	18
5	Compensation - Business & income loss	15
6	Communications	15
7	The Red River Floodway Act - General	14
8	Compensation - Claimant duties & responsibilities	11
9	Floodway - Operating rules	8
10	The Red River Floodway Act - Spring & summer	11
11	City of Winnipeg	7
12	Floodway - Seine River Diversion	5
13	Floodway - James Avenue water elevation	3
14	Compensation - Appeals	2
15	Other	24
	Total	294

Issues Raised

1. Compensation – Regulations

As in previous forums related to the Red River Floodway, fair compensation was again the dominant and probably the most emotional of all the issues discussed. Many of the participants in these public meetings have had first-hand experience with past flooding, some more than once. They expressed their frustration with outstanding legal issues and the inadequacy of the Disaster Financial Assistance (DFA) program.

The issue of basic human rights was raised at all four meetings. Some participants believe that in causing artificial flooding, the actions of government contradict both Canadian and international human rights. It was also expressed that a change of attitude is needed so that people living in the Valley were looked upon as heroes for what they are put through to protect the City of Winnipeg and not as a financial liability as they are perceived today.

Participants provided numerous specific questions and/or suggestions on whom and what should be eligible and how the amount of compensation should be determined. The use of independent third party experts to determine the compensation was a recurring theme as it would address the mistrust many participants have toward a government that in their mind decides to operate the Floodway, reports if artificial flooding has occurred, and then determines the amount of compensation a person should receive.

General support was expressed for the sections of *The Red River Floodway Act* that provide for an expedited claims process, stipulates no deductible, and that payment of compensation was not conditional on the person actually carrying out the repairs. This support was guarded at best as there was and still is considerable mistrust toward government. Some participants wanted to know why draft regulations had not been provided in advance of the public meetings. Others wanted to know why more public consultation did not take place to draft the Act.

Reservations were also expressed with some sections of the Act. For example the reduction of the compensation based on the assistance received from other sources was seen as a penalty. Participants questioned how government could prevent someone from receiving charitable donations. Also, the ability to reduce compensation based on a person's failure to take reasonable actions to prevent or limit damage was of concern. Participants felt that such a decision was subjective at best and would be used as a tool by government to deny compensation.

Some participants recommended that government should implement flood easements and/or a formal flood agreement similar to the Northern Flood Agreement used by Manitoba Hydro. It was felt by some that the issue of compensation for storing water on private property has been ignored and that any fair compensation package must address this situation. Storage of water of private land was seen to be an act of trespass.

Over the course of the four meetings there were contradictory opinions and views expressed as to the urgency of implementing the proposed regulations. Some felt that they are long overdue and others felt that they should not be rushed as we face no imminent risk. There was both appreciation for holding these public meetings and objections to participating, believing that the issue was too complex and emotional for the people directly affected, and that professional expertise should be funded by the government to represent the people's interests.

2. Floodway - Operating report

A Floodway Operating Report was prepared for the first time in 2005, following the spring flood operations. This report was available on-line and copies were made available at the public meetings. The 2005 Floodway Operating Report served as a model for what future reports could contain. Participants in the public meetings were generally unaware of the existence of the 2005 report and most were not familiar with its contents.

Participants suggested that a table showing the dates, times, increments, and water levels for each gate operation should be included. It was also suggested that maps and other forms of images be included to show the extent of flooding and to delineate what was natural and what was artificial.

Considerable discussion took place as to what the natural flood level is. Some participants wanted to know the specific elevation at which the natural level is exceeded.

3. Floodway - Current design & expansion

Discussion related to the current design & expansion of the Floodway was kept to a minimum by the meeting facilitator, as this issue is outside of the scope for these public meetings. For the purpose of the summary record the following questions, points or comments were noted:

- Are there plans to expand the entrance of the Floodway and will this reduce artificial flooding?
- How do we get the free dirt to flood protect our homes?

- What is the distance from the top of the Floodway channel entrance lip to the bottom of the river?
- What are the maximum water levels that the West dike can hold?
- The Shellmouth Reservoir is of little benefit to the residents of Ritchot as the benefits of storing water up there reaches us too late.
- The Floodway is a dike that stops surface water from flowing off our land.
- The Floodway should be designed in a way that would not back up water, and so eliminate all artificial flooding.
- Government should not be compartmentalized; we need to discuss openly and honestly all issues related to the Floodway. The Floodway Expansion Authority is not prepared to discuss the original design; they will only talk about the expansion.
- The Government has ignored much of what the International Joint commission (IJC) recommended.
- The expansion of the Floodway is unlicensed and is therefore illegal.

4. Compensation - Valuation of property loss

As part of the presentation on the proposed compensation regulations a comparison was made between the Floodway Compensation Program and the Disaster Financial Assistance (DFA) program. There was general agreement that DFA is not a suitable mechanism for providing compensation for artificial flooding and that the concepts of compensation that are being proposed are on the right track but still need some work.

Many participants suggested that compensation should be broader than just physical damages and economic loss; it should also recognize the psycho-social effect flooding has on people such as the loss of productivity an artist may experience or the anxiety a person suffers from being under a constant threat of flooding. Also, long-term medical issues such mental health, cancer, and other ailments should not be overlooked.

Property values, specifically the loss in property value, were seen by some participants as something that should be compensated for. Some residents in the Red River Valley are of the belief that the value of the property they own has been negatively affected because they are in a flood prone area. Not only has the property value gone down if they were to sell, but also restrictions on subdividing means they cannot realize profits from selling a portion of their land, something that other landowners outside of the Red River Valley can do easily.

It was also suggested that “inconvenience” costs should be allowed to help flooded property owners with all the little things they need to do to get their lives back in order. This could include hiring of professionals such as lawyers, engineers, accountants, designers, etc. to help them with their recovery. Also, assistance with purchasing new clothes or furniture would be

helpful as people often find it difficult to get everything done that needs to be done, especially when they are under the stress flooding puts on people.

5. Compensation - Business & income loss

The complexities of determining business and income loss were acknowledged by the participants. Most participants felt that compensation should be based on the maximum earning potential the business would have had if the artificial flooding had not taken place. The maximum earning potential could be verified using 3-5 years of business income statements and market trends. Special consideration must be provided for start-up business that may not yet have the historical information to support their earning potential.

Participants commented that determining business income or loss is not new; it is done for many reasons such as purchasing business interruption insurance, filing income taxes, or the acquisition of a business. The procedure used by government to compensate for business loss due to artificial spring flooding should be based on an existing and accepted method of valuing the loss; it does not have to be built from scratch.

6. Communications

There were a number of issues raised under the general topic of communications. Some focused on specific issues such as the need to develop a communications protocol to let people know in advance when the Floodway is to be operated. Others focused on general communications issues such as information sharing, public consultations, and the media.

With regard to the development of a communications protocol, it was suggested that a database of contact information be created that could be used to let property owners know in advance of the Floodway being operated. It was thought that a combination of telephone, wireless and e-mail technologies would allow for information to be distributed directly to the affected areas rather than relying on the media to deliver these messages.

With regard to public consultations, it was noted that participants generally appreciated this opportunity to voice their concerns but more should have been done in the past and more must be done in the future to hear what people have to say. Furthermore, the agenda of public meetings must allow for the full spectrum of issues related to a particular topic to be discussed and not be limited to certain aspects of the larger issue.

7. The Red River Floodway Act – General

There were a number of issues raised with regard to *The Red River Floodway Act*. First of all, participants felt that a public consultation process should have been used to write the Act. Many participants considered this to be a very important oversight as the Act allows government to flood private property. The question raised was where or when did government ask the people about this or for permission to do it. The Act commits the Province of Manitoba to paying compensation for artificial damages, but some participants wondered if Manitoba can afford this; where is the money coming from? What is the position of the federal government, and will they be paying for part of the compensation?

There were also concerns raised about ambiguity in the Act. An example of this ambiguity is that the Act says that “all applicable flood proofing criteria” be complied with yet nobody seems to know much about this criteria.

Many participants felt that reducing compensation based on funds received from other sources should not apply to charitable donations that are received. These charitable donations are gifts from everyday people to victims, and government should not have any say in how they are dispersed.

8. Compensation - Claimant duties & responsibilities

Many participants felt that imposing reasonable duties and responsibilities on people when claiming compensation would be fair. However, reducing the compensation a person would get because of something they failed to do should only be done in extreme cases where obvious abuse or neglect could be clearly demonstrated. While it was generally accepted that people should take steps to minimize damage to their property, people should not be penalized if for some reason (age, illness, absence, etc.) they could not take steps to prevent or reduce their damages. Most if not all participants felt that claimants should supply documentation that would verify their loss, including photographs, receipts, and business records.

Several participants also commented that while imposing duties and responsibilities on claimants is reasonable, there should also be duties and responsibilities imposed on the government. These could include the use of experienced adjustors, timeliness of inspections and payments, provision of advances, and full disclosure of how the compensation was determined.

9. Floodway - Operating rules

The integrity and credibility of the Floodway Operating Rules was challenged at all of the meetings. Participants felt that government used the rules to justify their actions, but changed the rules to suit their needs. With the federal government no longer involved in setting the rules, the province was essentially free to do what it wanted, when it wanted.

A number of suggestions were made with regard to operating the Floodway. It was suggested that the Floodway should only be operated during daylight hours and that the last operation of the day should be no later than 2 p.m. This would provide sufficient time for people to relocate moveable items and not force them to do such work in the dark. It was also suggested that the horn on the Floodway Inlet Control Structure should be sounded for each operation, not just the first. It was also suggested that a call-out system, using telephones or e-mail, should be established to notify people when the Floodway is to be operated.

10. The Red River Floodway Act - Spring & Summer

The relatively low position this issue appears in the frequency table is somewhat misleading in terms of its significance to participants at the meetings. As part of the opening remarks for each meeting it was repeatedly stated that comments should be limited to spring operation of the Floodway as *The Red River Floodway Act* does not include summer operation. This limitation most likely resulted in a fewer number of comments, but it did not diminish the passion associated with the issue. In general, many if not all participants wanted to know why summer operation is excluded from the Act. It was felt that compensation must be provided for artificial flooding no matter when it happens.

Some participants commented that the effects of Floodway operation in the summer are actually greater than when it is operated in the spring. The effects of flood waters on grass and other vegetation that are fully or partially into their growth cycle are far greater than earlier in the year when they may still be dormant. Concerns also were raised about the additional “caustic” level of the water which many felt was higher in the summer than in spring and therefore would have a greater impact.

11. City of Winnipeg

The feeling amongst participants of being “sacrificed” to protect the City of Winnipeg was frequently expressed. Participants wanted to know what the

City of Winnipeg and its residents were doing to reduce the threat of sewer backup as this is often cited as the reason why the Floodway is operated or why the duration it is operated is extended longer than it needs to be.

Questions were asked with regard to plans to upgrade the City's storm sewer system in order to reduce the reliance on the Floodway. Comments were also made that a "flood tax" should be imposed on City residents who benefit when the Floodway operates while others suffer from the flooding it causes. Many participants question the cost benefit analysis used when making the decision to operate the Floodway. Many believe that the cost of compensating for all the damages, including riverbank erosion, is actually higher than the sewer backup damages that might be prevented.

12. Floodway - Seine River Diversion

The effects of the Seine River Diversion were raised at three of the four meetings. Questions and/or comments surrounding this subject varied from technical questions on the actual capacity/flow of the diversion, effects of Floodway operation on the Seine River levels and implications of the expanded Floodway to more general questions such as do homeowners along the Seine River benefit in any way when the Floodway is operated. Several participants wanted to know if the backwater effects on the Seine River that result when water cannot enter into the Floodway due to high water in the channel is considered to be artificial.

13. Floodway - James Avenue water elevation

Although not directly related to the intended purpose of these public meetings, issues related to the water elevations at James Avenue were raised on several occasions and are reported here as part of the summary record.

The concern raised at the public meetings related to a change in the Floodway operating rules which now allows water at James Avenue to be controlled to 24.5 feet when the original operating rules provided for 25.5 feet. The lower water level inside the city of Winnipeg results in more water outside of the Floodway. This was also noted as an example of the government's ability to change the operating rules without public notification thereby bringing into question the integrity and credibility of the operating rules.

14. Compensation – Appeals

Comments related to the appeal process centered on whether the decision of the Appeal Board was truly final and binding on all parties, both the appellant and the government. It was felt that while the appellant had no choice but to accept a decision made by the Appeal Board, the same was not true for

government. A recent application under the subdivision process was cited as an example of where a provincial department was allowed to further appeal or challenge what was thought to be a final decision.

It was also suggested that the Appeal Board, when hearing an issue related to the assessed value of property, should not rely upon the assessment of EMO but should employ an independent body to determine the fair value.