

Shellmouth Dam & Floodway Compensation Regulatory Amendments

Project Overview

The Red River Floodway and Shellmouth Dam are provincial water control infrastructure operated to provide flood protection and other benefits to Manitobans. In some years, the operation of these structures can raise water levels above natural levels in certain areas, causing artificial flooding.

Under The [Water Resources Administration Act and the Red River Floodway Act](#), the Manitoba government is required to compensate for damages resulting from artificial flooding. Manitoba Emergency Management Organization (EMO) administers the Shellmouth Dam and the Red River Floodway compensation programs to provide compensation for any property damage or economic losses caused by artificial flooding, in keeping with the legislation.

Following complaints about the delivery of past Shellmouth Dam compensation programs, the Office of the Auditor General (OAG) conducted a review and released a report in 2021 highlighting five recommendations for government to implement.

Manitoba EMO held an initial engagement session in April 2022 to share potential program changes and gather feedback from previous claimants. Feedback from the April 2022 session was considered and used to develop an improved program process that addresses stakeholder concerns related to program administration and streamlines program delivery.

In April 2024, Manitoba EMO returned to outline the updated program process and the proposed regulatory changes to enable these program improvements. The program and regulatory changes will address the OAG's recommendations.

Engagement Overview

An in-person engagement session was held in Miniota, Manitoba on April 4, 2024. The session was organized to share proposed regulatory changes to the Shellmouth Dam Compensation Program (SDCP) with past claimants, members of the Shellmouth

Reservoir Regulation Liaison Committee, and local government representatives. Approximately 30 people attended the engagement session.

Manitoba EMO opened the session with a presentation on the updated program process and regulatory changes. The presentation highlighted improvements to how the SDCP is initiated, administered, and delivered to be faster and prevent delays, including:

- Removing the publication of a detailed artificial flood report as a prerequisite to initiating an SDCP in favour of the Minister issuing a public notice, and publishing inundation maps showing the maximum extent of flooding.
- Enabling claims to be filed as soon as a program is commenced, instead of waiting for the publication of an artificial flood report.
- Faster program creation and faster filing of claims will allow inspections to occur closer to the time when artificial flooding occurs.
- Allowing Manitoba EMO to determine the compensation to be awarded to claimants based on the proportion of damage or loss that is attributable to artificial flooding. This generalized approach to awarding claims will make the claim evaluation process quicker, resulting in timely payments to claimants.
- Removing the requirement to use licensed insurance adjusters, allows Manitoba EMO to determine the qualifications of inspectors. This change enables Manitoba EMO to use Manitoba Agricultural Services Corporation (MASC) inspectors to inspect agricultural damages.

Information stations were also set up to provide additional information and seek feedback on regulatory changes, online application and regulatory timelines, inspections and communication strategy.

Public comments were also received through EngageMB on the proposed regulatory changes for 45 days between February 29, 2024 and April 14, 2024.

What We Heard

Manitoba EMO received supportive feedback on the following proposed changes to the SDCP, including:

- participants noted that the proposed changes should lead to a faster program with improved communication,
- there was general support for using MASC inspectors for documenting damages,
- support for claimants being able to review and approve inspection and evaluation reports, and
- recognition that the proposed changes will address the OAG recommendations.

In general, participants continue to request a broader definition of artificial flooding, particularly regarding the criteria for when Manitoba EMO provides compensation.

Some participants also continue to request that Manitoba Transportation and Infrastructure (MTI) review the operating guidelines for Shellmouth Dam and Reservoir. Updating the definition of artificial flooding and reviewing the operating guidelines are out of the scope of this engagement but have been shared with senior MTI officials.

Participants provided input on several topics summarized below.

1. Definition of artificial flooding

Many participants expressed disagreement with the MTI's definition of artificial flooding, requesting that compensation should cover all flooding downstream of the Shellmouth Dam and Reservoir.

Others questioned why the definition of artificial flooding was removed from the regulation.

Some participants also raised concerns about the exclusion of compensation for artificial flooding within the winter period, indicating that damages caused by artificial flooding in winter should be compensated. Additionally, there were requests for the program to be expanded to include the Assiniboine River downstream (east) of the City of Brandon.

MTI response to concerns raised:

The Shellmouth Dam and Reservoir have a finite water storage capacity, just like all dams and reservoirs. In normal years, the Shellmouth Dam and Reservoir store water throughout spring runoff to reduce downstream flows and provide flood protection to areas downstream. The stored water is also gradually released throughout the summer and fall to help support water supply needs downstream.

The definition of artificial flooding remains unchanged within the Water Resource Administration Act, which provides the overall direction for the Shellmouth Dam Compensation Regulation. This definition is based on a similar definition in the Red River Floodway Act. In essence, artificial flooding is understood as the incremental difference between the flood conditions that did occur and the flood conditions that would have occurred if the dam did not exist. The intent of the SDCP is to provide compensation to affected landowners for harm caused by the incremental portion of flooding (artificial flooding), without landowners needing to resort to litigation. The definition of artificial flooding was removed from the regulation as it was not required, because the text restated a definition already present in the Water Resources Administration Act.

The department acknowledges that in some years the Shellmouth Dam and Reservoir is unable to eliminate all downstream flooding particularly in low-lying areas of the Assiniboine River Valley. Not all downstream flooding is artificial flooding, flooding frequently occurs because of natural hydrology and topography. The SDCP is designed specifically to address artificial flooding, it is not intended to be a support program to

assist with periodic natural flooding in the river's floodplain, or to provide compensation for the difference between actual and optimal conditions if the dam had been operated differently.

The department recognizes that flooding, whether it is artificial or natural, can have devastating impacts on livelihoods. The department also acknowledges that stakeholders' requests to change the definition of artificial flooding are a request for assistance – that wet conditions have resulted in more frequent flooding, harming livelihoods in a way that may not be addressed satisfactorily by risk management or support programs. The department is committed to discussing long-term strategies to address these issues.

Requests to remove the exclusion of compensation for artificial flooding during the winter period were reviewed by MTI. The purpose of this exclusion is to ensure that the reservoir can be lowered during winter to accommodate spring runoff volumes. This winter exemption remains in the regulation and may be considered if operating guidelines are reviewed in the future. Operation data since the construction of the dam (1970) indicates that downstream capacity was exceeded in the winter only in one year (in the winter of 2010) out of the 53 years of operation, which shows artificial flooding in winter periods is a very rare event.

Neither the current regulation or the proposed regulation limits the SDCP to the area between Shellmouth Dam and the City of Brandon. Under the current regulation, the affected area is determined by the artificial flood report. Under the proposed regulation, eligibility to apply to the SDCP will be indicated on publicly available flood inundation maps. If MTI's modeling of artificial flooding shows impacts downstream of the City of Brandon program eligibility will include those areas.

2. Inspections

Most participants expressed support for using MASC inspectors. Participants agreed that claimants should have the ability to review and approve inspection and appraisal reports.

However, concerns were raised about how Manitoba EMO would evaluate MASC inspection reports if Manitoba EMO staff were not present during the inspection. Participants also raised concerns regarding the regulatory change that allows Manitoba EMO to not inspect a property if it is satisfied that an inspection will not provide any relevant information.

MTI response to concerns raised:

Manitoba EMO's expertise is in program and claim management; the department will rely on experts to ensure damages are accurately documented. Participants were informed that Manitoba EMO has signed a Memorandum of Agreement with MASC to carry out inspections. Manitoba EMO has developed program application and inspector documents to ensure that consistent information is captured for every claim. This will

also result in consistent outcomes as Manitoba EMO administers the claims.

Section 7(2) of the amended regulation allows for Manitoba EMO to choose not to complete an additional inspection of a property if a previous inspection was conducted due to artificial flooding and a further inspection would not provide any additional relevant information. This clause is intended for scenarios where a second, smaller artificial flood event occurs after an earlier artificial event already caused damages. In these scenarios, it may not be necessary to undertake two inspections if damages were already documented. This clause allows Manitoba EMO to streamline inspections to ensure they only occur where required.

3. Compensation

Participants supported being able to review and approve inspection and appraisal reports.

Participants raised the concern that farmers should be made economically whole including legal and consulting fees if they feel there is a need to challenge the data collected by Manitoba EMO.

MTI response to concerns raised:

Participants were informed that MASC and licensed private adjusters would work with claimants to identify the total impact of flood damages on claimants' properties.

Manitoba EMO will then evaluate the total flood damages for the impact of artificial flooding. In accordance with the legislation, only damages fully or partially caused by artificial flooding are eligible for compensation. A simplified approach will be used to evaluate the impact of artificial flood damages. More details on this approach is explained in the engagement presentation.

All data collected by MASC and licensed private adjusters will be shared with the claimant for their review and acceptance. The claimant will be present for every inspection. If the claimant does not agree with the information collected or evaluated in whole or part, this may be appealed.

Legal fees are not intended to be included as eligible expenses as the SDCP is intended to provide compensation without affected landowners needing to pursue legal action. All other costs will be considered based on program eligibility that will be shared with claimants at the launch of the program.

4. Program Communication and Administration:

Participants noted that these changes should lead to a faster program with improved communication.

Participants raised concerns about how public notice will be given, the publication and use of inundation mapping and the transparency of decisions made by Manitoba EMO related to claims.

Some participants requested administrative changes to the program such as removing the requirement for an oath or affirmation from claimants.

MTI response to concerns raised:

Participants were informed that Manitoba EMO recognizes that past SDCPs were unsatisfactory and were administered inconsistently. Manitoba EMO acknowledges that the department will need to work with impacted claimants to rebuild relationships and confidence in the SDCP.

Manitoba EMO will ensure key communication timelines are adhered to, ensuring stakeholder awareness of when artificial flooding starts, when an SDCP has opened, and when artificial flooding ends. More details on program awareness and claimant outreach are explained in the draft communication strategy.

Manitoba EMO will provide the claimant with a written explanation and all information used to make a claim decision under the SDCP.

Based on feedback from this engagement, Manitoba EMO has removed the regulatory requirement for claimants to provide an oath or affirmation about the truth of claims submitted to the program. A simple verification of the accuracy of information will be included in the compensation program application.

5. Shellmouth Dam Operating Guidelines:

Some participants would like the operating guidelines for Shellmouth Dam and Reservoir reviewed. Others expressed their opinion that flood protection for agricultural interests in the Upper Assiniboine River Valley does not receive as much priority as other interests such as water storage for recreation or downstream water users. A few participants mentioned that the operating rules for the reservoir have changed several times without consultation.

MTI response to concerns raised:

The Shellmouth Dam and Reservoir are operated following established guidelines and in consultation with the Shellmouth Reservoir Regulation Liaison Committee to balance the benefits and risks between different interests. The current operating guidelines were approved in 2009 and have not changed since then. The Water Resources Administration Act requires public consultation before operating guidelines are approved.

With more experience and better data, MTI has been able to operate the dam more effectively under the operating guidelines to provide better outcomes for all stakeholders.

Next Steps

The information gathered through EngageMB, as well as additional feedback provided by stakeholders, landowners, and the public as part of the overall public engagement process, was utilized to assess if further changes to the regulation or SDCP process were required. The final regulation will be advanced to government for approval in the summer of 2024.

The proposed improvements to the SDCP do not address stakeholder expectations for additional compensation for all flood damages (both natural and artificial) or long-standing stakeholder concerns about Shellmouth Dam and Reservoir operations. MTI remains open to discussing long-term strategies and engaging with all stakeholders on how best to balance the many interests in this area.

Active Offer Statement

This information is available in an alternate format on request. Please contact emo@gov.mb.ca.

Questions?

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