

Crown ownership of wetlands policy in AWMS



A wide variety of waterbodies and watercourses are defined as reserved to the Crown in *The Provincial Lands Act, 2016* including “any river, stream, watercourse, lake, creek, spring, ravine, canyon, lagoon, swamp, marsh or other body of water.”



Crown ownership of watercourses and lakes is well accepted and the Water Security Agency (WSA) employs such ownership in many of its Agricultural Water Management program (AWM) regulatory functions.

In contrast, palustrine (marsh and pothole type wetlands) have not in practice been treated as though they are Crown owned.





Legal analysis suggests that the Crown *could* claim ownership of many of Class V, IV and some Class III palustrine (pothole and marsh) wetlands.

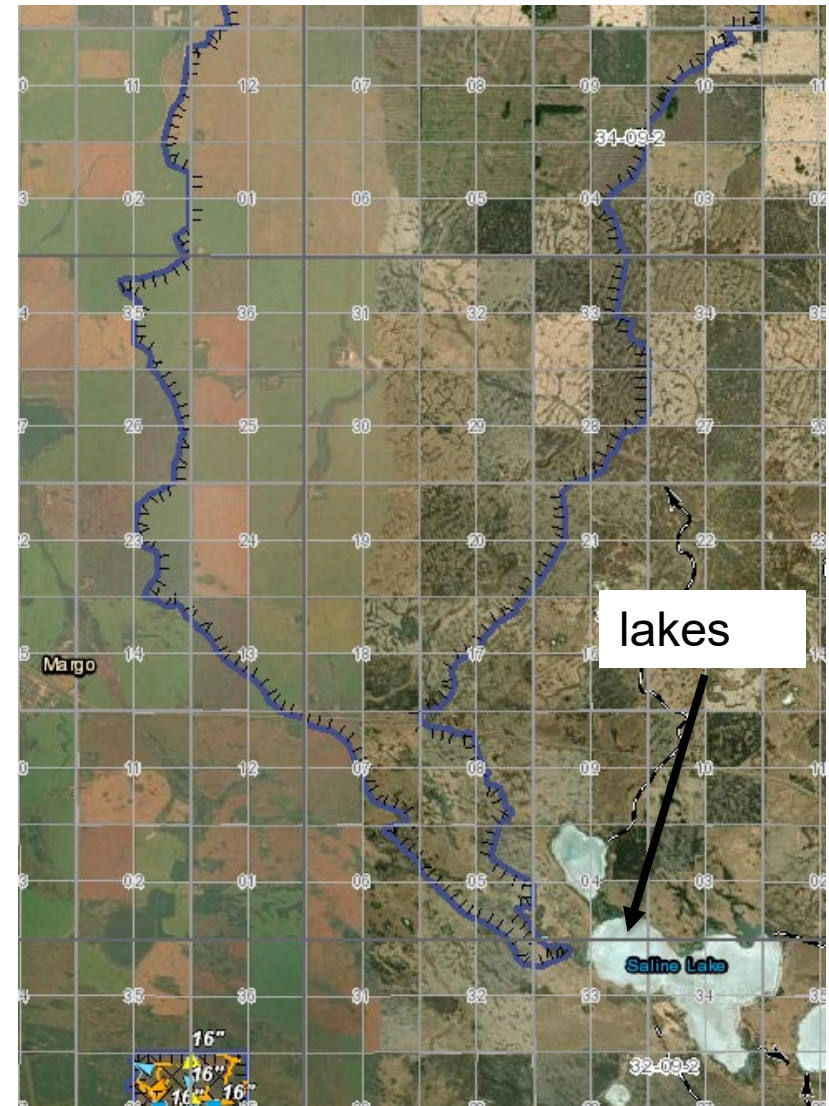
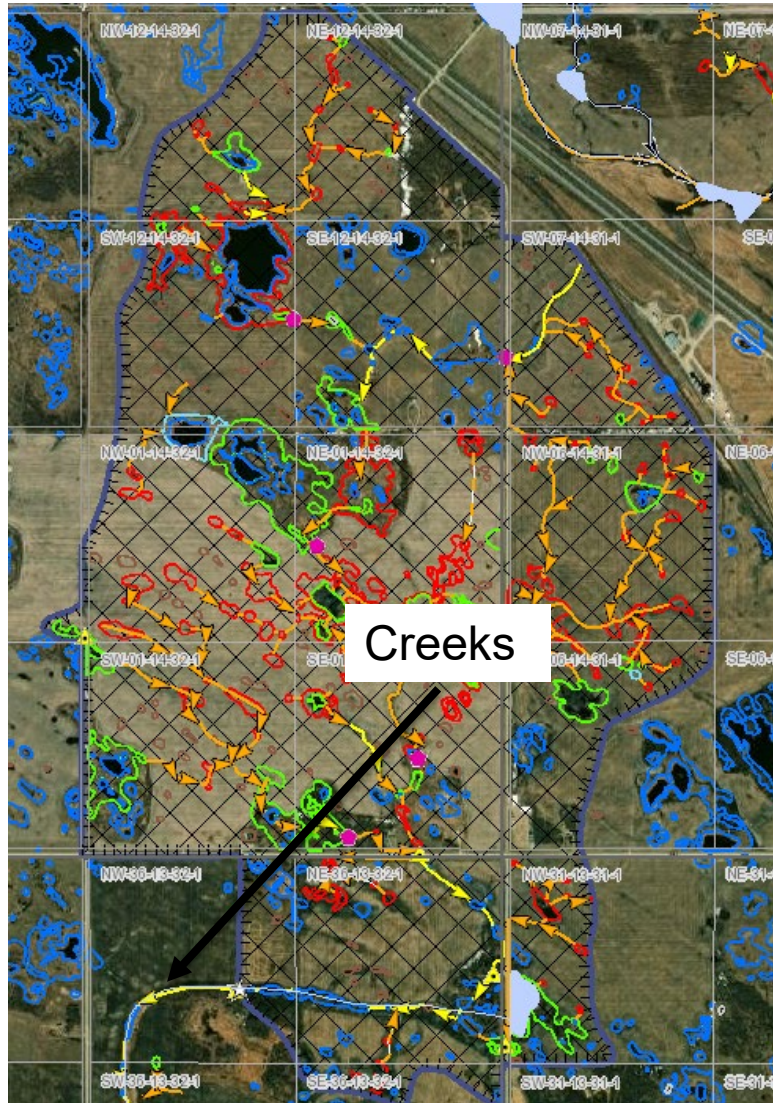
Crown ownership of palustrine wetlands does not impact WSA ability to regulate drainage



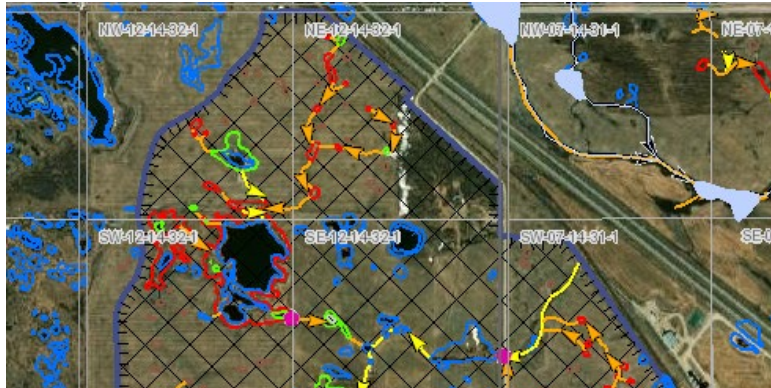
A new WSA policy provides policy guidance on how to address Crown ownership of waterbodies and watercourses **within drainage regulatory processes:**

- Drainage of Crown owned waterbodies
 - Land control requirements for out of bank flooding along Crown owned Creeks
 - Land control requirements for channelization of Crown owned creeks
 - Drainage of palustrine wetlands
- 

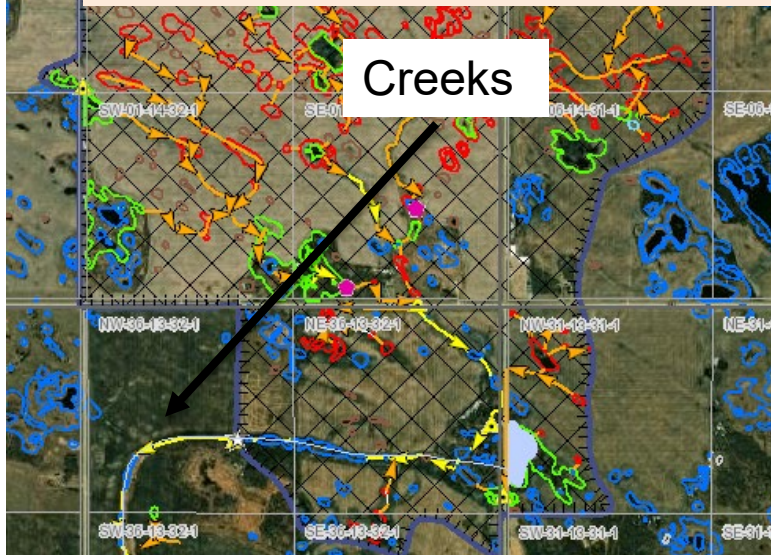
Creeks and lakes will continue to be treated as Crown owned.



Creeks and lakes will continue to be treated as Crown owned.



Crown ownership of creeks (especially ephemeral and seasonal ones) is important from a practical drainage perspective.

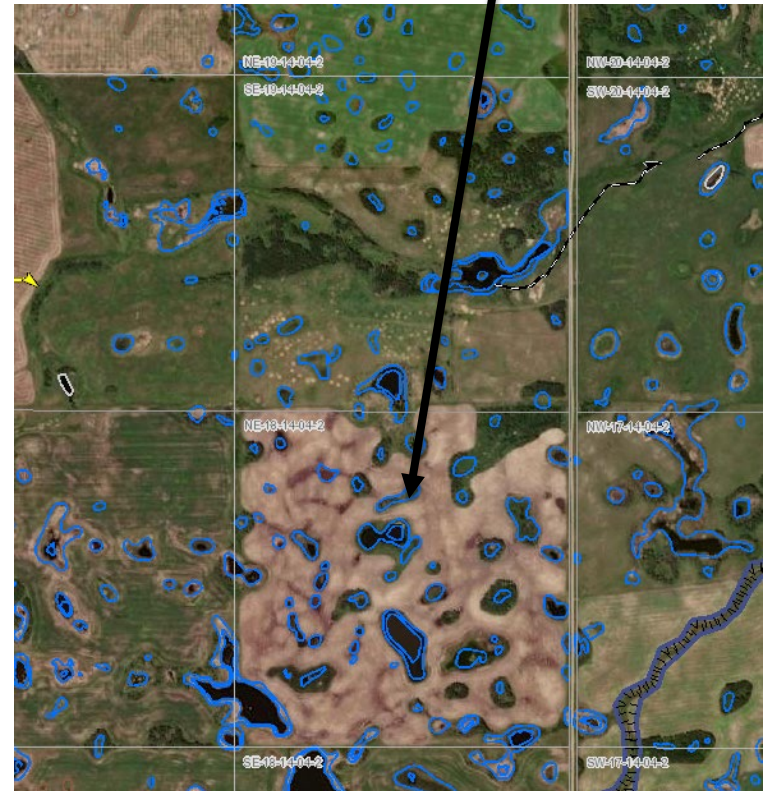


Potholes and marshes will be treated as privately owned.

Large
farmed
marshes



Pothole
wetlands



Potholes and marshes will be treated as privately owned.

Large
farmed
marshes



Pothole
wetlands



Resolving Crown ownership of potholes will be a long and complex process.

Establishing an interim position will help advance approvals and align with how clients currently understand the issue.



For the purposes of the regulatory process of the AWM, watercourses and lakes will be considered Crown owned. Crown owned lakes and watercourses will be identified using the following considerations.

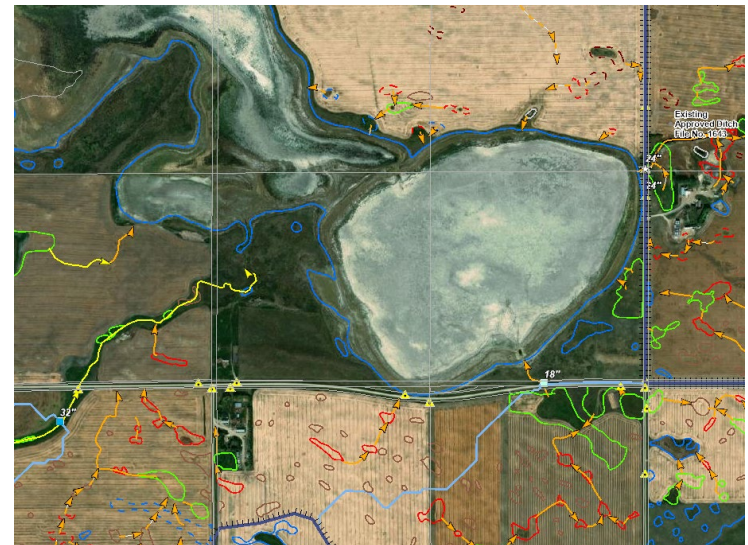
- a) If a parcel exists for a lake or watercourse the parcel lines will be considered the extent of Crown ownership.
- a) In the absence of a legal parcel for lakes or waterways, WSA will use the wetland delineation criteria in the Wetland Definition, Identification and Delineation Policy and Point of Adequate Outlet Policy to determine the extent of Crown ownership.

Unless a Crown owned parcel exists for a palustrine wetland, it will not be considered as Crown owned for the purposes of regulatory process related to drainage regulation regardless of size or permanence class. Drainage of these wetlands will require an approval with any required land control.

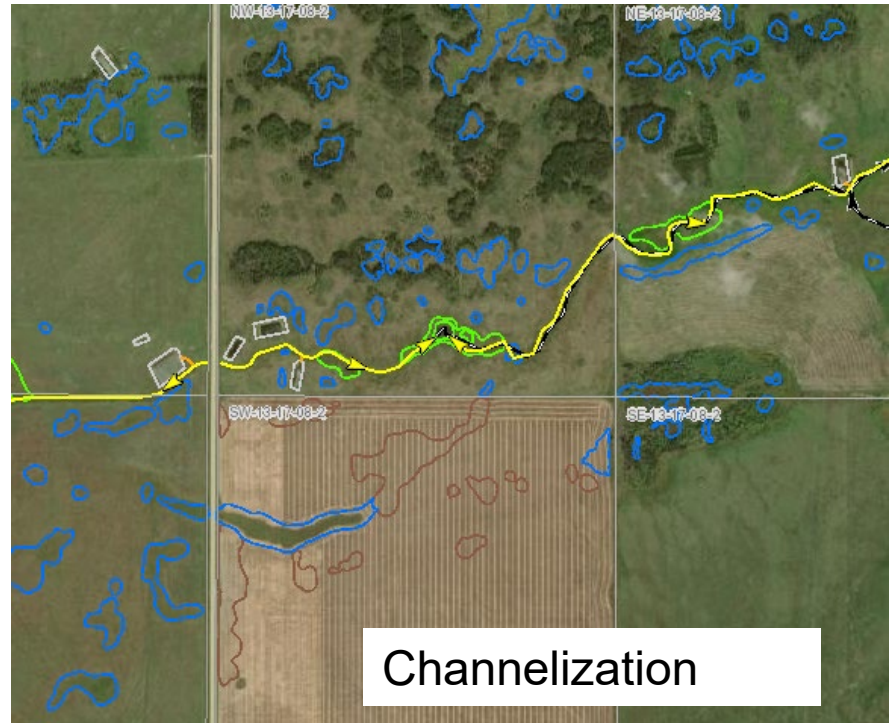


In order to achieve water management objectives, WSA may in certain circumstances choose to treat a palustrine wetland as Crown owned. Such a case will require approval by Executive Committee and will consider:

- a) **Wetland Size:** The wetland is of a sufficient size to justify Crown ownership (e.g., many tens or hundreds of acres in size).
- b) **Wetland permanence:** The wetland is permanent enough to justify Crown ownership (e.g., Class IV or V wetland).
- c) **Water management purpose:** Treating the wetland as Crown owned serves a significant water management purpose (e.g., flood abatement)
- d) **Interests of impacted parties:** Considers the interests of all parties impacted by the decision



Who can drain a Crown owned wetland?



Key Policy Statements

- Applicants for the drainage of Crown owned waterbody or watercourse must be a party with a legitimate interest in the drainage of the waterbody or watercourse.
- WSA will consider the interests of adjacent landowners and other water management considerations (e.g., managing risk of flooding, managing recreational access to shoreline) when approving the drainage of a waterbody or watercourse considered to be Crown owned . Land control will be required for impacted lands which are not treated as Crown owned.
- In particular, when considering whether to approve a channelization, WSA will place significant consideration on the interests of the adjacent landowners.
- When constructing a channelization (surface ditch within a watercourse) in a Crown owned watercourse, if access adjacent to the watercourse for equipment or construction and maintenance of the drainage works is necessary, land control will be required.



Summary

- ***This policy only applies to AWM and continues current practices.***
- Lakes and creeks will continue to be considered Crown owned – facilitating drainage approvals as outlets
- Pothole and marsh wetlands will continue to be treated as privately owned.
- Only parties with a legitimate interest can drain a Crown owned waterbody. Interests of affected parties must be considered.



Questions?