

# Land and Water Boards of the Mackenzie Valley



## Reference Bulletin: Water Use

### Annex A: Interpretation and Reasoning

#### 1.0 Background

In February 2020, during a working group meeting related to the development of the [Method for Determining Winter Water Source Capacity for Small-Scale Developments](#), staff from the Land and Water Boards of the Mackenzie Valley (LWBs) identified a gap in regulation of water use in the Mackenzie Valley. In particular, LWB staff determined that water circulated continuously from a watercourse to prevent freezing of pumps and lines for drilling operations was not being included in proposed total water use volumes in mineral exploration applications. As a result, this water use was not being considered during these regulatory proceedings or being included in the licence conditions. Further, LWB staff became aware that this water use is regulated and included in licence conditions for these types of projects in Nunavut.

Upon comparison of the Nunavut legislation to the applicable water licensing legislation in the Mackenzie Valley, it is clear that the [Nunavut Waters and Nunavut Surface Rights Tribunals Act](#) (NWNSTRA) has a similarly broad definition for water use,<sup>1</sup> and the [Nunavut Waters Regulations](#) (NWR) set out similarly

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<sup>1</sup> "use" is defined in section 4 of the [NWNSTRA](#), as: in relation to waters, means a direct or indirect use of any kind, including, but not limited to,

- (a) any use of water power and geothermal resources;
- (b) any diversion or obstruction of waters;
- (c) any alteration of the flow of waters; and
- (d) any alteration of the bed or banks of a river, stream, lake or other body of water, whether or not the body of water is seasonal.

However, it does not include navigation or any other use connected with shipping activities that are governed by the *Canada Shipping Act, 2001*.

broad licensing criteria for direct water use for this type of project.<sup>2</sup> Given these similarities, this type of water use should be regulated similarly in both regions.<sup>3</sup>

In reviewing this discrepancy, LWB staff concluded that a primary reason for this difference in interpretation is the lack of a common understanding among parties in the Mackenzie Valley about the application of the definition of water ‘use’ to water uses where water is returned to the same water source. To provide clarity on this matter and related future matters, LWB staff prepared the *Reference Bulletin: Water Use* (Bulletin), which was issued in June 2020 under the direction of the LWBs’ Executive Directors’ Committee. From time to time, the LWBs develop and issue reference bulletins of this nature regarding legislative and policy interpretations in order to clarify the LWBs’ expectations and improve the efficiency and transparency of LWB proceedings.

Although the Bulletin was initiated by the need to improve clarity regarding a specific water use, the Bulletin was also intended to provide a broader interpretation of water use that would provide clarity for various circumstances involving direct or indirect withdrawal or diversion of water. During the development of other LWB guidance documents<sup>4</sup> and in LWB regulatory proceedings<sup>5</sup> following the issuance of the Bulletin, LWB staff subsequently determined that water used for the construction and maintenance of ice-bridges (i.e., water used to thicken the portions of winter roads that cross watercourses) had also not historically been included in proposed total water use volumes in applications, and consequently, not included in, or reported under, licence conditions.

This ice-bridge water use is similar to water used to keep lines and pumps from freezing because water is returned to the same watercourse; however, there is a singular specific reference in the licensing criteria to an exception for ice-bridge water use, and parties do not agree on how this exception should be interpreted. During the Mackenzie Valley Operational Dialogue (MVOD) discussion in February 2023, LWB staff and other participants acknowledged the need to formally resolve this issue and ensure expectations are clear to all parties. In order to determine how to advise applicants proposing winter roads as part of a project, LWB staff subsequently undertook further review of the legislation and the Bulletin.

Based on this review, the LWBs’ understanding was that, if a licence is required for a project, ice-bridge water use should be considered a direct water use and should be included in the total water use volume

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<sup>2</sup> Under the [NWR](#), for any type of undertaking other than a power undertaking, a type B water licence is required for the “use of 50 m<sup>3</sup> or more but less than 300 m<sup>3</sup> per day,” and a type A licence is required for the “use of 300 m<sup>3</sup> or per day.”

Under the [MVFAWR](#) and [Waters Regulations](#), for both industrial and miscellaneous projects, a type B water licence is required for the “use of 100 or more cubic metres per day and less than 300 cubic metres per day,” and a type A licence is required for the “use of 300 or more cubic metres per day.”

<sup>3</sup> The LWBs also reviewed the Yukon’s [Waters Act](#) and [Waters Regulations](#); however, since the types of mineral exploration projects are largely dissimilar and are considered differently under the Yukon legislation, no comparison is provided here.

<sup>4</sup> See the Policies and Resources page on any of the LWBs’ websites ([www.glwb.com](http://www.glwb.com)/[www.mvlwb.com](http://www.mvlwb.com)/[www.slwb.com](http://www.slwb.com)/[www.wlwb.ca/](http://www.wlwb.ca/)) to access the [LWB Standard Water Licence Conditions Template – Review Summary Tables](#) and the [LWB Guides to the Land Use Permitting and Water Licensing Processes – Review Summary Table](#).

<sup>5</sup> For examples, see the LWBs’ public registry for [MV2022L2-0007 – KDI – Issuance – Type B Water Licence – Dec 22 22](#), [MV2014L2-0006 – CZN – ASR – Non-Fed Licence – Amendment – Aug 30 22](#), and [MV2022L8-0008 – EREX – Issuance – Type B Water Licence – Jan 3 23](#)

for the project. For miscellaneous projects that otherwise exceed licensing criteria for water use, ice-bridge water use would therefore contribute to the determination of whether a type A or type B licence is required. For some other types of projects, where the relevant Schedule does not set out ice-bridge water use as a below-threshold direct water use, ice road water use would also contribute to the determination of whether a licence is required at all. The reasoning for the LWBs' interpretation of the legislation with respect to water use in general, and specifically with respect to ice-bridge water use, was set out in this Annex, which was then distributed for public review from June 8 - October 30, 2023. The public review was focused on obtaining the evidence needed to determine the best legal interpretation of the legislation with respect to ice-bridge water use, and reviewers were guided by specific review questions.

Several Parties submitted responses to this review request,<sup>6</sup> which were then reviewed by LWB staff and legal counsel. LWB staff then prepared a draft Bulletin with potential revisions that could be considered by the LWBs based on the responses to the first review. The draft Bulletin was subsequently distributed for public review from March 27 – April 24, 2024.<sup>7</sup> Eleven Parties, including Indigenous, federal, and territorial governments, industry, and consultants submitted comments on the draft Bulletin.

The LWBs considered all responses submitted during both public reviews and updated the Reference Bulletin and Annex to reflect their revised interpretations. The LWBs' reasoning for their current interpretations is set out in section 2.0 below.

Where indicated, the LWBs' revised interpretations should be regarded as interim to address the current lack of clarity in the legislation. The LWBs recognize that, for the longer term, the regulation of ice-bridge water use, along with other aspects of the licensing regulations that are unclear, should be addressed through amendments to the [Mackenzie Valley Federal Areas Regulations](#) (MVFAWR) and [Waters Regulations](#) (collectively, the Regulations).

## **2.0 [Interpretation of Licensing Legislation](#)**

### **2.1 [Definition of Water Use](#)**

In the licensing legislation, the definition of 'use' with respect to water is very broad and includes both direct and indirect water uses. As noted above, the primary reason for developing the Bulletin was to clarify how the LWBs specifically apply this definition to water withdrawals and diversions where the water is returned to the same source:

Without limiting the [legislated definition], any withdrawal or diversion of water, directly or indirectly, from a water source for any period of time is considered a water use, since the water that is removed is not available to other potential users of the water source during that time.

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<sup>6</sup> See the LWBs' Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#).

<sup>7</sup> See the LWBs' Online Review System for [MVLWB – Draft Reference Bulletin: Water Use – March 27, 2024](#).

As set out in the Bulletin, this includes water used to construct and maintain an ice bridge over a watercourse as well as water that is circulated continuously from a watercourse to prevent pumps, lines, or equipment (e.g., drills) from freezing.

In 2014, Aboriginal Affairs and Northern Development Canada (AANDC) responded to a request from the Nunavut Water Board to clarify AANDC's interpretation of water use under the [NWNSRTA](#), particularly with respect to water circulated continuously from a watercourse to prevent freezing of equipment. In summary, AANDC's response (attached) concludes that this is a water use, because in general, water removed from a source for any period of time is not available to other users during that time and therefore constitutes a water use. AANDC further clarifies that water use should be included in the total water use volume for a project even if returned to the same water source.

This more general explanation of how AANDC interprets the legislated definition for water withdrawals and diversions also provides clarity on other similar water uses, including ice-bridge water use. This conclusion is consistent with both the [NWR](#) and the Regulations, neither of which generally specify that water returned to the source after use should be excluded when considering the licensing criteria in the Schedules.

While AANDC's letter refers to water use of this nature as both a withdrawal and a diversion, with respect to the Regulations, not all water withdrawals are diversions. Instead, the Schedules in the Regulations differentiate between direct water use and diversion of water, which is an indirect water use with its own specific licensing criteria. Since the letter was written in the context of the [NWR](#), which do not make this differentiation in the Schedules, this letter should not be taken to mean that all water withdrawals can be broadly considered diversions under the Regulations in the Mackenzie Valley.

The LWBs acknowledge that, in response to the draft Bulletin, some reviewers recommended that the LWBs further consider the definition of water use and whether this definition should differentiate between consumptive and non-consumptive water use. These reviewers suggested that non-consumptive water use (water returned unaltered to the water source) should not be considered a water use under the Regulations.<sup>8</sup>

The LWBs note that the definition of water use in the legislation is very broad and does not distinguish consumptive versus non-consumptive water uses. The LWBs do not have the authority to constrain this definition in the manner suggested in this recommendation, or in any other manner that would be inconsistent with the legislation. Any further discussion of distinguishing between consumptive and non-consumptive water use for the purposes of regulation should be considered through amendments to the Regulations.

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<sup>8</sup> See the LWBs' Online Review System for [MVLWB – Draft Reference Bulletin: Water Use – March 27, 2024](#): EREX-2; page 2 of the Chamber of Mines' response letter; MPVD response letter; page 1 of RainCoast's response letter; and White Cliff Minerals' response letter.

Regardless, as noted by the NorZinc Ltd. (NorZinc), Seabridge Gold (Seabridge), and the Northwest Territories Power Corporation (NTPC) in the initial public review, defining an activity as a water use does not determine whether or not a licence is required;<sup>9</sup> however, this is the first step in determining whether a water use could require a licence and should be assessed against licensing criteria for water use, which are discussed further in the next section.

Notwithstanding differences between the licensing criteria in the Regulations and the [NWR](#) (which are notably simpler and more general), the definition of water use in the [NWNSRTA](#) and the [Mackenzie Valley Resource Management Act](#) (MVRMA) and [Waters Act](#) (collectively, the Acts) are essentially identical, and these Acts all require consideration of the effects of water use on other users.<sup>10</sup> Accordingly, the LWBs consider AANDC's interpretation of water use applicable to water withdrawals and diversions, whether direct or indirect, in the Mackenzie Valley, and have incorporated this interpretation in the Bulletin.

## 2.2 Licensing Criteria for Water Use

Under the Regulations, water may be used without a licence if it does not exceed the applicable licensing criteria set out in the Regulations and also meets the following broad criteria:

- (a) has no potential for significant adverse environmental effects; and
- (b) would not interfere with existing rights of other water users or waste depositors.<sup>11</sup>

Even exempt water uses may require a licence if they fail to meet any one of these requirements.

The [MVFAWR](#) and the [Waters Regulations](#) (collectively, the Regulations, as previously noted) set out water licensing criteria for both direct and indirect water use (as well as deposit of waste) in the Schedules. In all Schedules, for all categories and types of licences, criteria for direct water use are listed in item 1, while indirect use criteria are in item 2, and deposit of waste criteria are in item 3. Below-threshold water uses (i.e., water uses that do not, on their own, exceed minimum water licensing criteria) are listed in column II of each item in a Schedule.

In response to the legal interpretation questions, some reviewers commented that the licensing criteria in the Schedules are only applicable to the water uses expressly listed therein.<sup>12</sup> While the LWBs agree with this in principle, not all water-use licensing criteria are specific. While the direct water use criteria are based on a volume for a specific water use (e.g., for type A mining and milling licences or for power licences) in some licence categories set out in the Schedules to the Regulations, in other licence categories, the direct water use criteria are based broadly on water use volumes rather than a specified water use

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<sup>9</sup> See the LWBs' Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#): EREX-4; page 2 of NorZinc's response letter; page 3 of Seabridge's response letter; and pages 4 and 10 of NTPC's response letter.

<sup>10</sup> See paragraphs 26(5)(a) and (b) and subsection 27(2) of the [Waters Act](#); paragraphs 72.03(5)(a) and (b) and subsection 72.04(2) of the [MVRMA](#); and sections 58, 62, and 71, and subsection 60(1) of the [NWNSRTA](#).

<sup>11</sup> See subsections 4(1) of the Waters Regulations and 5(1) of the [MVFAWR](#).

<sup>12</sup> See the LWBs' Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#): GNWT-4; page 2 of NorZinc's response letter; and pages 17-18 of NTPC's response letter.

(e.g., industrial or miscellaneous<sup>13</sup> licences). In such cases, the LWBs consider the cumulative direct water uses for all project activities to determine whether a licence is required, and whether the licence will be a type A or B licence. This may consist of several below-threshold water uses that, in total, exceed the licensing criteria, because the focus is on total water use – not on a singular specific use.

In general, as acknowledged by the Government of the Northwest Territories – Department of Environment and Climate Change (GWNT),<sup>14</sup> once a project exceeds licensing criteria, below-threshold water uses are to be considered in the preliminary screening and in the licence conditions (including any limitations on water use volumes or rates). The LWBs do not separate out and exclude below-threshold water uses for a project, because the legislation indicates that once a licence is required, it will include any of the water uses and deposits of waste listed in the Schedules (as relevant to the project),<sup>15</sup> and the scope of the conditions the LWBs may include is broad.<sup>16</sup> This approach is consistent with screening the project as a whole and developing conditions accordingly. Further, the LWB [Water Use Fee Policy](#) and [Calculator](#) also indicates that fees are to be paid for below-threshold water uses, and these fees are based directly on the water use volumes authorized in a licence. In order to include below-threshold water uses in the fee calculations, they must therefore be included in the authorized water use volumes in a licence.

### 2.3 Exceptions in Licensing Criteria

In addition to the general statutory licensing exceptions for domestic users, instream users, and emergency water uses for floods and fires,<sup>17</sup> the Schedules in the Regulations describe specific exceptions to licensing requirements in two different ways. Primarily, for each category of licences, the Schedules set out some below-threshold water uses and/or waste deposits that do not, on their own, require a licence. Below-threshold activities that are applicable to only one category of project are listed only in the relevant Schedule. Below-threshold water uses/waste deposits that are applicable to all licence categories are specifically listed in each Schedule – for example, diversion of a watercourse less than 2 m wide, or off-stream storage of less than 2,500 m<sup>3</sup> of water. Regardless, as described above in section 2.2, in order to consider a project as a whole, the LWBs do not consider these to be exceptions once a project otherwise exceeds licensing criteria.<sup>18</sup>

The other approach to specifying a licensing exception in the Schedules is an asterisk that specifies an exemption for direct water use from an artificial reservoir. The asterisk is included for all categories of licences except power projects and type A mining and milling projects. Further, unlike below-threshold activities, in each Schedule the asterisk is included in, it is specifically included in each column it is meant to apply to (e.g., Column II – no licence required, Column III – type B, and/or Column IV – type A criteria).

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<sup>13</sup> While this category also includes agricultural, recreation, and conservation projects, for the purposes of this document, this category will be referred to as ‘miscellaneous.’

<sup>14</sup> See the LWBs’ Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#): GNWT-4.

<sup>15</sup> See sections 8 and 7, and Column I of Schedules IV-VIII and D-H, of the [MVFAWR](#) or the [Waters Regulations](#), respectively.

<sup>16</sup> See subsection 27(1) of the [Waters Act](#) and subsection 72.04(1) of the [MVRMA](#).

<sup>17</sup> See subsection 10(2) of the [Waters Act](#) and subsection 72(2) of the [MVRMA](#).

<sup>18</sup> Notably, subsection 4(2) of the [NWR](#) directly specifies that, “no use of waters without a licence is authorized if a licence is required for another use of waters, or a deposit of waste, in respect of the same undertaking.”

There is also one unique exception specified for ice-bridge water use for miscellaneous projects (Schedule H/VIII). Although this exception is listed similarly to below-threshold water uses, there is no volume limitation on this type of water use, so this exception is considered differently than other below-threshold water uses. This exception is discussed further in section 2.4 below.

Based on these deliberate approaches and on the rules of statutory interpretation, the LWBs only apply criteria and exceptions where they are listed. For example, the LWBs do not apply municipal licensing criteria to mining and milling projects, or exclude water use from an artificial reservoir for a power project.

## 2.4 Ice-Bridge Water Use<sup>19</sup>

In a water licence application for any type of project, applicants must provide the same information about ice-bridge water use as for other direct water uses.<sup>20</sup> Because of the specific exception for miscellaneous projects (described in section 2.3 above), however, the LWBs do not consider the volume of water used for ice-bridges in the total direct water use volume, the determination of whether a type A or B licence is required, or the calculation of water use fees for these types of projects.<sup>21</sup>

The explicit exception for ice-bridge water use set out in the Schedule for miscellaneous licences is not found anywhere else in the Regulations, so the LWBs do not consider ice-bridge water use an exception for other types of projects. For all other types of projects, applicants must include ice-bridge water use in the total direct water use volume, so water use fees will usually be applicable,<sup>22</sup> and for industrial projects, this may affect whether a type A or B licence is required.

The LWBs' reasoning for these interpretations and application requirements is set out below.

### 2.4.1 Categorization as a Water Use

Based on the Regulations and AANDC's letter as described in section 2.1 above, the LWBs consider water used to form an ice-bridge as a water use under the [MVRMA](#) and [Waters Act](#) because this water is not available to other water users during the time it remains incorporated into the ice bridge.

During the first public review, some Parties argued that ice-bridge water use should not be considered a water use, because it is temporary, and the water is not actively used, nor actually withdrawn from the watercourse, but only transformed to a different physical state, and therefore still available to other

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<sup>19</sup> No comparison to the [NWR](#) or the Yukon's [Waters Regulations](#) is included here, because there is no reference to ice bridges in the [NWR](#), and while there is a parallel reference to below-threshold ice-bridge water use for miscellaneous licences in the Yukon's [Waters Regulations](#), both the types of projects in this category and the typical means of accessing these projects are not similar to those considered by the LWBs in this category.

<sup>20</sup> For more information, see the [Apply for Permit/Licence](#) page on any of the LWBs' websites to access the Water Licence Application Forms and the LWB [Guide to the Water Licensing Process](#).

<sup>21</sup> This exception only applies to water used for an ice bridge on the same watercourse; this exception does not apply to water used from one watercourse for an ice bridge on a different watercourse.

<sup>22</sup> See the [Apply for Permit/Licence](#) page on any of the LWBs' websites to access the [Water Use Fee Calculator](#).

users.<sup>23</sup> In reviewing the draft Bulletin, as noted earlier, some Parties furthered this argument by categorizing ice-bridge water use as a non-consumptive water use that should not be considered a water use in the context of the Regulations. The LWBs do not agree with these arguments.

As noted by the GNWT,<sup>24</sup> by identifying the removal of water for ice-bridges as a water use to which the licensing criteria don't apply in some circumstances, the Regulations clearly recognize it as a water use. The LWBs also note that the legislation does not distinguish between temporary and permanent water uses, nor between consumptive and non-consumptive water uses. Additionally, while the LWBs do not consider water used for ice bridges as a waste, the definition of waste in the Acts indicates that the legislation contemplates the potential for effects from changes in water temperature, which is relevant to the change in physical state of water.<sup>25</sup>

Finally, with respect to whether this water can be considered a withdrawal, the exception in Schedule H/VIII specifically describes ice-bridge water use as a 'removal of water,' which, on ordinary reading, indicates it is considered a withdrawal. Although the ice remains in the same watercourse, the water that is withdrawn and incorporated into an ice-bridge is not available to other uses while the ice bridge is in place – users cannot take the ice and melt it for other uses without affecting the integrity of the ice bridge itself – so the capacity of water available for other users is effectively reduced.

#### **2.4.2 Applicable Licensing Criteria**

In the Regulations, ice-bridge water use is only referred to in the direct water use criteria for miscellaneous licences, where it is listed as a below-threshold direct water use,<sup>26</sup> and for all projects, diversions and off-stream storage of water are listed separately under the indirect water use criteria.<sup>27</sup> Accordingly, for all types of projects the LWBs consider ice-bridge water use a direct use, not a diversion or, as suggested by Seabridge,<sup>28</sup> similar to off-stream storage (i.e., an indirect water use). The LWBs therefore apply the direct water use criteria to ice-bridge water use.

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<sup>23</sup> See the LWBs' Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#); EREX-4; page 1 of NorZinc's response letter; and pages 1-2 of the Chamber of Mine's response letter.

<sup>24</sup> See the LWBs' Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#): GNWT-4.

<sup>25</sup> See section 1 of the [Waters Act](#) and section 51 of the [MVRMA](#).

<sup>26</sup> See Column II, Item 1 of Schedule VIII or H of the [MVFAWR](#) or the [Waters Regulations](#), respectively.

<sup>27</sup> See Item 2(4) in Schedules IV - VIII or D-H of the [MVFAWR](#) or the [Waters Regulations](#), respectively.

<sup>28</sup> See the LWBs' Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#): pages 4-5 of Seabridge's response letter.



Because direct water use criteria are written differently in each licence category, considering ice-bridge water use as a direct water use may or may not influence the determination of whether a type A or B licence is required. For miscellaneous projects, the Schedules in the Regulations allow for direct water use without a licence for:

Use of less than 100 m<sup>3</sup> per day or use for construction of an ice bridge where the water used is removed directly from the watercourse.<sup>29</sup>

This exception for unlimited ice-bridge water use is not expressly carried across into the type A and B licensing criteria, which are strictly volume-based. The LWBs do not normally exclude below-threshold water uses once a licence is otherwise required, but during the first public review, some Parties suggested that the use of the word ‘or’ separates this exception into two distinct parts.<sup>30</sup> When considered separately as suggested, there is no volume limit on the ice-bridge water use exception, which could signal an intent to entirely exempt ice-bridge water use from licensing criteria, so some Parties pointed out that this not really a ‘below-threshold use.’<sup>31</sup>

The term ‘below-threshold’ is not actually used in the legislation, but the LWBs agree that this exception is written differently from what the LWBs commonly refer to as below-threshold criteria or uses. In the absence of clarity and documented intent in the current legislation, and with consideration for the operational and economic impacts referenced by all Parties,<sup>32</sup> for the interim, the LWBs have decided to adopt the interpretation suggested by several reviewers and exclude ice-bridge water use from the direct water use total for miscellaneous-type projects. Consequently, ice-bridge water use will not be considered when determining whether a type A or B licence is required for a miscellaneous-type project.<sup>33</sup>

Although the LWBs believe that amendments to the Regulations are needed to clarify this exception for the long-term, taking this approach in the interim remains consistent with the overall objective of the LWBs to make decisions that balance conservation and use of land and water in a way that best benefits the people of the Mackenzie Valley, and Canada in general.<sup>34</sup> The risk of significant effects from ice-bridge water use is usually low, and almost all Parties noted that requiring licences based on this water use often requires more time and resources for all Parties than necessary for abandoned-mine remediation projects and small mineral exploration projects.<sup>35</sup>

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<sup>29</sup> See Column II, Item 1 of Schedule VIII or H of the [MVFAWR](#) or the [Waters Regulations](#), respectively.

<sup>30</sup> See the LWBs’ Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#): page 2 of NorZinc’s response letter; and page 4 of Seabridge’s response letter.

<sup>31</sup> See the LWBs’ Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#): GNWT-5; pages 2, 3,4, and 5 of NorZinc’s response letter; and page 5 of Seabridge’s response letter.

<sup>32</sup> See the LWBs’ Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#), and [MVLWB – Draft Reference Bulletin: Water Use – March 27, 2024](#).

<sup>33</sup> Specific volume limitations for this water use from any or all proposed water sources may be included in a licence if all criteria set out in subsection 4(1) of the [Waters Regulations](#) or subsection 5(1) of the [MVFAWR](#), as applicable, are not met.

<sup>34</sup> See section 101.1 of the [MVRMA](#).

<sup>35</sup> See the LWBs’ Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#): EREX-2 and 3; the Chamber of Mine’s response letter; page 5-6 of NorZinc’s response letter; GNWT’s Response Letter; pages 6-7 of Seabridge’s response letter; and the Tłı̨chǫ Government’s response letter.

As explained in section 2.2 above, however, even projects that do not exceed the licensing criteria set out in the Regulations will require a licence if the project's water use has the potential for significant adverse effects on the environment or effects on the existing rights of other water users or waste depositors. While the Acts do include blanket licensing exemptions for some general water uses (see section 2.3 above), ice-bridge water use is not among them, so all of these criteria must be met for ice-bridge water use to be exempt from the licensing criteria.

In this respect some reviewers argued that, in addition to being exempt under the licensing criteria, the environmental impacts of ice-bridge water use are typically minimal and the rights of other users are unlikely to be affected,<sup>36,37</sup> and as such, Seabridge in particular reasoned that this use meets all the legislated criteria for water use without a licence.<sup>38</sup> Even if this is typically true of ice-bridge water use, every project must be considered in the context of the project- and location-specific details, and with the cumulative effects of the whole project and any existing or proposed projects in mind, so the LWBs cannot simply apply this assumption to all projects and infer a blanket exemption where the legislation does not specify one.

In keeping with these same arguments, many Parties in both reviews further recommended that the LWBs broadly exclude ice-bridge water use from the licensing criteria for all types of projects, arguing that not to do so would be illogical, and inconsistent with modern statutory interpretation and/or the legislative drafters' intent.<sup>39,40</sup>

In general, the LWBs agree that in applying the "modern approach" to statutory interpretation, the history and purpose is important. In this case, however, the LWBs, do not agree with reviewers that it is evident from this context that the intent was to apply the ice-bridge water use exemption to all Schedules, for all types of projects. At the time the legislation was drafted, there was a much greater focus and priority on oil and gas exploration than mineral exploration. This is reflected in the fact that mineral exploration is not mentioned anywhere in the Regulations, including the Schedules (as discussed later in section 2.5.1 below), while oil gas exploration is clearly categorized. None of the criteria in Schedules H/VIII are directly relevant to mineral exploration, and there is no indication that mineral exploration was purposefully intended to fit into these Schedules, where it could benefit from the ice-bridge water use exemption.

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<sup>36</sup> See the LWBs' Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#); page 5 of NorZinc's response letter; pages 1, 3, and 4 of Seabridge's response letter; and pages 1-2 of the Chamber of Mine's response letter.

<sup>37</sup> See the LWBs' Online Review System for [MVLWB – Draft Reference Bulletin: Water Use – March 27, 2024](#): EREX-2, and page 2 of NorZinc's response letter.

<sup>38</sup> See the LWBs' Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#): page 4 of Seabridge's response letter.

<sup>39</sup> See the LWBs' Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#): EREX-5 and GNWT-4 and 5; page 5 of NorZinc's response letter; pages 17-18, and 22 of NTPC's response letter; and pages 5-7 of Seabridge's response letter.

<sup>40</sup> See the LWBs' Online Review System for [MVLWB – Draft Reference Bulletin: Water Use – March 27, 2024](#): EREX-3; GNWT-5; page 2 of NorZinc's response letter; and page 1 of RainCoast Environmental Services Ltd. (RainCoast)'s response letter.

At the same time, although oil and gas exploration was a priority at the time of drafting the legislation, the drafters did not include an ice-bridge water use exemption in Schedules D and IV concerning oil and gas exploration. This suggests that such an exemption was either not intended to apply to these Schedules, or similarly, to the other Schedules where it is also not included, or that it simply was not thoroughly considered at all.

The LWBs acknowledge that maintaining the ice-bridge water use exemption exclusively to Schedules H/VIII, while entirely consistent with the current legislation, has implications for other types of projects. The LWBs recommend that this issue be considered further through amendments to the Regulations.

In the interim, the LWBs note that neither power nor municipal licensees are affected, and mining and milling licensees will be required to pay water use fees for ice-bridge water use (as discussed further below), but this water use will not affect whether a type A or B licence is required for these types of projects. Until such time as the Regulations are clarified, applicants for projects in the industrial category (including oil and gas exploration and operations) will be required to include ice-bridge water use in their proposed total water use volume, which may affect the type of licence required (though it may not be the determining factor in all cases) and will affect the required water use fees. The LWBs note that there is limited new oil and gas activity at this time, and this will not affect existing licensees until their licences must be renewed.

Miscellaneous projects that do not otherwise exceed licensing criteria will not require a licence for any volume of ice-bridge water use. While this may appear incongruent with the reasoning for the interpretation above, both the number and size of projects of this nature are likely small – for example, community winter access roads. Most projects that propose a winter road are likely to require a licence for other water uses (including water for the overland portions of a winter road), or for the deposit of waste, in which case, the ice-bridge water use mitigations required in the licence will be similar to any other project that includes ice-bridge water use.

Regardless of the above, all applicants will be required to provide the same information about ice-bridge water use, and appropriate conditions will be included as explained further below.

### ***2.4.3 Licence Applications and Conditions***

While not all water uses will be relevant to determining whether a project exceeds the licensing criteria in the Schedules, to assess proposed projects against all three of the overarching criteria that govern whether a licence is required (as described in section 2.2 above), the LWBs require information about all proposed water uses in a water licence application. Neither the LWBs nor the existing users themselves can identify who might be affected, or whether those effects will be adverse, without understanding where, when, and how much water will be used.

Consequently, as explained in section 2.2, once a licence is required, the LWBs require information about all water uses, not only those that exceed licensing criteria, in order to:

- evaluate any potential issues of precedence;<sup>41</sup>
- assess any potential compensation claims;<sup>42</sup>
- conduct a preliminary screening, which must consider a project as a whole;<sup>43</sup>
- develop appropriate licence conditions.<sup>44</sup>

While Seabridge suggested that ice-bridge water use for miscellaneous projects should not be subject to preliminary screening or considered in developing licence conditions,<sup>45</sup> as observed by the GNWT, a screening must consider all potential environmental impacts of all aspects of a project, even those that do not require an authorization.<sup>46</sup> Additionally, once a licence is required, the scope of conditions that can be included is broad and is not limited to addressing only those activities that require a licence.<sup>47</sup>

Accordingly, even though ice-bridge water use will not always be a factor in determining what type of licence (A or B) is required, information about ice-bridge water use must be included in water licence applications for all categories of projects. Reviewers will then have the opportunity to identify potential impacts of all proposed water uses on the environment and on other water users, which supports informed and balanced LWB decisions.

For miscellaneous-type projects, ice-bridge water use would not be included as an authorized water use that would contribute to the maximum total water use volume specified in the licence; however, this water use will be considered in the preliminary screening, and the licence will typically include conditions intended to mitigate the potential impacts of this water use as identified in the screening.

The LWB [Standard Water Licence Conditions Template](#) includes standard conditions intended to mitigate the potential impacts associated with winter water withdrawal for activities such as ice-bridge construction and maintenance. Without setting out specific volume limits in a licence for winter water withdrawal from a water source, these conditions are intended to ensure that the capacity of a water source to support winter water use is not exceeded, and aquatic habitat is protected. Based on the evidence from the regulatory proceeding for a particular project, the LWBs may also include project-specific conditions in addition to, or in place of, these standard conditions.

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<sup>41</sup> See paragraph 26(5)(a) of the [Waters Act](#) and paragraph 72.03(5)(a) of the [MVRMA](#).

<sup>42</sup> See paragraphs 26(5)(a) and (b) of the [Waters Act](#), and paragraphs 72.03(5)(a) and (b), subsection 72.05(1), and sections 77 and 79 of the [MVRMA](#).

<sup>43</sup> See subsections 111(1) and 124(1), and section 125 of the [MVRMA](#).

<sup>44</sup> See subsection 27(1) and (2) of the [Waters Act](#), and subsections 72.04(1) and (2) of the [MVRMA](#).

<sup>45</sup> See the LWBs' Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#): pages 3-4 of Seabridge's response letter.

<sup>46</sup> See subsections 111(1) and 124(1), and section 125 of the [MVRMA](#), and the LWBs' Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#): GNWT-4.

<sup>47</sup> See subsection 27(1) and (2) of the [Waters Act](#), and subsections 72.04(1) and (2) of the [MVRMA](#), and the LWBs' Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#): GNWT-4.

As previously noted, in some cases, miscellaneous projects that do not otherwise exceed licensing criteria will not require a licence for any volume of ice-bridge water use. For an extensive winter-road-only project that might entail large volumes of ice-bridge water use, however, a water licence is still likely to be required for water used for the on-land portions of the road. As a result, the opportunity to apply appropriate licence conditions to mitigate the potential impacts of ice-bridge water use will be available for most winter roads.

#### 2.4.4 Water Use Fees

Water used for ice bridges is considered a water use; however, since water use fees are calculated based on the authorized water use volume in a licence, water use fees will not apply to ice-bridge water use for miscellaneous projects. Water use fees are also not payable for this water use for power licences, which have a different fee structure, or municipal licences, for which there are no water use fees. Water use fees will only be payable for this water use for any mining and milling, or industrial licences that include ice-bridge water use in the authorized water use volume.

The GNWT was the only Party that made a specific recommendation on this topic, stating that water use fees are payable for ice-bridge water use, because it is a 'water use.'<sup>48</sup> Other Parties only generally recommended that the LWBs adopt the Draft Bulletin – in which LWB staff proposed that water use fees would not apply to ice-bridge water use for miscellaneous projects – without commenting specifically on this potential change in interpretation.

As set out in the legislation and the LWB [Water Use Fee Policy](#), water use fees for miscellaneous projects are calculated based on the authorized water use volume set out in the licence, not on actual water use.<sup>49</sup> As noted in section 2.4.3 above, for these projects, ice-bridge water use will not be an authorized water use included in the maximum total water use volume specified in a licence. To implement the GNWT's recommendation to include ice-bridge water use in the fee calculation, set maximum daily and annual water use volumes for ice bridges must be included in the authorized total water use volume in a licence. The LWBs would therefore be directly authorizing an exempt water use in a licence, as well as authorizing type A water licence water use volumes and charging type A water licence fees in type B miscellaneous licences, which would not be consistent with the legislation.

From a practical perspective, directly constraining the daily and annual ice-bridge water use by setting specific maximum volumes in a licence, rather than regulating it through standard or project-specific risk-based conditions, reduces flexibility for licensees. This is the same restrictive approach required under the initial version of the Bulletin and was the root of the concerns that led to the review of the Bulletin. When the initial version of the Bulletin was in effect, some licensees chose to limit their total water use to less than 299m<sup>3</sup>/day (including ice-bridge water use) to avoid the need for a type A licence for a small project – this approach requires the licensee to limit and/or manipulate their operations on a daily basis to remain

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<sup>48</sup> See the LWBs' Online Review System for [MVLWB – Draft Reference Bulletin: Water Use – March 27, 2024](#); GNWT-4.

<sup>49</sup> See paragraphs 8(1)(a) and (b) of the [Waters Regulations](#) and 9(1)(a) and (b) of the [MVFAWR](#), and the LWB [Water Use Fee Policy](#).

within this limit for all combined project water uses.<sup>50</sup> The operational and economic impacts of this limitation were repeatedly noted as a concern by reviewers.<sup>51,52</sup>

If the LWBs adopted the GNWT's recommendation, the allowable authorized water use volume would be higher than the legislation allows for in a type B miscellaneous licence (299m<sup>3</sup>/day), but a licensee would still be constrained by the daily limit and may need to adjust operations accordingly at times to account for variability in the volume used for ice-bridges on any one day, and from year to year.

To build in flexibility and avoid the need for amendments to the authorized maximum volume, applicants would need to propose very conservative estimates and be prepared to pay the correspondingly high fees. Ultimately then, annual water licence fees for ice-bridge water use throughout the life of a project would likely be a more significant burden than the initial costs associated with licensing processes. This implication directly conflicts with expressions of concern from reviewers, including the GNWT itself, regarding the impacts of higher regulatory costs on mineral exploration in the NWT.<sup>53,54</sup> Seabridge observed directly that including ice-bridge water use in total water use calculations significantly affects water use fees and costs for mineral exploration projects.<sup>55</sup>

Finally, the LWBs also note that, before this issue was brought to light, water use for ice bridges was not included in miscellaneous licences – applicants were only including the water used for portages in their proposed winter road water use – so the GNWT has not historically been collecting fees on this water use for miscellaneous-type projects.

Given these implications, the LWBs have not accepted the GNWT's recommendation in its entirety – as outlined above, water use fees will not apply to ice-bridge water use for miscellaneous projects. For all types of projects, the LWBs will continue to include licence conditions applicable to this water use as necessary and appropriate. The LWBs agree that this may include setting specific volume limits for ice-bridge water use from particular watercourses if the evidence indicates it is appropriate to do so – for example, if either of the other criteria in subsection 4(1) or 5(1) of the [Waters Regulations](#) or the [MVFAWR](#), respectively, are not met.

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<sup>50</sup> For examples, see [MV2022L8-0008](#) and [MV2023L2-0011](#).

<sup>51</sup> See the LWBs' Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#); EREX-2 and 3; pages 2-4 of the Chamber of Mine's response letter; pages 5-6 of NorZinc's response letter; page 1 of the GNWT's response letter; pages 7-8 of Seabridge's response letter; and page 2 of the Tłı̄chǫ Government's response letter;

<sup>52</sup> See the LWBs' Online Review System for [MVLWB – Draft Reference Bulletin: Water Use – March 27, 2024](#); EREX-4 and WSP-1; page 1 of Aurora Geosciences response letter; page 1 of the Chamber of Mines's response letter; page 2 of NorZinc's response letter; Mountain Province Diamonds Inc. (MPVD)'s response letter; page 2 of RainCoast's response letter; and White Cliff Minerals Limited (White Cliff)'s response letter.

<sup>53</sup> See the LWBs' Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#); EREX-2 and 3; pages 2-4 of the Chamber's response letter; pages 5-6 of NorZinc's response letter; page 1 of the GNWT's response letter; pages 7-8 of Seabridge's response letter; and page 2 of the Tłı̄chǫ Government's response letter;

<sup>54</sup> See the LWBs' Online Review System for [MVLWB – Draft Reference Bulletin: Water Use – March 27, 2024](#); EREX-4 and WSP-1; page 1 of Aurora Geosciences response letter; page 1 of the Chamber of Mine's response letter; page 2 of NorZinc's response letter; MPVD's response letter; page 2 of RainCoast's response letter; and White Cliff's response letter.

<sup>55</sup> See the LWBs' Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#); page 7 of Seabridge's response letter.

## 2.5 Categorization of Projects

The questions regarding how ice-bridge water use should be regulated have primarily been raised in relation to mineral exploration and abandoned mine remediation projects, both of which the LWBs currently consider as miscellaneous projects. As part of the review of ice-bridge water use, LWB staff considered whether this is the correct categorization of these projects.

### 2.5.1 Mineral Exploration Projects

In general, the Regulations do not specify what licence category is intended to apply to mineral exploration in the Mackenzie Valley. It should be noted that the LWBs were previously numbering mineral exploration licences as mining and milling licences, but otherwise categorizing them as industrial licences with respect to the direct water use licensing criteria. The LWBs are only recently classifying mineral exploration projects in the miscellaneous category – the reasoning for this shift is summarized below. Aside from raising the question of ice-bridge water use, this shift did not otherwise affect the direct use licensing criteria for these projects, because the direct water use thresholds are the same in the industrial and miscellaneous categories.

The LWBs primarily consider mineral exploration as a miscellaneous-type project because:

- Mineral exploration is not mentioned at all in the Schedules (or the Regulations in general), whereas oil and gas exploration is specifically included in the industrial category.<sup>56</sup>
- Mineral exploration does not technically fit into the mining and milling category, because it does not fall into the definition of a mine in the [NWT Mining Regulations](#).<sup>57</sup>
- Mineral exploration does not technically fit into the industrial category, because it is not listed in the description in Schedule II/B.
- Mineral exploration falls within the broad scope of the miscellaneous category, but only by default – the criteria in Schedule VIII/H do not have any specific relevance to mineral exploration.

Given that the category for mineral exploration is not specific or clear, additional considerations include:

- In the [NWR](#), mineral exploration is clearly listed as a mining project; however, since both the direct and indirect water use criteria are the same for all Nunavut projects other than power projects, further comparison to the NWR criteria does not appear to be useful.
- The deposit of waste criteria in the industrial and miscellaneous categories are different: all deposits of waste require a type B licence in the industrial category, while the miscellaneous category requires a type B licence for deposits of waste if there is direct or indirect deposit to surface water. This difference could potentially impact whether some mineral exploration projects require a licence for deposit of waste regardless of whether a licence is required for water use.

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<sup>56</sup> See Schedule II or B of the [MVFAWR](#) or the [Waters Regulations](#), respectively.

<sup>57</sup> *Ibid.*

- In the mining and milling category, the deposit of waste criteria are so specific to milling rates that a licence would not be required for any deposit of waste for mineral exploration projects, so this would be a notable gap in regulating potential deposits of waste associated with these types of projects.
- The water use criteria for type A and B licences in the industrial and miscellaneous categories are the same (100m<sup>3</sup> and 300m<sup>3</sup> per day, respectively); however, in the miscellaneous category, ice bridge water use does not contribute the determination of whether a type A or B licence is required.
- Under the mining and milling class, only a type B licence would be required for a mineral exploration project using more than 100m<sup>3</sup>/day until they started milling and reached a rate of more than 100 tonnes/day.<sup>58</sup> There is no cap on the water use volume allowed in a type B licence in this case.

Based on the analysis above, which was supported by recommendations from the public review,<sup>59</sup> the LWBs maintain that the miscellaneous category is the most appropriate category for mineral exploration projects until the categorization of these projects is clarified in amended Regulations.

### 2.5.2 Abandoned Mine Remediation Projects

Under the Regulations, a mining project is defined by incorporating an external reference to the definition of a mine in the [Canada Mining Regulations](#);<sup>60</sup> however, these were replaced by the [NWT Mining Regulations](#) in 2014. The definition of ‘mine’ in these two sets of regulations differs in a way that could affect how the LWBs categorize mine remediation projects, because the definition in the more recent NWT Mining Regulations includes mines that are no longer producing. The LWBs note that the NWR do not rely on an external reference to categorize mine remediation: the mining category specifically includes ‘restoration of the site of a mine.’

Canada Mining Regulations:

*mine means any work or undertaking in which minerals or ore containing minerals are removed from the earth or from talus by any method, and includes works, mills, concentrators, machinery, plant and buildings below or above ground belonging to or used in connection with the mine.*

NWT Mining Regulations:

*mine means an undertaking that produces or has produced minerals or processed minerals from lands within the Northwest Territories Mining District, and includes the depreciable assets that are located in the Northwest Territories and used in connection with the undertaking.*

<sup>58</sup> Mineral exploration water use would fit under the last part of the type B direct use criteria in Schedule V/E: “... use of 100 or more cubic metres (of water) per day for undertakings other than milling or production leaching.”

<sup>59</sup> See the LWBs’ Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#): GNWT-7 and EREX-6; page 6 of NorZinc’s response letter; and page 7 of Seabridge’s response letter.

<sup>60</sup> See Item 2 in Schedule II or Schedule B of the [MVFAWR](#) or the [Waters Regulations](#), respectively.



Based on the definition of a 'mine' in the NWT Mining Regulations, abandoned mine remediation projects could be categorized as mining and milling projects rather than as miscellaneous projects with respect to licensing criteria. However, because this is not the definition of a 'mine' that was in place when the water licensing legislation was drafted, it is not clear that mining and milling was the intended category for mineral exploration projects. Accordingly, the LWBs maintain that the miscellaneous category is the most appropriate category for abandoned mine remediation projects until the categorization of these projects is clarified in amended Regulations. The GNWT agreed with this categorization in their recommendations; no other reviewers submitted recommendations on this interpretation.<sup>61</sup>

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<sup>61</sup> See the LWBs' Online Review System for [MVLWB – Legal Interpretation Regarding Ice-Bridge Water Use – June 8, 2023](#): GNWT-7. The LWBs acknowledge that the GNWT qualified its position on this matter based on the project history, status, and operator; however, consideration of these opinions is beyond the scope of the Bulletin.

### 3.0 Summary

Given the above and acknowledging the recommendation by almost all reviewers to adopt the draft Bulletin until such time as the Regulations are amended, the LWBs have decided to issue a revised Bulletin. As set out in the Bulletin, the LWBs' current interpretations with respect to water use in general, and specifically in relation to ice-bridge water use, are summarized below.

- Any withdrawal or diversion of water, directly or indirectly, from a water source for any period of time is considered a water use, since the water that is removed is not available to other potential users of the water source during that time.
- Water circulated continuously from a watercourse to prevent freezing of equipment, and water used for the construction and maintenance of ice-bridges are considered direct water uses.
- Once a project requires a licence, all water uses, including below-threshold water uses, are included in the preliminary screening and considered in developing the licence conditions, and where applicable, contribute to the determination of whether a type A or type B licence is required. This applies to ice-bridge water use as follows:
  - For projects in licence categories other than the miscellaneous category, ice-bridge water use is not a below-threshold or exempted direct water use. Any water used for ice bridges is considered a direct water use for a project in any of these categories; however, because direct use criteria are written differently in each category, it may or may not influence the determination of whether of a licence (either type A or B) is required. Water use fees may apply.
  - For miscellaneous-type projects, ice-bridge water use does not contribute to the total direct water use volume calculated or authorized for a project, the determination of whether a type A or B licence is required, or the calculation of water use fees.
  - For all types of projects, ice-bridge water use is included in the preliminary screening and considered in developing the licence conditions.
- Mineral exploration and abandoned mine remediation projects are categorized as miscellaneous projects.



Votre référence - Your file

Notre référence - Our file

Mr. Damien Côté  
Executive Director  
Nunavut Water Board  
PO Box 119  
GJOA HAVEN NU X0B 1J0

JAN 27 2014

Dear Mr. Côté:

I am writing in response to your letter dated August 21, 2013, requesting clarification concerning Aboriginal Affairs and Northern Development Canada's interpretation of the term "use" of water pursuant to the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSRTA).

Your letter specifically identifies a circumstance, whereby, as I understand, water is continuously withdrawn from a source water body, circulated through equipment for the purpose of keeping that equipment from freezing, and then released back into the water body from which it was withdrawn. You have questioned whether this project-related activity constitutes "use" of water, as prescribed by the NWNSRTA.

As you note in your correspondence, the definition of "use" of water is generally identical across the legislation that applies in Canada's three territories (*Northwest Territories Waters Act*, *Nunavut Waters and Nunavut Surface Rights Tribunal Act* and the *Waters Act*). The definition of "use" is also very broad and wide-reaching. In relation to Nunavut, "use" is defined in section 4 of the NWNSRTA as:

"Use", in relation to waters, means a direct or indirect use of any kind, including, but not limited to,

- (a) any use of water power and geothermal resources;
- (b) any diversion or obstruction of waters;
- (c) any alteration of the flow of waters; and
- (d) any alteration of the bed or banks of a river, stream, lake or other body of water whether or not the body of water is seasonal.'

.../2

The removal of a quantity of water from a source means that quantity is not available, if even for a short time, to any other authorized user of the same water body.

With this in mind, the diversion of waters (e.g. withdrawal), regardless of duration, would constitute a "use" of waters. That is to say, water used for the purpose of circulation through equipment, constitutes water use. As such, the water removed for circulation purposes needs to be accounted for in the overall water usage allowance, as water is clearly being diverted, directly or indirectly, from its original source.

The effective management and protection of Nunavut's water resources is dependent upon a clear understanding of the relevant legislation. A common understanding and consistent application of the term "use" of water is essential to securing adherence to water-related legislation, by both regulators and water licence applicants. A cooperative and consistent approach will allow for the conservation and utilization of waters in Nunavut in a manner that will provide the optimum benefit for those waters for the residents of Nunavut, in particular, and Canadians, in general.

I trust this response satisfies your request on the definition of water 'use' and will provide you with the clarification necessary to ensure the correct application of the NWNSRTA and its associated Regulations. To that end, the Field Operations Directorate of the Nunavut office of our Department will initiate discussions with your staff and stakeholders to support a consistent application of the definition.

If you wish further clarification on this issue please do not hesitate to contact me by e-mail at [Glen.Stephens@aadnc-aandc.gc.ca](mailto:Glen.Stephens@aadnc-aandc.gc.ca) or by phone at 819-994-7483.

Sincerely,



Glen Stephens  
Director, Land and Water Management  
Natural Resources and Environment Branch