



July 5, 2024

Tanya MacIntosh  
Chairperson  
Mackenzie Valley Land and Water Board  
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YELLOWKNIFE NT X1A 2P6

Elizabeth Wright  
Chairperson  
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Mason Mantla  
Chairperson  
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Chairperson  
Sahtu Land and Water Board  
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FORT GOOD HOPE NT XOE OHO

Dear Chairpersons MacIntosh, Mantla, Wright and Gordon:

**Recommendations for Focused Amendments to the  
Waters Regulations and Mackenzie Valley Federal Areas Waters Regulations**

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Thank you for your letter received on May 28, 2024, outlining recommendations regarding focused amendments to the territorial Water Regulations and the Mackenzie Valley Federal Area Waters Regulations. These regulations are administered by the Minister of Crown-Indigenous Relations and Northern Affairs, who was a co-addressee on the letter.

The *Waters Act* and regulations have remained substantially unchanged since federal enactment in 1992. As noted in your letter, there has been a long-standing mutual interest in amending the *Waters Act* and regulations, which led to a process initiated during the 18<sup>th</sup> Legislative Assembly shortly after devolution. We acknowledge the significant progress made with partners, including the Land and Water Boards of the Mackenzie Valley (LWBs) during the previous amendment process. Unfortunately, a final amended Act was not achieved before the dissolution of the 18<sup>th</sup> Legislative Assembly. The Government of the Northwest Territories (GNWT) has again included the *Waters Act* and *Waters Regulations* on the legislative agenda for the 20<sup>th</sup> Legislative Assembly and the Department is eager to re-engage with the Intergovernmental Council (IGC) and other Indigenous Governments to determine interest in moving forward with amendments.

.../2

I recognize the importance of updating laws and regulations to meet the evolving needs of residents and industry over time. For example, the GNWT recognizes that amendments are required to enhance consistency and coordination with other Northwest Territories (NWT) and federal legislation; to regulate air, which is outstanding since 2017; to reflect modern treaties as well as agreements entered into by the GNWT; and to support commitments made in the NWT Water Stewardship Strategy.

The GNWT is discussing this issue internally and Environment and Climate Change (ECC) officials will be engaging with you and other partners, including the IGC Secretariat, other Indigenous governments, and the Boards to work collaboratively to consider the full range of options for moving an initiative forward through the Legislative Development Protocol.

I anticipate that the LWBs will be invited to actively participate once a formal process is initiated. In the meantime, I applaud the ongoing initiatives being undertaken by your organizations, including those in collaboration with the GNWT such as the recent discussions on water use for ice bridge construction, to provide additional clarity to the regulatory process in the Mackenzie Valley. ECC staff will continue to work with LWB staff to identify additional mechanisms around regulatory improvements and provide input as requested.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jay Macdonald', with some overlapping strokes.

Jay Macdonald  
Minister  
Environment and Climate Change

c. Distribution List

Distribution List:

Honourable R.J. Simpson  
Premier

Honourable Caitlin Cleveland  
Minister of Industry, Tourism, and  
Investment

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Principal Secretary

Kyla Kakfwi-Scott  
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Director, Environment and Renewable  
Resources  
Crown-Indigenous Relations and Northern  
Affairs Canada

Ron Pankratz  
A/Regional Director General  
Crown-Indigenous Relations and Northern  
Affairs Canada

May 28, 2024

The Honourable Daniel Vandal  
Minister of Northern Affairs, Canada  
Crown-Indigenous Relations and Northern Affairs

The Honourable Jay Macdonald  
Minister of Environment and Climate Change  
Government of the Northwest Territories

Sent via email

Dear Ministers Vandal and Macdonald,

**RE: Recommendations for focused amendments to the Waters Regulations and Mackenzie Valley Federal Areas Waters Regulations**

In accordance with paragraphs 106.1(2)(a) and (b) of the *Mackenzie Valley Resource Management Act* (MVRMA), we are writing on behalf of the Land and Water Boards of the Mackenzie Valley (the LWBs) with recommendations regarding focused amendments to both the Waters Regulations and the Mackenzie Valley Federal Areas Waters Regulations (collectively referred to as the Regulations in this letter).

In 2017, the LWBs wrote<sup>1</sup> to your predecessors with recommendations for amendments to both the *Waters Act*/MVRMA and the Regulations. At that time, the GNWT had begun a process to first amend the *Waters Act*, and the LWBs were active participants in that process as we were keen to make the legislation clearer and more effective. Unfortunately, the *Waters Act* amendment process was halted just over a year later.

The LWBs continue to experience difficulties with the water legislation. In November 2023, we gave a presentation at a Mackenzie Valley Operational Dialogue meeting to reinstate the discussion about the Regulations. This presentation is attached to this letter; there you will find a summary of the issues we have identified and the implications of maintaining the status quo.

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<sup>1</sup> See letters from the LWB to the [GNWT](#) and to [CIRNAC](#) in November 2017.

This letter outlines the broader context that supports the overall recommendation that focused amendments to the Regulations are needed now.

***The Regulations are outdated and a source of uncertainty in the regulatory process***

There have been no substantive updates to the Regulations since they were originally enacted in 1993 despite many changes to the NWT's operating environment, including the implementation of the co-management system, new technologies in mining and mineral exploration, and new industries like diamond mining and government-funded remediation projects. In 1993, oil and gas projects were predominant in the NWT; now it is mineral exploration, and yet the Regulations are completely silent on that important part of the NWT's current economy.

Much of the language in the Regulations is vague or ambiguous. This means that questions about the legal interpretation of provisions in the Regulations frequently arise during regulatory processes. When legislative tools like the Regulations are not clear and don't reflect the current operating environment, the timeliness of regulatory processes are affected as lawyers debate interpretations of the law and proponents struggle to meet regulatory requirements that don't always make sense for their industry. This regulatory uncertainty has helped fuel the perception<sup>2</sup> that the NWT is not a good place to invest in mineral exploration or mining.

***Focused amendments to the Regulations should be prioritized over updates to the Waters Act***

It is a common understanding that amendments to the *Waters Act* would also help improve regulatory certainty in the NWT; however, parties in the NWT also recognize the magnitude and complexity of the process that will be required to update the *Waters Act*. In that context, it is important to note that of all the various pieces of legislation that influence and guide the regulatory system, the Regulations cause the greatest number of challenges that repeatedly arise in the LWBs' routine regulatory processes.

To illustrate the degree of uncertainty and impact to the regulatory system, the LWBs have had to run several separate processes to address questions of interpretation and application of the Regulations. These multi-stakeholder processes are time-consuming and continue to divert limited human and financial resources away from the day-to-day work of the LWBs and other parties. Through these processes, the LWBs have identified a few focused amendments that would relieve many of the issues that are causing uncertainty for industry, other regulators, and Indigenous Governments and Organizations.

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<sup>2</sup> See the Fraser Institute's [2023 Annual Survey of Mining Companies](#) which ranks NWT very low in terms of attracting investment due to policy issues despite the strong mineral potential.

Amendments to regulations do not require the approval of the Legislative Assembly or Parliament, so it should be possible to remedy the known and immediately concerning provisions in the Regulations in much less time than a comprehensive review or waiting until after a future update to the *Waters Act*. For example, while it took several years to amend the NWT's *Wildlife Act*, the Wildlife General Regulations have been amended every year between 2017 and 2022.

As per the Intergovernmental Council's (IGC) Legislative Protocol, the Government of the Northwest Territories, Department of Environment and Climate Change (GNWT-ECC) will need to work on amendments with the IGC. The IGC process for amending the regulations under the NWT's new *Mineral Resources Act* and new *Public Land Act* have been relatively lengthy likely because of the extent of the changes to the regulation of mineral resources and lands. In this case though, the LWBs are only recommending small and focused amendments to existing regulations.

***Many proponents and some co-management partners support focused amendments to the Regulations***

In a recent [process](#), the LWBs undertook to interpret unclear language in the Regulations regarding water use for ice-bridge construction. In their submissions, several individual mineral exploration companies, as well as the NWT & Nunavut Chamber of Mines and consultants to the industry, said that while they appreciated the LWBs' attempt to clarify the Regulations, what they really wanted was for the Regulations to be formally amended to ensure the ice-bridge interpretation was clear to all parties for the long-term. This sentiment was echoed in submissions by CIRNAC and the Tłıchq Government. Several parties also noted the importance of amending the Regulations as soon as possible to ensure the health of the mineral exploration industry in the NWT, especially given the recent interest in lithium exploration.

While this example is specific to one issue, several of these parties indicated general support for focused amendments to the Regulations.

***This letter is intended to reinitiate a discussion between co-management partners***

Clearly written legislation that reflects the current values and needs of NWT residents allows regulators and all parties to be part of an efficient and effective regulatory system, which industry, governments, and other parties consistently, and rightfully, demand. We hope this letter will encourage the GNWT and CIRNAC to consider this request to work with the co-management partners to improve the regulatory system for the benefit of all residents of the Mackenzie Valley and Canada.

We look forward to discussing our concerns and ideas with you and your representatives directly.

If you have any questions about this letter, please contact the Executive Director of the Mackenzie Valley Land and Water Board, Kathy Racher, by [email](#) or at (867) 766-7457.

Sincerely,



Tanya MacIntosh  
Chair  
Mackenzie Valley Land and Water Board



Mason Mantla  
Chair  
Wek'èezhii Land and Water Board



Elizabeth Wright  
Chair  
Gwich'in Land and Water Board



Valerie Gordon  
Chair  
Sahtu Land and Water Board

cc to:

Georgina Lloyd – Assistant Deputy Minister, Northern Affairs, CIRNAC  
Joanna Ankersmit – Director General, Natural Resources and Environment, CIRNAC  
Rebecca Chouinard – Director, Resource Policy and Environment, CIRNAC  
Kim Pawley – Director, Environment and Renewable Resources, CIRNAC  
Erin Kelly – Deputy Minister, GNWT- ECC  
Premier R.J. Simpson – Premier, GNWT  
Hon. Caitlin Cleveland – Minister of Industry, Tourism and Investment  
Joe Dragon – Principal Secretary, GNWT  
John MacDonald – Secretary to Cabinet, GNWT  
Ron Pankratz – A/Regional Director General, CIRNAC

Attachment: Potential changes to the NWT/Federal Areas Waters Regulations Presentation–  
November 2023

# Potential changes to the NWT/Federal Areas Waters Regulations

Ideas from staff of Land and Water Boards of the Mackenzie Valley  
(LWBs) - for discussion

November 2023

1

## This presentation is meant to begin a discussion about amending water regulations in the NWT

The ideas presented here were generated by LWB staff.

Before discussing our ideas, we want to note the following:

- The LWBs do not write the legislation, we only implement it.
  - This means that although we have identified issues with the legislation, we do not have an opinion on how best to resolve those issues – that is up to the treaty partners, not the LWBs.
- What we want overall are water use regulations that are clear, consistent, and that accurately reflect the values and needs of the people of the NWT.

2



## Our focus is on the federal and territorial waters regulations, not on the *Waters Act* or the water licensing provisions in the MVRMA

- The process for amending regulations is less onerous than making amendments to the Acts.
- Making even a handful of changes to the Regulations would improve the regulatory process for water licences – so we believe this is the best place to start.



3

## Summary of issues identified

4

## There are several issues with water regulations that, in our opinion, continuously contribute to regulatory inefficiencies

These issues fall into one or more of three broad categories:



Project types not contemplated in the regulations



Apparent disconnect between the amount of regulatory process required and the potential impacts of some regulated activities



Unclear language used for some provisions

5

## Project types not contemplated in the Regulations



- Diamond mining
- Abandoned mine-site remediation projects
- Mineral exploration

- Each of these project types have unique water uses/waste deposits that the Regulations are silent on.
- There is continued debate as to how regulate aspects of these projects leading to unclear, inconsistent, and/or changing expectations for applicants.

6

## Disconnect between required process and potential impacts



### Examples:

- Small mineral exploration projects that need a lot of water to build ice-bridges may need to go through the same amount of regulatory process as a full-scale mine – even though the scale of environmental impacts is very different.
- There is no clear process for reducing a water licence from a type A to a type B even as a project moves from peak activity to reclamation to closure to post-closure monitoring. This means that the amount of regulatory process does not match the scale of impacts for every stage of a project.



7

## Unclear language used for some provisions



- Many provisions in the Regulations (including the Schedules) are not written clearly.
- As a result, there is constant debate on the correct interpretation of aspects of the Regulations – this can lead to unnecessary tension between parties.
- Clear language ensures that the LWBs can implement the legislation in the way that the drafters intended.



8

## LWB staff believe that an update of the water Regulations in the NWT is long overdue

- Since the LWBs cannot do this, we ask other parties to encourage all levels of government – Indigenous, federal, territorial – to begin an amendment process.
- Although we know there are many who want to update the *Waters Act*, we do not think that must happen before making some focused amendments to the Regulations.

9

## Issues identified – in more detail

10

## Many of the bigger problems we see are in the Schedules of the federal and territorial Regulations

- Note that although the federal and territorial Regulations are mirrored, the numbering system is different.
- When we reference Schedules from the regulations, the letters refer to the Waters Regulations and the numbers refer to the MVFAWR (e.g., Schedule B in the Waters Regulations is equivalent to Schedule II of the MVFAWR)



11

## The Schedules guide whether a project needs a type A or a type B licence. This is important because of the different requirements for each process.

### Type A licensing process

#### Initial licence:

- Mandatory public hearing that can only be cancelled 10 days before it was scheduled.
- Process takes up to 9 months plus up to an additional 3 months for the Minister to sign the licence.

#### Amendments or renewal of licence:

- Same timelines as for initial licence.

### Type B licensing process

#### Initial licence:

- Public hearing not mandatory but can be requested by parties if necessary.
- Process takes less time, typically 2-4 months, (although legislation allows up to 9 months) and does not require the Minister to sign it, unless there is a public hearing.

#### Amendments or renewal of licence:

- Same timelines as for initial licence.

12

## There are two components of the Schedules that play a key role in determining whether a licence is required

- **Schedule B/II: Classification of Undertakings:** When an application is received, we refer to this Schedule to classify a project.
- **Schedule D – H/IV-VIII: Licensing Criteria:** These Schedules describe what activities can be undertaken without a licence, with a type B licence, or a type A licence. The criteria are different for different kinds of undertakings:
  - Industrial; Mining and Milling; Municipal; Power; and Agricultural/Conservation/Recreational/Miscellaneous

13

## The most pressing issues LWB staff identified in the Schedules are described in more detail in the following slides

- LWB staff have also identified a number of other issues in the body of the Regulations, which are summarized in a table at the end of this presentation.

14

## Issue 1: Ice-bridge Water Use (Schedule H/VIII)

- **Issue:** Ice-bridge water use is a thorn in our side.
  - For miscellaneous undertakings (Schedule H/VIII), the direct water use criteria allows for the use of water for constructing ice bridges without a water licence. However, because of how these Schedules are written, it is unclear whether this exceptions still applies if a project that includes ice-bridge water use requires a licence for other water uses.
- **Implications:** If this water use is included in the total water use volume for projects that require a licence for other water uses in addition to ice-bridge water use, more small miscellaneous projects (e.g., mineral exploration) will require a type A licence instead of a type B licence.
- **What is needed:** Clarifying whether ice-bridge water use should be included in the total water use volume for miscellaneous projects that otherwise exceed water licensing criteria would be helpful.

15

## Issue 2a: Classification of Undertakings (Schedule B/II)

- **Issue:** Mineral exploration activities are not explicitly considered in the Schedules.
  - Mineral exploration is not explicitly classified as either a Mining or Milling, or an Industrial undertaking, and it does not fit the undertaking descriptions in either of these categories.
  - By comparison, oil and gas exploration is explicitly classified as an Industrial undertaking.
  - LWBs have been classifying mineral exploration projects in the Miscellaneous category by default.
- **Implications:** The licensing criteria in any of these three categories are not reflective of the activities associated with mineral exploration. This means that these kinds of projects might not be appropriately regulated.
- **What is needed:** Parties should look at the activities that are specific to mineral exploration projects and consider licensing criteria that align with the potential environmental impacts of those projects.

16

## Issue 2b: Classification of Undertakings (Schedule B/II)

- **Issue:** Abandoned mine-site remediation activities are not explicitly considered in the Schedules
  - Mine-site remediation is not explicitly classified as either a Mining or Milling, or an Industrial undertaking, and it does not fit the undertaking descriptions in either of these categories.
  - The LWBs have been classifying abandoned mine-site remediation projects in the Miscellaneous category by default.
- **Implications:** The Miscellaneous licensing criteria are not reflective of the activities associated with abandoned mine-site remediation. This means that these kinds of projects might not be appropriately regulated.
- **What is needed:** Parties should look at the activities that are specific to mine-site remediation projects and decide on licensing criteria that align with the potential environmental impacts of those projects.

17

## Issue 3: Type of Licence (Schedules)

- **Issue:** It is unclear whether the type of licence a project requires can change over the life of the project.
  - Although some projects may initially exceed criteria for a type A licence, later phases of a project (closure and reclamation, post-closure monitoring) may only exceed criteria for a type B licence.
  - Whether a type A licence can be replaced by a type B licence when type A licensing criteria are no longer exceeded for a project is unclear.
    - For example, it is not clear how section 7 of the Waters Regulations and section 8 of the MVFAWR apply throughout the life of a project.
    - Is a project only intended to be evaluated against type A and B licensing criteria on initial application?
  - To date, this has primarily been raised with respect to abandoned mine-site remediation projects, but it would be applicable to other types of projects as well.
- **Implications:** As projects scale down from their operation to closure, and post-closure, there is no clear opportunity to scale down the level of regulatory process required for that project. This means we may all be doing more work than is necessary at different phases of a project.
- **What is needed:** The Regulations should specify how the life of a project – from peak activity to closure – can be appropriately regulated.

18



## Issue 4: Licensing Criteria for Municipal Undertakings (Schedule F/VI)

- **Issue:** One of the criteria for needing a water licence for a camp or lodge is that it have a “capacity of more than 50 occupants per day”.
  - It isn’t clear if this criteria applies to 50 overnight occupants or 50 day-users of the site.
  - The LWBs have been interpreting this as 50 overnight occupants, but we have been challenged in our interpretation by GNWT.
- **Implications:** Lack of clarity has resulted in LWB staff providing different advice to applicants than Inspectors. Also, if the definition is for daytime users, many more water licences will need to be issued.
- **What is needed:** It would be helpful if the term “occupants” could be clarified to indicate either overnight or daytime users of a camp/lodge.

19

## Issue 5: Licensing Criteria (Schedules D-H/IV-VIII)

- **Issue:** It isn’t necessarily clear how the criteria are linked to potential level of environmental impact of the water use.
  - For example, why was the use of 300 m<sup>3</sup>/day chosen as a criteria for a type A licence for Industrial and Miscellaneous undertakings?
  - In some cases, the criteria also differ across the three territories. For example, if an applicant plans to use more than 300 m<sup>3</sup>/day for a Miscellaneous undertaking (like mineral exploration), they will require a type A licence in the NWT or Nunavut but only a type B licence in the Yukon.
- **Implications:** Subjecting small projects to a higher level of scrutiny than needed uses up time and resources for all parties.
- **What is needed:** It would be helpful to review the licensing criteria and consider whether some could be revised.

20

## Issue 6: Licensing Criteria (Schedules D-H/IV-VIII)

- **Issue:** Some of the criteria for indirect water use are unclear.
  - Item 2(5) states that indirect water use includes “alteration of flow or storage by means of dams or dikes”. But this statement can be read two different ways:
    1. “alteration of flow OR storage by means of dams or dikes” (emphasis added)
    2. “alteration of flow or storage BY MEANS of dams or dikes” (emphasis added)
  - The difference between alteration of flow (item 2(5)) and a diversion (item 2(4)) is also unclear, since a diversion could involve altering flow, potentially via dams or dikes.
- **Implications:** Depending on the interpretation, many more projects could require a type A licence. The interpretation also affects water use fees since diversions don’t require fees (if the water isn’t used for other purposes).
- **What is needed:** It would be helpful to clarify the intent of and distinction between these indirect water use criteria.

21

## Ideally, parties would sit down and consider the Schedules as a whole instead of doing only piecemeal changes....

- However, we don’t know if there is an appetite to do that without first updating/amending the *Waters Act*.
- In the meantime, we hope that the specific issues identified in the Schedules could be changed.
- In the next three slides, we have also outlined some issues identified in the body of the Regulations. Most of these issues are related to clarity of interpretation. While these issues have potential consequences and do cause confusion, in LWB staff’s opinion, changes to the Schedules are more pressing.

22

## Issues within the body of the Regulations

| Section Heading in Regulations | Issue identified  | Potential consequences of not addressing the issue                              |
|--------------------------------|---|---|
| <b>Application Fees</b>        | <ul style="list-style-type: none"> <li>Discrepancy between fees for water licences (\$30) and land use permits (\$150)</li> </ul> | <ul style="list-style-type: none"> <li>Loss of revenue to government</li> </ul> |

23

## Issues within the body of the Regulations

| Section Heading in Regulations | Issue identified   | Potential consequences of not addressing the issue  |
|--------------------------------|--|---|
| <b>Water Use Fees</b>          | <ul style="list-style-type: none"> <li>Water use fee amounts listed in subsection 8(1) of the Waters Regulations and 9(1) of the MVFAWR are likely out of date</li> </ul>  | <ul style="list-style-type: none"> <li>Loss of revenue to government</li> </ul>   |
|                                | <ul style="list-style-type: none"> <li>Not clear if fees should be paid for volumes less than threshold (e.g., 30m<sup>3</sup>/day) if the project only exceeds licensing criteria for a deposit of waste</li> </ul>   | <ul style="list-style-type: none"> <li>LWB policy is to charge water use fees in this instance – but if we are wrong, then licensees are paying more than they should</li> </ul>  |
|                                | <ul style="list-style-type: none"> <li>Subsection 8(5) of the Waters Regulations and 9(5) of the MVFAWR says that no fees are payable if “a diversion of water if the water is not otherwise used.” The difference between a diversion and alteration of flow is not clear. Are activities like lake drawdown or pit refilling/reconnection for diamond mines a diversion or an alteration of flow? Note that this also relates to the interpretation discussed in Issue 6.</li> </ul> | <ul style="list-style-type: none"> <li>LWBs have not charged fees for lake drawdowns or underground dewatering – if parties believe that fees should be charged, it means thousands of dollars of government revenue has been missed</li> </ul> |

24

## Issues within the body of the Regulations

| Section Heading in Regulations | Issue identified  | Potential consequences of not addressing the issue  |
|--------------------------------|---|---|
| <p><b>Security</b></p>         | <ul style="list-style-type: none"> <li>Regulations refer to “abandonment” and “restoration” although “closure” and “reclamation” are the terms used now</li> </ul>  | <ul style="list-style-type: none"> <li>The terms “abandonment” and “restoration” may be confusing, because ‘abandonment’ is currently associated with situations where the licensee has walked away; whereas, in the legislation, ‘abandonment’ often encompasses all closure scenarios.</li> </ul> |
|                                | <ul style="list-style-type: none"> <li>Paragraph 11(2)(a) of the Water Regulations and paragraph 12(2)(a) of the MVFWR says that, when setting security, the board may consider the ability of an assignee to pay the costs –unclear whether this provision is intended to:               <ul style="list-style-type: none"> <li>justify setting a lower amount for a licensee that has limited funds, or</li> <li>justify setting a lower amount for a licensee that demonstrates adequate funds to close and reclaim the site.</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>Projects may be over or under-secured.</li> <li>Smaller projects may not go ahead because of excessive security requirements.</li> </ul>   |