

## LWB Reference Bulletin: Water Use – Review Summary Tables and Letters July 2024

### [Review Summary Table – General Topics Identified in Review Comments and Letters](#) [Review Summary Table – Legal Interpretations Regarding Ice-Bridge Water Use](#) [Review Summary Table – DRAFT LWB Reference Bulletin: Water Use](#) [Review Letters](#)

#### Reviewer Legend:

- Aurora Geosciences
- Canadian Zinc Corporation/NorZinc Ltd. (CZN/NorZinc)
- Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC)
- EREX International Ltd./Li-FT Power Ltd. (EREX/Li-FT)
- Government of the Northwest Territories, Department of Environment and Climate Change (GNWT)
- Mountain Province Diamonds Inc. (MPVD)
- Northwest Territories Power Corporation (NTPC)
- NWT & Nunavut Chamber of Mines (Chamber of Mines)
- RainCoast Environmental Services Ltd. (RainCoast)
- Seabridge Gold (Seabridge)
- Tłıchq Government (TG)
- White Cliff Minerals Ltd. (White Cliff)
- WSP Canada (WSP)

### Review Summary Table – General Topics Identified in Review Comments and Letters

| Reviewers   | Comment/Recommendation  | Land and Water Board Response  |
|---|---|--|
| <b><u><a href="#">Overall Responses to General Topics Identified in Review Comments and Letters</a></u></b> |   |  |
| Aurora Geosciences<br>Chamber of Mines<br>CIRNAC<br>CZN/NorZinc<br>EREX/Li-FT<br>MPVD<br>RainCoast<br>TG    | Support for revisions proposed in the Draft Bulletin as an interim measure. | The LWBs appreciate these responses and have considered them in making their decision. |

| Reviewers  | Comment/Recommendation  | Land and Water Board Response  |
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| White Cliff<br>WSP   |   |  |
| Aurora Geosciences<br>Chamber of Mines<br>CIRNAC<br>CZN/NorZinc<br>EREX/Li-FT<br>MPVD<br>RainCoast<br>TG<br>White Cliff<br>WSP | Support for amending Regulations as a long-term solution.                               | The LWBs appreciate the expressed support and will continue to encourage the territorial and federal governments to initiate a process to amend the Regulations.   |
| EREX/Li-FT<br>NTPC   | The LWBs do not have the authority to re-define the legislated definition of water use. | <p>The LWBs agree. Although this was not the intent of the Bulletin, these comments are understandable given some of the language used in the first versions of both the Bulletin and the Annex.</p> <p>Neither AANDC’s letter nor the LWBs’ Reference Bulletin redefine the legislated definition of water use. Both are explanations of how this definition is interpreted in relation to certain types of water use activities. The definition of water use in the Acts and the licensing criteria in the Regulations clearly encompass water uses beyond these interpretations that do not necessarily include removal of water withdrawal, diversion, or removal of water from a watercourse (e.g., watercourse crossings, watercourse training, some alterations of flow, banks, or beds of watercourses).</p> <p>Accordingly, the Bulletin and the Annex have been revised to clarify that the LWBs are not redefining water use, only explaining how the legislated definition is applied, and that AANDC’s letter was used as a resource in determining how to apply the legislated definition to a particular type of water use.</p> <p>The LWBs note that some of the more specific recommendations made by reviewers regarding the interpretation or definition of water use entail limiting the definition of water use. The definition of water use in the legislation is very broad and does not distinguish consumptive versus non-consumptive water uses. In fact, the definition includes “direct or indirect use of any kind.” The LWBs do not have the authority to amend or</p> |

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|  |   | interpret this definition in any manner that would restrict the definition of water use as set out in the legislation.  |
| Chamber of Mines<br>CZN/NorZinc<br>EREX/Li-FT<br>Seabridge         | The LWBs' decision on these interpretations should not be a strictly legal exercise. The LWBs' current interpretation of water use and the licensing criteria as they apply to ice-bridge water use has significant regulatory, economic, and operational impacts on mineral exploration, which should be considered. | <p>This review was initiated largely based on these concerns, which the LWBs take very seriously, and which the LWBs have taken into consideration in making their decision.</p> <p>LWB staff prepared and distributed the Draft Bulletin for review to provide a means for any reviewer to provide broader input, with or without legal support, so that the LWBs would have all of the available information about the potential implications of any potential changes to the Bulletin</p> <p>The LWBs note, however, that they do not have the authority to amend the legislation and must work with the legislation as it is currently written. The LWBs strongly encourage amendments to the Regulations through a process that allows all parties to work together to clarify and update the Regulations.</p> <p>Please refer to the Annex that accompanies the Bulletin for more information about how the LWBs have considered reviewer recommendations regarding the implications associated with the interpretation of water use.</p> |
| Chamber of Mines<br>CZN/NorZinc<br>EREX/Li-FT<br>NTPC<br>Seabridge | The LWBs must consider their overall mandate and objectives, and should apply the principles of modern statutory interpretation, in making their determination on these interpretations.  | <p>The LWBs agree with this recommendation. The LWBs' legislated mandate and objectives necessarily inform any legal interpretations the LWBs need to make. While the LWBs have considered them in their determinations on ice-bridge water use, particularly in relation to the concerns noted in the comment above, the LWBs must still work within the Regulations as they are currently written.</p> <p>The LWBs strongly encourage amendments to the Regulations through a process that allows all parties to work together to clarify and update the Regulations.</p>   |

## Review Summary Table – Legal Interpretation Regarding Ice-Bridge Water Use

Project: LWB Reference Bulletin - Water Use  
 Board: Mackenzie Valley Land and Water Board  
 Organization: MVLWB

File Number: LWB Reference Bulletins  
 Review Comments Due: October 30, 2023

| No.   | Topic                     | Reviewer Comment   | Reviewer Recommendation  | Land and Water Board Response   |
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| <b>NWT &amp; Nunavut Chamber of Mines - Chamber of Mines Chamber of Mines</b> |                           |  |  |   |
| 1   |                           | Please see the attached submission on behalf of the Chamber of Mines   | Please see the attached submission on behalf of the Chamber of Mines | The LWBs appreciate this submission and have considered it in their decision. Please refer to the Annex that accompanies the Bulletin for more information. |
| <b>Seabridge Gold - Jane Howe</b>   |                           |  |  |   |
| 1   | Seabridge Response Letter | See attached.  | N/A  | The LWBs appreciate this submission and have considered it in their decision. Please refer to the Annex that accompanies the Bulletin for more information. |
| <b>Northwest Territories Power Corporation (NTPC) - Josh Clark</b>            |                           |  |  |   |
| 1   | NTPC Response Letter      | Please see the attached submission.  | N/A  | The LWBs appreciate this submission and have considered it in their decision. Please refer to the Annex that accompanies the Bulletin for more information. |
| <b>CIRNAC (Yellowknife) - Megan Larose</b>                                    |                           |  |  |   |
| 1   | <b>General Comment</b>    | CIRNAC-Resource and Land Management (RLM - Yellowknife Regional Office) reviewed and considered the Land and Water Boards' (LWBs) interpretation of water use in general and ice-bridge water use in particular, as discussed in the Reference Bulletin on Water Use, and Annex A: Interpretation and Reasoning. In general, CIRNAC-RLM are in alignment with the LWBs interpretation with respect to water use. CIRNAC-RLM also acknowledge the potential for different interpretations of how below-threshold water uses, and specifically water use for ice-bridges are considered based on the current wording of the applicable legislation from the perspective of a regulatory agency or a potential developer. Outside of revisions to the legislation to provide clarity of interpretation, CIRNAC- | For consideration.   | The LWBs appreciate this response and have considered it in their decision.   |

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|   |                           | RLM would rely on the LWBs to apply a consistent approach based on the interpretation they determine is most appropriate and considering the perspectives of the applicable regulatory agencies, environmental protection interests, and interests in future economic development in the Northwest Territories.   |  |  |
| <b>EREX International Ltd - Dr. April Hayward</b> |                           |   |  |  |
| 1   | Cover Letter              | Cover Letter  | See attached.  |  |
| 2   | Approach to Issue at Hand | <p>Li-FT is concerned by the MVLWB's stated approach on this important decision on water use and its associated implications for the residents of the NT. In its request for comments, the MVLWB stated that it would be making a "...decision primarily based on legal interpretation of the legislation..." However, any interpretation of legislation must consider the MVLWB's overall mandate, as set out in Section 101.1(1) of the Mackenzie Valley Resource Management Act (MVRMA):</p> <p>101.1(1) The objectives of the Board are to provide for the conservation, development and utilization of land and water resources in a manner that will provide the optimum benefit generally for all Canadians and in particular for residents of the Mackenzie Valley.</p> <p>In making its decision on this matter, the MVLWB must clearly and explicitly consider the extent to which any given interpretation will provide the optimum benefit for Canadians and residents of the Mackenzie Valley. Consideration of the MVLWB's mandate in its decision-making process is particularly important when the legislation is not clear. Though legal interpretations may be helpful, the MVLWB must ultimately weigh the impacts and benefits of the interpretation on the residents of the Mackenzie Valley (and Canadians more broadly). The MVLWB must also be guided by the principles of statutory interpretation (see also Seabridge Gold's submission).</p> <p>On the matter at hand, overly restrictive interpretations of the definition of water use have serious implications for exploration companies that will deleteriously affect the socioeconomic benefits that exploration projects provide to the NT and its residents. Importantly, these costs would be incurred without producing any benefit, environmental or otherwise. Clearly, such interpretations would not align with the MVLWB's mandate. The MVLWB must not be myopic on this matter, but instead consider the fulsome implications of the interpretation in terms of the benefit or harm that any given interpretation is likely to provide.</p> | <p>Making a "...decision primarily based on legal interpretation of the legislation..." as described in the request for comments on the ORS, is not appropriate. The MVLWB must consider its mandate in making decisions, especially when legislation is unclear and subject to interpretation, and be guided by the principles of statutory interpretation.</p> | Please refer to the Overall Responses to General Topics Identified in Review Comments and Letters above. |
| 3   | Broader Consequences      | Should the MVLWB decide that the construction of ice bridges constitutes water use, exploration companies will undoubtedly incur additional costs and schedule  | Do not interpret the definition of water use in a manner that  | The definition of water use in the legislation is very broad and   |

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|     |       | <p>delays associated with compliance to limits on water usage rates. The additional costs and schedule delays would be a direct result of having to reduce the number of water pumps in use for ice road construction (and throttling down the pumps that are in use) to remain within the maximum usage rates associated with Type B Water Licences (i.e., 300 m3/d) or 'below threshold' uses (i.e., 100 m3/d). The associated impacts are even more significant than they may first appear as the rate restrictions would mean that a company would not be able build multiple sections of an ice road simultaneously. This would not only drastically extend the time it would take to build ice roads, but would also increase overhead costs as crews would have significant down time on any given day. The associated increase in costs and extension of schedules would be significant. Risks to worker health and safety would also increase as workers would be exposed colder weather and thinner ice conditions for much longer periods of time.</p> <p>To avoid operational cost increases and schedule delays associated with slowing the rate of work to remain under Type B or "below threshold" usage rates, a company could apply for a Type A Water Licence. However, the level of effort (and associated cost) required to obtain and renew a Type A Water Licence is significantly greater than the level of effort and associated cost required to obtain a Type B Water Licence. Type A Water Licence applications also result in additional regulatory burden on, and carry additional costs for, all parties. This includes additional costs for the MVLWB, which are ultimately born by all Canadians. Many parties have already (and routinely) expressed concerns over their capacity to participate in regulatory proceedings. Forcing exploration companies into a situation where they would need to apply for a Type A Water Licence would only serve to increase this burden on all parties unnecessarily.</p> <p>The MVLWB Guide to the Water Licencing Process states that "Type A licences are generally for larger projects that use more water or have a greater environmental impact. Typical examples of projects requiring a Type A licence include mines and large hydroelectric projects. Type B licences are generally for small projects with less impact on the environment. Typical examples include advanced mineral and oil and gas exploration..." (emphasis added, p. 3). Li-FT notes that a decision to include the construction of ice bridges as a water use would be inconsistent with this guidance and would effectively render Type B Water Licences moot for exploration projects.</p> <p>In short, a decision by the MVLWB to interpret the definition of water use in a manner that would include ice bridge construction would place a substantial</p> | <p>includes the construction of ice-bridges as such a decision has significant negative implications for the residents of the Mackenzie Valley and provides no obvious benefit, environmental or otherwise.</p> | <p>includes "direct or indirect use of any kind." The LWBs do not have the authority to amend or interpret this definition in the manner suggested or in any other manner that would restrict the definition of water use as set out in the legislation.</p> <p>Please refer Overall Responses to General Topics Identified in Review Comments and Letters above, and to the Annex that accompanies the Bulletin for more information about how the LWBs have considered reviewer recommendations regarding the interpretation of water use.</p> |

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|     |                     | <p>burden on exploration companies, forcing them to choose between incurring schedule delays and increased costs or applying for a Type A Water Licence, which is a time- and resource-intensive endeavour that places additional burden on other parties. Either way, the result will be a reduction in investment in exploration activities in the NT as investors, who have a plethora of projects to choose from around the world, move their money out of the NT and into jurisdictions with less cumbersome, less costly, and more predictable regulatory regimes.</p> <p>While interpreting the definition of water use in a manner that includes the construction of ice bridges has obvious and significant short- and long-term negative implications for the residents of the Mackenzie Valley, the benefits of applying such a conservative definition are unclear. Notably, including the construction of ice bridges as a water use would not result in any additional environmental protection: other regulatory instruments (e.g., the Fisheries Act) provide adequate environmental protection even when the construction of ice bridges is not considered a use.</p>  |  |  |
| 4   | Annex - Section 2.1 | <p>With respect to Annex – Section 2.1, Li-FT notes that there is no clear definition of direct use in either the Waters Act or the MVRMA. In the absence of a clear definition, the MVLWB has unilaterally adopted a working definition of direct use as “...any withdrawal...for any period of time...since the water that is removed is not available to other potential users of the water source during that time.”</p> <p>Importantly, the MVLWB has not sought input from interested and or potentially affected parties on either the definition of direct use or the limited rationale it has provided for adopting this definition as recently described in Annex A of the MVLWB Reference Bulletin: Water Use (Annex A).</p> <p>Li-FT finds the MVLWB’s working definition of water use problematic as the inclusion of the words “during that time” could be taken to suggest that water that has been withdrawn is actively being used for the entire period over which water is not available to other users. Li-FT also questions the premise that water use should be defined with respect to the availability of water for other users as it is not clear how such an interpretation addresses the MVLWB’s fulsome mandate as set out in the MVRMA. Finally, Li-FT notes that the references to the consideration of other water users that are provided by the MVWLB in Section 2.1 (footnote #6) of Annex A point to sections of the legislation that refer to existing users, not potential users.</p> <p>In the absence of a legal definition of direct use within the legislation, the MVLWB should not rely on its unilaterally-imposed definition of direct use, but should</p> | <p>In the absence of a legal definition of direct use within the legislation, the MVLWB should rely not on its unilaterally-imposed definition of direct use, but on the long-standing precedent that the construction of ice bridges does not constitute water use. The latter interpretation is better aligned with the MVLWB’s overall mandate to “...provide for...the utilization of...water resources in a manner that will provide the optimum benefit for all Canadians and in particular for residents of the Mackenzie Valley...” as set out in the MVRMA. Li-FT also directs the MVLWB to the comments provided by Seabridge Gold</p> | <p>Please refer to the Annex that accompanies the Bulletin for detailed information about the history of the interpretation set out in the initial Bulletin, and for more information about how the LWBs have considered reviewer recommendations regarding the interpretation of water use.</p> |

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|  |                            | <p>consider its broader mandate and the precedent that has been set on the matter at hand. In this case, the precedent is clear: historically, the construction of ice bridges has not been considered a use of water. Moreover, the existing precedent better aligns with the MVLWB's mandate to provide the optimum benefit for residents.</p> <p>Li-FT also directs the MVLWB to the comments provided by Seabridge Gold and Canadian Zinc with respect to whether the construction of ice-bridges constitutes a water use, which are reflective of Li-FT's interpretation, understanding, and position on this matter.</p> | <p>and Canadian Zinc, which are reflective of Li-FT's interpretation, understanding, and position with respect to whether the construction of ice-bridges constitutes a water use.</p>  |   |
| 5  | Exemption for all projects | <p>With respect to whether ice-bridge water is exempted for all projects or only for miscellaneous projects, Li-FT directs the MVLWB to the response provided by Seabridge Gold, which is reflective of Li-FT's interpretation, understanding, and position on this matter.</p>  | <p>Ice-bridge water should be exempt for all projects, not only miscellaneous projects.</p>   | <p>The LWBs have not accepted this recommendation. This exemption is clearly not included in any of the Schedules for other types of licences, and there is no evidence to suggest that it was intended to be extended to the other Schedules. The LWBs recommend this be considered through amendments to the Regulations.</p> <p>Please refer to the Annex that accompanies the Bulletin for more information about how the LWBs have considered reviewer recommendations regarding this issue.</p> |
| 6  | All other Review Questions | <p>In respect of all of the other specific Review Questions that have been posed by the MVLWB, Li-FT is in agreement with the responses provided by Canadian Zinc and Seabridge Gold and refers the MVLWB to those submission as reflective of Li-FT's interpretation, understanding, and position.</p>  | <p>Refer to the submissions by Canadian Zinc and Seabridge Gold as reflective of Li-FT's interpretation, understanding, and position on each of the specific Review Questions posed by the MVLWB as part of this review that have not been otherwise addressed in Li-FT's comments.</p> | <p>Noted.</p>   |
| <p><b>CanZinc Corporation (CZN) - Claudine Lee</b></p> |                            |  |   |   |



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| 1   |                   | See attached Legal Interpretation from Canadian Zinc  |                         | The LWBs appreciate this submission and have considered it in their decision. Please refer to the Annex that accompanies the Bulletin for more information. |
| <b>Tlcho Government - Brett Wheler</b>  |                   |   |                         |   |
| 1   |                   | Please see attached letter.   | n/a                     | The LWBs appreciate this submission and have considered it in their decision. Please refer to the Annex that accompanies the Bulletin for more information. |
| <b>GNWT - Environment and Climate Change - Environmental Regulatory Analyst</b> |                   |   |                         |   |
| 1   | GNWT Cover Letter | Please see attached.  | N/A                     | The LWBs appreciate this submission and have considered it in their decision. Please refer to the Annex that accompanies the Bulletin for more information. |
| 2   | Introduction      | <p>The GNWT appreciates the opportunity to provide additional feedback to the land and water boards (LWBs) on our interpretation of how the various pieces of legislation apply to ice bridges. As discussed with Board staff previously, and outlined in detail below, the GNWT shares the opinion with Board staff that water used in the formation of an ice bridge is considered a “use” and can be regulated by a Board through conditions of a water licence. However, contrary to the Board’s assertion, the GNWT disagrees that ice bridge water use is only a below threshold water use for undertakings under Schedule H of the Waters Regulations (WR) and Schedule VIII of the Mackenzie Valley Federal Areas Waters Regulations(MVFAWR) and also disagrees that such water use is taken into account when determining the type of licence required.</p> <p>The GNWT has laid out our detailed legal arguments below for the consideration of the Boards and for the information of other parties and would be available for further discussions on this topic should the Boards consider this to be helpful.</p> <p>While the contents of this submission are specific to our legal position and respond to specific questions from the Board, there are implications to the NWT and GNWT related to these discussions, including potential economic impacts. The GNWT</p> | N/A                     | Please refer to responses to specific review comments below.  |

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|     |             | refers the Board and other reviewers to our cover letter for a more detailed summary on these issues.  |   |  |
| 3   | Section 2.1 | The GNWT agrees that any water taken from a watercourse and placed on top to form an ice bridge over that watercourse is a “use”. The GNWT agrees that this is apparent from the broad definition of “use” in the Waters Act (WA) and Mackenzie Valley Resource Management Act (MVRMA). The reference to “use” in Item 1, Column II of Schedule H of the WR and Item 1, Column II of Schedule VIII of the MVFAWR leaves no doubt about this being a “use”.   | N/A   | The LWBs agree with this comment. Please refer to the Annex that accompanies the Bulletin for detailed information about how the LWBs have considered reviewer recommendations regarding the interpretation of water use.  |
| 4   | Section 2.2 | <p>The GNWT agrees that if an undertaking requires a water licence on any basis under the applicable schedule or s. 4(a) or (b) of the MVFAWR or WR, any water use associated with that undertaking, including for ice bridges that would otherwise not require a licence, may be regulated through condition(s) in the water licence.</p> <p>S. 27(1) of the WA sets out the scope of conditions that may be included in a water licence by a Board. The wording in this section is extremely broad. The stem refers to “any conditions... including, but not limited to”. Subsection (a) then sets out that conditions related to the manner of use of waters that may be included in a licence. The opening of s. 27(1) indicates that the extremely broad scope of conditions that may be included in a water licence are subject to the rest of the WA and its regulations. There is no other provision in the WA or its regulations that narrows the scope of conditions that may be included in a licence in relation to use of waters. The MVRMA contains analogous sections.</p> <p>The GNWT also agrees that the use of water in association with any proposed undertaking that requires a water licence must, unless the proposed undertaking is exempt from preliminary screening, be considered in the preliminary screening of that proposed undertaking. Under s. 125 of the MVRMA, preliminary screening considers all potential environmental impacts of a proposed unexempted undertaking regardless of whether the aspect of the proposed undertaking at issue requires an authorization.</p> <p>The GNWT disagrees that the broad definition of “use” is relevant to the interpretation of the types of uses that are set out in the schedules to the MVFAWR and WR. The GNWT interprets the references in those schedules as being the only uses that are to be taken into account in determining whether a type A or B water</p> | The GNWT recommends that the LWBs consider the information above in their decision on this issue. | <p>The LWBs agree that, once a licence is required, all water uses, including ice-bridge water use and/or other below-threshold water uses, are to be included in the preliminary screening and the licence conditions.</p> <p>Some water use criteria in the Schedules are not specific, particularly those for direct water use for some industrial projects and for miscellaneous projects. These broad criteria require consideration of the definition of water use.</p> <p>Please refer to the Annex that accompanies the Bulletin for detailed information about how the LWBs have considered these comments.</p> |

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|     |                      | <p>licence is required on the basis of use. There is no apparent basis to conclude otherwise.</p>  |  |   |
| 5   | Sections 2.2 and 2.3 | <p>Given the GNWT’s interpretation, it is necessary to set out in detail the GNWT’s interpretation of the full effect of the reference to “use for construction of an ice bridge if/where the water used is removed directly from the watercourse” in Item 1, Column II of Schedule H of the WR and Item 1, Column II of Schedule VIII of the MVFAWR under what the LWBs have set out as the third and fourth issues. Though the same reasoning applies to the MVFAWR, for the remainder of the response to the third and fourth issues, the GNWT will only refer to the WR.</p> <p>The GNWT’s interpretation is that water taken from a body of water to construct an ice bridge over that body of water is not taken into account in determining whether a licence is required. If a licence is required on the basis of other uses, water used for any such ice bridge is not taken into account in determining the type of licence required under Schedule H and probably all other schedules. Interpreting Item 1, Column II of Schedule H as only applying if no licence is otherwise required under Schedule H results in an arbitrary and irrational distinction, so is not likely the correct interpretation.</p> <p>The GNWT begins by noting that if either s. 4(1)(a) or (b) of the WR do not apply in relation to water taken from a body of water to build an ice bridge over that body of water, a water licence is required on the basis of that use. S. 4(1)(a) and (b) of the WR state:</p> <p>A person may use water and deposit waste without a licence if the proposed use or deposit</p> <p>(a)has no potential for significant adverse environmental effects;</p> <p>(b)would not interfere with existing rights of other water users or waste depositors; and...</p> <p>The point noted in the first sentence of this paragraph is apparent from the use of “and” between s. 4(1)(b) and (c). This results in a requirement that all of s.4(1)(a)-(c) apply for such use to lawfully occur without a licence. If s. 4(1)(a) or (b) do not apply in relation to water taken from a body of water to build an ice bridge over that body of water, at minimum, a type B licence is required regardless of whether there are other water uses for the undertaking. However, as set out below, such water use for an ice bridge cannot otherwise be taken into account in the</p> | <p>The GNWT recommends that the Boards consider the information above in their decision on this issue.</p> | <p>The LWBs have accepted the recommendation made by the GNWT and other Parties regarding ice-bridge water use in relation to the determination of licence type for miscellaneous-type projects. The LWBs consider this an interim solution until the Regulations are clarified through amendments.</p> <p>The LWBs have not, however, accepted this recommendation in relation to other types of projects. The ice-bridge water use exemption is clearly not included in any of the Schedules other than those for miscellaneous-type projects, and there is no evidence to suggest that it was intended to be extended to the other Schedules. The LWBs recommend this be considered through amendments to the Regulations.</p> <p>Please refer to the Annex that accompanies the Bulletin for more information about how the LWBs have considered reviewer recommendations regarding this issue.</p> |

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|     |       | <p>determination of the type of water licence required in Schedule H and likely cannot be taken into account under any schedule.</p> <p>Item 1, Column II of Schedule H of the WR is unique among all of the licencing requirements on the basis of use in the schedules to the WR. This is the only entry in any schedule that exempts a particular kind of use from even being taken into account in determining whether a water licence is required regardless of the total volume of that use. The only other basis set out in Item 1, Column II of any schedule for a licence not being required is total volume of use. This gives a clear indication that the Commissioner in Executive Council and Governor General in Council intend use of water from a body of water to construct an ice bridge over that body of water to be a use that is to be taken into account differently than other water uses. The wording of this exemption is unqualified. There is therefore no ambiguity that this exemption applies to uses that fall under each of the above schedules (agricultural, conservation, recreational and miscellaneous) if no licence is required based on other use. However, the exemption likely applies more broadly than this.</p> <p>The exemption applies regardless of whether a type B licence would otherwise be required on the basis of the other uses. This accords with the principle of statutory interpretation that an interpretation should not result in an arbitrary or irrational distinction. MacDonald C.J.N.S. stated the following for a unanimous Nova Scotia Court of Appeal in paragraph 21 of <i>LeBlanc v. Wawanesa Mutual Insurance Company</i>, 2006 NSCA 138:</p> <p>“I see no legitimate basis for coverage to hinge on the arbitrary and irrational distinction between psychological injuries which the appellant says would be covered and physical injuries which the appellant concedes would not be covered. Such an interpretation would lead to an absurd result; something our courts strive to avoid. For example, <i>Ruth Sullivan, Sullivan and Driedger on the Construction of Statutes</i>, 4th ed. (Markham: Butterworths, 2002), says this about interpretations that may lead to irrational distinctions:</p> <p>... Under the modern principle, however, the chief duty of the courts is not to give effect to textual meaning, but to what the legislature most likely intended. The courts must harmonize the text as written with other indicators of legislative intent, including presumed intent. The modern principle justifies the presumption against absurdity by integrating it into the analysis through which the intention of the legislature is constructed.</p> |                         |                               |

| No. | Topic | Reviewer Comment  | Reviewer Recommendation | Land and Water Board Response |
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|     |       | <p>Irrational distinctions. A proposed interpretation is likely to be labelled absurd if it would result in persons or things receiving different treatment for inadequate reasons or for no reason at all. This is one of the most frequently recognized forms of absurdity.”</p> <p>In the absence of a clear indication to the contrary, the use of water from a watercourse to construct an ice bridge over that watercourse must also be exempt from being taken into account in determining the type of licence required for undertakings that only require a type B licence on the basis of other use under Schedule H. In this case, there is no clear indication to the contrary. There is no sound reason why the same ice bridge, in association with two hypothetical undertakings that both fall under Schedule H, would in one case not be taken into account in determining whether a water licence is required and in another case be taken into account and potentially result in a type A licence being required rather than a type B licence. Whatever effect the ice bridge will have on the environment and the rights of any other water users and waste depositors will be the same in either case. The Commissioner in Executive Council in the WR, and the Governor General in Council likewise in the MVFAWR, made a determination that if s.4(1)(a) and (b) of the WR apply, no matter how much water is used from a body of water to construct an ice bridge, no water licence is required on that specific basis. Given that there is no limit to the volume for this particular use in Column II, there is strong basis to believe that the same reasoning applies to Column III. Treating this same use with the same effects differently under Schedule H depending upon the specific undertaking is not rational and is arbitrary.</p> <p>The GNWT acknowledges that an argument could be made that if the intention had been to exempt ice bridges from being taken into account once the threshold for a type B licence is triggered on the basis of other uses, Item 1 Column III of Schedule H would have included wording to the effect of ‘... excluding use for construction of an ice bridge if the water used is removed directly from the watercourse.’ As noted above, the ice bridge exemption is the only exemption in any schedule of a particular type of use regardless of the total volume. The GNWT therefore is of the view that the irrationality and arbitrariness noted above outweighs the lack of express reference to this exemption in Item 1 Column III of Schedule H in the interpretation of whether the exemption also applies to Column III.</p> <p>The GNWT is further of the view that the exemption for water use for construction of an ice bridge likely applies in columns II and III of all other schedules given that</p> |                         |                               |

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|     |                                    | <p>irrationality and arbitrariness would again otherwise result. All of the factors noted above apply to the other schedules. Most notably, the same ice bridge, if constructed using water from that watercourse, has the same effect on the environment and the rights of other water users and waste depositors regardless of the undertaking the ice bridge is associated with. Any ice bridge constructed by using water directly from the same watercourse is therefore likely not to be taken into account in determining whether a licence is required. If a licence is triggered on the basis of other uses, the ice bridge likely is not taken into account in the determination of the type of licence required.</p>   |  |  |
| 6   | Section 2.3.1                      | <p>The GNWT has the following responses to what the Land and Water Boards have set out under this heading:</p> <p>a. The GNWT agrees that ice bridge construction is a use of water. There is no distinction made between direct and indirect water uses in the WR or MVFAWR.</p> <p>b. As set out above, the GNWT disagrees that ice bridge water use is only a below threshold water use for undertakings under Schedule H of the WR and Schedule VIII of the MVFAWR.</p> <p>c. As set out above, the GNWT disagrees that ice bridge water use is taken into account for undertakings under these schedules that otherwise require a water licence in the determination of the type of licence required.</p> <p>d. As set out above, though it is less clear than for points b. and c. under this heading, the GNWT disagrees that ice bridge water use is not a below threshold water use for undertakings in other schedules.</p> <p>e. As set out above, though it is again less clear than for points b. and c. under this heading, the GNWT disagrees that ice bridge water use is taken into account in the determination of the type of licence required in other schedules.</p> | <p>The GNWT recommends that the Boards consider the information above in their decision on this issue.</p> | <p>Please refer to the responses to GNWT-3 and 5 above.</p>  |
| 7   | Section 2.4 – Licensing categories | <p>The LWBs currently categorize both mineral exploration and abandoned mine remediation projects as miscellaneous projects for the purposes of licensing. Based on the project categories set out in Schedule B and Schedule II of the Waters Regulations and the MVFAWR, respectively:</p> <p>(a) What is the appropriate licensing category for mineral exploration projects?</p> <p>(b) What is the most appropriate licensing category for abandoned mine remediation projects?</p>  | <p>The GNWT recommends that the Boards consider the information above in their decision on this issue.</p> | <p>The LWBs acknowledge that the GNWT qualified its position on the categorization of abandoned mine remediation projects based on the project history, status, and operator. Consideration of these opinions is beyond the scope of this review and requires discussion with other parties.</p> |

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|     |       | <p>(a) The GNWT agrees that it is appropriate to categorize a mineral exploration project as a miscellaneous undertaking. Schedule B of the WR indicates that a 'mining and milling undertaking' is the operation of a mine within the meaning of the Canada Mining Regulations or the Coal Regulations and related milling activities. Schedule II of the MVFAWR is identical, other than that it refers to the Territorial Coal Regulations instead of the Coal Regulations. With the Canada Mining Regulations no longer existing and the Coal Regulations not defining "mine", the definition set out in the federal Northwest Territories Mining Regulations (SOR/2014-68) is the definition that should be used given s. 28(5) of the Northwest Territories Interpretation Act and s. 44(h) of the federal Interpretation Act. It is clear in these regulations that so long as an exploration project is not producing minerals for sale, it is not regarded as a mine. With certain mineral exploration projects, there may not even be any extraction of minerals from the ground. Such a mineral exploration project could not conceivably be classified as a "mine" and have the mining and milling criteria applied to it.</p> <p>(b) The GNWT also agrees that an abandoned mine remediation project is appropriately classified as a miscellaneous undertaking. When a mine is abandoned, a government will be responsible for the remediation of that mine. That government never produced minerals from that mine. It is therefore inappropriate to treat mine remediation as being analogous for the purpose of classifying the undertaking to activities carried out by an operator as part of the closure stage of a mine.</p> <p>The GNWT does, however, note an important point in relation to mining and milling operations: Any operator regardless of whether their licence has expired or they purchased the property and are newly operating it, including a receiver or monitor under a bankruptcy or insolvency proceeding if there is any potential to seek a new operator, would require the original class of licence issued for the undertaking for any care and maintenance, reclamation or closure activities.</p> |                         |                               |





## Review Summary Table and Letters – DRAFT LWB Reference Bulletin: Water Use

Project: LWB Reference Bulletin - Water Use  
 Board: Mackenzie Valley Land and Water Board  
 Organization: MVLWB

File Number: LWB Reference Bulletins  
 Review Comments Due: April 24, 2024

| No.   | Topic                 | Reviewer Comment  | Reviewer Recommendation | Land and Water Board Response   |
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| <b>CIRNAC - NRE - Mr. Nathan Donald</b>   |                       |   |                         |   |
| 1   |                       | <p>Hello,</p> <p>CIRNAC has considered the Mackenzie Valley Land and Water Boards' (LWBs) interpretation of water use in general, ice-bridge water use in particular, and classification of miscellaneous projects as discussed in the Draft Reference Bulletin released by the Board on March 27, 2024. After reviewal, CIRNAC would like to state its support for a risk and rights-based approach to resource management and is open to advancing operational-level discussions with partners on how federal regulations could be amended to create more clarity and certainty. Our teams appreciates the Boards efforts in distributing the potential revisions and their inclusion of various partners in the review.</p> <p>Sincerely,</p> <p>Christopher Morton</p> <p style="text-align: right;">A/Director of Environmental<br/>and Renewable Resources Management<br/>Natural Resources and Environment Branch – Northern Affairs Organization<br/>Crown-Indigenous Relations and Northern Affairs Canada</p> |                         | The LWBs appreciate this response and have considered it in their decision. |
| <b>GNWT - Environment and Climate Change - Environmental Regulatory Analyst</b> |                       |   |                         |   |
| 1   | GNWT-ECC Cover Letter | The Department of Environment and Climate Change, Government of the Northwest Territories has reviewed the application at reference based on its mandated responsibilities under the Waters Act and has provided comments and recommendations for consideration of the Mackenzie Valley Land and Water Board.   | N/A                     | N/A   |

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|     |   | <p>For any technical questions, please contact Bill Pain, Environmental Management Scientist with the Regulatory and Permitting Division at Bill_Pain@gov.nt.ca.</p> <p>Should you have any general questions or concerns, please do not hesitate to contact gnwt_ea@gov.nt.ca.</p>   |  |   |
| 2   | Legal Interpretation Regarding Ice-Bridge Water Use | <p>The GNWT notes that a related review occurred soliciting comments and recommendations in response to specific questions relevant to the proper legal interpretation and application of Schedule H of the Water Regulations and Schedule VIII of the Mackenzie Valley Federal Areas Waters Regulations (MVFAWR) with respect to water use for ice bridges.</p> <p>The GNWT, CIRNAC and the Tłı̨chǫ Government, as well as multiple representatives of industry and other interested parties provided responses to the Board on their interpretations and positions related to the questions posed. To date, no response or decision from the MVLWB has been shared in response to this legal review.</p> <p>Of note, the MVLWB had no obligation to conduct a formal legal review with an opportunity for any interested party to respond on the ice bridge interpretation questions. However, having done so, a formal decision from the MVLWB on the matter is now unavoidably required, as this process is similar in nature to a request for ruling. In order to be able to comment on an informed basis regarding any proposed updates to the Water Use Reference Bulletin based upon the ice bridge interpretation questions, reviewers need to know MVLWB’s decision on the ice bridge interpretation questions. As such, it is not procedurally appropriate for the MVLWB to circulate an updated draft Water Use Reference Bulletin for review, based upon potential decisions from the ice bridge interpretation questions, until the decision from the Board on the ice bridge interpretation questions has been issued.</p> | The GNWT recommends that the MVLWB provide a formal reasons for decision on the “Legal Interpretation Regarding Ice-Bridge Water Use”. | <p>As explained in the Draft Bulletin Item for Review (IFR), the LWBs had not yet made any decisions prior to the distribution of the Draft Bulletin, which was prepared by LWB staff specifically for the purposes of the public review.</p> <p>This additional step was considered to be appropriate in this case, particularly because in response to the first review, several parties commented that the LWBs’ decision shouldn’t be a strictly legal exercise and that the legal nature of the request limited some parties’ ability to participate. As a result, in the second review, LWB staff used the Draft Bulletin to provide a means for any reviewer to provide broader input, with or without legal support, so that the LWBs would have all of the available information about the potential implications of any potential changes to the Bulletin.</p> <p>As noted in the IFR, the LWBs fully intended to provide the reasoning for their decisions in a revised Annex, which is now available with the revised Bulletin.</p> |

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| 3   | Legal Interpretation Regarding Ice-Bridge Water Use | <p>As noted above, a separate review was conducted in 2023 related to “Legal Interpretation Regarding Ice-Bridge Water Use” for which the GNWT and others provided substantial comments. It is noted that conclusions and references related to that review are incorporated in the revised Water Use Reference Bulletin. The GNWT wishes to clarify that all comments from all reviewers previously provided to the MVLWB on the ice bridge interpretation questions, including the GNWT’s Submission from October 24, 2023 (the GNWT Submission), should be considered in MVLWB’s reasons for decision for that review unless the reviewer indicates that it is withdrawing one or more comments.</p>   | <p>The GNWT recommends that all previous comments provided to the MVLWB on the “Legal Interpretation Regarding Ice-Bridge Water Use” be considered in the formal reasons for decision that are issued for that matter unless the reviewer indicates that it is withdrawing one or more comments.</p> | <p>As noted in the Draft Bulletin IFR, the LWBs have considered submissions made during both public reviews in making their decision. No reviewers indicated that they wished to withdraw any of their previous comments or recommendations.</p>  |
| 4   | Total Water Use                                     | <p>An addition has been proposed in the Water Use Reference Bulletin that ice bridge water will not be considered in determining whether a project requires a Type A or Type B water licence for direct water use in Schedule H (Miscellaneous, Agricultural, Conservation or Recreational), and that this water should not be included in the total proposed water use volume. However, it is also noted in the draft bulletin that the information will still be included in the application.</p> <p>While the GNWT agrees with the revision in relation to the determination of water licence classification, ice bridge water, as set out in the GNWT Submission, is a “use” as defined in the Waters Act and should still be regulated by the Board in the water licence. Given that this is a “use” and there is no indication in the Waters Act or Waters Regulations of this use being exempt from water use fees, water use fees are payable for this use. While it is agreed by the GNWT that the water is exempt for water licence ‘triggers’, there is still in certain bodies of water an environmental risk to the aquatic environment from removing water under ice to create an ice-bridge. As such, the Board has jurisdiction to place conditions on this water use, such as a maximum allowable volume per a period of time or adherence to guidance documents developed by the Land and Water Boards or others.</p> | <p>The GNWT recommends that ice bridge water still be considered a “use” in terms of regulation by the Board, regardless of whether it is considered in terms of water licence thresholds within the schedules of the Waters Regulations.</p>  | <p>The LWBs agree that water used for ice bridges is considered a water use; however, the LWBs have not accepted this recommendation to include ice-bridge water use in the calculations for water use fees for all types of projects.</p> <p>For miscellaneous type projects, which were the primary source of concern in this review, there are both practical and economic implications associated with this recommendation, which the GNWT does not appear to have considered.</p> <p>Please refer to the Annex that accompanies the Bulletin for more information about how the LWBs have considered this recommendation and its implications.</p> |
| 5   | Ice Bridge Exemption                                | <p>The revised Water Use Reference Bulletin has clarified that ice bridge water is only exempt in relation to miscellaneous, agricultural, conservation or recreational projects.</p>   | <p>The GNWT recommends that the Bulletin outline that ice bridge water exemption is not</p>  | <p>The LWBs have not accepted the recommendation to apply the ice-bridge water use exemption to all</p>   |

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|  |  | The GNWT notes that this is not consistent with the position and interpretation set out in the GNWT Submission. As with all positions and interpretations in the GNWT Submission, GNWT's position and interpretation on the breadth of the ice bridge water use exemption for licence requirement and classification remains unchanged.  | only for miscellaneous, agricultural, conservation or recreational projects, but applies to all schedules of the Waters Regulations and Mackenzie Valley Federal Areas Waters Regulations (MVFAWR).   | types of undertakings. Please refer to the Overall Responses to Common Topics Identified in Review Comment and Letters above.  |
| 6                                      | Ice Bridge Exemption   | The revised Water Use Reference Bulletin has clarified that ice bridge water is only exempt if the proposed water use meets all three criteria set out in subsection 4(1) of the Water Regulations or 5(1) of the MVFAWR. It should be noted that this subsection only applies to whether a water licence would be required or not and should not be referenced regarding total water use within a water licence or in any other context.  | N/A   | The footnote has been moved and revised to reflect a more general application to water licensing.  |
| 7                                      | Whether the proposed updates to the Water Use Reference Bulletin suitably give effect to what MVLWB decides on the ice bridge interpretation questions | As MVLWB's decision on the ice bridge interpretation questions has not yet been provided, neither the GNWT nor anyone else commenting on the proposed updates to the Water Use Reference Bulletin is able to comment on whether the proposed updates suitably give effect to what is decided by MVLWB. This should be an important aspect of this review. If a decision on the ice-bridge interpretation questions is first provided by MVLWB, the GNWT and everyone who responds could assess on an informed basis whether the proposed updates to the Water Use Reference Bulletin suitably give effect to what is decided by MVLWB.   | As with the first recommendation, above, the GNWT recommends that the MVLWB provide a formal reasons for decision on the "Legal Interpretation Regarding Ice-Bridge Water Use".   | Please see response to GNWT-2 above.   |
| <b>WSP Canada Inc. - Damian Panayi</b> |  |  |   |  |
| 1                                      | Review of the Draft Reference Bulletin for Water Use   | WSP Canada Inc. (WSP) appreciates the opportunity to comment on the Draft Reference Bulletin for Water Use (the Bulletin), issued 22 March 2024. WSP provides regulatory support to a range of projects in the Northwest Territories, including mining, mineral exploration, power generation, transmission lines and roads, for both industry and government. As is well known, the current version of the Bulletin was a source of concern for our clients as it caused water licences to be triggered for projects and undertakings that previously did not require such. WSP notes that the Land and Water Boards of the Mackenzie Valley have responded to this concern, both through seeking legal interpretations and subsequent revisions to the Bulletin. The clarifications provided, both with regards to water licence applications and specifically with regards to water use for ice bridges, will provide | WSP supports adoption of the March 2024 Water Use Bulletin, with the understanding that legislative or regulatory changes may also be required to fully describe how the Waters Act applies to exploration and other water users as they occur today in the Northwest Territories. As a suggestion to improve the | The LWBs appreciate this response and have considered it in their decision. Please refer to the Annex that accompanies the Bulletin for more information.<br><br>In general, the LWB Reference Bulletins are intended to provide additional background information and explanation for particular interpretations and expectations |

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|  |                                    | clarity and reduce regulatory burden for our clients without compromising environmental protection.  | Bulletin, an annex could be included with examples of how water use for ice-bridges and other uses be included in a water licence application (with particular reference to Sections 6, 7 and 10 of the application form). Thank you again for this opportunity to review and comment on the Bulletin. | set out in LWB guidance documents – they are not intended to be detailed guidance documents themselves. WSP’s recommendation to include examples will be considered when the <i>Guide to the Water Licensing Process</i> is next updated. |
| <b>Aurora Geosciences - gary.vivian@aurorageosciences.com Vivian</b> |                                    |  |  |   |
| 1  | Aurora Geosciences Response Letter | See attached response letter.  |  | The LWBs appreciate this submission and have considered it in their decision. Please refer to the Annex that accompanies the Bulletin for more information.   |
| <b>Mountain Province Diamonds Inc. - Matt MacPhail</b>               |                                    |  |  |   |
| 1  |                                    | See attached response letter.  |  | The LWBs appreciate this submission and have considered it in their decision. Please refer to the Annex that accompanies the Bulletin for more information.   |
| <b>RainCoast Environmental Services Ltd. - Ms. Katsky Venter</b>     |                                    |  |  |   |
| 1  |                                    | See attached response letter.  |  | The LWBs appreciate this submission and have considered it in their decision. Please refer to the Annex that accompanies the Bulletin for more information.   |
| <b>EREX International Ltd - Dr. April Hayward</b>                    |                                    |  |  |   |
| 1  |                                    | Cover Letter   | N/A  | N/A   |
| 2  | Definition of Water Use            | Li-FT notes that there is no clear definition of direct use in either the Waters Act or the MVRMA. In the absence of a clear definition, the MVLWB has adopted a working definition of direct use as “...any withdrawal...for any period of time...since | In the absence of a legal definition of direct use within the legislation, the MVLWB   | Please refer to the Overall Responses to Common Topics  |

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|     |       | <p>the water that is removed is not available to other potential users of the water source during that time.”[1]The MVLWB has provided only limited rationale for adopting this definition in Annex A of the MVLWB Reference Bulletin: Water Use (Annex A).[2]</p> <p>Li-FT appreciates the opportunity to provide input on this important definition.</p> <p>Li-FT finds the MVLWB’s working definition of water use problematic as the inclusion of the words “during that time” could be taken to suggest that water that has been withdrawn is actively being used for the entire period over which water is not available to other users. Li-FT also questions the premise that water use should be defined with respect to the availability of water for other users as it is not clear how such an interpretation addresses the MVLWB’s fulsome mandate to “...provide for...the utilization of...water resources in a manner that will provide the optimum benefit for all Canadians and in particular for residents of the Mackenzie Valley...” as set out in the MVRMA. Finally, Li-FT notes that the references to the consideration of other water users that are provided by the MVWLB in Section 2.1 (footnote #6) of Annex A point to sections of the legislation that refer to existing users, not potential users.</p> <p>From an environmental perspective, it is important to distinguish between water withdrawal and water consumption when considering the matter of direct water use. Water that is withdrawn may or may not be consumed and water consumption has different environmental implications than water withdrawal without consumption. Typically, water that is withdrawn from a watercourse but returned to its original watershed without any alteration is not considered consumption. This is relevant to the MVLWB’s consideration of whether water that is applied to portages should be included in the calculation of water use. This is only one of many possible examples where water might be withdrawn but not consumed with little potential for negative environmental impacts. The MVLWB’s definition of water use must align with its overall mandate to as set out in the MVRMA and this likely warrants distinguishing between withdrawal and consumption in considerations of the definition and interpretation of direct water use and how water use is ultimately regulated.</p> <p>[1] p. 1 of <a href="https://mvlwb.com/media/864/download?inlineand">https://mvlwb.com/media/864/download?inlineand</a><br/> <a href="https://wlwb.ca/media/2017/download?inline">https://wlwb.ca/media/2017/download?inline</a><br/> [2] <a href="https://mvlwb.com/media/864/download?inline">https://mvlwb.com/media/864/download?inline</a></p> | <p>should carefully consider its definition and interpretation of water use. The MVLWB should likely distinguish between withdrawal and consumption to ensure its definition and interpretation is adequately aligned with the MVLWB’s overall mandate as set out in the MVRMA.</p> | <p>Identified in Review Comment and Letters above.</p> |

| No. | Topic   | Reviewer Comment  | Reviewer Recommendation   | Land and Water Board Response   |
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| 3   | Application of Exemption to Different Types of Undertakings | <p>Li-FT notes that many exploration projects have not been licenced as “Miscellaneous” undertakings, including Li-FT’s Yellowknife Lithium Project. This is a common error on Water Licence applications for exploration projects and many exploration projects hold Water Licences issued as “Mining and Milling” undertakings. Ultimately, the rationale provided for the exclusion of water used for ice bridges applies to all types of undertakings, not just Miscellaneous undertakings. Moreover, it is difficult to see how differentiating between types of undertakings in the application of the exemption for ice bridges offers any environmental protection, but it does have negative economic implications, including implications for project costs and schedules. As such, the exclusion should be applied across all types of undertakings.</p> | <p>To align with the MVLWB’s overall mandate, the exemption for ice bridges should be applied to all undertakings, not just Miscellaneous undertakings. Should the MVLWB decide that the exemption only applies to Miscellaneous undertakings, a clear and simple process should be implemented by the MVLWB for re-classifying exploration projects that are not currently licensed as Miscellaneous undertakings.</p> | <p>Li-FT’s Yellowknife Lithium Project (<a href="#">MV2022L8-0008</a>) was issued a miscellaneous licence, not a mining and milling licence, so it is unclear what misunderstanding has occurred for this Licence in particular.</p> <p>In general, however, the legislation actually does not address mineral exploration at all, so it is not clear what category of licence these projects technically belong in. The LWBs acknowledge that these projects were not consistently categorized historically. They were either considered industrial, mining and milling, or miscellaneous at various times. As described in the Annex that accompanied the first public review, the LWBs have only recently reviewed this issue in depth and determined that these projects will be considered miscellaneous (at least until the Regulations are amended and clarified).</p> <p>It is unlikely that mineral exploration projects that were misclassified prior to the initial issuance of the Bulletin were affected by this in any case, because it was only after the issuance of the Bulletin that the LWBs learned that applicants had not been including ice-bridge</p> |

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|     |       |                  |                         | <p>water use in proposed water use volumes for winter roads. Ice-bridge water use would, therefore, not have been considered in the type A vs B determination, or in the authorized water use volume in these misclassified licences.</p> <p>The LWBs also acknowledge that some more recent mineral exploration projects have still been mistakenly categorized as mining and milling; however, these are not, in fact, numerous. Further, in determining whether a type A or B licence is required for these projects, staff have typically applied the direct water use criteria for miscellaneous licences rather than those for mining and milling licences, so in effect, the misclassification of these licences has no material effect. It is only the requirement to include ice-bridge water use in the proposed and authorized total water use volume since the issuance of the original Bulletin that impacts these mineral exploration licences, and this would have had the same impact regardless of which licence category was applied.</p> <p>Regardless of misclassification, the LWBs have identified only a small number of licences that have been impacted over the short period during with the first version of the</p> |



| No.  | Topic                 | Reviewer Comment   | Reviewer Recommendation  | Land and Water Board Response   |
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|  |                       |  |  | <p>Bulletin was in effect. LWB staff will be contacting each of these licensees directly to provide direction on next steps.</p> <p>Looking forward, the current <i>Guide to the Water Licensing Process</i> notes that mineral exploration projects are classified as miscellaneous projects, and a result of the review of the Bulletin, both staff and the applicants are now more aware of this distinction. Misclassification of these projects is not expected to be a concern in the future.</p> <p>The LWBs have not accepted the recommendation to apply the ice-bridge water use exemption to all types of undertakings. Please refer to the Overall Responses to Common Topics Identified in Review Comment and Letters above.</p> |
| 4  | Urgency of Resolution | Li-FT's winter 2024 exploration activities were significantly affected by the MVLWB's current interpretation and guidance on water use, which elongated schedules and increased program costs. These additional costs and schedule delays came at a time when interest rates are high and it is difficult to secure capital for exploration. Complying with the current interpretation of water use and its regulatory application absorbed capital that could have been spent on advancing the Project without resulting in any additional environmental protection. There is a narrow window of opportunity for successfully bringing Northwest Territories lithium to the global market and it is important that the MVLWB act quickly to resolve this issue. | With all of the above comments in mind, Li-FT supports the adoption of the draft Reference Bulletin on Water Use as the MVLWB continues to evaluate how the definition and interpretation of water use and its regulatory application can be improved to further align with the MVLWB's overall mandate. | The LWBs appreciate this response and have considered it in their decision. Please refer to the Annex that accompanies the Bulletin for more information.   |
| <b>White Cliff Minerals Limited - Eric Sondergaard</b> |                       |  |  |   |

| No.   | Topic                         | Reviewer Comment   | Reviewer Recommendation   | Land and Water Board Response   |
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| 1   |                               | See attached response letter.  |   | The LWBs appreciate this submission and have considered it in their decision. Please refer to the Annex that accompanies the Bulletin for more information.   |
| <b>CanZinc Corporation (CZN) - Claudine Lee</b> |                               |  |   |   |
| 1   |                               | See attached comment letter.   |   | The LWBs appreciate this submission and have considered it in their decision. Please refer to the Annex that accompanies the Bulletin for more information.   |
| <b>Tlicho Government - Brett Wheler</b>         |                               |  |   |   |
| 1   | Summary                       | Both the Boards' current (pre-existing reference bulletin) and potential revised (new draft reference bulletin) policy positions are reasonable considering the analysis TG undertook in October 2023. The regulations are ambiguous enough to allow for both approaches.  | The new draft interpretation with regards to ice-bridge water use for miscellaneous-type projects is reasonable.  | The LWBs appreciate these responses and have considered them in their decision. Please refer to the Annex that accompanies the Bulletin for more information. |
| 2   | Potential revisions           | The MVLWB summary of potential revisions states that:<br>"Proposed ice-bridge water use for miscellaneous-type projects would not contribute to whether a type A or B water licence is needed for direct water use" and "Ice-bridge water use would not be included in the total water use volume authorized in a miscellaneous-type water licence, so water use fees would not apply"   | The current regulations do not bar this interpretation and this interpretation is reasonable.   |   |
| 3   | ambiguity in the regulations  | There remains an ongoing risk of regulatory ambiguity.   | Regulations should be amended to explicitly clarify this issue.   |   |
| 4   | value of amending regulations | As we stated in the October 2023 review, Tlicho Government continues to call on GNWT and the federal government to take a proactive approach and to come together with Indigenous Government partners to review and, where necessary and appropriate, amend existing regulations. Regulatory clarity, consistency, and effectiveness are priorities that are shared by all Northern governments. Undertaking a review and amendment process for regulations provides a means to address legitimate industry concerns while enabling the Boards to exercise their management authority more effectively, for the optimum benefit of the residents of the Mackenzie Valley and of all Canadians. | As we stated in the October 2023 review: Updating regulatory requirements and adapting them to better meet the needs of our communities as well as those of industry can support the conservation, development, and use of land and water in the Mackenzie Valley in a manner that will drive investment in our region while protecting our resources |   |

| No.   | Topic | Reviewer Comment              | Reviewer Recommendation  | Land and Water Board Response   |
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|   |       |                               | <p>for present and future generations.</p> <p>We believe there are practical regulatory adjustments that would have broad support and move forward efficiently. Tłıchǫ Government is ready to collaborate on this important work</p> |   |
| <b>NWT &amp; Nunavut Chamber of Mines - Mr. executivedirector@miningnorth.com Hoefler</b> |       |                               |  |   |
| 1   |       | See attached response letter. |  | The LWBs appreciate this submission and have considered it in their decision. Please refer to the Annex that accompanies the Bulletin for more information. |

## **Review Letters:**

### **Legal Interpretations Regarding Ice-Bridge Water Use**

### **DRAFT LWB Reference Bulletin: Water Use**



October 24, 2023

Dr. Kathy Racher  
Executive Director  
Mackenzie Valley Land and Water Board  
P.O. BOX 2130  
YELLOWKNIFE, NT X1A 2P6

Dear Dr. Racher:

### **Government of the Northwest Territories recommendations on LWB Reference Bulletin - Legal Interpretation Regarding Ice-Bridge Water Use**

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The Government of the Northwest Territories (GNWT) has reviewed the Land and Water Boards of the Mackenzie Valley (LWBs) questions relevant to the proper legal interpretation and application of Schedule H of the *Waters Regulations* and Schedule VIII of the *Mackenzie Valley Federal Areas Waters Regulations* (MVFAWR) concerning water use for ice bridges. GNWT understands these questions result from subsequent public discussions following the LWB's June 2020 [Reference Bulletin: Water Use](#) (Bulletin).

As outlined in more detail in our comments submitted on the Online Review System, it is the GNWT's legal position that while water used for ice bridges are considered a "use" and can be regulated by the LWBs through water licence (WL) conditions, this use should not be considered in relation to schedule triggers when determining water licence requirement or classification. The GNWT is concerned that the current interpretation by the LWBs in various respects is not consistent with the modern approach to statutory interpretation and is also problematic for industry and by extension the economy of the NWT. Requiring unnecessary Type A Ws for otherwise exempted activities, i.e., ice bridges, create significant increases in regulatory timelines, additional costs (e.g., consultants and staff time), and negative industry perceptions all of which can result in project cancellation or inability to obtain project funding and reputational losses.

Longer regulatory timelines and regulatory delays associated with a Type A WL result in higher costs and greater time for achieving permits which disincentivizes exploration in the NWT compared to other jurisdictions. This may result in an inability to get a project funded because it is more difficult to attract investors to a project that is not fully permitted. The resource industry is cyclical in nature and project delays can result in missing a window for achieving funding which can result in project cancellation or further delays.

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Please note that while this letter is being submitted from Environment and Climate Change's (ECC) Regulatory and Permitting Division, we would like to highlight that the Departments of Industry, Tourism, and Investment (ITI), Infrastructure (INF), and Justice (DOJ) also reviewed and provided input to the comments submitted herein. The Regulatory and Permitting Division provided the role of interdepartmental coordinator as the primary contact with the Land and Water Boards on water licensing and water legislation discussions.

Please contact Rick Walbourne, A/Director, Regulatory & Permitting Division, at [Rick.Walbourne@gov.nt.ca](mailto:Rick.Walbourne@gov.nt.ca) if you have any questions or concerns in relation to GNWT's interpretations.

Sincerely,



Rick Walbourne  
A/Director  
Regulatory and Permitting Division  
Environment and Climate Change



## Tłıchǫ Government

Box 412, Behchokǫ, NT X0E 0Y0 • Tel: (867) 392-6381 • Fax: (867) 392-6389 • [www.tlicho.ca](http://www.tlicho.ca)

October 30, 2023

Kathy Racher  
Executive Director  
Mackenzie Valley Land and Water Board  
Yellowknife, NT  
*Submitted via Online Review System*

### Re: Ice Bridge Water Use

Tłıchǫ Government thanks the Land and Water Boards of the Mackenzie Valley (the “Boards”) for inviting comments and recommendations on issues of legal interpretation regarding the regulation of ice bridge water use.

We have reviewed the Boards’ Reference Bulletin on water use and its Annex and take the position that **the Board’s interpretations** of the Waters Regulations, the Mackenzie Valley Federal Areas Waters Regulations, and their enabling statutes with respect to ice bridge water use **are reasonable and respect the modern principle of statutory interpretation.**

We acknowledge, **however**, and take seriously the concerns of the Government of the Northwest Territories (“GNWT”) that flow from these interpretations, namely, the risk of certain proponents facing longer regulatory timelines, additional costs and delays, as well as negative industry perceptions and potential impacts for industry and the economy as a whole.

While these concerns have merit, we must work with the regulations we have been dealt. Tłıchǫ Government notes that regulatory interpretation with respect to ice bridges is only one of several tools at our disposal to address these concerns. We are of the opinion that regulatory amendments are the most appropriate way to address these concerns directly.

**We call on GNWT and the federal government to take a proactive approach and to come together with Indigenous Government partners to review and, where necessary and appropriate, amend existing regulations.** Regulatory clarity, consistency, and effectiveness are concerns that are shared by all Northern governments. Undertaking a regulatory review and amendment process provides a means to address legitimate industry concerns while enabling the Boards to exercise their management authority more effectively, for the optimum benefit of the residents of the Mackenzie Valley and of all Canadians.

We have a world-class regulatory system established through modern treaties and based on principles of co-management and reconciliation. Updating regulatory requirements and adapting them to better meet the needs of our communities as well as those of industry can facilitate the conservation, development, and use of land and water in the Mackenzie Valley in a manner that will drive investment in our region while protecting our resources for present and future generations.

We believe there are practical regulatory adjustments that would have broad support and move forward efficiently. Tłıchq Government is ready to collaborate on this important work.

In Tłıchq Unity,



Brett Wheler  
Senior Policy Advisor - Resource Management and Sustainability  
A/Director of Culture and Lands Protection  
Tłıchq Government

cc. Ryan Fequet, Executive Director, Wek'èezhìi Land and Water Board

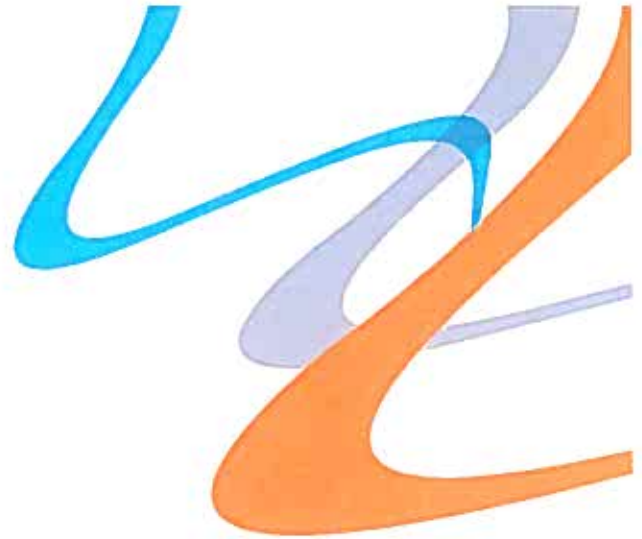
Erin Kelly, Deputy Minister, GNWT-ECC

Pamela Strand, Deputy Minister, GNWT-ITI

Rebecca Chouinard, Acting Director, Resource Policy and Programs Directorate, Crown-Indigenous Relations and Northern Affairs Canada

Kenny Ruptash, President, NWT & Nunavut Chamber of Mines





October 26, 2023

**Att: Kathy Racher  
Executive Director  
Mackenzie Valley Land & Water Board  
Yellowknife, NT**

**Re: Industry comments on [Legal Interpretation Regarding Ice-Bridge Water Use](#)**

The NWT & Nunavut Chamber of Mines (the “Chamber”) appreciates the opportunity to submit a response to the request for comments on the new interpretation of water use. This response is based upon the review questions that the Land and Water Boards (the “Boards”) have stated will be used to direct a final decision.

The Chamber is concerned that the request for a detailed legal analysis and rationale undermines the fairness and transparency approach expected from the Boards. Any comments provided to the Boards should be considered legitimate whether they have been vetted by legal counsel or not. Many junior explorers do not have access to legal counsel, nor does the Chamber, a non-profit association, have the resources to hire legal counsel for this issue. The reality is that the Boards are the only well-financed parties to fully engage in this process.

**It is the Chamber’s strong view that the Boards’ current interpretations concerning water use should be reconsidered and the Bulletin should be subsequently revised.**

The Boards’ new policy deeming that water used in ice bridges (and ice pads) will now be considered water *use*, and be included in a water license, is deeply flawed. This application of water is not a *use*, but a temporary transfer of water that will be returned to its source.

An ordinary, grammatical interpretation of “use” that achieves the purpose of the *Waters Act* and the MVRMA in context is as follows:

*Any permanent withdrawal or diversion of water, directly or indirectly, from a water source for any period of time, since the water that is removed is not available to other potential users of the water source during that time.*

The Boards’ interpretation that a temporary transfer of water that will be returned to the same water body constitutes a “use” because it will not be available to other potential users is not grounded in reality. Given its vast geography and near-infinite supply of water, there is no known water “use” in the NWT by the mineral industry that displaces other users. This is particularly so for ice bridges which by definition are built in remote areas with no other water users present. When there are other bridge users, they are driving on the ice road, thereby benefiting. When the ice melts in the spring, the water is returned in liquid form to the source from which it came. This raises another important point – a mere change in the physical

properties of water from liquid to ice within the same water body should not be termed a use. The water is simply changing state.

The Chamber accepts that a permanent withdrawal of water constitutes a “use” in the ordinary and grammatical sense, but to further define “use” with the application of liquid water to thicken the ice surface temporarily during the winter, is unnecessarily restrictive. It will be a disincentive to investing in the NWT.

From that perspective, the Boards should consider Section 101.1(1) of the MVRMA:

*“The objectives of the Board are to provide for the conservation, development and utilization of land and water resources in a manner that will provide the optimum benefit generally for all Canadians and in particular for residents of the Mackenzie Valley.”*

The Bulletin does not reference this purpose and is not consistent with the MVRMA’s socio-economic intent.

The Chamber provides the following detailed responses to the review questions which it believes are consistent with the stated objectives.

Review Question Responses:

- 1) Under Sections 1, 2.1, and 2.2, the Chamber agrees with the Boards that the definition of “use” is broad. Providing guidance on interpreting this definition seems to be the Boards’ objective, but they have advanced an interpretation in the Bulletin without understanding the repercussions the interpretation will have on the end-user, namely the “residents of the Mackenzie Valley” that the MVRMA and the Boards are designed to serve. The Boards’ mandate is to provide for the “conservation, development and utilization” of land and water resources when making licensing decisions, for “optimum benefit” of residents. This, by definition, requires a balanced interpretation, that does not swing the pendulum too far in one direction, as the Bulletin does.

Further, the Chamber believes that:

- i) The current interpretation will provide a significant cost increase to the end-user, especially small to medium-sized exploration projects. The Chamber agrees with the GNWT that this type of water use was never to be considered part of a water license; and
- ii) Ice bridges, ice pads, and ice roads are temporary structures at best and should not be part of the water license. This is not consumption but a transfer of water that will end up back in the same water body. There already exist specific guidelines for the withdrawal of water in winter from water bodies (a proponent is currently responsible for providing all water withdrawal points in a land use submission that guarantees no more than 10% of the water body will be used). Additional oversight is not required;
- iii) In addition, the role of the land use inspector has been downgraded, which negatively affects how the regulations can be effectively carried out between the inspectors and the proponent. Previously, this involved a dialogue with the inspectors to achieve a common-sense interpretation. Under the Bulletin, decisions on water use are being made without any consideration for practical on-the-ground realities, which is completely contrary to how environmental legislation is supposed to be applied.

- 2) Under Section 4 of the Annex, Categorization of Projects, the Chamber has the following responses:
- i) The Chamber believes, as does the GNWT, that mineral exploration was never to be affected by these types of water use. They are insignificant because they are not consumption but are temporary transfers. Understanding that mineral exploration is not to be evaluated for this type of water use provides for increased investment, which is a common goal;
  - ii) The Boards have pushed water license guidance of using 35-37 cubic meters a day per drill, to an evaluation of almost 70 cubic meters of water use per day. This would elevate a proponent using two drills for early-stage exploration into a type B water license;
  - iii) Also, with these new guidelines the Boards could be pushing more advanced exploration projects into the need for a type A water license. The amount of effort and technical and financial resources required to apply for a type A water license is considerably greater than that for a type B water license. This is unnecessary over-regulation and contributes to the interpretation that water used for ice bridges (streams, ponds, small lakes) will monumentally and unnecessarily affect the license a proponent can apply for;
  - iv) A type A license should only be considered for large projects going into construction and production. With proper management, and with the use of inspectors, a type B water license should more than cover the early stage and advanced stages of exploration activities.

As general comments, we provide the following;

- 1) The industry agrees with the GNWT that ice bridges and ice pads should not be considered water use.
- 2) Interpretation is changing policy and there is no engagement with the industry.
- 3) Clear, concise, and simple should be the order of the day. A regulation and any interpretation thereof should follow efficient regulation, economic implications, and what is intended by a plain read of the *Waters Act*. There needs to be more recognition of the (un)reasonableness of potential fees, especially related to early-stage projects where high-risk, hard-to-obtain financing is invested in the NWT to bring economic gain.
- 4) It has become an unacceptable standard that under any new interpretation to develop policy, the complexity, cost, and frustration ramp up.
- 5) The Mackenzie Valley Operational Dialogue was originally targeted to address early-stage projects and investment concerns. There appears to be no understanding that the policy and regulations continue to restrain investment in the territory. These interpretations are not making things better.
- 6) The Boards appear to be heading to a one-size-fits-all approach to licensing projects. However, there is a drastic difference between the two types of water licenses and the discharge criteria which are so extremely different for exploration and operations. The Chamber believes this is why mineral exploration was not included in the water regulations but have since been classified as miscellaneous. Mineral exploration should

be exempt. An Ontario experience provides a good example: permitting two drills, building winter roads, a camp and intense exploration (geophysics, geological sampling, etc.) does not require a water license.

- 7) Consider a high-pressure water pump running at 50 cubic meters/hour (high-volume pumps for roads, pads and ice bridges) with 2 drills running, would require a type A water license. To stay under a type A water license by using the pump only 2-3 hours per day, would double or triple the cost to build an ice bridge or ice pad, never mind the health and safety issues associated with this extra time.
- 8) We are hopeful that the Board will see the logic of our recommendation and will change the interpretation of water use. If the Board cannot find a way to support that change, and ice bridges must become a “use”, then we recommend that this “use” be exempt from payments and not be considered in relation to schedule triggers when determining water license requirements or classification as per Item 1, Column II of Schedule H of the Waters Regulations.

In closing, the Chamber has significant concerns with the Board’s new interpretations of water *use*. We believe that the intent was to never have exploration projects evaluated for this type of *use*, that it will have a severe and negative impact on exploration investment required to sustain a strong mining industry and will be detrimental to the socio-economic well-being of the NWT.

As always, the Chamber looks forward to an open relationship and dialogue with the Boards to positively enhance policy and guidelines as per their mandate.

Respectfully submitted,



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Gary Vivian, M.Sc., P.Geol.  
Chair, NWT Regulatory Committee

c.c.: Deputy Minister, Pam Strand, GNWT ITI  
Deputy Minister, Dr. Erin Kelly, GNWT ECC



October 30, 2023

VIA EMAIL

Mackenzie Valley Land and Water Board  
4922 – 48th Street  
7<sup>th</sup> Floor YK Centre Mall  
PO Box 2130  
Yellowknife  
NT X1A 2P6

**Re: Legal Interpretation Regarding Ice-Bridge Water Use Comments**

Canadian Zinc (CZN) has reviewed the Land and Water Boards of the Mackenzie Valley's (LWB) interpretation and application of Schedule H of the Waters Regulation and Schedule VIII of the Mackenzie Valley Federal Areas Waters Regulation with respect to water use for ice bridges. CZN thanks the LWBs for the opportunity to provide comments and legal interpretation included in the letter below. CZN provides comments on the interpretations of sections 1.0 and 2.1-2.3 of the Annex and provides comments and recommendations to the questions included in Part B: Review Questions.

- A) Annex – Section 2.1: In the [Mackenzie Valley Resource Management Act](#) (MVRMA) and [Waters Act](#), the definition of 'use' of water is very broad and includes both direct and indirect water uses. As set out in the Bulletin and further detailed in the Annex, the LWBs consider 'water use' as: Any withdrawal or diversion of water, directly or indirectly, from a water source for any period of time, since the water that is removed is not available to other potential users of the water source during that time.

**Response:** We note that the definition of "use" in both the MVRMA and the *Waters Act*<sup>1</sup> is very broad, however the building of an ice bridge does not "withdraw...water...from a water source" as described in the Bulletin. The water stays in the water course, simply in a different form – solid, as opposed to liquid. As a result of a lack of withdrawal of the water, there is no "use of water" as defined by the Acts and further described in the Bulletin.

- B) Annex – Section 2.2: Water licensing criteria for both direct and indirect water use are set out in the Schedules in the [Waters Regulations](#) and the [MVFAWR](#); however, given the broad definition of water use, not all possible water uses for each type of project have specific licensing criteria (e.g., water used for a camp is a direct water use for any type of

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<sup>1</sup> References to (i) "Acts" refers to the Mackenzie Valley Resource Management Act and the Waters Act, and (ii) "Regulations" refers to the Waters Regulations and the Mackenzie Valley Federal Areas Waters Regulations (MVFAWR). Sections references are made to the Waters Act and the Waters Regulations, and reference should be made to the analogous sections under the MVRMA and MVFAWR.

project that includes a camp, but it does not have licensing criteria in all Schedules). Once a project exceeds licensing criteria, the LWBs' understanding is that all water uses for the project must be considered in the preliminary screening and in developing the licence conditions (including any limitations on water use volumes or rates).

**Response:** While “use” is given a broad definition, its definition is not what specifies what types of uses are authorized via Section 4(1) of the Regulations and the types and quantities of water uses that trigger the requirement for a type A or type B licence. The provisions of the Acts and Regulations including their schedules provide the specific details of what uses (type and amount) trigger a requirement for a licence and which are the subject of a licence, and what uses are otherwise authorized by operation of the Act and Regulations (like ice bridge water use).

Section 4(1) of the Regulations *clearly states* that a person **may use water without a licence** if the proposed use (a) has no potential for significant adverse environmental effects, (b) would not interfere with existing rights of other water users or waste depositors; and (c) satisfies the criteria set out in (i)-(v). The criteria set out at (v) is in respect of miscellaneous undertakings in column II of Schedule H, which refers to direct water uses below a certain threshold – less than 100 m<sup>3</sup> per day (the “**threshold amount**”) **OR** “use for the construction of an ice bridge if the water used is removed directly from the watercourse”. As a result of the use of the word “or”, it is clear that the amount of water used for construction of an ice bridge is not included in the calculation of direct use. If it was intended that water used for ice bridges be included in the calculation of direct use for the purposes of this criteria, then the wording would have been: “Use of less than 100 m<sup>3</sup> per day, **including water used** for construction of an ice bridge where the water used is removed directly from the watercourse”. As a result, should water use exceed the threshold amount (not including the water used for the construction of an ice bridge), then a type B or type A licence is required for water use in respect of the undertaking. By operation of Section 4(1)(v), water used for ice bridges in respect of miscellaneous undertakings is authorized and does not require, and is not to be subject to the terms and conditions of, a licence. To impose licencing requirements to the use of water for ice bridges in relation to miscellaneous activities would directly contradict the authorization and exception provided for at Section 4(1)(v) for water use for ice bridges.

If the legislators intended for water use for the construction of ice bridges for miscellaneous undertakings to be included in calculations of thresholds, they would have included language to state that the authorization/exception applies only to “water use for the construction of ice bridges [...] **only if all water uses in connection with the same undertaking are below the threshold amount**”. The legislators did not do that and that is not what the Regulation and schedule states. There is no language in the Acts or the Regulations that suggests that the exemption provided for by Section 4(1)(v) for ice bridges is impacted by the threshold amount applicable for other types of water usage. The wording of the exemption is clear and unqualified.

If the legislators intended differently, they could have incorporated similar language to the Nunavut Water Regulations (the “NWR”), which explicitly *removes the authorization* for any use of water should the total water use in respect of the same undertaking require a licence (section 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”). The legislators did not do so.

Further, section 7(1) of the Regulations states that a licence applies to one or more uses of water set out in column I where the criteria set out in column II are met but does not meet the requirements of paragraph 4(1)(a) and (b), meaning that a licence would apply to other types of use that meet the criteria in column II (construction of an ice bridge) only if the requirements of paragraph 4(1)(a) and (b) are not met. In the case of water use for ice bridge construction, a licence may be needed for the construction of ice bridges only if such use (a) had a potential for significant adverse environmental effects and (b) would interfere with the existing rights of other water users (i.e. the exception provided for at s. 4(1)).

- C) Annex – Sections 2.2 and 2.3: Each Schedule identifies some specific below-threshold water use and waste disposal activities that do not, on their own, require a licence for the type of project in question. With respect to below-threshold water uses, the LWBs currently apply the following interpretations: (a) For licence categories where the direct water use criteria are based on an unspecified or broad water use (i.e., industrial or miscellaneous licences), the cumulative direct water use volumes for all project activities determines whether a licence is required, and whether the licence will be a type A or B licence. This may consist of several below-threshold direct water uses that, in total, exceed the licensing criteria. (b) Where a licence is required, all water uses, including 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).

**Response:** We agree generally but not with respect to ice bridges we disagree that water use for the construction of ice bridges is considered a “below-threshold water use”. Rather, it is a type of water use that is explicitly authorized by operation of section 4.1(c)(v) of the Regulations and exempted from the requirement for and terms of a licence, and unaffected by the threshold amounts provided in certain the columns in the Schedules. As it is not a “below-threshold water use”, such use is not included in the calculation of water use to determine if a licence is required and the type of licence required. The Schedules operate only as an extension of the provisions of the Regulations.

- D) Annex – Section 2.2 and 2.3: Below-threshold activities that are applicable to only one type of project are listed only in the relevant Schedule, while below-threshold water uses/waste deposits that are common to all licence categories are specifically listed in each Schedule. The LWBs’ current understanding is that below-threshold water uses or deposits of waste, and type A or B licensing criteria, that are only listed in a specific Schedule are not applicable to other Schedules.

**Response:** See response to 1C.

E) Annex – Section 2.3.1: With respect to ice-bridge water use specifically, the LWBs currently apply the following interpretations:

- (a) Ice-bridge water use is a direct water use.
- (b) Ice-bridge water use is only a below-threshold direct water use for miscellaneous projects (Schedule H/VII).
- (c) For miscellaneous projects that otherwise require a licence for direct water use, ice-bridge water use is included in the total direct water use volume, and therefore, in the determination of whether a type A or B licence is required, in the preliminary screening, and in the licence conditions.
- (d) Ice-bridge water use is not a below-threshold direct water use for projects in licence categories other than the miscellaneous category (Schedules D/IV through G/VII).
- (e) For projects other than miscellaneous projects, any water used for ice bridges is considered a water use for a project; however, because direct use criteria are written differently in each Schedule, it may or may not influence the determination of whether of a licence (either type A or B) is required.

**Response:** We disagree with:

As set out above in our comments:

- (a) We disagree that ice-bridge water use generally is a direct water use as it does not “withdraw...water...from a water source” as described in the Bulletin. The water stays in the water course, simply in a different form – solid, as opposed to liquid. As a result of a lack of withdrawal of the water, there is no “use of water” as defined by the Acts and further described in the Bulletin.
- (b) We agree that ice-bridge water use is an exemption only specifically noted in Schedule H for miscellaneous projects. That exemption is clear and unambiguous. We disagree generally that water use for the construction of ice bridge is a “below threshold” water use as it is not affected by the threshold calculations within the Schedules. As noted in our submissions, it is an activity that is exempted from the licensing criteria and requirements and does not fit within the concepts of direct or indirect water use as defined in the Acts and Bulletin.
- (c) We disagree with the position that ice-bridge water use is included in the calculation of water use and determination of whether a type A or B licence is required for miscellaneous projects that would otherwise require a licence. Section 4.1 of the Regulations authorizes the use of water for the construction of ice bridges for miscellaneous undertakings and makes it clear that a licence is not



required for such use, and that such use is not subject to the terms and condition of a licence. Such use does not require a licence nor is such use to be the subject of a licence unless section 4.1(a)-(b) are not met. Please see our response to question 1.B for further analysis.

- (d) While ice-bridge water use is not listed as exemptions in these other schedules, it is doubtful that ice bridge water use is considered a direct or indirect water use as defined in the Acts and Bulletin. See our response to Question 1.A.
- (e) See (d).

In summary, as it relates to miscellaneous undertakings, a type A or type B licence for direct water use is required should the amount of water used reach certain thresholds. Any direct water use below a certain amount/threshold does not require an authorization/licence, and above a certain threshold requires a licence. We agree that when a certain threshold is met, all and any direct water used (as defined in the Acts and Bulletin) for such miscellaneous undertaking is then subject to the licence and the licencing fees, with the exception of water used for the construction ice bridges, which is explicitly carved out of the licencing requirement by effect of Section 4.1(c)(v) of the Regulations, and arguably is not a direct or indirect water use as defined in the Acts and Bulletin.

We disagree with the interpretation of the exemption of ice-bridge water use for miscellaneous undertakings as being equivalent to or treated in the same manner as other “below threshold activities”. The characterization of the exemption being a “below-threshold use” is incorrect and inconsistent with the wording of the exception. The exemption for ice bridges is **not** a “below threshold activity” which is determined by the **amount** of water used through the “in scope” water uses. It should be noted that the exemption for ice bridges is the only exemption for use of water in the Regulations. The exemption of ice bridges is separate and distinct from the threshold amounts and is unaffected by the amount of other cumulative direct water uses. By operation of Section 4.1(c)(v) of the Regulations, provided that (a)-(b) are not engaged, water used for ice bridges does not require a licence, meaning it is authorized activity and not the subject of a licence. The imposition of licencing terms and conditions on this type of use would directly contradict the plain language, meaning and intention of the section 4.1(c)(v) with respect to ice bridges. The legislation is clear that water used for ice bridges for miscellaneous activities is authorized and does not require a licence.

This reflects the reality on the ground that such water use is commonly used for miscellaneous undertakings, without posing any significant adverse effects by proponents in early stages of mineral exploration. Subjecting such use to licencing requirements introduces regulatory requirements, time and cost to undertakings that is overly burdensome and disproportionate to the impact of such use and discourages mineral exploration in the NWT, which requires the use and construction of ice bridges.

In practice, this interpretation is consistent with how many players in industry have and continue to understand the operation of the Acts and the Regulations and treatment of water use for ice bridges.

**2) The LWBs currently categorize both mineral exploration and abandoned mine remediation projects as miscellaneous projects for the purposes of licensing. Based on the project categories set out in Schedule B and Schedule II of the [Waters Regulations](#) and the [MVFAWR](#), respectively:**

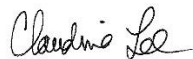
A) What is the appropriate licensing category for mineral exploration projects?

**Response:** We agree the appropriate category for mineral exploration projects is Miscellaneous undertakings. The classification of a “mining and milling undertaking” is defined as the “operation of a mine within the meaning of the Canada Mining Regulations or Coal Regulations and related milling activities” so focuses on the operation of a mine, not the earlier stages of the mining exploration activities.

B) What is the most appropriate licensing category for abandoned mine remediation projects?

No response.

CZN looks forward to a response from the MVLWB and consideration of the legal interpretation represented above.



Claudine Lee  
VP Corporate Social Responsibility

Dr. Kathy Racher  
Executive Director  
Mackenzie Valley Land and Water Board  
4922 48<sup>th</sup> Street  
7th Floor YK Centre Mall  
Yellowknife, NT, X1A 2P8

October 30, 2023

Dr. Racher,

Li-FT Power Ltd. (Li-FT or the Company) is a Canadian critical minerals exploration company focused on identifying and defining potential lithium resources in Canada. Li-FT is based in Vancouver, British Columbia and is publicly traded on the Canadian Securities Exchange (LIFT), Frankfurt Stock Exchange (WS0), and the OTCQX (LIFF). Li-FT has assets in Quebec and the Northwest Territories (NT). In the NT, Li-FT's assets are held by its wholly-owned subsidiary, EREX International Ltd. (EREX) and include the Yellowknife Lithium Project in the North Slave Region and the CALI Project in the Dehcho Region. The Yellowknife Lithium and CALI projects are early-stage exploration projects. Li-FT has obtained a Type A Land Use Permit for each of its NT projects and a federal and non-federal Type B Water Licence for its Yellowknife Lithium Project.

Li-FT appreciates the opportunity to provide input on the Mackenzie Valley Land and Water Board (MVLWB)'s interpretation of ice-bridge construction as a water use. The interpretation of ice-bridge construction as a water use has significant implications for the Company's operations, including program costs and schedule. The company has uploaded its comments on this matter to the MVLWB's Online Review System.

Sincerely,

A handwritten signature in blue ink, appearing to read 'April Hayward'.

April Hayward, Ph.D., MBA (Finance)  
Chief Sustainability Officer  
Li-FT Power Ltd.  
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Email: [april@li-ft.com](mailto:april@li-ft.com)

# SEABRIDGE GOLD

October 27, 2023

## VIA EMAIL

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4922 – 48<sup>th</sup> Street  
7<sup>th</sup> Floor YK Centre Mall, PO Box 2130  
Yellowknife, NT X1A 2P6

To Whom it May Concern:

**Re: Recommendation for Legal Interpretation Regarding Ice-Bridge Water Use**

Seabridge Gold Inc. (“**Seabridge**”) has received the September 21, 2023 invitation of the Land and Water Boards of the Mackenzie Valley (the “**LWBs**”) to provide comments and recommendations on the legal interpretation of ice-bridge water use under the *Mackenzie Valley Federal Area Waters Regulations* (the “**MVFAWR**”) and the *Waters Regulations* (the “**Invitation**”). We appreciate the opportunity to provide feedback on this important topic. This letter comprises Seabridge’s response to the Invitation.

Overall, Seabridge is concerned that the LWBs’ approach is not in keeping with the broader legislative scheme and practical regulatory consequences. A harmonious approach, incorporating both perspectives, shows that ice-bridge water use is not a licensable activity and should not contribute to the total water usage for any project. It is minimally impactful from an environmental perspective and does not interfere with the rights of other users.

In preparing this response, Seabridge has reviewed the pertinent legislation and regulations, the Invitation, and the LWB’s *Reference Bulletin: Water Use* as well as the annex thereto, *Annex A: Interpretation and Reasoning*. Below, we provide an overview of Seabridge’s activities, then each review question posed by the Invitation is reproduced verbatim, followed by Seabridge’s response.

## **A. Seabridge**

Seabridge is a Canadian based resource exploration company registered to do business in the Northwest Territories as Seabridge Gold (NWT) Inc. Seabridge currently holds an interest in the following core Canadian mining projects:

- Courageous Lake, located 240km north of Yellowknife, an exploration stage gold mining project with a measured and indicated resource of 8.0 million oz of gold;
- Kerr Sulphurets Mitchell (“**KSM**”), a development stage gold and copper project located in northwestern British Columbia, hosting the largest undeveloped gold resource in the world;
- 3 Aces, a district-scale orogenic gold project consisting of 1,734 claims covering 357 km<sup>2</sup> located in southeastern Yukon and currently undergoing exploration studies.

Seabridge has been conducting gold exploration in the Courageous Lake area since 2003. Seabridge currently holds Type B Water Licenses MV2019L2-0011 and MV2019L2-0012, as well as a Type A Land Use Permit MV2019C0025 to permit such activity. All permits were recently renewed by the Mackenzie Valley Land and Water Board on March 27, 2020. Seabridge therefore has significant and recent experience with the regulatory processes of the LWBs.

## **B. Principles of Statutory Interpretation**

The guiding rule of statutory interpretation is that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”<sup>1</sup> In other words, statutory interpretation cannot be founded on the wording of the legislation alone.<sup>2</sup> Words that appear clear and unambiguous may in fact prove to be ambiguous once placed in their context.<sup>3</sup> Context may include the internal context of the legislation as well as the external context such as factual and ideological setting and extrinsic aids (Hansard, Parliamentary reports, etc.).<sup>4</sup>

## **C. Review Question 1**

*Please review sections 1.0 and 2.1-2.3 of the Annex, and for each of the interpretations listed in Part A above, indicate whether your organization agrees or disagrees with the interpretation. As the LWBs will make their decision primarily based on legal interpretation of the legislation, each response should be supported by detailed legal analysis and rationale.*

Seabridge disagrees with the LWB’s interpretations in Part A of the Invitation.

### **(a) *Annex - Section 2.1***

The statutory definition of “use” is found in section 1 of the *Waters Act*:

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

- (a) a diversion or obstruction of waters,
- (b) an alteration of the flow of waters, and
- (c) an 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,

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<sup>1</sup> [Rizzo & Rizzo Shoes Ltd, Re, 1998 CanLII 837 \(SCC\)](#), [1998] 1 SCR 27 at para [21](#).

<sup>2</sup> [Montréal \(City\) v. 2952-1366 Québec Inc., 2005 SCC 62](#) at para [9](#).

<sup>3</sup> [Montréal \(City\) v. 2952-1366 Québec Inc., 2005 SCC 62](#) at para [10](#).

<sup>4</sup> Ruth Sullivan, *Statutory Interpretation*, 3<sup>rd</sup> ed (Toronto: Irwin Law, 2016) at pp. 51-52.

but does not include a use connected with shipping activities that are governed by the Canada Shipping Act, 2001;

The LWBs' interpretation of "use" relies heavily on the January 27, 2014 letter of Indian and North Affairs Canada (as it was then known), which is neither binding nor authoritative in any way. Mirroring the letter, the LWBs interpret "use" to mean "any withdrawal or diversion of water, directly or indirectly from a water source for any period of time, since the water that is removed is not available to other potential users of the water source during that time." This interpretation goes beyond the statutory definition of "use" to incorporate the licensing criteria in section 5(1) of the *MVFAWR* and section 4(1) the *Waters Regulations*. Both provisions list the circumstances under which a person may use water or deposit waste without a license. This includes three criteria: the use or deposit (1) has no potential for significant adverse environment effects, (2) would not interfere with existing rights of other water users or waste depositors, and (3) satisfies the criteria in column II of the applicable Schedule [emphasis added].

The second criterion introduces the concept of impacts to other water users that is not otherwise included in the statutory definition of "use" under the *Waters Act*. The period of time water is used and lack of availability to other users does not inform the definition of "use". These criteria were promulgated in the *MVFAWR* and the *Waters Regulations* to determine whether a license is needed for the use, but do not define what constitutes a use. Use is defined in the statute, and cannot be constrained by regulations.<sup>5</sup>

While this interpretation does not change whether ice-bridge water use is captured by the statutory definition, it emphasizes that impacts to other users or waste depositors is a factor to be considered in whether a license is required, not whether the activity constitutes a "use". In this case, ice-bridge water use is a temporary and predictable use, with water being frozen and then returned unaltered to the environment, in many cases directly to the source waterbody. Because of the unique, minimally obtrusive, and sustainable nature of this activity, no license should be required.

**(b) Annex – Section 2.2**

Response provided within (c), below. Seabridge's position is that ice-bridge water should not be considered in total water use volume, and therefore should not affect the determination of license type for any projects, including miscellaneous.

**(c) Annex – Sections 2.2 and 2.3**

The LWBs should not consider ice-bridge water in either preliminary screening or in developing license conditions, even if a project otherwise meets the threshold for licensing. Ice-bridge water should be exempt from any cumulative licensing assessment.

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<sup>5</sup> Ruth Sullivan, *Statutory Interpretation*, 3<sup>rd</sup> ed (Toronto: Irwin Law, 2016) at p. 329.

As the LWBs have observed, use of water “for construction of an ice bridge where the water is removed directly from the watercourse” is expressly excluded from the requirement for a license per Schedule H of the *Waters Regulations* and Schedule VIII of the *MVFAWR*. In our view, this use is (and ought to continue to be) exempt from any licensing regardless of the volume used. As a result, such a use cannot be considered to contribute to the total volume for preliminary screening and in developing license conditions. This is clear from the text of the Schedule itself as well as contextual considerations.

The Schedule H/VIII exception is described in column II thereto as follows:

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 [emphasis added].

The use of “or” is always disjunctive and indicates that the things before and after the “or” are alternatives.<sup>6</sup> In other words, ice bridge water use does not require a license, regardless of the 100m<sup>3</sup> limit applicable to other uses. Otherwise, drafters of the regulation would have avoided the ordinary meaning of “or,” and used an obviously inclusive term, such as “including”, in the description of the exception.

Separating ice bridge construction from any volume limit is sensible given that the Schedule further clarifies it applies where the “water used is removed directly from the watercourse”, and so will return to the same watercourse naturally, leaving the net volume of the source unchanged. In this way, use of water for ice bridge construction meets the other criteria in section 5(1) *MVFAWR* and section 4(1) the *Waters Regulations*, discussed above. It has no potential for significant adverse environment effects and would not interfere with existing rights of other water users or waste depositors.

Because water used for construction of an ice bridge is specifically excluded from the need for a license, and is not subject to any volume requirement owing to the inherently cyclical nature of its use, it is not meant to inform preliminary screening or licensing criteria. It is an exempt use.

***(d) Annex – Section 2.3.1***

Several of the LWBs’ specific interpretations with respect to ice-bridge water use are discussed above. This section adds nuance or additional points in alignment with this portion of the Invitation.

*i. LWB Interpretation: Ice-bridge water use is a typical direct water use*

The LWBs’ interpretation fails to acknowledge or account for the unique nature of ice-bridge water use. Ice-bridge use is most comparable to water *storage*. Fresh water is pumped from a source, and then kept in a solid state to enhance the integrity of ice-roads for the duration of the winter, after which the ice thaws and the water returns to the source, unchanged. In each of the Schedules to both

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<sup>6</sup> Ruth Sullivan, *Statutory Interpretation*, 3<sup>rd</sup> ed (Toronto: Irwin Law, 2016) at pp. 94-95.

the *Waters Regulations* and the *MVFAWR*, “off-stream storage of a quantity of water less than or equal to 2500m<sup>3</sup>” by means of dams or dikes is permitted without a license. Ice-road water use is even less impactful than off-stream storage, so there is no justification for treating them differently. Unlike water storage, ice-roads do not require dike or dam infrastructure, and the water is frozen for a predictable period of time. The water is kept in-stream, near or indeed part of water bodies (e.g. an ice road crossing a lake), as opposed to the off-stream storage permitted in the Schedules. As a parenthetical example to demonstrate the point, if someone clears snow from a frozen lake for a hockey rink, and drills down into the ice to let water seep up and flood the rink, surely that is not a licensable “use” of the water. Yet that is virtually identical to an ice road crossing the lake, and which is strengthened through the use of water from that same lake.

To maintain consistency, the LWBs should recognize that ice-bridge water use is unique, and so requires unique regulation. At the very least, ice-bridge water should be treated like off-stream storage. Interpretations that treat similar things in a dissimilar way without adequate reason are considered “absurd” by the courts, and liable to be rejected.<sup>7</sup>

- ii. *LWB Interpretation: Ice-bridge water use is only a below-threshold direct water use for miscellaneous projects (Schedule H/VIII)*

In Seabridge’s view, ice-bridge water use is a below-threshold use for *all* projects, not only Schedule H/VIII.

One of the primary objects of statutory interpretation is to discern the lawmakers’ intent when enacting a particular provision.<sup>8</sup> Although the drafters of the *Waters Regulations* and the *MVFAWR* did not (and could not) turn their mind to every single use or diversion of water to produce an exhaustive assessment of how each should be treated, they did express their intention with respect to ice-bridge water through the “miscellaneous” category of Schedule H/VIII. Regulators clearly considered ice-bridge water a below-threshold use with no volume limitation because it is a unique activity, creating no environmental impact or interference with other users. However, the absence of ice-bridge water from other schedules should not mean it is otherwise licensable as this would lead to a legislative inconsistency.

As mentioned, legislation should treat similar things in a similar way unless there is an adequate reason for differential treatment. In this case, there is no practical difference whatsoever between ice bridges built as a component of any particular undertaking (exploration, mining, municipal, industrial, etc.) and so they should be treated similarly regardless of the associated activity. There is no adequate reason for differential treatment between the schedules. Indeed, it is sensible that ice-bridge water use was placed in the residual category as it is a “miscellaneous” undertaking in the ordinary sense, and not thought of as immediately relevant to industrial, mining, milling, power, or municipal undertakings. In light of the regulators’ intent and the lack of reason for differential

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<sup>7</sup> Ruth Sullivan, *Statutory Interpretation*, 3<sup>rd</sup> ed (Toronto: Irwin Law, 2016) at p. 213 and 216.

<sup>8</sup> [Montréal \(City\) v. 2952-1366 Québec Inc., 2005 SCC 62](#) at para 12.



treatment, ice-bridge water should be considered a below-threshold use for all projects, not only Schedule H/VIII.

- iii. *LWB Interpretation: For miscellaneous projects that otherwise require a license for direct water use, ice-bridge water use is included in the total direct water use volume, and therefore, in the determination of whether a type A or B license is required, in the preliminary screening, and in the license conditions*

See response at (c), above.

- iv. *LWB Interpretation: Ice-bridge water use is not a below-threshold direct water use for projects in license categories other than the miscellaneous category*

See response at (d)ii, above. Seabridge's position is that Schedule H/VIII demonstrates a clear intention to treat ice-bridge water use as a below-threshold use for all project categories.

- v. *LWB Interpretation: For projects other than miscellaneous projects, water used for ice bridges is considered a water use for a project; however, because direct use criteria are written differently in each Schedule, it may or may not influence the determination of whether a license (either type A or B) is required*

This interpretation, as with the balance of the LWBs' interpretations, ignores the larger legislative context and practical consequences. It is established that consequential analysis is an appropriate component to statutory interpretation.<sup>9</sup>

From a practical perspective, water used for ice bridges should not influence whether a license is required, particularly for exploration programs. Project owners typically design exploration programs to minimize water consumption not only for conservation purposes, but also so that no license, or at most a Type B license, is required. An exploration program may involve few drilling spots or require few days to complete the work. Approvals for such projects can and should be handled quickly and efficiently. However, if water used for ice bridges becomes part of these calculations, even a modest exploration program could become subject to a Type A license, depending on the volume of water needed. Water use fees would also increase, potentially dramatically, making even a small exploration program involving an ice road uneconomic. This would have adverse socio-economic consequences for northern people and communities who rely on mineral exploration for their livelihood, as well as others who benefit from ice roads built by mineral exploration companies, such as hunters, trappers, and other recreational users.

As the LWBs acknowledged in the Invitation, the need for a water license is a potential barrier that requires time and resources that may be disproportionate to the size and nature of the project. This is certainly the case for ice-bridge water, where the environmental impacts of the water use do not justify the regulatory burden. In fact, the purpose of the two-tiered licensing approach under the

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<sup>9</sup> Ruth Sullivan, *Statutory Interpretation*, 3<sup>rd</sup> ed (Toronto: Irwin Law, 2016) at p. 212.

*Northwest Territories Waters Act* was to “create a more expedient licensing system for minor and non-controversial water use licenses,” and to address “the regulatory and administrative burden on minor license applicants.”<sup>10</sup> The LWBs’ proposed interpretation would be entirely contrary to this important purpose.

Such over-regulation for simple programs would also place an undue burden on government in terms of review. Non-licensing criteria were originally developed in the *Northern Inland Waters Regulations* – the origin of the *Waters Regulations* – in part to ease the workload for overwhelmed water boards forced to review and enforce licenses for even minor water uses.<sup>11</sup> Specific non-licensing criteria were eventually enacted through regulation, as is seen today. A license is not reasonably required for frozen water in ice bridge construction because of its minimal environmental impact and limited interference with the rights of other users, and so ought not add to the administrative burden for either water users or government.

## **Review Question 2**

***Please review section 2.4 of the Annex and respond to questions (a) and (b) below. As the LWBs will make their decisions primarily based on legal interpretation of the legislation, each response should be supported by detailed legal analysis and rationale.***

***The LWBs currently categorize both mineral exploration and abandoned mine remediation projects as miscellaneous projects for the purposes of licensing. Based on the project categories set out in Schedule B and Schedule II of the Waters Regulations and the MVFAWR, respectively:***

***(a) What is the appropriate licensing category for mineral exploration projects?***

Seabridge agrees with the LWBs’ interpretation at Annex 2.4.1 that mineral exploration projects are properly categorized as a miscellaneous undertaking. Seabridge welcomes this interpretation as its most recent water license application package for exploration activities (submitted in Sep 2019) referenced Schedule H, column 3 of the *Water Regulations* for miscellaneous undertakings, yet the two licenses were ultimately issued as “L2” licenses. This means they were issued pursuant to “mining & milling” category of undertaking in Schedule E of the *Waters Regulations*.

As the LWBs indicate, mineral exploration does not suit the classification descriptions for either “industrial” or “mining and milling” under Schedule II/B. It instead falls into the residual miscellaneous category. This is appropriate considering the activities involved in mineral exploration are distinct from those involved in actual mining and milling, particularly in terms of water volumes used and wastes deposited. For example, the notable role of milling rates in Schedules E/V,

<sup>10</sup> House of Commons Debates, 34th Parliament, 3rd Session: Vol. 7 at pp. 8482 and 8484 (William Rompkey and Jim Edwards): [https://parl.canadiana.ca/view/oop.debates\\_HOC3403\\_07/408](https://parl.canadiana.ca/view/oop.debates_HOC3403_07/408)

<sup>11</sup> House of Commons Debates, 34th Parliament, 3rd Session: Vol. 7 at p. 8481 (William Rompkey): [https://parl.canadiana.ca/view/oop.debates\\_HOC3403\\_07/406](https://parl.canadiana.ca/view/oop.debates_HOC3403_07/406)

demonstrate that the mining and milling category is ill-suited to accounting for water use associated with exploration activities. Similarly, the industrial category requires a Type B license for *all* deposits of waste, regardless of what the waste is or how it is deposited.

The miscellaneous category, on the other hand, allows for flexibility in terms of water usage and waste deposits. This is particularly important as some exploration programs are quite modest in terms of size and duration, and so are more appropriately assessed as 'miscellaneous'. With typically minor or non-existent impacts on the environment and other water users, mineral exploration should not be treated as comparable to mining/milling or industrial undertakings.

***(b) What is the most appropriate licensing category for abandoned mine remediation projects?***

Abandoned mine remediation is beyond the current scope of Seabridge's business activities and so we have not commented on the classification of this particular undertaking.

We trust this analysis is helpful and will inform the LWBs deliberations on the legal interpretation of ice-bridge water use. We look forward to the LWBs conclusions.

Yours truly,  
**SEABRIDGE**



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Brent Murphy

Senior Vice President, Environmental Affairs

**RESPONSE SUBMISSIONS**

**NORTHWEST TERRITORIES POWER CORPORATION**

**THE MACKENZIE VALLEY LAND AND WATER BOARD**

**ITEM FOR REVIEW**

**Legal Interpretation Regarding Ice-Bridge Water  
Use**

**October 30, 2023**

**INTRODUCTION AND SUMMARY**

1. In June 2020, the Land and Water Boards of the Mackenzie Valley (“**LWBs**” or the “**Boards**”) issued a Reference Bulletin (the “**Bulletin**”)<sup>1</sup> pertaining to what activities constitute ‘water use’ in the context of water licensing in the

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<sup>1</sup> Mackenzie Valley Land and Water Board, “Reference Bulletin Water Use” (June 11, 2020), online(pdf): [https://glwb.com/sites/default/files/lwb\\_reference\\_bulletin\\_-\\_water\\_use\\_-\\_jun\\_11\\_20.pdf?\\_gl=1\\*a48hz3\\*\\_ga\\*MTI1NjkzNDO0MC4xNjYwNDO5Njlx\\*\\_ga\\_1YN4RQ50MS\\*MTY3NzY5NDAXNy4xMTkuMS4xNjc3Njk0MzAxLjAuMC4w\\*\\_ga\\_DM4CTC801Y\\*MTY3NzY5NDAXNy4xMTkuMS4xNjc3Njk0MzAxLjAuMC4w\\*\\_ga\\_WH73GNZLKK\\*MTY3NzY5NDAXNy4xMTkuMS4xNjc3Njk0MzAxLjAuMC4w\\*\\_ga\\_FFVRERZXBW\\*MTY3NzY5NDAXNy4xMTkuMS4xNjc3Njk0MzAxLjAuMC4w](https://glwb.com/sites/default/files/lwb_reference_bulletin_-_water_use_-_jun_11_20.pdf?_gl=1*a48hz3*_ga*MTI1NjkzNDO0MC4xNjYwNDO5Njlx*_ga_1YN4RQ50MS*MTY3NzY5NDAXNy4xMTkuMS4xNjc3Njk0MzAxLjAuMC4w*_ga_DM4CTC801Y*MTY3NzY5NDAXNy4xMTkuMS4xNjc3Njk0MzAxLjAuMC4w*_ga_WH73GNZLKK*MTY3NzY5NDAXNy4xMTkuMS4xNjc3Njk0MzAxLjAuMC4w*_ga_FFVRERZXBW*MTY3NzY5NDAXNy4xMTkuMS4xNjc3Njk0MzAxLjAuMC4w) (“**Bulletin**”).

Mackenzie Valley under the *Waters Act*,<sup>2</sup> ("**2014 NWT Waters Act**") and the *Mackenzie Valley Resource Management Act*<sup>3</sup> ("**MVRMA**").

2. Following the Bulletin's issuance, water users raised questions about how the Bulletin applied to water use for ice bridges.<sup>4</sup> The LWBs subsequently issued an Annex to the Bulletin titled: *Annex A: Interpretation and Reasoning* (the "**Annex A**").<sup>5</sup>
3. The LWBs have invited parties to review the Bulletin, Annex A, and the interpretations summarized in the Item for Review,<sup>6</sup> and submit responses to the questions listed in the Item for Review. The LWBs will then determine if the interpretation should be reconsidered and the Bulletin subsequently revised.
4. These submissions provide the response of Northwest Territories Power Corporation ("**NTPC**") in respect of the following question stated in the Item for Review:

Please review sections 1.0 and 2.1-2.3 of the Annex, and for each of the interpretations listed in Part A above, indicate whether your organization agrees or disagrees with the interpretation. As the LWBs will make their decision primarily based on legal interpretation of the legislation, each response should be supported by detailed legal analysis and rationale.
5. In short, Annex A states that based on the Mackenzie Valley Federal Areas Waters Regulations<sup>7</sup> ("**MVFAWR**") and the 2014 *Waters Act* Waters Regulations<sup>8</sup>

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<sup>2</sup> SNWT 2014, c 18.

<sup>3</sup> SC 1998, c 25 ("**MVRMA**").

<sup>4</sup> Mackenzie Valley Land and Water Board, "LWB Reference Bulletin – Water Use, Legal Interpretation Regarding Ice-Bridge Water Use", online: <https://new.onlinereviewssystem.ca/review/70C881F6-8605-EE11-907C-6045BD5BD43C> ("**Item for Review**").

<sup>5</sup> Mackenzie Valley Land and Water Board, "Reference Bulletin - Water Use – Annex A: Interpretation and Reasoning", online(pdf): <https://mvlwb.com/media/1908/download?inline> ("**Annex A**").

<sup>6</sup> Item for Review, *supra* note 4.

<sup>7</sup> SOR/93-303.

<sup>8</sup> NWT Reg 019-2014.

(“**2014 NWT Waters Regulations**”) the LWBs now consider water used to form an ice-bridge as a water ‘use’ under the *MVRMA* and the 2014 *NWT Waters Act*, because water “is not available to other water users during the time it remains incorporated into the ice bridge”.<sup>9</sup>

6. In responding to the question posed by the Board, NTPC is guided by its objects and statutory mandates. NTPC is a corporation formed and subsisting under the *Northwest Territories Power Corporation Act*.<sup>10</sup> Under its enabling legislation, NTPC’s objects include, *inter alia*, the following:
  - (a) to generate, transform, transmit, distribute, deliver, sell and supply energy on a safe, economic, efficient and reliable basis; and
  - (b) to ensure a continuous supply of energy adequate for the needs and future development of the Territories.
7. In fulfillment of its objects, NTPC owns and operates hydro-electric, thermal and renewable power generation facilities in the Northwest Territories.
8. The issues raised by the Item for Review are of particular interest and importance to NTPC, as it operates several long life hydro-electric facilities under Type A water licenses issued by the Board under the 2014 *Waters Act*. These facilities fall under the POWER UNDERTAKINGS licensing criteria set out in Schedule G of the 2014 *NWT Waters Regulations*.
9. NTPC would respectfully disagree with any interpretations provided in Annex A that would subject power undertakings to additional regulatory treatment for ice-bridges.
10. NTPC submits that the appropriate interpretation is that water use for ice-bridges is not subject to licensing or regulatory treatment except in two cases:

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<sup>9</sup> Annex A, *supra* note 5, at 5.

<sup>10</sup> RSNWT 1988, c N-2.

- a. the regulations expressly state the construction of ice-bridges as a form of water use under a prescribed class of undertaking – that is under a specific licensing criteria schedule. Only Schedule H of the 2014 NWT Waters Regulations prescribes such use; or
  - b. where Column II of a schedule to the regulation stipulates a threshold volume for direct water use and the ice bridge construction would exceed that schedule.
11. Power undertakings do not apply to either of these cases. Schedule G of the 2014 NWT Waters Regulation does not state ice-bridge construction as a direct water use. Nor does this schedule prescribe, under any column, any direct use threshold water levels/volumes in respect of power undertakings. The noted classes of power undertakings in the schedule relate to another standard (power undertaking classes) which is not a water volume threshold standard.
  12. The treatment of power undertakings in this fashion reflects the nature of power generation using water. In the case of a power undertaking, the construction of an ice-bridge is not integral to operation of the undertaking. Further, the need for water use for an ice-bridge is a function of the lack of ice depth of the watercourse being crossed. If ice depths are adequate, there is no need for an ice-bridge.
  13. As such, the definition of water use is not determinative as to the question of whether the construction of ice-bridges gives rise to a need for water licensing, and in turn authorizes the Boards to issue conditions in respect of the licences. Prescriptive legislative criteria, as set out in regulations, has always established what activities would require water licences.
  14. The foregoing conclusions are based on the review and analysis which follows. The following submissions set out the legislative history of ss. 10(1) and 26(1) of the 2014 NWT *Waters Act*, and the 2014 NWT Waters Regulations, then provide a statutory analysis of these provisions and instruments.

## LEGISLATIVE HISTORY

15. Although the Boards placed emphasis on the definition of “use of waters” in conducting its analysis, NTPC submits that the proper place to start the analysis is to address the legislative history of Sections 10(1) and 26(1) of the 2014 NWT *Waters Act*.
16. In order to understand the scope of these provisions, and the scope of the 2014 NWT Waters Regulations, it is useful to consider their legislative evolution.
17. On March 24, 2014, through Bill C-15, the *Northwest Territories Devolution Act*<sup>11</sup> (“**Devolution Act**”) received Royal Assent. Effective as of April 1, 2014, the *Devolution Act* transferred responsibility over the management of most public lands, water, and resources in the Northwest Territories from the federal government (through Aboriginal Affairs and Northern Development Canada) to the Government of the Northwest Territories.
18. The *Devolution Act* implemented the provisions of the Northwest Territories Devolution Agreement, signed on June 25, 2013, and amended certain provisions of the *Territorial Lands Act*,<sup>12</sup> *Northwest Territories Waters Act*,<sup>13</sup> and the *MVRMA*.
19. Prior to the *Devolution Act*, all water licences (i.e., type A and B) were governed under the *Northwest Territories Waters Act*, SC 1992, c 39 (“**1992 NWT Waters Act**”), and water was prohibited to be used unless in accordance with a licence or as authorized by the regulations – the below provisions are the previous equivalents to the current ss. 10(1) and 26(1):

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<sup>11</sup> Bill C-15, *Northwest Territories Devolution Act*, 2nd Sess, 41st Parl, 2014 (royal assent 2014-03-25) (“**Bill C-15**”). In addition to the provisions dealing with devolution, Bill C-15 contained numerous amendments to the *MVRMA*.

<sup>12</sup> RSC 1985, c T-7.

<sup>13</sup> SC 1992, c 39, repealed by *Devolution Act* and replaced by *Waters Act*, SNWT 2014, c 18.



**8. (1)** Except as authorized pursuant to the *Dominion Water Power Act*, and subject to subsection (2), no person shall use, or permit the use of, waters in a water management area except

(a) in accordance with the conditions of a licence; or

(b) as authorized by regulations made under paragraph 33(1)(m).

**14. (1)** Subject to this section, the Board may issue type A licences and type B licences, **in accordance with the criteria set out in the regulations** made under paragraph 33(1)(c), for a term not exceeding twenty-five years, permitting the applicant for the licence, on payment of the fees prescribed by regulations made under subparagraph 33(1)(k)(i)

(a) at the times and in the manner prescribed by any applicable regulations made under paragraph 33(1)(l), or

(b) in the absence of such regulations, at the times and in the manner set out in the licence,

to use waters or deposit waste, or both, in connection with the operation of the appurtenant undertaking and in accordance with the conditions specified in the licence.  
[emphasis added]

20. In 1993, the regulations under the 1992 NWT *Waters Act* were the Northwest Territories Waters Regulations ("**1993 Waters Regulations**").<sup>14</sup> The 1993 Waters Regulations included Schedules for specific undertakings, including industrial, placer mining, quartz mining, municipal, power, and agricultural, conservation, recreational, and miscellaneous undertakings.

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<sup>14</sup> SOR/93/3030.

21. Notably, Schedule H, for agricultural, conservation, recreational, and miscellaneous undertakings, stated a direct water use was “use of less than 300 m<sup>3</sup> per day or for construction of an ice bridge where the water used is removed directly from the water course”.
22. The 1992 NWT *Waters Act* was repealed by the *Devolution Act*<sup>15</sup> and replaced by the 2014 NWT *Waters Act*. Additionally, under the *Devolution Act*, substantial portions of the 1992 NWT *Waters Act* were to be incorporated into the *MVRMA* to enable the continued issuance of water licences on federal lands post-devolution.<sup>16</sup> During the December 4, 2013, House of Commons debate on Bill C-15, Hon. Bernard Valcourt (Minister of Aboriginal Affairs and Northern Development, CPC), sponsor of the Bill, explained:

The bill would also repeal the Territorial Waters Act, as the legislative assembly of the Northwest Territories would also enact a new territorial law to manage waters in the territory.

The Mackenzie Valley Land and Water Board would continue to issue licences on territorial and private lands in the Mackenzie Valley, but the new territorial water legislation and its regulations would set out the requirements for issuing licences of these lands.

...

Finally, the Mackenzie Valley Resource Management Act would remain a federal statute similar to federal environmental assessment legislation in every other jurisdiction in Canada, should the bill be passed.

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<sup>15</sup> Bill C-15, s 66:

The *Northwest Territories Waters Act*, chapter 39 of the Statutes of Canada, 1992, is repealed.

<sup>16</sup> Canada, Parliament, House of Commons, Standing Committee on Aboriginal Affairs and Northern Development, *Minutes of Proceedings and Evidence*, 41<sup>st</sup> Parl, 2<sup>nd</sup> Sess, No 9 (10 December 2013) at 2 (PDF pg. 4). <https://www.ourcommons.ca/Content/Committee/412/AANO/Evidence/EV6382758/AANOEV09-E.PDF>

As a result, Bill C-15 would cause substantial portions of the Northwest Territories Waters Act to be incorporated into the Mackenzie Valley Resource Management Act in order for Canada to continue to regulate on federal lands, of which most public land will have been transferred to the territory as of April 1, 2014.<sup>17</sup>

23. The 2014 NWT *Waters Act* was introduced as Bill 14, in the Fifth Session of the 17<sup>th</sup> Legislative Assembly for which the summary provides:

This Bill substantially mirrors the Northwest Territories Waters Act (Canada) in accordance with the requirements of the Northwest Territories Lands and Resources Devolution Agreement.

24. There was some discussion in the NWT Legislative Assembly regarding Bill 14, including comments from Bob McLeod (Premier at the time) on March 11, 2014, where he stated the 2014 NWT *Waters Act* substantially mirrors the federal statutes and regulations being repealed or made inapplicable to public lands and waters transferring to the Government of the Northwest Territories (“GNWT”) through devolution. The new GNWT laws were to address the same matters, in substantially the same way, as federal laws do now.<sup>18</sup>
25. The 2014 NWT *Waters Act* and the 2014 NWT Waters Regulations came into force on April 1, 2014, and included provisions that were substantially identical to those introduced into the *MVRMA* and the *MVFAWR* as a result of the *Devolution Act*. Specifically, these provisions prohibited the use of water except in accordance with the conditions of a licence or as prescribed by the regulations, and permitted the board to issue licences in accordance with the criteria set out in the regulations; these provisions remain today as ss. 10(1) and 26(1).

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<sup>17</sup> Canada, Parliament, *House of Commons Debates*, 41<sup>st</sup> Parl, 2<sup>nd</sup> Sess, No 30, Vol 147 (4 December 2013) at 1530-1545. <https://www.ourcommons.ca/DocumentViewer/en/41-2/house/sitting-30/hansard>

<sup>18</sup> Northwest Territories, Legislative Assembly, *Hansard*, 17<sup>th</sup> Assembly, 5<sup>th</sup> Sess, Day 27 (11 March 2014) at 4361-4362. [https://www.ntassembly.ca/sites/assembly/files/hn140311\\_0.pdf](https://www.ntassembly.ca/sites/assembly/files/hn140311_0.pdf)

26. Sections 10(1) and 26(1) provide:

**10. (1)** Subject to subsection (2), no person shall use, or permit the use of, waters in a water management area except

(a) in accordance with the conditions of a licence; or

(b) as authorized by regulations made under paragraph 63(1)(n).

**26. (1)** Subject to this section, the Board may issue, **in accordance with the criteria set out in the regulations** made under paragraph 63(1)(c), type A licences and type B licences permitting the applicant for the licence, on payment of the fees prescribed by regulations made under subparagraph 63(1)(k)(i), at the times and in the manner prescribed by any applicable regulations made under paragraph 63(1)(l) or, in the absence of such regulations, at the times and in the manner set out in the licence, to use waters or deposit waste, or both, in connection with the operation of the appurtenant undertaking and in accordance with the conditions specified in the licence. [emphasis added]

27. Similarly, the 2014 NWT Waters Regulations contained substantially identical Schedules to the 1993 Waters Regulations and the existing MVFAWR, namely that a direct water use for agricultural, conservation, recreational, and miscellaneous undertakings included water for ice bridges if the water used is removed directly from the watercourse. This Schedule remains today as Schedule H and provides as follows:

| <u>Item</u> | <u>Column I</u>            | <u>Column II</u>   |
|-------------|----------------------------|--|
|             | Water use/Deposit of Waste | Water Use and Deposit of Waste Permitted Without a Licence |

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- 
1. Direct water use Use of less than 100 m<sup>2</sup> per day or for construction of an ice bridge where the water used is removed directly from the water course”.
  28. It is clear from the evolution of legislation that prescriptive legislative criteria, as set out in regulations, has always established what activities would require water licences. NTPC submits that the definition of water use is important in this context, but not determinative.
  29. With that legislative history in place, NTPC next sets out a detailed statutory interpretation analysis to support its interpretation of ss. 10(1), 26(1), and the 2014 NWT Waters Regulations.

## **STATUTORY INTERPRETATION**

30. The interpretation of ss. 10(1) and 26(1) of the 2014 NWT *Waters Act*, and the Schedules of the 2014 NWT Waters Regulations requires the provisions to be interpreted using a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act and Regulations as a whole.
31. The LWBs have concluded that the interpretation of ‘use’ in the 2014 NWT *Waters Act* and the *MVRMA*, as it relates to ‘water uses’, requires revision. The LWBs have created a new interpretation of ‘water use’ to mean:

Any withdrawal or diversion of water, directly or indirectly, from a water source for any period of time, since the water that is removed is not available to other potential users of the water source during that time.<sup>19</sup>
32. The LWBs supported this new interpretation in several ways. First, by noting that the definition of ‘use’ of water under the *MVRMA* and 2014 NWT *Waters Act* is very broad and includes both direct and indirect water uses. Second,

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<sup>19</sup> Item for Review, *supra* note 4.

given the broad definition of water 'use', not all possible water uses for each type of project have specific licensing criteria under the regulations. Third, that below-threshold water uses and licensing criteria, that are only listed in a specific Schedule of the regulations, are not applicable to other Schedules. Fourth, ice-bridge water use is only a below-threshold direct water use for miscellaneous projects (Schedule H/VII). Fifth, miscellaneous projects with ice-bridge water use above-threshold require the use to be included in the total direct water use volume. Sixth, ice-bridge water use is not a below-threshold direct water use for projects in licence categories other than the miscellaneous category (Schedules D/IV through G/VII).

33. What the LWBs are saying in effect is that water use for ice-bridge construction is a direct water use to be included in the total water volume of a water licence for all undertakings set out in the 2014 NWT Waters Regulations, unless an express exemption applies in the regulations.
34. Respectfully, NTPC does not agree with this interpretation and suggests it is inconsistent with the purpose and intent of the 2014 NWT *Waters Act*. When one conducts a full contextual and purposive analysis of ss. 10(1) and 26(1) it becomes clear that no reasonable interpretation supports the LWBs' conclusion.
35. The principles of statutory interpretation require that the words of a statute should be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.<sup>20</sup>
36. This is often described as a purposive and contextual approach to statutory interpretation. The purposive dimension of this interpretive exercise requires courts to assess legislation in light of its purpose and with due regard to the legislative scheme of which it forms a part. The contextual dimension requires

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<sup>20</sup> Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed (Markham: Butterworths, 2002) at 2; see also *Re Rizzo and Rizzo Shoes*, 1998 SCC 837; *Bell Express Vu Limited Partnership v Rex* (2002), 2002 SCC 42.

that the words chosen be interpreted in the entire context in which they have been used.<sup>21</sup> This analysis is applied in several steps.

**A. The Legislative Scheme and Purpose**

37. Dealing first with the overall legislative scheme, as noted, the 2014 NWT *Waters Act* is designed to implement the Devolution Agreement by providing the GNWT with authority related to waters in the Northwest Territories. Regulations made under the 2014 NWT Waters Act govern water licences under the administration and control of the GNWT in all of the Northwest Territories, including the Mackenzie Valley. The 2014 NWT *Waters Act* forms part of an integrated regulatory system of land and water management in the NWT with the *Northwest Territories Lands Act*,<sup>22</sup> and the federal *MVRMA*.
38. As a result of the *Devolution Act*, different water licensing legislation applies to non-federal and federal areas in the NWT:
  - a. The *MVRMA* and the *MVFAWR* apply to federal areas;<sup>23</sup> and
  - b. The 2014 NWT *Waters Act* and 2014 NWT Waters Regulations, as well as certain water licensing provisions of the *MVRMA* apply to non-federal areas.
39. In addition to the above, situations may arise where some project activities overlap non-federal and federal areas. These are considered to be split-interest projects. Two separate licences would be required for split-interest projects.<sup>24</sup>

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<sup>21</sup> See *Love v Flagstaff (County of) Subdivision and Development Appeal Board*, 2002 ABCA 292.

<sup>22</sup> SNWT 2014, c 13.

<sup>23</sup> A federal area is defined under section 51 of the *MVRMA* as:

any lands under the administration and control of a minister of the Government of Canada and any land on which is situated a waste site for which the Management – as defined in the Northwest Territories Lands and Resources Devolution Agreement that was made on June 25, 2013 – is the responsibility of the Government of Canada.

<sup>24</sup> See Mackenzie Valley Land and Water Board, “Reference Bulletin: Split-Interest Projects” (June 11, 2020), online(pdf): [https://wlwb.ca/sites/default/files/lwb\\_reference\\_bulletin\\_split-interest\\_projects\\_jun\\_11\\_20.pdf](https://wlwb.ca/sites/default/files/lwb_reference_bulletin_split-interest_projects_jun_11_20.pdf).

40. For those reasons, the 2014 NWT *Waters Act* is part of a larger legislative scheme, which includes the *MVRMA*. The purpose of this legislative scheme as a whole is to regulate the use of water and deposit of waste through the issuance of water licences in waters located in the Northwest Territories.
41. Given the *MVRMA* and the 2014 NWT *Waters Act* deal with the same subject matter, i.e., water licensing in non-federal and federal areas in the Northwest Territories, respectively, these acts and related regulations should be read together with a presumption that they offer a coherent and consistent treatment of the subject. As it relates to the provisions in question, both the 2014 NWT *Waters Act* and the *MVRMA* include almost identically worded regulatory capture provisions. Therefore, the interpretation adopted for ss. 10(1) and 26(1) of the 2014 NWT *Waters Act* may have an impact on how the provisions in the *MVRMA* are interpreted in the future on the basis of the presumption of consistent expression.<sup>25</sup>
42. The scheme of the 2014 NWT *Waters Act* with respect to the ‘use’ of water demonstrates that the 2014 NWT Waters Regulations are integrally connected to the *Act* by way of ss. 10(1) and 26(1). As noted by the Supreme Court of Canada in *R v Compagnie Immobiliere BCN Ltee*,<sup>26</sup> “where the provision to be interpreted appears in a regulation, it is to be read in the context of both the regulation and the enabling Act as a whole”. Further, where an enabling Act and the regulations form an integrated scheme, provisions from both must be interpreted in light of that overall scheme.<sup>27</sup>
43. Therefore, the interpretation of ‘water use’ does not end at the definition of ‘use’ in the 2014 NWT *Waters Act*, nor can such definition be read in isolation of the remainder of the Act or the Regulations. The fundamental provision of the *Act* is s. 10, which prohibits the use of water except in accordance with the

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<sup>25</sup> Ruth Sullivan, *Driedger on the Construction of Statutes*, 3<sup>rd</sup> ed (Toronto: Butterworths, 1994), at 163 [Sullivan 1994].

<sup>26</sup> [1979] 1 SCR 865.

<sup>27</sup> Sullivan 1994, *supra* note 24, at 246 citing *Crupi v Canada Employment and Immigration Commission*, [1986] 3 FC 3 at 11-13.



conditions described in a licence or as authorized by the regulations. Therefore, the question is not whether ice-bridges are considered a 'use' under the 2014 NWT *Waters Act*, but whether s. 10 applies to 'capture' ice-bridges as a water use under the conditions of a licence or pursuant to the 2014 NWT Waters Regulations.

44. Section 26(1) furthers the scheme of the 2014 NWT *Waters Act* by permitting the LWBs to issue licences in accordance with the criteria set out in the 2014 NWT Waters Regulations. In other words, licences issued by the Boards are subject to the criteria set out in the 2014 NWT Waters Regulations, and water licences can only be issued in accordance these regulations.
45. The 2014 NWT Waters Regulations contain Schedules for the appurtenant undertakings. Only one Schedule, being Schedule H, which relates to agricultural, conservation, recreational, and miscellaneous undertakings, includes express reference to ice-bridge construction as a direct water use. Express intention is one of the four elements of parliamentary intent.<sup>28</sup>
46. The express intention to include reference to ice-bridges in Schedule H, and to not include reference to ice-bridges elsewhere in the 2014 NWT *Waters Act* and Regulations is meaningful and determinative. In statutory interpretation, there is a presumption that the legislature creates general schemes that are rational, coherent and economical.<sup>29</sup> "If comparable matters are meant to receive the same treatment, they will be dealt with in identical or parallel fashion within the legislative scheme".<sup>30</sup>
47. Since neither the 2014 NWT *Waters Act*, nor the 2014 NWT Waters Regulations, except for Schedule H, expressly mention ice-bridge construction as a water use, or a condition to an appurtenant undertaking, the undertakings in Schedules D to G are not dealt with in a parallel fashion. Therefore, ice-bridges

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<sup>28</sup> Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6<sup>th</sup> ed (LexisNexis Canada, 2014) at 9-10.

<sup>29</sup> Sullivan 1994, *supra* note 24, at 250.

<sup>30</sup> *Ibid.*

are not a direct water use in respect of the undertakings set out in each of those schedules, including Schedule G for Power undertakings.

48. Similarly, as there is no mention of threshold water volumes as a licensing criteria in Schedule G for power undertakings, licensing and license conditions are not triggered based on volumes. As such, the inclusion of volumes for ice-bridge construction (when and if it occurs) is not a consideration.

**B. Context**

49. The legislative history of the 2014 NWT *Waters Act* is especially important to understanding the legislative intent, object and scheme of the *Act*. To understand the scope of ss. 10(1) and 26(1), it is useful to consider its legislative evolution.<sup>31</sup>
50. As noted above, prior to the *Devolution Act*, sections 8 and 14(1) of the 1992 NWT *Waters Act*, and the Schedules in the 1993 Waters Regulations, prohibited the use of water unless in accordance with a licence or as authorized by the Regulations, of which was described in the Schedules.
51. As also noted above, as a result of the *Devolution Act*, the 1992 NWT *Waters Act* was repealed and replaced with 2014 NWT *Waters Act*, but the provisions remained substantially identical. The same language prohibiting the use of water unless in accordance with a licence or as authorized by the Regulations was also included in the amended *MVRMA*.
52. Since the enactment of the 1992 NWT *Waters Act* and 1993 Waters Regulations, and up until the LWBs re-interpreted the legislation and renewed licences with scopes inclusive of water use for ice bridges, such use was not considered a direct water use or captured under previous water licences.

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<sup>31</sup> The Supreme Court has held that the evolution of legislation is part of the entire context in which statutes are to be read: *Merk v International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771*, 2005 SCC 70 at para 28.

53. It is clear that as a whole, there has been a consistent interpretation and application of the legislative scheme by the GNWT, compounded by the harmony between the 2014 NWT *Waters Act* and the federal *MVRMA* provisions related to water use and the prescription of licences and Regulations.
54. NTPC submits this consistency in interpretation is appropriate and should be preserved. There has been no change in legislation or regulations to merit or authorize a different interpretation and application of the relevant legislation.

**C. *Textual Meaning***

55. It is against this general statutory backdrop that we turn to the specific wording of sections 10(1) and 26(1). For ease of reference, these sections provide:

**10. (1)** Subject to subsection (2), no person shall use, or permit the use of, waters in a water management area except

**(a)** in accordance with the conditions of a licence; or

**(b)** as authorized by regulations made under paragraph 63(1)(n).

**26. (1)** Subject to this section, the Board may issue, **in accordance with the criteria set out in the regulations** made under paragraph 63(1)(c), type A licences and type B licences permitting the applicant for the licence, on payment of the fees prescribed by regulations made under subparagraph 63(1)(k)(i), at the times and in the manner prescribed by any applicable regulations made under paragraph 63(1)(l) or, in the absence of such regulations, at the times and in the manner set out in the licence, to use waters or deposit waste, or both, in connection with the operation of the appurtenant undertaking and in accordance with the conditions specified in the licence. [emphasis added]

56. Turning to the text of the provisions in issue, the words “no person shall use water except as authorized by regulations” taken on their own and divorced from their context, imply that water use, as defined, must be in accordance with the regulations. However, when these words are read in their statutory context, as they must be, it becomes clear that the regulations prescribe the basis for how water is to be used in accordance with a licence. In addition, licences may only be issued in accordance with the criteria as prescribed by the Regulations. This is supported by the reasons that follow.
57. First, the repetition of the reference to “regulations” and the context in which this occurs strongly suggest that water ‘use’ takes its character from the surrounding words of each paragraph, being the regulatory capture provision requiring conformity to the Regulations. If the word “use” had been intended to be a broad definition and encompass all direct and indirect forms of use, it is difficult to understand why the 2014 NWT Waters Regulations contain specific, prescribed water uses for the appurtenant undertakings in the Schedules, with specific reference to ice bridges in only one Schedule.
58. With respect, NTPC submits the LWBs’ new interpretation of ‘water use’, which overrides the Legislature’s express exclusion of ice bridges from other undertakings in the Schedules, misinterprets the legislative provisions at issue.
59. NTPC respectfully submits that direct water use can only encompass water use for ice-bridge construction where it has been expressly included as a water use in the 2014 NWT Waters Regulations or where threshold volumes are triggered. While the definition of water use under the *MVRMA* and the 2014 *NWT Waters Act* is broad, the interpretation offered by the LWBs offends the grammatical and ordinary sense of the words used in ss. 10(1) and 26(1) and renders the Regulations inoperative in respect of power undertakings. Further, this interpretation does not reflect the legislative intent of these provisions. Specifically, the LWBs’ interpretation fails to recognize that the Regulations, and the Schedules described therein, expressly define the conditions for water licences and the criteria for water use for the appurtenant undertakings.

60. Simply put, had the Legislature intended to have ice bridges as a water use in the Regulations and Schedules, other than just Schedule H, it could have done so. However, no mention of ice bridges other than the single reference in Schedule H have been adopted and enacted by the Legislature. It is even arguable that the threshold volume test is not a basis to adopt ice-bridge construction for any activity other than those set out in Schedule H.
61. Further, the 2014 NWT Waters Regulations identify specific and prescribed classes of undertakings to which a Type A or Type B license applies, and within each class specific descriptions are provided for activities to which a Type A or Type B licence would apply. Although the definition of the uses of water in the enabling legislation is broad, due regard must be given to the fact specific activities are listed as direct or indirect water use. The analysis of the Boards does not appear to have taken note of or given the proper weight and significance to this legislative approach.
62. Considering the ordinary meaning of the words used in ss. 10(1) and 26(1), the express exclusion of ice bridge" from Schedules D-G of the Regulations, and the legislative context and purpose, the LWBs' interpretation of the scheme for water use regulation is not tenable.
63. Instead, the provisions in the 2014 NWT *Waters Act* and the 2014 NWT Waters Regulations should be interpreted to mean that water use for ice bridges, except where expressly stated in the regulations, does not constitute a 'water use' pursuant to the 2014 NWT *Waters Act* such that it requires a water licence.

**D. *Authority to Re-interpret Statutes***

64. In NTPC's respectful submission, it is arguable whether the LWBs have authority to re-interpret the 2014 NWT *Waters Act* and Regulations in the first place. Sections 60 and 102 of the *MVRMA* grant the Boards jurisdiction in respect of all uses of waters for which a licence is required and may, in accordance with the regulations, issue, amend, renew and cancel licences and approve the assignment of licences:

### **Jurisdiction — water and waste in federal area**

**60 (1)** A board has jurisdiction in respect of all uses of waters and deposits of waste in a federal area in its management area for which a licence is required under this Part and may, in accordance with the regulations, issue, amend, renew and cancel licences and approve the assignment of licences.

### **Jurisdiction — water and waste outside federal area**

**(1.1)** A board has jurisdiction in respect of all uses of waters and deposits of waste on lands outside a federal area in its management area for which a licence is required under any territorial law and may, in accordance with that law,

**(a)** issue, amend, renew, suspend and cancel licences and approve the assignment of licences;

**(b)** include in a licence any conditions it considers appropriate;

**(c)** determine the term of a licence;

**(d)** determine the appropriate compensation to be paid by an applicant for a licence, or by a licensee who applies for an amendment or renewal of their licence, to persons who would be adversely affected by the proposed use of waters or deposit of waste;

**(e)** require an applicant for a licence, a licensee or a prospective assignee of a licence to furnish and maintain security; and

**(f)** on the request of a person who is subject to an order made by an inspector, review that order and confirm, vary or revoke it.

...

### **Jurisdiction — Board**

**102 (1)** The Board has jurisdiction in respect of all uses of land in the Mackenzie Valley for which a permit is required under Part 3 and in respect of all uses of waters or deposits of waste in the Mackenzie Valley for which a licence is required under Part 3 or any territorial law, as the case may be, and for that purpose the Board has the powers and duties of a board established under Part 3, other than powers under sections 78, 79 and 79.2 to 80.1, as if a reference in that Part to a management area were a reference to the Mackenzie Valley, except that, with regard to subsection 61(2), the reference to management area continues to be a reference to Wek'èezhìi.

### **Jurisdiction — regional panels**

**(2)** A regional panel of the Board shall exercise

**(a)** the powers and duties referred to in subsection (1) in respect of a use of land or waters or a deposit of waste that is to take place, and that is likely to have an impact, wholly within the management area of the regional panel; and

**(b)** the powers conferred by sections 78, 79 and 79.2 to 80.1 on the board established under Part 3 for that management area.

65. The Board may also “subject to the regulations and any territorial law, ... establish guidelines and policies respecting licences, including their issuance”.<sup>32</sup>

66. Section 1 of the 2014 NWT *Waters Act* defines Board as:

... in respect of a matter over which a board within the meaning of Part 3 or 4 of the *Mackenzie Valley Resource Management Act* (Canada) has jurisdiction or powers, that board ...

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<sup>32</sup> *MVRMA*, *supra* note 2, s 65(2).

67. Sections 26 and 27 of the 2014 NWT *Waters Act* also grant the Board powers with respect to issuing licences, the term of licences, and licence conditions. However, neither the *MVRMA* nor the 2014 NWT *Waters Act* grant the Boards the authority to determine questions of fact or law, such that the LWBs could create a new interpretation of 'water use'.
68. Further, even if the LWBs had such authority, the new interpretation of 'water use' cannot amend existing licences. As described in the LWBs' Standard Licence Conditions Template, "any change made to the [*MVRMA* or 2014 NWT *Waters Act* and/or the Regulations] that affects licence conditions and defined terms will be deemed to have amended this Licence".<sup>33</sup>
69. The inclusion of such wording in the water licences issued by the LWBs applies only to amendments made to the *MVRMA* or 2014 NWT *Waters Act* and/or the Regulations by the phrase "any change made to". This phrase does not encompass new interpretations to the Acts or Regulations, and thus, such interpretations cannot affect existing licences.

## **REVIEW QUESTION 1**

70. In consideration of the above, the NTPC provides the following summary in response to Question 1 of the Review Questions on the LWBs' Legal Interpretation Regarding Ice-Bridge Water Use.

### ***Annex A – Section 2.1***

71. The NTPC agrees that the definition of 'use' in the *MVRMA* and the 2014 NWT *Waters Act* is broad and includes direct and indirect water uses, but respectfully disagrees that the interpretation of this definition ends the analysis.

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<sup>33</sup> Mackenzie Valley Land and Water Board, "Standard Water Licence Conditions Template Version 2.1" (February 9, 2023), online(pdf): <https://mvlwb.com/sites/default/files/2023-02/Standard%20Water%20Licence%20Conditions%20and%20Schedules%20-%20Version%202.1%20-%20Feb%202023.pdf>.



72. As described in the statutory interpretation analysis above, where an enabling Act and the regulations form an integrated scheme, provisions from both must be interpreted in light of that overall scheme.
73. The interpretation of the 2014 NWT *Waters Act* and Regulations requires the provisions to be interpreted using a textual, contextual and purposive analysis to find a meaning that is harmonious with the *Act* and Regulations as a whole. Therefore, the interpretation of 'water use' does not end at the definition of 'use' in the 2014 NWT *Waters Act*, nor can such definition be read in isolation of the remainder of the *Act* or the Regulations. As NTPC has conducted above, a full statutory interpretation analysis is required.

#### **Annex A – Sections 2.2-2.3**

74. NTPC respectfully disagrees that the exclusion of licensing criteria in certain Schedules of the 2014 NWT Waters Regulations does not mean that such criteria exists. As described above, where an enabling Act and the regulations form an integrated scheme, provisions from both must be interpreted in light of that overall scheme. The fundamental provisions of the 2014 NWT *Waters Act*, being ss. 10 and 26, specifically require water 'use' and water licence conditions to be subject to the 2014 NWT Waters Regulations.
75. The 2014 NWT Waters Regulations contain Schedules for the appurtenant undertakings. Only one Schedule, being Schedule H, which relates to agricultural, conservation, recreational, and miscellaneous undertakings, includes an express reference to ice bridges as a direct water use.
76. The Legislature's express intent to include reference to ice-bridge construction in Schedule H, and to not include reference to ice-bridges elsewhere in the 2014 NWT *Waters Act* and Regulations is meaningful and determinative. As is the case where a prescribed class of undertaking (such as power undertakings) has no threshold water volumes to establish licensing criteria for direct water use.

77. In statutory interpretation, there is a presumption that the legislature creates general schemes that are rational, coherent and economical;<sup>34</sup> “[i]f comparable matters are meant to receive the same treatment, they will be dealt with in identical or parallel fashion within the legislative scheme”.<sup>35</sup>
78. When considered in light of the scheme and purpose, context, and textual meaning as described above, this intent confirms that the LWBs’ new interpretation of ‘water use’ is not tenable. The interpretation firstly overrides an express exclusion of ice-bridges from other undertakings and secondly, applies regulation in cases where no threshold water volume criteria exist. Therefore the interpretation should not be applied.
79. NTPC thanks the Boards for the opportunity to provide the within submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of October, 2023.

**NORTHWEST TERRITORIES POWER CORPORATION**

by its Counsel, McLennan Ross LLP

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<sup>34</sup> Sullivan 1994, *supra* note 24, at 250.

<sup>35</sup> *Ibid.*



Kathy Racher, Ph.D.  
Executive Director  
Mackenzie Valley Land and Water Board  
By email to: [kracher@mvlwb.com](mailto:kracher@mvlwb.com)

RE: Draft Reference Bulletin: Water Use

Dear Ms. Racher,

Aurora Geosciences Ltd. (Aurora) is a long-time service provider to junior exploration and major mining companies in the NWT. We have been involved in permitting projects for over 30 years. Aurora appreciates the opportunity to provide a response to the Land and Water Boards of the Mackenzie Valley (LWBs) regarding the Draft Reference Bulletin: Water Use, dated March 27, 2024.

The 2020 NWT Environmental Audit indicated a significant concern with small-scale exploration with the following wording, "Despite the efforts of LWBs, small exploration companies continue both to struggle with the application process and to meet its requirements. If allowed to persist, this disconnect between industry and regulators will continue to affect the level of exploration activity in the territory which, in turn, will affect the NWT's socio-economic environment".

We have been a part of the Mackenzie Valley Operational Dialogue (MVOD) since March 2020, which was meant to correct this. We have seen 4 years of little being achieved. This draft reference bulletin creates some hope and Aurora supports this amended bulletin.

The amended bulletin helps to provide some overdue clarity and certainty around water use. We acknowledge the fact that the LWBs see these draft changes as temporary and ultimately look to change to the Water Regulations are required. To that end, if the Water Regulations are opened, we feel that the fixes should be targeted and not all-encompassing, *holus bolus*.

The LWBs treatment of this issue, up until this latest amendment, has created substantial uncertainty for many exploration projects in recent years. We need to address more targeted fixes in the regulations if we are to see an increase in exploration. Better definitions for water withdrawal and water consumption ("water use") are needed. Interpretations of the regulations are happening all of the time and there needs to be more collaboration on the interpretations. The unintended consequences of poor interpretations have put us in the predicament of poor exploration expenditures.

We look forward to being a part of continued collaboration to clarify, improve and support exploration in the Mackenzie Valley, by supporting this bulletin and by participating in processes to see appropriate changes made to the water regulations.

Respectfully submitted,



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Gary Vivian, M.Sc., P.Geol.  
Chairman



April 24, 2024

To: Kathy Racher  
Executive Director  
Mackenzie Valley Land & Water Board  
Sent by email to: [kracher@mvlwb.com](mailto:kracher@mvlwb.com)

Dear Ms. Racher,

**Re: Draft Reference Bulletin: Water Use**

Please accept our thoughts and recommendations on behalf of industry interests on the [Draft Reference Bulletin: Water Use](#) circulated for public comment.

Our northern minerals industry is here by invitation of governments who ask them to do what governments cannot do themselves: raise and bring money, provide expertise and assume investment risk, in hope that they discover mineral deposits that can be mined to create jobs, business expenditures, and tax revenues for governments and for residents of the jurisdiction. And of course, to find minerals that our society needs, as we are learning with the significant demand for minerals critical to address climate change today.

From a Boards perspective, our industry's efforts also contribute to the "economic well-being of residents of the Mackenzie Valley", one of the principles and goals of the legislation guiding your board.

Water is used routinely in the minerals industry for exploration drilling, and for related activities like ice road and ice pad construction. Over time, changes have been made through policy and through regulatory interpretations on how that water should be used. Unfortunately, these changes have added complexity and at times confusion for our members. As you will know from other work, including the *2020 NWT Environmental Audit*, the previous work by the Boards has seen small scale exploration projects treated as advanced projects, unnecessarily raising their performance requirements and increasing costs. This makes the NWT less competitive, and reduces the exploration needed for future mining success and ultimately, negatively affects the economic well being of the territory.

As enunciated by the Government of Canada in [The Canadian Critical Minerals Strategy](#): *We recognize that, although responsible regulations are vital, complex regulatory and permitting processes can hinder the economic competitiveness of the sector and increase investment risk for proponents.* The previous Bulletin fit that circumstance.

Therefore, we are pleased that the Board is proposing operational improvements through this current bulletin to clarify water use for our exploration industry, and we support the adoption of this *Reference Bulletin: Water Use* by the LWBs.

However, we believe that additional improvements are still needed. Two examples identified by members that we wish to put on the record here are:

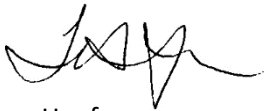
- Definition of "water use" generally, and specifically of "direct water use"

- Identification of the difference between water withdrawal and water consumption as it pertains to the definition and interpretation of direct water use

Some further improvements may be possible through policy changes, and our members will no doubt identify some of those. Other additional improvements may require specific regulatory changes. We understand that changes to regulations will take additional time and effort, and this new March 2024 Water Use Reference Bulletin will assist in the interim. We should note that we do not believe changes to the act are required.

To reiterate, we are pleased that the Board is proposing operational improvements through this current Bulletin to clarify water use for our exploration industry. We support the adoption of this *Reference Bulletin: Water Use* by the LWBs until focused regulatory changes can be made.

Yours truly,



Tom Hoefler  
Senior Advisor



April 24, 2024

Via email

Mackenzie Valley Land and Water Board  
4922 – 48th Street  
7th Floor YK Centre Mall  
PO Box 2130  
Yellowknife  
NT X1A 2P6

***Re: Call for Comments Regarding Draft Water Use Reference Bulletin Amendments***

Further to our submissions dated October 30, 2023, and in response to the *Note to Reviewers* by the Land and Water Boards of the Mackenzie Valley (LWB) dated March 22, 2024 regarding the Draft Reference Bulletin (Water Use), please find our comments below.

We have reviewed the potential revisions to the original Reference Bulletin (Bulletin) shared with the public by the LWB on March 22, 2024 for the purpose of gathering additional public input to inform the LWB's ongoing deliberations in respect of potential amendments to the Bulletin.

We commend the LWB staff in their efforts to propose revisions to the Bulletin that are consistent with the language in the legislation regarding the explicit exemption of water use for ice bridges from licensing requirements for projects listed at Schedule H for miscellaneous undertakings, including mineral exploration. The proposed changes, if accepted, would bring the language of the Bulletin into closer alignment with the language of the legislation, thereby introducing clarity and certainty for all impacted parties.

Our comments below focus strictly on the meaning and interpretation of water "use" as defined under the legislation more broadly and across all categories of undertakings and projects.

- We acknowledge that the definition of "use" in both the *Mackenzie Valley Resource Management Act* and the *Waters Act* is broad, and applies to direct and indirect uses of water. Nevertheless, we disagree that the term water "use" captures the construction, use and maintenance of winter ice bridges.
- Examples of "uses" provided in the legislation include:
  - a *diversion or obstruction* of waters, (b) an *alteration* of the flow of waters, and (c) an *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.
  - While the above are examples of water uses and is not an exhaustive list, they give meaning to the types of activities meant to be captured by the term "use". None of the examples provided suggest that "use" is intended to capture a change of water from a liquid form to a solid form during the process of ice bridge construction, use and maintenance during the winter months. The examples all suggest that "use" refers to the taking of, diversion of, or alteration of water flows or bodies, not merely a temporary



change in the physical form of water into ice, which ultimately melts back to its original form of water in the spring.

- Ice bridges are generally formed by flooding an ice surface of a watercourse by building up the ice thickness that exists in the watercourse.
  - The building of an ice bridge does not “withdraw...water...from a water source” as currently described in the Bulletin. As a result of a lack of withdrawal of the water, there is no “use” of water as defined by the Acts and further described in the Bulletin. The water stays in the water course, simply in a different form temporarily – solid, as opposed to liquid. There is no removal, taking, diversion, and ultimately “use”.
- In addition, Section 4(1) of the Regulations<sup>1</sup> states that a person may use water without a licence if the proposed use (a) has no potential for significant adverse environmental effects, (b) would not interfere with existing rights of other water users or waste depositors and meets certain criteria in their schedules. We view the factors at Section 4(a) and (b) as highlighting that the licencing requirements are meant to, among other things, safeguard against uses with potential for significant adverse environmental effects and that may interfere with existing rights of other water users. The construction, use and maintenance of winter ice bridges do not in practice present such risk. On the contrary, winter ice bridges generally provide benefits to the broader community by way of a winter ice road in the winter months.

In conclusion, our view is that the term of water “use” as used in the legislation was never intended to include ice bridges, and that the exemption for ice bridges in Schedule H was added to clarify this for miscellaneous undertakings. We are requesting similar clarification in respect of the broader legislation and Bulletin.

We note that in the Northwest Territories there is already other engagement that persons or entities involved in the construction and maintenance of winter ice bridges must undertake, which recognizes and supports the benefits that ice bridges offer to the broader community. There is no need to also impose the administrative burden and costs associated with the requirements of a water licence under the legislation.

NorZinc appreciates the ongoing engagement on this key issue and the ability to provide comments related to the Draft Reference Bulletin. Please contact Claudine Lee, VP CSR at [claudine.lee@norzinc.ca](mailto:claudine.lee@norzinc.ca) and (403) 466-4195 if there are any question.

Sincerely,

Claudine Lee, M.Sc., P.Geol.

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<sup>1</sup> Referring to the *Mackenzie Valley Federal Areas Waters Regulations* and the *Waters Regulations*.



Dr. Kathy Racher  
Executive Director  
Mackenzie Valley Land and Water Board  
4922 48<sup>th</sup> Street  
7th Floor YK Centre Mall  
Yellowknife, NT, X1A 2P8

April 24, 2024

Dr. Racher,

Li-FT Power Ltd. (Li-FT or the Company) is a Canadian critical minerals exploration company focused on identifying and defining potential lithium resources in Canada. Li-FT is based in Vancouver, British Columbia and is publicly traded on the Canadian Securities Exchange (LIFT), Frankfurt Stock Exchange (WS0), and the OTCQX (LIFFF). Li-FT has assets in Quebec and the Northwest Territories (NT). In the NT, Li-FT's assets are held by its wholly-owned subsidiary, EREX International Ltd. (EREX) and include the Yellowknife Lithium Project in the North Slave Region and the CALI Project in the Dehcho Region. The Yellowknife Lithium and CALI projects are early-stage exploration projects. Li-FT has obtained a Type A Land Use Permit for each of its NT projects and a federal and non-federal Type B Water Licence for its Yellowknife Lithium Project.

Li-FT appreciates the opportunity to provide input on the Mackenzie Valley Land and Water Board (MVLWB)'s DRAFT Reference Bulletin: Water Use (the Bulletin). The Bulletin has significant implications for the Company's operations, including program costs and schedule. The company has uploaded its comments on this matter to the MVLWB's Online Review System.

Sincerely,

A handwritten signature in blue ink, appearing to read 'April Hayward'.

April Hayward, Ph.D., MBA (Finance)  
Chief Sustainability Officer  
Li-FT Power Ltd.  
Cell +1 (867) 686-8375  
Email: [april@li-ft.com](mailto:april@li-ft.com)



April 24th, 2024

Lindsey Cymbalisky  
Senior Technical Advisor  
Mackenzie Valley Land and Water Board  
P.O. Box 2130  
Yellowknife NT, X1A 2P6

Dear Lindsey Cymbalisky,

**RE: LWB Reference Bulletin - Water Use Draft Reference Bulletin: Water Use**

The Department of Environment and Climate Change, Government of the Northwest Territories has reviewed the application at reference based on its mandated responsibilities under the *Waters Act* and has provided comments and recommendations for consideration of the Mackenzie Valley Land and Water Board.

For any technical questions, please contact Bill Pain, Environmental Management Scientist with the Regulatory and Permitting Division at [Bill\\_Pain@gov.nt.ca](mailto:Bill_Pain@gov.nt.ca).

Should you have any general questions or concerns, please do not hesitate to contact [gnwt\\_ea@gov.nt.ca](mailto:gnwt_ea@gov.nt.ca).

Sincerely,

Shakita Jensen  
Environmental Regulatory Analyst  
Environment Impact Assessment  
Department of Environment and Climate Change

April 24, 2024

Kathy Racher  
Executive Director  
Mackenzie Valley Land and Water Board  
Yellowknife, NT  
[kracher@mvlwb.com](mailto:kracher@mvlwb.com)

**Re: MPVD and KDI Recommendations re: Draft Reference Bulletin: Water Use**

Dear Ms. Racher,

Mountain Province Diamonds Inc. (“MPVD”), and its wholly owned subsidiary Kennady Diamonds Inc. (KDI), is hereby submitting their recommendation to the Land and Water Boards of the Mackenzie Valley (LWBs) on the Draft Reference Bulletin: Water Use. MPVD holds a 49% interest in the Gahcho Kué Mine in a Joint Venture (“GKJV”) with De Beers Group, and KDI owns 100% of the Kennady North Project, and exploration project comprised of 99 mineral claims and 30 mineral leases totaling ~113,437 ha of land near the Gahcho Kué Mine.

MPVD has direct experience with the uncertainty generated for exploration in relation to the interpretation of water use in recent years in the Northwest Territories. Such uncertainty reduces the ability to conduct exploration activities, activities necessary to identify potential for new mines, but also to extend life of existing mines and the economic benefits they provide. MPVD views the revisions proposed by the LWBs as an improvement in the current bulletin, and notes that the changes would re-align better with the water use practices currently employed in earlier stages of exploration (i.e. those below Type B water license thresholds).

Based on this and the critical need for an improvement in the interpretation issued in 2020, MPVD recommends that the LWBs adopt these changes as an interim measure. However, MPVD also agrees that further thought must be given in future to the regulations and their interpretation, as it remains unclear that the regulations deem water withdrawals that are non-consumptive in nature, such as those for drill or camp water recirculation or ice road development, a ‘use’.

MPVD appreciates the opportunity to provide this recommendation and thanks the LWBs for their consideration of this important issue.

Sincerely,



Matt MacPhail, Chief Technical and Sustainability Officer

April 22, 2024



Kathy Racher  
Executive Director  
Mackenzie Valley Land and Water Board  
Yellowknife, NT

**Re: Recommendation regarding the Draft Reference Bulletin: Water Use issued by the Land and Water Boards of the Mackenzie Valley**

Dear Ms. Racher,

RainCoast Environmental Services Ltd. (RainCoast) is grateful for the opportunity to offer a recommendation to the Land and Water Boards of the Mackenzie Valley (LWBs) concerning the Draft Reference Bulletin: Water Use. As a specialized environmental consulting firm, RainCoast focuses on permitting, compliance, and engagement, related primarily to mineral exploration and mining projects in the Northwest Territories (NT) and Nunavut. Over the years, RainCoast has provided support to various projects, including but not limited to Kennady North, White Cliff Minerals, Echo, Hidden Lake, CALL, and Ekati projects in the NT, and Back River, Hope Bay, Hackett River, Chidliak, High Lake, and Izok projects in Nunavut. RainCoast has also collaborated with Fisheries and Oceans Canada (DFO) on various policy, monitoring, and management initiatives.

RainCoast recommends that the LWBs adopt the proposed revisions to the Reference Bulletin: Water Use to enhance clarity and certainty for all stakeholders involved in the mineral exploration and mine reclamation licensing process. We concur with the LWBs that this action should be viewed as an interim measure, one that we believe is essential to rectify the current interpretation.

Following the implementation of these interim measures, RainCoast suggests further examination of whether non-consumptive water withdrawals (i.e. those which return chemically unaltered water to its source) should be categorized as 'use' from a regulatory standpoint (i.e., under the Regulations), or in consideration of significance of such withdrawals to either biological systems or other water users. Such withdrawals may include instances where water is withdrawn and promptly returned to the source waterbody, e.g. for drill or camp water recirculation, as well as in relation to water withdrawals for winter ice road development where water is applied within the watershed of the source waterbody. RainCoast also notes that the reasoning underpinning the exclusion of ice bridge water for Miscellaneous water licences also applies to other types of water licences. This is particularly relevant, as, in contrast to what has been indicated by the LWB, exploration projects requiring a water licence have not

consistently been classified as 'Miscellaneous' to date; some currently hold a 'Mining and Milling' Type B water licence.

RainCoast sincerely appreciates the reconsideration undertaken by the LWBs thus far and values this opportunity to provide input. We are hopeful that the adoption of the draft changes will facilitate will assist in facilitating a continuation of exploration activities in the Northwest Territories, at least until such a time that further improvements can be identified and discussed.

Sincerely,

A handwritten signature in black ink, appearing to read 'K Venter', with a stylized flourish at the end.

Katsky Venter  
Director & Snr Environmental Consultant  
RainCoast Environmental Services Ltd.  
[www.RainCoastEnvironmental.com](http://www.RainCoastEnvironmental.com)



24 April 2024

Kathy Racher  
Executive Director  
Mackenzie Valley Land and Water Board  
Yellowknife, NT

**Re : Recommendations regarding the Draft Reference Bulletin: Water Use issued by the Water Boards of the Mackenzie Valley**

Dear Ms. Racher,

White Cliff Minerals Limited appreciates the opportunity to provide a recommendation to the Land and Water Boards of the Mackenzie Valley (LWBs) regarding the Draft Reference Bulletin: Water Use. As a company focused on mineral exploration and mining in the Northwest Territories (NT) and Nunavut, White Cliff Minerals has experience with projects in both regions, as well as exploration and development projects in Greenland and other remote locations.

We support the proposed revisions to the *Reference Bulletin: Water Use* and recommend their adoption as an interim measure. These changes, coupled with the potential revisions suggested by the LWB staff, promise to enhance the clarity and certainty necessary for the licensing of mineral exploration and mine remediation projects. Mineral exploration in remote areas like ours is inherently complex and costly, and the existing uncertainties around water use regulations only add to the challenges, potentially deterring investment at a time when Canada is striving to build a domestic supply of critical metals.

Although we advocate for these revisions as temporary measures, we also encourage the LWBs to further analyze whether non-consumptive water uses, such as freshwater recirculation or winter road development, should be categorized as 'use' under the current regulations.

We are grateful for the LWBs' efforts to revisit these crucial regulations, which have significantly impacted exploration activities in recent years. It is our hope that implementing these changes will not only encourage renewed exploration activities in the Northwest Territories but also support broader strategic initiatives to secure a stable supply of essential minerals in Canada.

Thank you for considering our input on this critical issue.

Yours sincerely,

Eric Sondergaard  
Canada Country Manager, Director  
White Cliff Minerals Limited