

Land and Water Boards of the Mackenzie Valley



Reference Bulletin Split-Interest Projects

June 11, 2020

Introduction

As a result of [devolution](#), some project activities may overlap non-federal and federal areas.¹ These are considered to be split-interest projects. This Reference Bulletin provides general information about the land use permitting and water licensing processes for split-interest projects; however, each project will be considered on a case-by-case basis. Applicants are encouraged to contact Land and Water Board (LWB) staff prior to submitting application packages for a split-interest project.

If there is any conflict between this Reference Bulletin and the *Mackenzie Valley Resource Management Act* (MVRMA) and/or the *Waters Act*, the Acts prevail.

The Water Licensing Process

How many water licence applications are required for a split-interest project?

Different water licensing legislation applies to non-federal and federal areas: the [MVRMA](#) and the Mackenzie Valley Federal Areas Waters Regulations ([MVFAWR](#)) apply to federal areas, whereas the [Waters Act](#), [Waters Regulations](#), and certain water licensing provisions of the MVRMA apply to non-federal areas. Because of this difference in regulatory regimes, two separate licences are required for split-interest projects, and, therefore, two separate Water Licence Application Forms must be submitted to the applicable LWB.²

¹ A federal area is defined under section 51 of the *Mackenzie Valley Resource Management Act* 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.'

² See attached letter from the GNWT and CIRNAC dated July 24, 2018

If the proposed split-interest project is related to remediation performed by or on behalf of Canada, only one licence is required, so only one Application Form will need to be submitted.

How are the licensing criteria applied to split-interest projects?

The licensing criteria set out in the Schedules of the Waters Regulations and the MVFAWR apply to the project as a whole, rather than to the parts of the project that are located in each particular area. For example, two type B water licences will be required if the proposed water use for the whole project is less than 299 m³/day. If the proposed water use for the whole project is more than 299 m³/day, then two type A water licences will be required.³ In other words, water licensing criteria do not change for a split-interest project – it is regulated as a whole.

Land Use Permitting

How many land use permit applications are required for a split-interest project?

Because there is only one set of regulations that regulate the use of land in the Mackenzie Valley (the Mackenzie Valley Land Use Regulations), only one permit is required, and, therefore, only one Land Use Permit Application Form needs to be submitted to the applicable LWB. As a result, the land use permitting process is the same for these types of projects; however, the permit may have conditions that are specific to each area (e.g., security will be split into two conditions to account for the portions of the project located in non-federal and federal areas).

Management Plans and Other Supporting Documents

Are separate management plans required for split-interest applications?

Although separate Application Forms are required, applicants can submit one set of supporting documents, such as engagement and management plans, for the application packages; however, within these documents, applicants should clearly distinguish any differences applicable to the federal and non-federal areas. This will help make the management plan review process more efficient. Please note that each required plan will be considered and approved under each of the individual authorizations.

Are separate closure cost estimates required?

One closure cost estimate can be submitted for the entire project; however, it must be divided into two components, reflecting activities specific to the non-federal and federal areas, and each component must include a break-down of costs for land-related activities and water-related activities (if applicable). Therefore, in most cases, the total closure cost estimate for the project will consist of two components for the Land Use Permit Application, and one component for each Water Licence Application.

Summary

For split-interest projects, the main differences in the regulatory process include:

- two water licences are required, so two water licence applications must be submitted, unless the project is related to remediation that is performed by or on behalf of Canada; and

³ See WLWB Online Registry for [Nighthawk Gold Corp. W2018L2-0002 Review Summary and Attachments](#).

- only one permit is required; however, the permit may include conditions that are specific to each area.

Applicants are encouraged to submit the application packages together. This will enable the applicable LWB to harmonize the proceedings as much as possible and ensure that effective and integrated permit and licence conditions can be developed.

Attachment:

July 24, 2018 letter from GNWT and CIRNAC regarding the licensing of split-interest projects



JUL 24 2018

Dr. Shelagh Montgomery
Executive Director
Mackenzie Valley Land and Water Board
P.O. Box 2130
4922 - 48th STREET
YELLOWKNIFE NT X1A 2P6

Dear Ms. Montgomery:

Mackenzie Valley Land and Water Boards – Split Interest Areas - Licencing Questions

Crown and Indigenous Relations and Northern Affairs Canada (CIRNAC), and the Government of the Northwest Territories (GNWT), Department of Environment and Natural Resources (ENR) and Department of Lands (DOL) acknowledges receipt of Mackenzie Valley Land and Water Board's (the Board) letter dated May 2, 2018 on split-interest areas and licencing questions.

As the Board notes in its letter, one land use permit can be issued for split-interest projects. However, it is essential that the Board include separate line items in any split-interest land use permit regarding the security for the portion of the project in a federal area and the portion of the project outside of a federal area. Neither the Federal nor the Territorial Minister can hold security on behalf of the other Minister and each should hold adequate security to address the land use permit related liabilities within their respective areas.

We have copied the Board's questions in **bold** and set out joint responses below:

1) To apply for a split interest project, are two application forms – one for the federal area (Schedule III of the MVFAWR) and one for the non-federal area (Schedule C of the Waters Regulations) -required?

Two separate water licence application forms must be submitted to the Board, and two water licences are required, for any split-interest projects that are not related to remediation that is performed by or on behalf of Canada and will involve activities occurring in both a federal area and outside of a federal area.

.../2

For any such split-interest projects, neither the Federal nor the Territorial Minister can hold security on behalf of the other Minister. There are separate statutory regimes for water licencing in a federal area, which would be entirely under the *Mackenzie Valley Resource Management Act (MVRMA)*, and outside of a federal area, which would be via provisions in both the *MVRMA* and *Waters Act*. This precludes a single authorization. Further, if Ministerial approval is required, one Minister cannot approve a water licence on behalf of the other Minister.

If all activities that require a water licence occur entirely within a federal area or entirely outside of a federal area, only one application will need to be submitted and only one water licence is required.

If the project is related to remediation performed by or on behalf of Canada, only one application will need to be submitted and only one water licence is required, which must be approved by the Federal Minister if approval is required prior to issuance.

a. Will subsequent amendments, assignments, cancellations, etc. require separate federal and non-federal applications? Is there another option?

Any subsequent amendments, assignments, cancellations, etc. of water licences that will apply both in a federal area and outside of a federal area will require separate federal and non-federal applications. There is no alternative option.

If any of the foregoing will only apply in a federal area or outside of a federal area or if the project is related to remediation performed by or on behalf of Canada, only one application will be required.

i. How does this impact projects that currently overlap federal and non-federal areas?

Two separate applications must be submitted to the Board for projects that require any of the above-noted changes in both a federal area and outside of a federal area.

2) Will one or two licences be required?

As noted in the response to question #1, two separate water licences will be required for any split-interest projects that will involve activities occurring in both a federal area and outside a federal area that require trigger a water licence.

3) If one licence is possible, how could it be structured? Could there be a Part A for non-federal areas and a Part B for federal areas? It is recognized that if it is a type A water licence or a type B water licence in connection with a hearing, Ministerial approval is required. As such, will both Ministers need to be involved (i.e. will two signature blocks be required on the licence cover page)?

For the reasons noted in the response to question #1 a single water licence cannot be issued for split interest projects that are not related to remediation performed by or on behalf of Canada.

a. What water licence structure would work best for the Inspectors for compliance and enforcement?

We believe the existing water licence terms and conditions are acceptable for Inspectors designated under the respective legislation.

4) Finally, upon issuance of an authorization, is there a proposed approach for the federal and non-federal Inspectors to monitor compliance and enforcement over the split interest area?

For split interest projects, Inspectors designated by the GNWT will be responsible for inspecting compliance with water licences outside of a federal area unless the project is related to a remediation performed by or on behalf of Canada, in which case federally appointed Inspectors will be responsible.

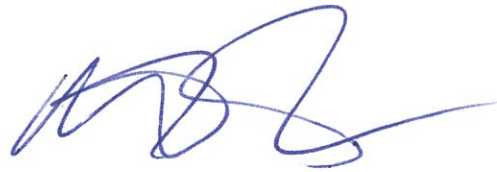
Due to the inter-governmental and Departmental legislative frameworks, we request that the Mackenzie Valley Land and Water Boards establish a process for the Boards, CIRNAC, ENR and DOL to discuss and plan for any anticipated split interest applications early in the Board's land use permit and water licence processes.

If you have any further comments or questions, please contact Mr. Michael Roesch, Senior Program Manager, Crown and Indigenous Relations and Northern Affairs at (867) 669 – 2440 or at michael.roesch@canada.ca, Ms. Lorraine Seale, Director, Securities and Project Assessment, GNWT – Department of Lands at (867) 767 – 9180, ext. 24020 or at [Lorraine Seale@gov.nt.ca](mailto:Lorraine.Seale@gov.nt.ca), and Mr. Nathen, Richea, Director, Water Resources, GNWT – Environment and Natural Resources at (867) 767 – 9234, ext. 53105 or at [Nathen Richea@gov.nt.ca](mailto:Nathen.Richea@gov.nt.ca).

Sincerely,



Lorraine Seale
Director, Securities and Project Assessment
Lands



Nathen Richea
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