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Introduction to the Nunavut Water Board

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NUNAVUT IMALIRIYIN KATIMAYINGI
NUNAVUT WATER BOARD
OFFICE DES EAUX DU NUNAVUT

GUIDE MANAGEMENT

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- Guide 3 – Activities that Require a Water Licence and Types of Water Licences
- Guide 4 – Completing and Submitting a Water Licence Application for a New Licence
- Guide 5 – Processing a Water Licence Application
- Guide 6 – Electronic Documentation: Submission and Registry
- Guide 7 – Licensee Requirements following the Issuance of a Water Licence
- Guide 8 – Community Consultation (under development)
- Rules of Practice and Procedure for Public Hearings
- Water Licensing Process Flowcharts and Time Charts (in colour and black and white)

Important Notes

1. *This Guide presents information about the Nunavut Water Board (NWB or Board) and its process in a plain language format for the purpose of public education and assistance to parties involved in the process. However, it should be noted that the legal responsibilities of parties involved in the water licensing process are as established under the Nunavut Land Claims Agreement (NLCA), the Nunavut Waters and Nunavut Surface Rights Tribunal Act (NWNSRTA or Act), and the applicable regulations. All parties are responsible for ensuring they comply with the applicable legal responsibilities imposed under these provisions. To the extent that this Guide is inconsistent or in conflict with the applicable legal requirements, the obligations as set out in the relevant acts and regulations shall govern. Any descriptions of the responsibilities of the parties contained in this Guide are of a general nature only and are not offered or intended as a substitute for professional legal advice or the specific direction of the NWB in any given case.*
2. *In the event of a conflict between the Guides and the NLCA, the NWNSRTA or the applicable regulations, the NLCA, NWNSRTA, and the applicable regulations prevail.*
3. *The abbreviations 'NWB' and 'Board' are used interchangeably throughout this document to refer to the Nunavut Water Board.*
4. *Versions of the NWB Guides are available in English from the NWB electronic public registry. Translated versions will be made available upon request. (See NWB Contact Information at the end of this Guide.)*

1. How was the Nunavut Water Board (NWB or Board) established?

The NWB was established on July 9, 1996, as an Institute of Public Government (IPG) pursuant to Article 13 of the *Nunavut Land Claims Agreement (NLCA)*.

2. What are the legislated responsibilities and powers of the NWB?

The Board has responsibilities and powers over the regulation, use, and management of water in the Nunavut Settlement Area (NSA), except for the use of water for navigational purposes, as defined in Articles 10 and 13 of the NLCA, as well as the Federal *Nunavut Waters and Nunavut Surface Rights Tribunal Act (NWNSRTA or the Act)*¹. Water, as defined by the NLCA, means waters in any river, stream, lake or other body of inland waters on the surface or under ground in the NSA, and includes ice and all inland ground waters, but does not include water or ice in marine areas. The NWNSRTA expands the jurisdiction to all of Nunavut. For the purposes of this definition, the Board considers the term inland waters to mean freshwater.

Under the NWNSRTA, the NWB is empowered to issue, renew, amend, assign or cancel a water licence, with or without a public hearing depending upon the type of activity and type of licence required. Persons or organizations wishing to use water or deposit waste

¹ Assented to on April 30, 2002

that may enter into water within Nunavut must apply for a water licence from the NWB, except where:

- a) The use of waters is for a domestic purpose²;
- b) The use of waters is for the purpose of extinguishing a fire or, on an emergency basis, controlling or preventing a flood;
- c) The use of waters is in a national park;
- d) The deposit of waste is in a national park; or
- e) The instream use of water does not consume water nor impair the water quality.

With the exception of s. 5, discussed below, the *Northwest Territories Waters Regulations* (NTWR or Regulations) apply in Nunavut until they are replaced or repealed under the NWNSRTA. As outlined in more detail in Guide 3, Schedule II of the Regulations provides a list of undertakings requiring licenses, including various industrial undertakings, mining, various municipal activities, hydro or geothermal electrical generation, agricultural and conservation uses and commercial or public recreational developments.

Section 5 of the Regulations related to water use or waste deposit without a licence ceased to apply in Nunavut after July 2002, to eliminate inconsistency between the NLCA and the Regulations. At the time of writing this Guide, Nunavut-specific water regulations are being developed under the NWNSRTA. Please contact the NWB if you have any questions regarding the status of the Nunavut-specific water regulations.

3. What is the objective of the NWB?

The Board's objective is to provide a means for the conservation and utilization of waters in Nunavut, except in a national park, in a manner that will provide the optimum benefit from those waters for the residents of Nunavut in particular and Canadians in general.

4. What policy principles does the NWB use to assist in fulfilling its objectives?

Credibility

The NWB works hard to maintain credibility with its partners, including Nunavut organizations, government, industry and the public.

Respect

Within its established powers, the NWB strives to exercise due respect for the culture, values, and interests of all Nunavummiut.

² Domestic purpose means the use of waters for the following purposes:

- (a) household requirements, including sanitation and fire prevention;
- (b) the watering of domestic animals; or
- (c) the irrigation of a garden that adjoins a dwelling-house and is not ordinarily used in the growth of produce for market.

Fairness

The NWB is required by the NLCA to the extent consistent with the broad application of the principles of natural justice and procedural fairness to allow, where appropriate, the admission of evidence that would not normally be admissible under strict rules of evidence, and give due regard and weight to the tradition of Inuit oral communication and decision-making.

Public Participation

The NWB operates under the principle that public participation is an important element of an open, honest, and balanced review process. Effective public participation strengthens the quality of the review process and helps to avoid potential misunderstandings and conflict. The NWB has a role to ensure that affected communities are aware of the project and its potential environmental impacts on inland water. For more information, please see the *NWB Guide 8: Community Consultation*.

Inuit Knowledge

The NWB gives due regard and weight to Inuit culture, customs, knowledge and language.

5. How is the NWB organized?

In accordance with the NLCA, the NWB is composed of nine members, one of whom acts as a chairperson. The chairperson is appointed by the Minister of Indian and Northern Affairs Canada (INAC) following consultation with the other members. The other members are also appointed by the Minister of INAC with some members being appointed upon nomination by a Designated Inuit Organization (DIO) or designated Ministers of the Territorial Government.

Members are appointed for three year terms and may be eligible for reappointment in the same or another capacity. If the term of a member expires before the member has made a decision on a public hearing matter, the member may, with the authorization of the chairperson, continue to act as a member in relation to that matter until the public hearing has concluded and a decision has been made.

The Board may also establish panels of two or more members of the Board and delegate any of its powers, duties, and functions to them. Each panel must be composed of an equal number of DIO nominees and other members.

The Board may also delegate particular powers to its Executive Director (Chief Administrative Officer (CAO)) including the power to issue, amend, renew, assign or cancel a licence in relation to which no public hearing is required.

Members of the Board must perform their duties in accordance with an oath of office set out in Schedule 2 of the NWNSRTA and in accordance with laws relating to conflict of interest, provided that no member will be considered biased in any application before the NWB solely because the member is an Inuk.

6. How are the NWB staff organized?

The Board employs officers and employees and engages the services of agents, advisers and experts as are necessary for the proper conduct of its business. The NWB full time staff is comprised of the following:

- Executive Director (Chief Administrative Officer (CAO))
- Director of Corporate Services
- Financing Officer
- Board Secretary
- Interpreter / Translator
- Director of Technical Services
- Technical Advisors
- Manager of Licensing
- Licensing Administrator
- Administrative Staff

A staff organization chart is included in Appendix A of this Guide. *

7. What language(s) does the NWB conduct its business in?

The NWB conducts its business in both of the official languages of Canada in accordance with the *Official Languages Act* and any directives of the Minister. Upon request by a member, the Board may also conduct its business in Inuktitut.

8. To what geographic extent does the NWB's authority apply?

The NWB's authority applies to inland waters within Nunavut.

Where a drainage basin is shared between Nunavut and another jurisdiction, the Government of Canada and the Territorial Government, assisted by the NWB are required to use their best efforts to negotiate agreements with other jurisdictions concerned with the use and management of such drainage basins.

In the event that it is determined that the approval of a water licence application in Nunavut would have a significant bearing on water use outside Nunavut, the NWB may collaborate with the competent water authority in the review, if appropriate, of that water licence.

9. What is the relationship between the NWB, the NIRB and the NPC?

In order to avoid unnecessary duplication and to ensure that projects are dealt with in a timely manner, the Board cooperates and coordinates its consideration of applications with the Nunavut Planning Commission (NPC) and the Nunavut Impact Review Board (NIRB) (or any federal environmental assessment panel referred to in section 12.4.7 of the NLCA).

With respect to applications for water licence amendments or amendment/renewals, where the requested amendment to the project from the original licence includes a change to or a new activity or component related to water use or waste disposal not previously licensed in the scope of the project, the water licence application is sent to NIRB and NPC to determine whether or not the amendment changes any original NPC conformity determination and any NIRB screening determination or project certificate.

The NWB's *Process Flowchart* illustrates the roles of NPC and NIRB in the NWB's water licensing process.

9.1. Relationship with the Nunavut Planning Commission

The Board may not issue, amend, or renew a licence to use waters or deposit waste where there is an applicable, approved land use plan, unless the NPC:

- a) Has determined that the use or deposit, or in the case of an amendment any change to the use or deposit, conforms to the land use plan; or
- b) Has approved a variance in respect of the use, deposit or change.

The Board is required to reject an application in relation to a licence where the NPC has informed the Board that the use, deposit or change does not conform to the land use plan and that the NPC will not be approving a variance.

If the Board rejects an application for the reasons stated above, the applicant may, within one year after the date of the rejection, apply to the appropriate Minister for an exemption from conformity with the land use plan in accordance with section 11.5.11 of the NLCA. If such an exemption is obtained, the Board may resume processing the application.

9.2. Relationship with the Nunavut Impact Review Board

The Board may not issue, amend, or renew a licence to use waters or deposit waste where the appurtenant undertaking requires screening by NIRB in accordance with Part 4 of Article 12 of the NLCA, until the NIRB has completed the screening.

Furthermore, where the appurtenant undertaking requires a review under Part 5 or Part 6 of Article 12 of the NLCA, the Board may not issue, amend, or renew a licence until NIRB has issued a project certificate.

However, there is an exception. Where a water application is required to be reviewed, the Board, may, before the NIRB project certificate is issued, issue, amend, or renew a licence in relation to exploration or development work related to the appurtenant undertaking provided that:

- a) The use or deposit falls within Schedule 12-1 of the NLCA, or can in the judgement of NIRB, proceed without a the review; or
- b) The licence is issued, amended, or renewed for an interim short-term period.

In the case where the NWB is required to conduct a public hearing in respect of a licence in connection with a project for which a public hearing is also to be held by the NIRB, or any federal environmental assessment panel referred to in section 12.4.7 of the NLCA, the NWB may, in lieu of conducting a separate public hearing, participate in the environmental assessment review body's hearing or conduct a joint hearing with the environmental assessment review body.

The NWB may also incorporate water and/or waste related terms and conditions recommended by NIRB in its screening decisions and project certificates into the NWB's application information requirements and/or conditions of water licence approval.

10. What is the relationship between the NWB and other Nunavut bodies

10.1. Relationship with Designated Inuit Organizations (DIOs)

The Inuit are provided with rights to water pursuant to Article 20 of the NLCA. These rights are vested in a DIO and include rights to the use of water on, in, or flowing through Inuit Owned Lands (IOL) as well as the right to have water flowing through IOL substantially unaffected in quality and quantity and flow.

In accordance with section 20.3.1 and 20.3.2 of the NLCA the NWB cannot approve a licence if the project or activity may substantially affect the quality, quantity or flow of water through IOL, unless the applicant has entered into a compensation agreement with the DIO for any loss or damage that may be caused by the change in quality, quantity or flow of the water, or the NWB has made a determination regarding the appropriate compensation. For more information see the NWB's *Guide 4-Completing and Submitting a Water Licence Application for a New Licence*, section 5, block 18.

10.2. Relationship with marine areas

The NWB does not have jurisdiction over marine areas. The applicant should contact NPC, NIRB and the Nunavut Wildlife Management Board (NWMB) regarding their jurisdiction over marine areas.

The NWB, NIRB, NPC, and the NWMB may jointly, as the Nunavut Marine Council, or severally, advise and make recommendations to other government agencies regarding marine areas.

10.3. Relationship with other water authorities

Where the use of waters or the deposit of waste would have a significant impact on the use of waters or deposit of waste in a national park or any place outside of Nunavut, the Board may collaborate with any body exercising powers of water management for that park or place.

10.4. Relationship with other authorities

In addition to the NWB's requirements, an applicant may be required to obtain permits, licences, or other forms of approvals from territorial or federal departments or agencies with regulatory authorities in relation to certain aspects of a proposed undertaking. Approval from the NWB does not absolve the applicant from obtaining these other regulatory approvals. Similarly, an approval from another regulatory authority does not absolve the applicant from obtaining an approval from the NWB.

11. How can I access public documents from the NWB?

The Board maintains a public registry containing the following in respect of each licence application:

- a) A copy of the application and all supporting documents;
- b) All records from any public hearing held in connection to the application;
- c) A copy of any licence issued in respect of the application and the reasons for the decision of the Board in respect of its issuance; and
- d) All correspondence and documents submitted to the Board in respect of compliance with the conditions of the licence issued.

The public registry is maintained in both hardcopy and electronically, both forms of which are available for public use at the main office in Gjoa Haven, Nunavut, during normal business hours (Mon-Fri: 9:00am – 5:00pm Mountain Standard Time (MST)).

In addition, the Board maintains its public registry electronically on an FTP site at <ftp://ftp.nwb-oen.ca>. (Username: public, Password: registry). Windows Internet Explorer is the recommended browser for accessing the NWB FTP site. At the time of writing this Guide, the NWB FTP site is accessible but under construction.

For more information regarding the NWB's electronic public registry FTP site and the submission of electronic documentation, refer to the NWB's *Guide 6: Electronic Documentation: Submissions and Registry*.

12. How do I contact the NWB?

If you have any questions regarding the content of this Guide contact the NWB. The NWB's Licensing Administration department is the first point of contact and will direct inquiries accordingly. The NWB's contact information is:

Nunavut Water Board
P.O. Box 119
Gjoa Haven, Nunavut
X0B 1J0

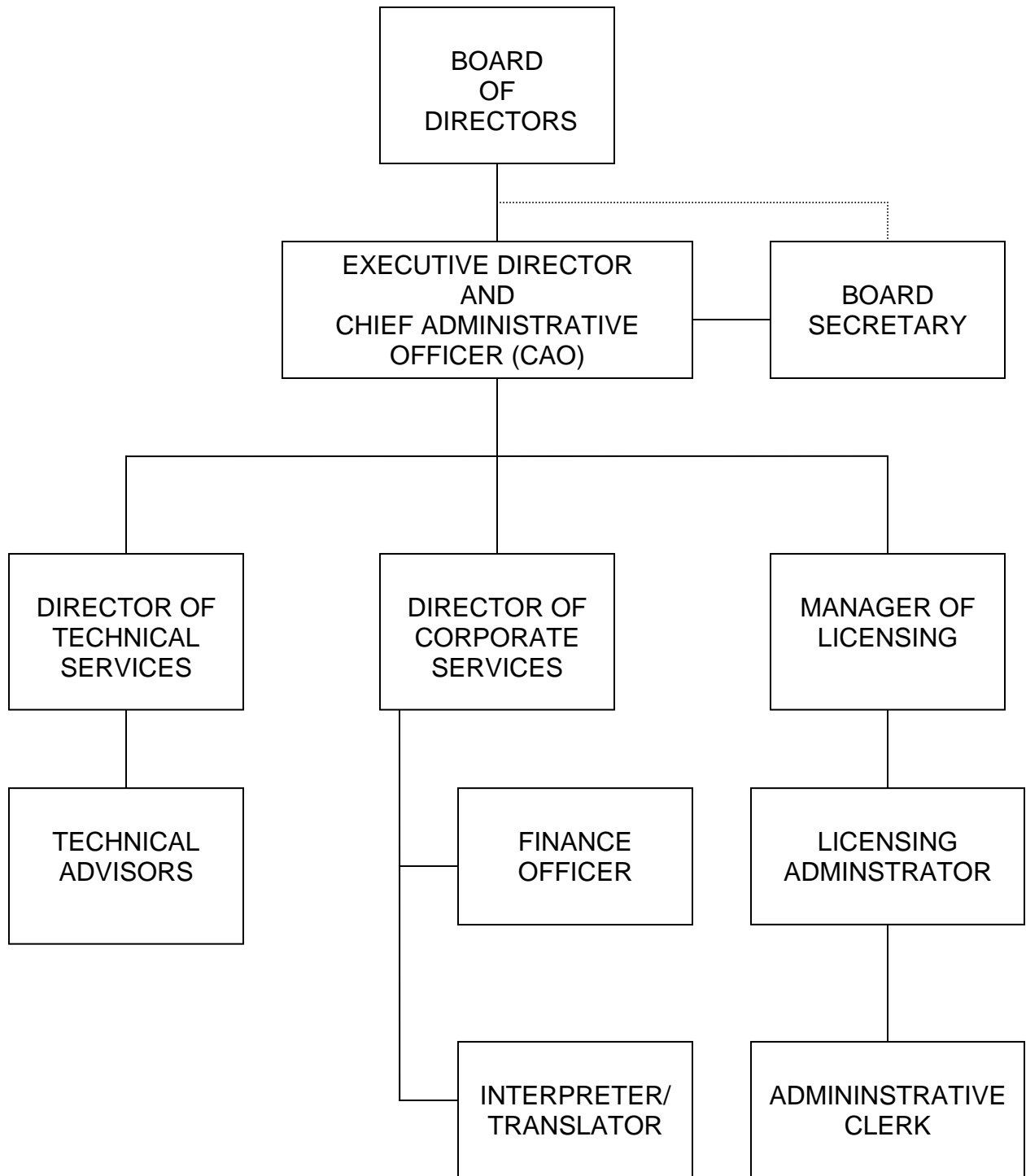
Phone: (867) 360-6338
Fax: (867) 360-6369
E-mail: licensing@nwb-oen.ca
Website: <http://www.nwb-oen.ca/>

All correspondence with the NWB related to a water licence application or approved licence must reference the application or licence number, the project name and the applicant's name. E-mail correspondence must include this information in the e-mail subject line.

FTP Site: ftp://ftp.nwb-oen.ca/ Username: public Password: registry

APPENDIX A Staff Organization Chart

Staff Organization Chart



* This chart does not provide for administrative support staff.