



NUNAVUT WATER BOARD

WATER LICENCE NO. 3AM-ARV1016

SHORT TERM RENEWAL

REASONS FOR DECISION

NUNAVUT WATER BOARD



In the Matter of:

Applicant: Government of Nunavut – Community and Government Services (on behalf of the Hamlet of Arviat)

Subject: Application for a Short Term Renewal of Existing Type “A” Water Licence 3AM-ARV1015

Date: June 16, 2015

Precedence: Where there is any inconsistency or conflict between the *Nunavut Land Claims Agreement (Agreement)* and the *Nunavut Waters and Nunavut Surface Rights Tribunal Act (NWNSTRA)*, the *Agreement* prevails to the extent of the inconsistency or conflict. Where there is any inconsistency or conflict between the *NWNSTRA* and any other act of Parliament, except the *Nunavut Land Claims Agreement Act*, the *NWNSTRA* prevails to the extent of the inconsistency or conflict.



REASONS FOR DECISION

SECTION I: BACKGROUND AND REGULATORY HISTORY

Application

On February 27, 2015, the Government of Nunavut-Community and Government Services (GN-CGS), on behalf of the Hamlet of Arviat, submitted to the NWB, an application for the full licence renewal and amendment (the Renewal and Amendment Application) in relation to the municipal Type “A” Water Licence 3AM-ARV1015 for the Hamlet of Arviat (the Existing Licence). The Renewal and Amendment Application is currently under review by the Board and interested persons. However, the Existing Licence is set to expire on August 31, 2015, likely before the Board’s processing of the Renewal and Amendment Application can be completed.

On March 30, 2015, the GN-CGS (on behalf of the Hamlet) submitted an application for the short term renewal (STR Application) seeking renewal of the Existing Licence for a period of up to 180 days in order to bridge any potential gap between the expiry of the Existing Licence and the potential issuance of a fully renewed and amended Licence. As permitted under s. 9(1)(b) of the *Nunavut Waters Regulations*, SOR/2013-693), the STR Application can be processed without a Public Hearing.

The Short Term Renewal (STR) of the Existing Licence has been requested on the following basis:

- No changes to the Existing Licence (administrative or otherwise);
- The short term renewal would not exceed 180 days from the date on which the Existing Licence expires (August 31, 2015), with the expiry of the STR occurring on the earlier of February 27, 2016 or on the granting of a renewed water licence, should the Board and Minister grant the Renewal and Amendment Application for a renewed water licence;
- No plans, studies, reports, or designs would be submitted in support of the STR as this information has already been provided or will be provided during the Board’s processing of the Renewal and Amendment Application; and
- The assumption that even if the STR is granted, the Renewal and Amendment Application that is currently before the Board will continue to be processed by the Board in as timely and efficient a manner as possible.

On April 24, 2015, the Board issued a Notice of Application for the STR, and invited parties to carry out a full technical review for a thirty (30) day period, with comments due on or before May 24, 2015.

Environment Canada (EC) submitted their comments on May 4, 2015, which have been provided in Section II of this document. On May 15, 2015, the Board also received a written submission



from Aboriginal Affairs and Northern Development Canada (AANDC). AANDC supported the Applicant's request for the 180 day short term renewal of the Existing Licence.

The NWB acknowledges that on April 23, 2010, the Nunavut Impact Review Board (NIRB) sent correspondence indicating that the undertaking under the Existing Licence, 3AM-ARV1015 is exempt from the requirement for screening under Article 12 of the Nunavut Land Claims Agreement (NLCA). As no correspondence was submitted by NIRB to the NWB with respect to the STR Application specifically, the Board has considered that the NIRB's Decision provided on April 23, 2010 exempting the Existing Licence from requiring NIRB screening, also applies to the STR Application. Consequently, the NWB can proceed to consider the STR Application without additional assessment of the STR Application from the NIRB

Application and Supporting Materials Submitted by the Applicant

The following documents were included with the STR Application:

1. Cover Letter;
2. Completed Application form for STR of the Water Licence; and
3. \$30 application fee.

The STR Application and supporting documentation was placed on the Board's Public Registry and is available from the NWB ftp site at the following link:

<ftp://ftp.nwb-oen.ca/1%20PRUC%20PUBLIC%20REGISTRY/3%20MUNICIPAL/3A/3AM%20-%20Municipality/3AM-ARV1015/1%20APPLICATION/>

Following the review of technical comments received during the thirty (30) day comment period, and pursuant to Article 13 Clause 13.3.6 of the Nunavut Land Claims Agreement and s. 29¹ of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, S.C. 2002, c. 10 (NWNSRTA) the matter was remitted to the members of the Board duly appointed to deal with the STR Application and the full Renewal and Amendment Application, the Arviat Panel (the Panel or P16). As permitted under s. 9(1)(b) of the *Nunavut Waters Regulations*, SOR/2013-693), the STR Application was processed without a Public Hearing.

On June 16, 2015, following a review of the STR Application and the comments submitted by EC and AANDC, by Panel Motion #2015-11-P16-03, the Panel approved the granting of the

¹ Section 29 of the NWNSRTA states:

(1) The Board may establish panels of the Board and delegate any of its powers, duties and functions to them.



STR Application and issuing of the STR. The Panel authorized the issuance of a single amendment to the Existing Licence, that being a change to the expiry date of the Licence to add a further term of up to 180 days beyond the Existing Licence expiry. This extension would result in the expiry date of the Existing Licence changing from August 31, 2015 to the earlier of February 27, 2016 or the date on which a renewed water licence is issued, should the Board and Minister grant and approve the Renewal and Amendment Application.

SECTION II: SUMMARY OF COMMENT SUBMISSIONS OF THE PARTIES

Aboriginal Affairs and Northern Development Canada (AANDC)

Aboriginal Affairs and Northern Development Canada (AANDC) has a broad mandate for the co-management of water resources and the management of Crown land in Nunavut. With respect to the STR Application, AANDC provided written comments pursuant to the following applicable law and policy: the *Department of Indian Affairs and Northern Development Act*,² and the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*.³

In AANDC's correspondence dated May 15, 2015 regarding the STR Application, AANDC indicated:

“In light of the upcoming expiry of the Hamlet's current Type A water licence, before the approval of a renewal, AANDC strongly encourages the applicant to take full advantage and make use of this extended time wisely if approved by the NWB.”

Environment Canada (EC)

The Environmental Protection Operations Directorate of Environment Canada (EC) submitted correspondence on May 4, 2015 stating that they would not be reviewing the STR Application. Their recommendations were as follows:

“EC will not be reviewing the STR for this Licence at this time, as EC will be focusing on the related Amendment-Renewal Application. EC reminds the Proponent that they are still required to comply with the relevant legislation, including the Canadian Environmental Protection Act, 1999, the pollution prevention provisions of the Fisheries Act, the Migratory Birds Convention Act, 1994, and the Species at Risk Act.”

² R.S.C. 1985, c. I-6.

³ S.C. 2002, c. 10.



SECTION III: SUBMISSIONS BY OTHER INTERVENING PARTIES OR MEMBERS OF THE PUBLIC

There were no other submissions by any other intervening party or members of the public provided to the Board on the STR Application.

SECTION IV: JURISDICTION OF THE BOARD

The Board has jurisdiction over the STR Application pursuant to Division 2 of the NWNSRTA.⁴ Relevant sections in that Division allow the Board to amend a licence⁵ on application or on the Board's own initiative. As required by ss. 55(1) and (4) of the NWNSRTA, the Board provided notice of the STR Application on April 24, 2015 and invited interested persons to provide their comments on or before May 24, 2015.

The Nunavut Waters Regulations

As set out in s. 9(1)(b) of the *Nunavut Waters Regulations*,⁶ because the STR Application involves a short term renewal not exceeding 180 days, the Board was not required to hold a Public Hearing in respect of the Application.

SECTION V: DECISION TO GRANT THE SHORT TERM RENEWAL

Following the close of the comment period associated with the STR Application and for reasons elaborated further below, the Board has decided to grant the Applicant's request to amend Type "A" Water Licence 3AM-ARV1015 to extend the expiry to the earlier of February 27, 2016 or the date on which a renewed water licence is granted, if the Board and Minister choose to grant the full Renewal and Amendment Application and issue/approve a renewed water licence following a Public Hearing as required by s.52(1) of the Act.

Based on the technical review carried out, the comments received from the parties, no indications of public concern with the STR Application and the Board's consideration of its objects and mandate, the Board has determined that it is preferable to extend the Existing Licence rather than have the Existing Licence expire while the Board and Minister are considering the full Renewal and Amendment Application.

The NWB is confident that, if this short term extension is granted, the use of water and the deposit of waste for the Hamlet of Arviat, will continue to meet acceptable standards for water

⁴ Sections 42-81 of the NWNSRTA.

⁵ See s. 43(1)(b) of the NWNSRTA.

⁶ S.O.R./2013-69.



quantity, water quality and effluent quality. In granting the STR, the Board is satisfied that the STR Application contained the required information and was in the proper form having regard to the requirements of the NWNSRTA⁷ and associated regulations.⁸

SECTION VI: WATER LICENCE 3AM-ARV1016 AMENDED TERM

The Applicant is advised that the amendment to the term of the Licence does not take effect until approval of the Minister is given or deemed to have been given pursuant to s. 56 of the NWNSRTA.⁹

As indicated in Section V, the Panel, by way of Motion #2015-11-P16-04 has decided to issue the requested short term renewal of Water Licence No. 3AM-ARV1015. Please note that as the Short Term Renewal adds a further term of up to 180 days to the expiry date of the Existing Licence, the expiry date under the licence changes from the year 2015 to 2016. Therefore, the number of the water licence for the Short Term Renewal has been changed from the existing No. 3AM-ARV1015 to Water Licence No. 3AM-ARV1016 to denote the 2016 expiry. Under the Short Term Renewal, the expiry date has been extended from August 31, 2015 to the earlier of February 27, 2016 or the date on which a renewed water licence is issued, if the Board and Minister choose to issue and approve the full Renewal and Amendment Application currently under review. All other terms and conditions of the Existing Licence remain the same and are carried forward to the Short Term Renewal Licence, 3AM-ARV1016.

⁷ See s. 48 of the NWNSRTA.

⁸ *Nunavut Waters Regulations*, SOR/2013-69, April 18, 2013.

⁹ Section 56 of the NWNSRTA states:

The issuance, amendment, renewal and cancellation of a Type A licence, and if a public hearing is held, a Type B licence are subject to the approval of the Minister.

Under s. 56(2.2) if the Minister does not issue a decision within 45 days of receiving the Licence from the Board, (or within 90 days if the Minister has extended the decision-making period by an additional 45 days) the Minister is deemed to have approved the Licence.