



NWB Tools

Ida Porter <ida.porter@nwb-oen.ca>

NWB Water Licence Application 8BC-GJO---

Jivko Jivkov <jivko@jivko.ca>

Mon, Sep 14, 2015 at 5:03 PM

To: Brady MacCarl <brady.maccarl@nwb-oen.ca>

Cc: Licensing Department <licensing@nwb-oen.ca>, Stephanie Autut <stephanie.autut@nwb-oen.ca>, "Kamimmalik, Sarah" <skamimmalik@gov.nu.ca>, Shawn Stuckey-SAO <saogjoa@qiniq.com>

Thank you Brady,

Please consider our Application for Water Licence for the construction of the Swan lake River Bridge still valid.

We are not withdrawing our Application. In fact we stated that we would withdraw the Application only if the NWB concludes that such Application is not required.

We will comply with the NWB decision and will not start work on the bridge site until we receive the Water Licence

Regards,

Jivko Jivkov, P. Eng.,

Jivko Engineering Ltd., P. O. Box 1341; 4916-49th Street, Yellowknife, NT X1A 2N9; T: 867 920-4455; F:867 873-6090; C: 867 446-0082; E: jivko@jivko.ca

From: Brady MacCarl [<mailto:brady.maccarl@nwb-oen.ca>]

Sent: September-14-15 4:47 PM

To: jivko@jivko.ca

Cc: Licensing Department; Stephanie Autut

Subject: NWB Water Licence Application 8BC-GJO---

Dear Mr. Jivko:

Stephanie has authorized me to respond to your email regarding the Swan Lake River Bridge Project, with additional insight from the NWB's legal counsel.

The NWB has reviewed your request to rescind the Water Licence Application for the Swan Lake River Bridge Project in light of your argument that no licence is required because a) no construction work will be done within the water body of the river, b) no water will be extracted from or disposed of into the river, and c) no alteration of

the riverbed itself will take place.

You also indicated that the DFO advised that no formal permit is required for the undertaking.

Firstly, the NWB has found no communication from the DFO advising no formal authorization for the project would be required, and even if such advice was given, the DFO does not determine whether an undertaking requires water use authorization. Second, after a review of the material submitted with your application, the NWB has confirmed that your undertaking will involve a “use” of water which triggers the requirement for some form of authorization by the NWB. It is important to remember that water use is, very broadly defined under the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (The Act) and is not limited to consumptive uses of water or withdrawals of water. Specifically, section 4 of the Act classifies water “use” as follows:

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

(a) any use of water power and geothermal resources;

(b) any diversion or obstruction of waters;

(c) any alteration of the flow of waters; and

(d) any 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.

From material submitted with your application, the NWB understands that the abutments for the proposed bridge will be constructed slightly below the high water mark of the river. This is confirmed by the design drawing “General Layout Elevation Plan”, and in the document entitled “Project Status Report”, which states that the bridge superstructure is roughly 29 metres long, yet “at high water levels during the spring thaw the river runs 35 m to 40 m wide.”

Referencing the Proponent’s own documents, it appears to the NWB likely that the project may influence seasonal water flows in the river. On this basis, the NWB does not agree with the interpretation that a structure built below the high water mark of a watercourse does not constitute a “use” of water because it is not an alteration of the watercourse itself. In addition, the activities in relation to the alteration of the banks of the water body contemplated in the Application also likely constitute a type of water use which requires the NWB’s authorization.

To further reinforce its conclusion, the NWB cites the licensing criteria for use of waters under the *Nunavut Water Regulations* (The Regulations), which elaborates under Schedule 2, Item 1(1) and Item 1(2), that a Type B licence is required for:

“Any use of waters related to the construction of a structure across a watercourse that is 5 m or more wide at the ordinary high water mark at the point of construction”; and

“Any use of waters related to any other watercourse training”.

The NWB reminds the proponent that water “use”, under the Act, is a fluid term, and is not exclusive to what one

might consider “direct” or “consumptive” uses. Any activity that influences the flow or quality of water, or the characteristics of a waterbody (e.g. alteration to the bank of a watercourse) may constitute a “use” of water to which the Act and the Regulations may apply.

Consequently, due to the undertaking’s alterations to the banks of the Swan Lake river, and the predicted influence to seasonal hydrological regimes, the NWB has classified the undertaking as requiring a Type B Water Licence and recommends that you do not withdraw your Application as it is, in the NWB’s view required to authorize the proposed work.

Should you have any additional questions or concerns, please feel free to contact myself or the NWB’s licensing department: licensing@nwb-oen.ca.

Regards,