



NWB Water Licence Application 8BC-GJO---

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

Mon, Sep 14, 2015 at 4:46 PM

To: jivko@jivko.ca

Cc: Licensing Department <licensing@nwb-oen.ca>, Stephanie Autut <stephanie.autut@nwb-oen.ca>

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

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