

# Land and Water Boards of the Mackenzie Valley



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## Draft Reference Bulletin Water Use

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March 22, 2024

### **NOTE TO REVIEWERS:**

The LWBs have not yet made any decisions regarding potential revisions to the original [Reference Bulletin](#) and the [Annex](#) that accompanied it, which remain in effect until further notice.

This Draft Bulletin has been prepared by LWB staff solely for the purpose of gathering additional public input to fully inform the LWBs' deliberations at the next full Board meeting on whether to revise the interpretations set out in the original Bulletin – it does not indicate any changes to the LWBs' existing interpretations and expectations at this time.

### **Introduction**

Water licensing criteria are set out in the Mackenzie Valley Federal Areas Waters Regulations (MVFAWR) and the Waters Regulations, and many of these criteria are based on direct or indirect water use. This Reference Bulletin provides information about ~~what constitutes~~ water use in the context of water licensing in the Mackenzie Valley. If there is any conflict between this Reference Bulletin and the *Mackenzie Valley Resource Management Act* (MVRMA), the *Waters Act*, or the Regulations, the Acts and Regulations prevail.

### **Water Use**

Under the MVRMA and the *Waters Act*, water use is broadly defined as a direct or indirect use of any kind (unless connected with shipping activities governed by the *Canada Shipping Act*), including, but not limited to:

- a) a diversion or obstruction of waters;
- b) an alteration of the flow of waters; and

**Commented [LCM1]:** Note to Reviewers: Removed to clarify that this Bulletin is not intended to capture all water uses encompassed by the legislation or to redefine water use.

c) an 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.<sup>1</sup>

Without limiting the above, any withdrawal or diversion of water, directly or indirectly, from a water source for any period of time is considered a water use,<sup>2</sup> since the water that is removed is not available to other potential users of the water source during that time.

### Water Licence Applications

A water licence application package must include information about all proposed water uses, both direct and indirect, for the project.

Applicants must provide the water use information specified in the Application Form and the accompanying LWB *Guide to the Water Licensing Process*.<sup>3</sup> A water licence application package must include information about all proposed water uses, both direct and indirect, for the project. This is necessary because the preliminary screening and the licence for the project will be based on the project as a whole.<sup>4</sup>

The LWBs use this information to:

- evaluate the potential impacts of a project for the preliminary screening determination
- if relevant to the applicable licensing criteria, determine whether the project needs a type A or a type B water licence
- set the authorized water use volume in the licence
- calculate any water use fees

If based on the definition of water use, the application must describe water uses even in the case where an applicant is proposing to return water to a water source, including the same source. This must be described in the application and included in the proposed total water use volume. This is true regardless of the duration of the diversion/withdrawal; the distance between the point of diversion/withdrawal and the point of return; and/or the absence of changes in the chemical or physical characteristics of the water.

Note that licence applicants proposing miscellaneous, agricultural, conservation, or recreational projects that include a winter road must include information about the proposed water sources for both ice bridge and overland components of the winter road. For these types of projects, however, ice-bridge water use will not be considered in determining whether a project requires a type A or a type B water licence for

<sup>1</sup> See section 51 of the [MVRMA](#) and section 1 of the [Waters Act](#).

<sup>2</sup> This includes water used to construct and maintain an ice bridge over a watercourse as well as water that is circulated continuously from a watercourse to prevent pumps, lines, or equipment (e.g., drills) from freezing.

<sup>3</sup> See the [Apply for Permit/Licence](#) webpage on any of the LWB websites to access the Application Forms and Guides: GLWB, MVLWB, SLWB, and WLWB.

<sup>4</sup> For more information, see sections 3.0 and 4.2 of the [LWB Guide to the Water Licensing Process](#).

**Commented [LCM2]:** Note to Reviewers: This addition is proposed to identify this statement as a clarification, not as an alternative or complete definition of water use. As explained in the Annex, the development of the original Reference Bulletin was initiated by the need for this particular clarification, which is relevant to some, but not all types of water uses. The legislated definition above and the licensing criteria in the Regulations clearly encompass water uses that would not necessarily include withdrawal, diversion, or removal of water from a watercourse (e.g., watercourse crossings, watercourse training, some alterations of flow, banks, or beds of watercourses).

**Commented [LCM3]:** Note to Reviewers: This addition of this footnote is intended to provide clarity about two specific water use activities. This clarity is needed because these two water use activities were the subject of discussions that led to the development of the original Bulletin and then this Draft Bulletin.

**Commented [LCM4]:** Note to Reviewers: This addition is intended to clarify that the Bulletin is applicable to all types of water use, even though the following paragraphs are specific to direct water uses and diversions.

**Commented [LCM5]:** Note to Reviewers: The proposed revisions below provide more clarity on why this information is needed.

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direct water use,<sup>5</sup> so only the proposed water use for the overland sections of the road<sup>6</sup> should be included in calculating the total proposed water use volume.]

[Additionally, with the exception of power projects, all applicants should exclude any water use from an artificial reservoir with no natural inflow from the proposed total water use volume for a project.<sup>7</sup>]

Applicants are encouraged to contact Land and Water Board staff prior to submitting application packages.

### Water Use Fees

Water use fees are calculated based on the volume of water use authorized in the water licence for a project.<sup>8</sup> Water use fees may apply to water that is returned to a water source; however, water use fees do not apply to water that is diverted but otherwise not used.<sup>9</sup>

### Summary

- Any direct or indirect removal of water from a water source for any period of time is considered a water use.
- All proposed water uses, direct and indirect, must be described in a water licence application.
- Any direct or indirect removal of water from a water source for any period of time is considered a water use.]
- All proposed water uses for a project must be included in the proposed total water use volume for the project, except:
  - Ice-bridge water use for miscellaneous, agricultural, conservation, or recreational projects,<sup>10</sup> and
  - Water use from an artificial reservoir with no natural inflow for all projects other than power projects.
- The proposed total water use volume in the Application will inform the authorized maximum water use volume in the licence.
- If water use fees are required, they will be based on the authorized maximum water use volume in the licence.

<sup>5</sup> See item 1, column 2 in Schedule VIII and H of the MVFAWR and the Waters Regulations, respectively. Note that this exception will only apply if the proposed ice-bridge water use meets all three criteria set out in subsection 4(1) of the Waters Regulations and MVFAWR.

<sup>6</sup> Water used for the overland sections of a winter road is not exempt from this evaluation because it is not being used for an ice bridge and is not directly returned the same watercourse.

<sup>7</sup> See item 1 in Schedules IV-VIII and D-H of the MVFAWR and the Waters Regulations, respectively.

<sup>8</sup> See the MVLWB [Water Use Fee Policy](#) for more information.

<sup>9</sup> See subsection 9(5) of the MVFAWR and subsection 8(5) of the Waters Regulations.

<sup>10</sup> This exception will only apply if the proposed ice-bridge water use meets all three criteria set out in subsection 4(1) of the Waters Regulations and MVFAWR.

**Commented [LCM6]: Note to Reviewers:** The LWBs have not yet made any decisions on whether to revise the interpretation set out in the original Bulletin. These draft changes reflect a revised interpretation that the LWBs could consider based on the submissions received during the first public review. The LWBs will make their decision on revisions to their interpretations, if any, based on the submissions from both public reviews and will then update the Bulletin if needed.

**Commented [LCM7]: Note to Reviewers:** This addition is only a clarification regarding a separate exception in the licensing criteria. This exception is clear in the Regulations and does not require interpretation.

**Commented [LCM8]: Note to Reviewers:** This reorganization is intended to clarify that this is not a definition of all water use - it is identifying these types of activities as water use, but they are not the only activities that qualify as water use. The legislated definition and the licensing criteria in the Regulations clearly encompass water uses that would not necessarily include removal of water from a watercourse (e.g., watercourse crossings, watercourse training, some alterations of flow, banks, or beds of watercourses).

**Commented [LC-M9]: Note to Reviewers:** As described above in the Water Licence Application section, this reflects a potential change in the LWBs' current interpretation based on review comments to date, but that has not yet been considered by the LWBs.

The current Regulations only set out this exception for these types of projects. When the LWBs make their decision on whether to revise their current interpretation for the types of projects listed here, they will also consider whether and how this exception applies to other types of projects (for example, industrial projects). The LWBs will consider submissions from both public reviews when making their decisions.

**Commented [LCM10]: Note to Reviewers:** Footnote added to clarify that there are limitations to this exception.

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