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Conveyed Electronically

Robert Jenkins,
Acting ADM, Environment and Natural Resources
Government of the NWT
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Dear Mr. Jenkins:

RE: **Waters Act**

This letter represents the first set of comments from Alternatives North on the proposed amendments to the *Waters Act*. These comments are in conjunction with overall comments on the five Acts, covered in our letter of June 15 (attached).

We appreciate the efforts of ENR on water issues such as the Waters Stewardship Strategy, community-based water monitoring, and transboundary water agreements. Many of the provisions to update the Act seem to be supporting such efforts, which we view as positive.

In addition, Alternatives North has many concerns over inadequate development closure and security. We are glad to see that detailed closure plans, with objectives and commitments, will be required; and that new wording such as the Board **shall** set security (rather than **may**) are much needed improvements.

We do have some points of clarification and recommendations, as follows:

Clarifications
At the May stakeholder meeting, we recorded two points which ENR staff said they would get back to the group on:

1. Making sure no gaps between *Navigable Waters Act* and *Waters Act* (with the proviso that *Navigable Waters Act* is federal, and the federal government has jurisdiction over certain areas that the GNWT can't touch/fill)

2. Cross-over with *Protected Areas Act*, in particular the interface between protection of representative aquatic ecosystems and wetlands under the *Waters Act* or *Protected Areas Act*

The perspective of expert staff on these items would be appreciated.

Terms of License

We do not support ENRs suggestion for having licenses longer than 25 years. The statements made during the stakeholders' meeting regarding relatively easy triggering of mid-license reviews are not, in our view, realistic. Ongoing review of license performance by citizens and organizations within the NWT take considerable resources, and simply isn't a reality given civil society resources. Moreover, for large licences that may have significant public concerns, there is often a political reality – attempting to trigger a review of an existing license is an uphill effort. With these factors, it's easy to see why this kind of mid-license review is, at a minimum, uncommon (AN is not aware of this ever occurring).

Bulk Water Sales

We do not support bulk water sales, and recommend that a clear restriction on such sales be placed in the Act.

We use as our working definition this definition adapted from the Great Bear Lake Watershed Management Plan:

> "Bulk water removal" means any water (including ice) transferred out of a watershed in any individual container greater than 40 litres in volume, or removal by any means that involves permanent out-of-watershed transfer, whether it is by diversion (including pipelines, canal, tunnel, aqueduct or channel), tanker or other mechanism. Bulk water removal does not include "bottled water" in containers of 40 litres or less, which is regulated under environmental assessment processes and licensed under applicable legislation, and which is consistent with the maintenance of ecological integrity (which includes wetlands and fish habitat) and cultural continuance. In addition to the bottled water exemption, "bulk water removal" does not include removal of freshwater from a drainage basin for water required: to meet short-term health and safety needs (such as fire fighting); for human or animal consumption during travel and water needed to carry foodstuffs; for road construction and maintenance; and other local uses, in so far as these are consistent with the maintenance of ecological integrity and cultural continuity".

In addition, any proposed bottled water removals must undergo a public consultation process.

"No-Net Loss of Wetlands Functions"

As noted in our overview letter of June 15, a definition of wetlands is needed. We recommend that this Act include to "No-Net Loss of Wetlands Functions". We support wording from Ducks Unlimited Canada regarding this:

> "*In administering this Act, the NWT will adopt the principle of "No-Net Loss of Wetlands Functions" which means attempting to sustain the current balance and full range of benefits and values provided by wetlands. Achieving "No-Net Loss of Wetlands Functions" involves striking a balance between the protection of high value wetlands that are socially, culturally, recreationally or ecologically important with sustainable development protocols that ensure economic, social and environmental dimensions are fully considered.*
>
> *"As part of the commitment to promote and achieve the principle of "No-Net Loss of Wetlands Functions", the Minister may develop regulations to enable the implementation of a wetland mitigation sequence. This sequence is a hierarchical progression of alternatives involving: 1. avoidance of impacts as first priority wherever possible; 2. minimization of unavoidable impacts through the use of best management practices; and 3 as a last resort, the use of restoration, replacement and offset alternatives to compensate for lost functions that could not be avoided or minimized."*

Grandfathering

Alternatives North understands that aspects of 'grandfathering' (legacy land uses) are important for existing license holders. However, this should not be a blanket approach with perpetual coverage. We support grandfathering with a decay aspect, allowing users to adjust to any new scenario. In general, grandfathering would expire with any license renewal, extension or amendment; and a decay clause should be defined and established in years for long licences.

Allocation priority

We agree with ENR that 'first in time, first in line' is not an appropriate way to allocate use. Ecosystems needs and appropriate access by residents to adequate potable water as a human right are priorities. However, we don't think a simple ranking would be suitable; there could be too many variables. Thus who decides on allocations is the underlying issue. This should not be done through Ministerial discretion. The co-management system through Lands and Water Boards seems to be an appropriate way to make allocation assessment, or possibly assigning this to some sort of representative tribunal would be appropriate.

To emphasize that 90%+ of all NWT water is not renewable (e.g., is in place due to ice age / ice-rich permafrost melting), and in fact such water can sometimes be

mined rather than used renewably, we recommend a statement in the preamble regarding this issue. As noted by Environment Canada "Relatively little water [in the NWT and Nunavut] is actually circulating in the hydrologic cycle, due to permafrost conditions, seasonal storage of water in snow, and long-term storage in glaciers."

(https://www.canada.ca/en/environment-climate-change/services/water-overview/publications/water-in-canada.html)

Cumulative Effects Assessment

The GNWT must take the lead on cumulative effects assessment and management. Developers and researchers must be required by the GNWT to use comparable protocols (as appropriate to each project) to facilitate cumulative effects assessment and management. Further, cumulative effects assessments required in the Act must consider multiple scales, lenses and timeframes, including:

- ecoregion (as used in protected areas ecological representation, which will facilitate baseline comparisons, or combinations of ENRs level II and level III ecoregions, as periodically updated by ENR);
- subwatersheds (as currently laid out by and periodically updated by ENR);
- zone with an approved regional Land Use Plan;
- transportation and communications infrastructure;
- closest community(ies);
- through lens of climate change;
- 25 and 100 year time frame;

For licences longer than 10 years, developers should be required to update the cumulative effects assessment every 10 years. Licences would need to be written such that the assessments done could then be used to modify terms of the licence, i.e., actions may need to be taken once the assessments are done.

Post-remediation issues

We appreciate that the GNWT is undertaking a full review of closure and security issues, and look forward to participating in subsequent discussions. Under this Act however, we see the opportunity to develop a 'closure fund' (for want of a better title). The approach to any development must be to prevent or prohibit operations that require any form of perpetual care. This would include prohibiting the use of permanent engineered structures or containment structures that rely on permafrost or ice which require long-term monitoring and care. However, even using this as a base position, we believe monitoring of sites is prudent, and we need to be prepared for unforeseen circumstances that could result in a 'closed and safe' site becoming unstable. As an example, Pine Point mine was rehabilitated to what

was, at the time, the best standards. Now, we realize that other actions are needed. This is not through the fault of the company or people involved, but because we now have a greater understanding of rehabilitation. A 'closure fund', paid into by developers through regulatory requirements, could be used in such circumstances.

To be clear, such a 'closure fund' would *not* be the same as the proposed revolving forestry fund. The forestry fund has the GNWT taking on responsibility for reclamation; this closure fund would not exempt a company from requirements to close responsibly/ meet all requirements of the closure plan. Furthermore, if the developer is negligent, the GNWT could still pursue previous owners for damages.

In conclusion, we look forward to continued engagement on this, other ENR Acts, and security measures discussions.

Alternatives North

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Cory Vanthuyne, Chair, Standing Committee on Economic Development and Environment