

FAQ:

Intentions Documents for
Northwest Territories-British Columbia and
Northwest Territories-Alberta Bilateral Water
Management Agreements



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The Department of Environment and Natural Resources (ENR), Government of Northwest Territories (GNWT), has been negotiating with the Government of Alberta (AB), since September 2011, and with the Government of British Columbia (BC), since January 2014, to create bilateral water management agreements. Through these negotiations, the Parties have developed “Intentions Documents” that set out the main commitments the negotiators have agreed to bring back to their respective governments. These Intentions Documents have been created to ensure Northwest Territories (NWT) waters of the Liard Watershed and the Slave Watershed remain clean, abundant and productive for all time. These Intentions Documents will form the basis for the final Bilateral Water Management Agreements.

The goal is to have similar Bilateral Water Management Agreements between the jurisdictions who share the Mackenzie River Basin (MRB) (see Map 1: Mackenzie River Basin). Similar agreements across the basin will help make sure the waters of the MRB are managed consistently. ENR intends to use the NWT-BC Intentions Document and the NWT-AB Intentions Document as a model to conclude its negotiations with Saskatchewan (SK) and Yukon Territory (YT).

What is the Intentions Document?

The Intentions Documents lay out how we are going to cooperatively share and manage waters to maintain the health of aquatic ecosystems now and into the future. They contain commitments to protect surface water quality and quantity, groundwater, and biological health and commitments for how decisions will be made under the agreement.

The Intentions Documents were created through negotiations between the GNWT and the Government of British Columbia and the Government Alberta. Discussions with other MRB jurisdictions also occurred. The Intentions Documents give NWT residents information about what will be in final Bilateral Water Management Agreements (Agreements). The Intentions Documents reflect the concerns and interests of residents of the NWT.

All MRB jurisdictions share an interest in maintaining the integrity of the aquatic ecosystem of the MRB. The Intentions Documents strive to meet this interest for:

1. Surface water quality
2. Surface water quantity
3. Groundwater
4. Biological components (i.e., fish, animals, humans)
5. Air pollutants that are deposited into water

6. Decision making

Why are the Agreements important?

The NWT is the ultimate downstream jurisdiction of the MRB. NWT water is affected by management decisions in the upstream jurisdictions including BC, AB, SK and the YT. In any agreement between the NWT and its upstream neighbours, it is important to describe how water will be shared and managed to make sure NWT waters remain clean, abundant and productive. Agreements are important to both upstream and downstream jurisdictions because they provide a long-term framework for sustainable development and protection of the ecological integrity of the entire MRB.

How did we get here?

1997

The Governments of NWT, Canada, YT, BC, AB and SK signed the *Mackenzie River Basin Transboundary Waters Master Agreement* (Master Agreement). The Master Agreement commits all six governments to work together to ensure sustainable development and the ecological integrity of the aquatic ecosystem of the MRB, and to negotiate Bilateral Water Management Agreements that meet the purpose and principles of the Master Agreement (see www.mrb.ca for more information).

2000

The Governments of NWT and YT signed a transboundary water management agreement. This agreement will be renegotiated to reflect advances made with Bilateral Water Management Agreements currently being negotiated.

2007

The Governments of NWT and Canada signed a Memorandum of Understanding with Alberta that sets out the process, schedule, principles, and information required to negotiate a Bilateral Water Management Agreement.

2009

The Mackenzie River Basin Board (MRBB) provided guidance to all jurisdictions about the process, schedule and content for negotiation of all Bilateral Water Management agreements.

2010

The GNWT and Canada released *Northern Voices, Northern Waters: The NWT Water Stewardship Strategy* (Water Strategy). The Water Strategy development was guided by an Aboriginal Steering Committee (representing or observing for seven regional Aboriginal Governments) as well as stakeholder input through workshops and meetings. During the development of the Water Strategy, NWT residents made their concerns and interests about water very clear. The NWT Transboundary Water Negotiation Team paid close attention to this information and incorporated it throughout negotiations.

Goals of the Water Strategy include:

- Waters that flow into, within or through the NWT are substantially unaltered in quality, quantity and rates of flow.
- Residents have access to safe, clean and plentiful drinking water at all times.
- Aquatic ecosystems are healthy and diverse.
- Residents can rely on their water to sustain their communities and economies.
- Residents are involved in and knowledgeable about water stewardship.
- All those making water stewardship decisions work together to communicate and share information.

2011-2014

Once the NWT Water Strategy and its Action Plan (*NWT Water Stewardship: A Plan for Action, 2011-2015*) were complete, an NWT negotiating team was formed in September of 2011. Since that time, the negotiating team has had four formal negotiating sessions with BC, eight negotiating sessions with AB, and three multi-jurisdictional sessions with three or more MRB jurisdictions. The purpose of the meetings was to share background and technical information, compare interests, and discuss options that would address those interests.

What are interest-based negotiations?

The process chosen to negotiate Bilateral Water Management Agreements is *interest-based negotiations*. Interests are what we care about and options are how we protect our interests. Both Parties describe their own interests (instead of putting forward positions) and work together to develop options to satisfy common interests, while balancing opposing interests. This process is based on mutual respect and consensus, rather than on fixed positions. Both Parties' interests must be considered when developing options. Agreed-upon options become part of the Intentions Document, which will be finalized in a Bilateral Water Management Agreement.

What is the engagement and consultation process?

ENR has engaged with and received input from Aboriginal governments on NWT interests. In preparation for negotiations with AB, BC, SK and YT, ENR has consulted on the development of negotiation positions in meetings and regional workshops throughout the NWT for negotiations with AB, BC, SK and YT.

The NWT Water Strategy Aboriginal Steering Committee has been updated regularly on the progress of the negotiations. Traditional and local knowledge workshops and community-based monitoring have also contributed to the engagement and consultation process. These workshops have added valuable information to the negotiations process.

Public engagement and Aboriginal consultation is occurring for the NWT-BC and the NWT-AB negotiations and for future NWT-SK and NWT-YT negotiations. Input from these processes will inform the final Bilateral Water Management Agreements.

What will the Parties have to do under the Agreements?

The Parties to each Bilateral Water Management Agreement have agreed on decision-making processes to meet the commitments in the Agreements.

Where will the Agreements apply?

The agreements apply to the waters that cross or are adjacent to the provincial and territorial borders within the MRB and to decisions taken anywhere in the basin that might affect the ecological integrity of the aquatic ecosystem of another Party. The Bilateral Water Management Agreements will describe what the Parties must do to maintain the ecological integrity of transboundary aquatic ecosystems.

How will the Parties cooperate to make sure the waters they share are protected?

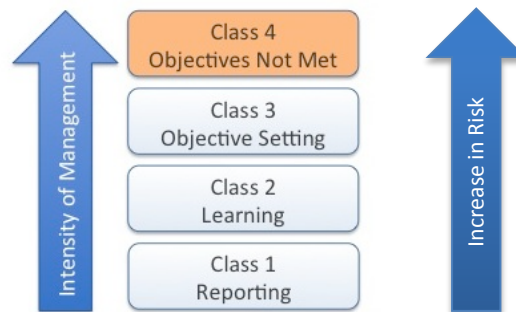
Under the terms of each Bilateral Water Management Agreement, the Parties will use an approach called Risk Informed Management (RIM). The purpose of this approach is for jurisdictions to work together to protect the ecological integrity of the aquatic ecosystem (see Section 4 of the Intentions Documents). This means they will assess risk, monitor, and make management changes as needed, including:

- Classifying transboundary water bodies (surface water or groundwater) into one of four classes based on risk from natural and human changes. Classes have required management actions.
- Establishing joint learning plans for water bodies classified in RIM Class 2
- Setting objectives to be met on water bodies in RIM Class 3
- Monitoring to ensure objectives are met

The nature and intensity of management actions increases as the risk to, or use (including traditional use) of, a transboundary water body increases. For example, if a water body is a Class 1, there would be no change to existing management. If there is moderate development or risk, the water body may be reclassified as a Class 2. If a water body is a Class 2, the Parties will do studies to learn more about the water body. If development or risk increases, that water body may be reclassified as Class 3 and objectives would be established to maintain downstream ecological integrity while allowing for sustainable upstream development. If the objectives are not being met, a water body may be classified as a Class 4 and the Party needs to do things to get back to Class 3 (meeting objectives) as soon as possible.

Risk Informed Management (RIM):

The nature and intensity of Bilateral Management and Jurisdictional Water Management increase from Class 1 to Class 3—for example, varying levels of learning, objective-setting and monitoring. Class 4 occurs when objectives are not met, indicating that the Ecological Integrity of the Aquatic Ecosystem may not be being maintained.



How will the Parties make decisions in their own province or territory?

Each party to a Bilateral Water Management Agreement will continue to make their own decisions about water and land use within their jurisdiction, but will make sure those decisions meet the commitments of the agreement (see Section 3 of the Intentions Documents). This means they will ensure their internal water-use and related land-use decision-making:

- Maintains ecological integrity within downstream jurisdictions
- Does not cause unreasonable harm to the other party
- Does not allow water to be moved into or out of the Mackenzie River Basin except in extraordinary circumstances
- Involves sharing information about any potential development or activity, consultation with the other Party, and consideration of any effects on the ecological integrity of the aquatic ecosystem in the other territory or province
- Meets transboundary objectives in accordance with the RIM approach (for surface water quality and quantity, groundwater, and biological components of the ecosystem)
- Is consistent with the RIM approach. Each party will adjust requirements—for example, in licenses and permits—to prevent unreasonable harm to the ecological integrity of the aquatic ecosystem, if and as necessary.

Who will ensure management actions under the Agreements are undertaken?

The Parties to each Bilateral Water Management Agreement will form a Bilateral Management Committee (BMC). The BMC will be responsible for implementing the agreement and monitoring its progress (see Section 13 of the Intentions Documents). The BMC will also undertake the actions required through the RIM approach. The BMC will share information, notify, and consult with the other Party and with the MRBB on any activities that might affect the ecological integrity of the aquatic ecosystem of the other Party(s) (see Section 5 of the Intentions Documents).

How will the Agreements respect Aboriginal and Treaty Rights?

The agreements will respect comprehensive lands, resources and self-government agreements, and any other existing or future Aboriginal and treaty rights. A primary goal of the NWT Negotiating Team is to make sure the Bilateral Water Management Agreements keep waters “*substantially unaltered as to quality, quantity, and rate of flow*”. This is in line with existing land claims agreements and treaty obligations, and ensures future agreements for unsettled land claim areas will be able to commit to nothing less than this standard. The Agreements respect Aboriginal and Treaty rights in the following ways:

- Conservative water quality objectives will ensure healthy aquatic ecosystems and safe drinking water.
- Only small amounts of water can be removed from transboundary rivers, which will ensure healthy aquatic ecosystems and allow for safe travel and hunting.
- Monitoring fish health will measure the health of the aquatic ecosystem and make sure that the fish are safe.
- Traditional use will be taken into account in classifying water bodies regarding risk.
- The BMC will consider scientific and traditional knowledge in learning plans, research, monitoring, and setting objectives.
- Decision-making mechanisms, such as prior notification, consultation and information sharing, will respect Aboriginal and treaty rights.
- The Parties commit that the Agreement will not “abrogate or derogate from” (i.e., negatively impact) Aboriginal and treaty rights.

How will the Agreements meet the NWT’s interests?

During public engagement sessions throughout the development of the Water Strategy, and during engagement and consultation meetings with Aboriginal governments on the transboundary agreements, NWT residents raised concerns about potential downstream impacts of upstream development. Concerns were focused on rapid and extensive development of shale gas in the Liard Basin, rapid expansion of oil sands projects in the Athabasca region in AB, the long-term impacts of the Bennett Dam and the potential impacts of the proposed Site C dam on the Peace River in BC, legacy uranium mining in SK, and potential future development in the Peel watershed. Maintaining water quality and quantity, subsistence harvesting of wildlife and fish, and overall ecosystem health were all noted as priorities.

The following statements summarize 36 NWT interests (which you can find at: <http://www.nwtwaterstewardship.ca/?q=transboundary>):

- Ecosystems are diverse and support all life now and in the future.
- All generations of all species that live in or use water get what they need from nature.
- All residents have the opportunity to make economic, social and cultural choices about water while the ecosystem remains healthy.
- Our relationships with each other and with nature are positively strengthened.
- The best available information is used to make sound decisions to make sure the aquatic ecosystem of the MRB is healthy.

- The Bilateral Water Management Agreements meet our interests and are legally enforceable.

How will the Agreements protect surface water quantity?

Northerners are concerned about water levels, timing of flows, and their effects on ways of life. Specific concerns include:

- declining water levels leading to more overgrowth and less access to areas that were once accessible for hunting and travel
- effects the Bennett Dam might have had on the flow and levels of the Slave River and on water bodies further downstream (such as Great Slave Lake and the Mackenzie River)
- potential effects of the proposed Site C hydroelectric project
- smaller ice jams and less spring flooding
- formation of an unsafe double layer of ice at certain times of the year
- amount of water being used in Alberta
- possible removal of water from the Mackenzie River Basin

Upstream and downstream jurisdictions are agreeing on water use limits to protect ecological integrity and traditional uses of transboundary waters, now and into the future.

Water Quantity Commitments

The Intentions Documents describe how water will be shared between the Parties (see Section 6 in the Intentions Documents). For every transboundary water body, the Parties will classify, monitor, create learning plans, and set water quantity objectives as part of the RIM approach. These objectives make sure the aquatic ecosystem continues to receive the water it needs to remain healthy, and any water available after that is shared evenly between the jurisdictions. Under this approach, it is expected at least 92.5-95% of natural flows will be passed from the upstream jurisdiction to the downstream jurisdiction. Triggers or thresholds are established to make sure appropriate action is taken before an objective is violated.

Permanent removal of water from the MRB is prohibited except in extraordinary circumstances as defined in a jurisdiction's existing legislation. Even in such extraordinary circumstances, flow requirements at the NWT border and the information, notification and consultation requirements still have to be met.

New water storage anywhere upstream will not occur without prior consultation with the NWT. Also, where a Party might make a decision that may affect the ecological integrity within another Party's jurisdiction, they will share this information with the MRBB. So, for example, BC will share with the MRBB (which includes the NWT) any information it has regarding proposed changes in operations to the Bennett Dam. Neither the NWT-BC nor the NWT-AB Bilateral Water Management Agreement will address past impacts of the Bennett Dam on the Peace River in BC. These are outside the scope of the Agreements but can be addressed by the Parties in the future if they wish.

How will the Agreements protect surface water quality?

Northerners are concerned about what effects shale gas, oil sands, pulp mills, municipal wastewater, agriculture runoff, and old mines might have on water quality in the NWT. These concerns have led to questions of whether the fish are safe to eat and the water is safe to drink. People are also concerned that water temperatures are getting warmer and affecting fish health.

Water Quality Commitments

The commitments in the Intentions Documents are meant to protect the quality of water flowing into the NWT through a proactive and precautionary approach (see Section 7 in the Intentions Documents). For every transboundary water body, depending on the level of development, the Parties will classify, monitor, create learning plans, and set water quality objectives as part of the RIM approach. The water quality objectives will be site-specific—based on the long-term data from that actual river—and will be set to address the use of, and level of risk to, that water body.

Water quality objectives will be set at a suitably protective level, depending on the kind of substance as described below. There will also be a series of early warning signals, or “triggers” to ensure appropriate action is taken well before a limit is violated.

During the negotiations, it was recognized that different chemical substances pose different risks and therefore have to be treated differently:

- Certain human-made substances—such as some pulp mill chemicals—can remain in the environment for a long time and can be harmful to aquatic life and to human health, either directly or through the consumption of aquatic plants and animals. The goal is to have levels of these substances in water be at or lower than levels that are detected by laboratory analysis equipment.
- Some substances have similar characteristics to human-made substances, but they have natural sources as well as human sources—for example, hydrocarbons and mercury. The goal for these substances is to keep levels within their natural range. In these cases, the goal is to avoid any further water quality degradation.
- Some substances are not necessarily toxic but can affect certain water uses, including traditional uses. For example, excess nutrients—such as phosphorous—can cause too much algae to grow, which reduces the level of dissolved oxygen available for fish in the water. The goal for these substances is to keep their levels below the level that could harm the most sensitive use, such as aquatic life.

How will the Agreements protect groundwater?

Groundwater collects, flows or freezes beneath the earth's surface, filling the porous spaces in soil, sediment, and rocks. Northerners are concerned about the lack of information available on groundwater in the NWT and transboundary regions. People are concerned about oil and gas activities, particularly hydraulic fracturing (fracking), and the effects these activities might have on groundwater and surface water. They are also concerned about permafrost (frozen groundwater) melting.

Groundwater Commitments

The commitments in the Intentions Documents recognize that there is currently little information about groundwater and learning about groundwater is expensive (see Section 8 in the Intentions Documents). Therefore, the Parties will classify groundwater bodies, monitor, share information about groundwater, create learning plans, and set water objectives as appropriate according to the level of risk (the RIM approach). Gathering baseline information will happen on a case-by-case basis as use and/or development is proposed or increases. As development or other pressures on transboundary groundwater are predicted, the Parties will develop joint learning plans to gain better understanding about groundwater in those areas. Groundwater quality or quantity objectives, where set, will be dependent upon the use of, and the level of risk to, groundwater. Parties will use and share groundwater reasonably and equitably according to predetermined internationally used principles.

How will the Agreements protect fish, animals, and humans?

Northerners expressed concerns about the health of fish, wildlife, and people, and how water quality may impact health. People are concerned about whether fish and wildlife are healthy and safe to eat. Unhealthy fish and wildlife affect ways of life. People are concerned there are changes in fish and wildlife populations, such as those for beavers, muskrat, moose, wolves, and birds.

Commitments for the biological components of aquatic ecosystems

The commitments for the biological components of aquatic ecosystems are intended to protect the ecological integrity of the aquatic ecosystem and to be proactive (see Section 9 of the Intentions Documents). The biological components include fish, animals and people and how they relate to one another. The commitments will include:

- Safe objectives for water quality and quantity protective of ecological integrity
- Establishment of biological indicators and, if necessary, the development of biological objectives and related actions
- Application of the RIM approach to better understand the links between water quality, water quantity, groundwater, airborne pollution, biology and human health

Changes in the biological indicators—for example, fish health—may require changes in management actions. These actions include reviewing, setting or revising ground and surface water quality and quantity objectives or developing biological objectives. The Parties will monitor these indicators and manage their water and land use to meet the objectives.

How will the Agreements address pollution from the air?

Northerners expressed concerns about air pollutants from upstream jurisdictions that settle into NWT water bodies and cause water pollution. They are also concerned pollutants from the air are harming plants and the animals eating those plants.

Commitments to address air pollution

There are a number of provisions that pertain to airborne pollution, including:

- Transboundary water body monitoring will measure pollutants that have entered the water from numerous sources, including air.
- Regional and basin-level monitoring in learning plans could include monitoring of air, rain and snow in areas where air blows north.
- Learning plans could also address knowledge gaps and establish baseline conditions for pollutants being deposited from air into the water body, either directly or from runoff and melting snow.
- Research provisions could consider the mechanisms for long-range transport of airborne pollutants from outside the MRB.

How will the Agreements address climate change?

Northerners are concerned climate change is causing:

- Permafrost melting, leading to slumping and releases of substances into water, which can affect fish health
- Changes in fish reproduction and populations, which can affect subsistence and commercial fishing
- Water levels changes in some seasons, changes in ice formation and break up, and changes in the frequency and magnitude of precipitation events
- Human health issues

Commitments to address climate change

The Intentions Documents do not have a section that addresses climate change directly. The negotiators studied the issue in considerable detail, consulted with several outside experts, and decided the agreement needed to be responsive to a changing climate in all of its provisions.

For example:

- Water quantity and quality objectives will be set at low levels to make sure the Parties can adapt to climate change impacts.
- Bilateral management under the RIM approach will be based on the most up-to-date knowledge, including information about climate impacts.
- Classification of water bodies will account for the risk from climate change.
- Continual monitoring at the borders and other priority locations in the MRB will help to assess the impacts of climate change on the health of the basin, and the Parties will proactively identify research needs in support of bilateral management, including research on climate change.
- Commitments in the Intentions Documents are designed to be adaptive and responsive to new information and changing conditions, which includes information related to climate change.

How will decisions be made under the Agreements?

Northerners want the Agreements to be enforceable. The way this will happen is through the decisions the Parties make individually, as well as together through the Bilateral Management Committee.

The way decisions are made will ensure the Intentions Documents' commitments are met

The Intentions Documents include the following provisions:

- Transboundary effects will be taken into account and reasonably addressed in regulatory decision-making.
- All relevant information will be shared.
- The downstream jurisdiction will be consulted before decisions on upstream developments are made.
- The upstream jurisdiction will not make decisions that cause unreasonable harm to NWT's aquatic ecosystem.
- There will be clear communication and procedures between the Parties in the event of water-related emergencies.
- There will be clear understanding about what actions will occur if transboundary objectives are not met, including, if required, mitigation of negative impacts on the aquatic ecosystem.
- There will be a formal dispute resolution process.
- All existing legal actions remain available to both Parties at all times.

The Bilateral Management Committee (BMC) for each Agreement will be responsible for implementing its respective Agreement and monitoring its achievement. Ongoing monitoring, setting transboundary objectives, sharing information, prior notification and consultation, emergency response procedures, dispute resolution, review and amendment, and termination commitments are all ways of making decisions that ensure the Parties will meet the commitments of the intentions documents.

What happens when the Agreements are complete and signed?

Once the NWT-BC and NWT-AB Agreements are complete, the NWT will negotiate an Agreement with SK and revisit the NWT-YT Agreement for the Peel watershed. As each Agreement is completed, the commitments under each will be implemented and the BMCs will be established. Each government will do what is necessary to ensure the Agreements are implemented.

Where can you access more information?

Contact: Ms. Annie Levasseur at (867) 765-6774 or Annie_Levasseur@gov.nt.ca

Website: www.nwtwaterstewardship.ca/?q=transboundary

Map 1. Mackenzie River Basin

