



Mackenzie Valley Land and Water Board
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March 1, 2017

File: MV2011L4-0002

Ms. Eleanor Olszewski
MLT Aikins LLP
2200-10235 101 Street
Edmonton AB T5J 3G1

Email: EOlszewski@mltaikins.com

Dear Ms. Olszewski:

Carter Family Expert Report Submission Extension Request - Approval
Taltson Hydro Facility Compensation, Nonacho Lake, NT

On March 1, 2017, the Mackenzie Valley Land and Water Board (MVLWB/the Board) met to consider the Carter Family request to extend the deadline for submissions of Expert Reports in rebuttal to the Northwest Territories Power Corporation (NTPC) April 23, 2012 response to the Carter Family Claim for Compensation (March 15, 2012). A deadline of January 27, 2017 was identified in the original Work Plan. The Board understood that this date was previously established through meetings and discussions amongst legal counsels for all parties (Carter Family, NTPC, and the MVLWB). The Board issued the Work Plan so that there would be a clear, formal timeline for all parties to work within.

On February 17, 2017, the Board received both the late submission of the Carter Family Expert Reports and an extension request to the submission deadline from January 27 to February 17, 2017. In an effort to limit any further delays in the compensation claim Re-Hearing process, the Board will accept the extension request and late Expert Report submissions. An updated Work Plan is provided to reflect changes that result from this late submission. Any additional requests relating to the procedure or timeline described in the Work Plan, shall be made in writing to the Board for approval no less than 14 days prior to the date in question.

If you have any questions or concerns, please contact Shannon Allerston at (867) 766-7458 or email sallerston@mvlwb.com.

Yours sincerely,

A handwritten signature in blue ink that reads "Paul Sullivan".

Paul Sullivan
MVLWB, A/Chair

Copied to: Distribution List

Attachment: Updated Workplan

Work Plan for the Re-hearing of a Claim for Compensation arising from the Northwest Territories Power Corporation's Type A Water Licence in relation to the Taltson Hydro Facility

Purpose of the Work Plan

To outline the process and timelines for the re-hearing of the claim for compensation brought by the Carter family (the "Carters") in the context of the Northwest Territories Power Corporation (NTPC) Type A Water Licence issued on August 31, 2012.

Background

On June 3, 2011, the NTPC applied to renew a Type A water licence in relation to the Taltson Hydro Facility on Nonacho Lake. On September 2, 2011, the Carters filed a Notice of Intervention/Claim for Compensation for past and future economic losses. The Board initially issued reasons supporting that the NTPC pay compensation in an amount to be determined, but the Minister declined to approve the licence in advance of a specific decision on the amount of compensation. Following further proceedings, the Board ordered compensation for nuisance and inconvenience in the amount of \$62,500. The Carters brought an application for judicial review which resulted in the portion of the Board's decision and Minister's approval dealing with compensation being quashed and sent back to the Board for further consideration on the matter of compensation.

Scope of the Review Process

Pursuant to the decision of Justice Shaner in *Jean Carter et al. v. Northwest Territories Power Corporation and the Mackenzie Valley Land and Water Board* 2014 NWTSC 19 ("*Carter v. NTPC*"), the Board is now required to:

1. Provide the Carters with an opportunity to respond to NTPC's April 23, 2012 submission that was in response to the December 20, 2011 Information Request from the Board; and
2. Include consideration of the response submission contemplated in item 1 and, through a re-hearing, consider and decide upon the matter of compensation as sought by the Carters.

Guiding Principles

The primary guiding principle for the re-hearing is procedural fairness, keeping in mind, as well, the Board's rules and the directions of Justice Shaner in *Carter v. NTPC*.

Other general principles include:

- The re-hearing, as with all licensing and permitting processes, will be carried out in a timely manner and shall have regard to the protection of the environment in consideration of the impacts of the proposed undertaking and the importance of conservation to the wellbeing and way of life of the Aboriginal peoples of Canada (section 35 of the *Constitution Act*, 1982);
- Maintaining consistency in process and approach to compensation claims throughout the Mackenzie Valley; and
- The Board will actively continue to ensure compliance with existing Water Licence MV2011L4-0002 requirements through the process.

Specific principles are as follows:

- The re-hearing will proceed in English without formal translation services offered.
- Notice of the re-hearing will be sent to the complete Taltson distribution list. However, the re-hearing will be limited to the issue of compensation involving only the NTPC and the Carters and will not be open for general comment.

- Any requests relating to the procedure or timeline described in the Work Plan, shall be made in writing to the Board for approval. Requests relating to timelines (e.g. adjournment requests) shall be no less than 14 days prior to the date in question (exceptions may be made in extenuating circumstances at the Board's discretion).
- The re-hearing will be open to the public to attend and observe but will not incur all the legislated steps for a formal public hearing as contemplated by the *Waters Act*.

Work Plan Objectives

The objectives of this Work Plan are to achieve the following:

- Establish a re-hearing process that is procedurally fair and meets the standard required by Justice Shaner in *Carter v. NTPC*;
- Ensure adequate information is gathered to consider the matter of compensation; and
- Conduct a re-hearing on the issue of compensation that is timely, efficient and fair to all parties.

Work Plan Tasks and Timeline

	Task	Responsible Party	Deadlines
1	Carters provide their expert reports to the Board and NTPC	Carters	February 17, 2017
2	NTPC will advise whether cross examination of any of the Carter factual witnesses is required	NTPC	March 17, 2017
3	Board may provide a letter to all parties identifying specific issues or questions that may be raised at the hearing	MVLWB	April 7, 2017
4	Pre-Hearing Conference: An agenda for the Pre-Hearing Conference will be distributed in advance.	All parties to the proceeding	Week of May 1 2017 (approximately one hour)
5	Re-Hearing Proceeding: The Re-Hearing will be in accordance with the Board's Rules of Procedure including Public Hearings. A detailed agenda will be distributed in advance. The Re-Hearing will include the following steps: <ul style="list-style-type: none"> - Carters will present oral arguments and respond to questions - NTPC will present oral arguments and respond to questions - Both parties will have the opportunity to present their closing arguments 		May 16 - May 17, 2017
	Board will deliberate and decide on the issue of compensation		TBD