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File: MV2011L4-0002

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Undertakings Resulting from the Taltson Compensation Claim Re-Hearing and associated Reasons for Decision

The Mackenzie Valley Land and Water Board (MVLWB) would like to thank you for participating in the Compensation Claim Re-Hearing held May 16-17, 2017. As you know, two undertakings arose during the proceedings which involve an opportunity for questioning and response by both parties.

These undertakings and the associated timelines for party submissions are provided below:

Undertaking #1: The Northwest Territories Power Corporation will have the opportunity to review the "Report on Samples of Lake Trout, Lake Whitefish, and Northern Pike Taken from Nonacho Lake, NWT, Summer 2014, and Analyzed for Mercury" by R. A. Bodaly and submit written questions on the report to Board staff and the other party by May 26, 2017. The Carter Family will have until June 9, 2017, to respond to Northwest Territories Power Corporation's questions through responses from its expert.

Undertaking #2: The Carter Family will have the opportunity to submit written questions it could not ask or it did not ask on (1) the Aquatic Effects Monitoring Program Report and, (2), the 2014 Sport Fishing Analysis (both attached to the Northwest Territories Power Corporation's written submission filed on April 18, 2017), and will submit those written questions, if any, to Board staff and the other party by May 26, 2017. The Northwest Territories Power Corporation will have until June 9, 2017, to respond to the Carter Family's questions through responses from its experts.

These undertakings result from the Board's decision to add and acknowledge 'new' evidence on the record and to provide both parties with sufficient time to consider and respond to that evidence in a fair way.

The Board's reasons for adding the "Report on Samples of Lake Trout, Lake Whitefish and Northern Pike Taken from Nonacho Lake, NWT, Summer 2014 and Analyzed for Mercury" are outlined below:

The Board heard a motion by counsel for the Carter Family to add the above-noted report to the Re-Hearing record at the outset of the Taltson Compensation Re-Hearing on Tuesday, May 16, 2017. The Board allowed the report to form part of the record on the basis that the Northwest Territories Power Corporation would have the opportunity to review and submit written questions within a specified time.

Counsel for the Carters submitted that the reason for the late application to file this evidence was because pre-hearing conferences with Board counsel and Northwest Territories Power Corporation counsel left her confused as to whether the scope of evidence permitted the introduction of evidence arising later than the original proceedings in 2012. In their April 2017 written submissions, Northwest Territories Power Corporation included evidence that post-dates the 2011 hearings. Counsel for the Carters argued that they should be treated in the same way as Northwest Territories Power Corporation by being allowed to file evidence that post-dates the original 2011 hearings.

Northwest Territories Power Corporation counsel submitted the report should not be allowed into the record. Counsel argued that notwithstanding any discussions between counsel, whether misunderstood or not, it is up to the Board to determine the admissibility of evidence. In this case, the Carters gave Northwest Territories Power Corporation no indication they might seek to introduce this particular report until two days before the Re-Hearing and no indication to the Board until the day of the Re-Hearing, notwithstanding opportunities to raise the issue through requests to amend the Work Plan or at the Pre-Hearing Teleconference held on May 3, 2017. The Northwest Territories Power Corporation submits that the Carters are therefore out of time. Alternatively, if the document is to be introduced, counsel proposed that Northwest Territories Power Corporation have the opportunity to present written questions and make submissions on the responses.

The Board notes that the request to add the report to the record was made on short notice and well past the deadline to provide the Carter's expert rebuttal evidence on February 17, 2017 or final written submissions on April 18, 2017. If there was any uncertainty or dissatisfaction arising from discussions with counsel, the Work Plan gave the Carters the opportunity to make an application to the Board on 14-days' notice.

The Board wishes to be fair to both parties and wishes to respect the integrity of its own process but ultimately aims to make the best possible decision knowing that all relevant evidence was made available. The alternative solution proposed by Northwest Territories Power Corporation allows this to occur without prejudicing Northwest Territories Power Corporation's opportunity to review the document with its expert and respond. It is for this reason that the Board allowed the report to be added to the

record on the basis of an undertaking which provides for written questions and responses.

Both parties accepted the undertaking as expressed by Board counsel, and the timeframes set out in the undertaking.

In response to the Board's decision on Undertaking #2, counsel for the Carters requested that the Carter Family be given the same opportunity to review and respond to the 2014 Aquatic Effects Monitoring Program Report and the 2014 Sport Fishing Analysis; both of which were attached to the Northwest Territories Power Corporation's written submission filed on April 18, 2017.

The Board's reasons for providing this additional time are outlined below:

The Board notes that the Northwest Territories Power Corporation submission was provided in a timely manner which provided sufficient time for the Carter Family to consider and respond to the evidence prior to the Re-Hearing. The Work Plan gave the Carters the opportunity to make an application to the Board on 14-days' notice with regard to any uncertainty or dissatisfaction arising from the submission.

That said, the Board wishes to be fair to both parties and wishes to respect the integrity of its own process but ultimately aims to make the best possible decision knowing that all relevant evidence was made available without prejudicing the Carter's opportunity to review the information and respond. It is for this reason that the Board has allowed additional time to review evidence on the record through an undertaking which provides for written questions and responses.

Both parties accepted the undertaking as expressed by Board counsel, and the timeframes set out in the undertaking.

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

Sincerely,

A handwritten signature in black ink, appearing to be 'SA', written over a light grey rectangular background.

Shannon Allerston
Regulatory Specialist
MVLWB