



What we heard

Results of consultation and public engagement about the Yukon-Northwest Territories Bilateral Water Management Agreements

April 2021

If you have any questions about this What we heard document or the Bilateral Water Management Agreements, please contact the Water Resources Branch at water.resources@yukon.ca.

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Background

What are Bilateral Water Management Agreements?

Bilateral Water Management Agreements (BWMA) help us manage water resources that run between the Yukon and other jurisdictions, including neighbouring territories, provinces and First Nations. These agreements collaboratively manage shared watersheds to maintain the ecological integrity and aquatic ecosystems of the watersheds, and prevent degradation of water in the territory.

The Government of Yukon and the Government of Northwest Territories (“the Governments”) are updating the Bilateral Water Management Agreement for the Peel and Mackenzie Delta sub-basins, as well as establishing a new agreement for the Liard River sub-basin. The goal of these agreements is to modernize standards for transboundary water management and better protect aquatic ecosystem health in the Mackenzie River basin. The Bilateral Water Management Agreements also align with the Peel Watershed Regional Land Use Plan.

These agreements support the Government of Yukon’s collaborative work with First Nations and other jurisdictions to improve management of the environmental and the ecological needs of watersheds.

Feedback

The Bilateral Water Management Agreements for the Peel and Mackenzie Delta sub-basins and the Liard River sub-basin were posted for public engagement from February 18, 2021 to April 16, 2021. We simultaneously conducted targeted consultation with First Nations, who are essential to the development and implementation of Bilateral Water Management Agreements.

Engagement and consultation were opportunities for the public and affected First Nations to review the agreements and provide any input they had. It is important to note that these agreements are quite technical in nature. What we heard from one non-profit organization and three First Nation Governments is summarized below.

General

Based on feedback, we received general support for having these agreements, especially given the increasing pressures of climate change and industrial development on water resources and the growing harvest of fish and wildlife species that are dependent upon water. Reviewers expressed the need to ensure that water is protected and available for traditional, cultural and ecological purposes.

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While there is support for the prohibition of interbasin water transfers, it was suggested that the agreements further define what we mean by 'affect ecological integrity', preferably by including a cubic volume that would result in the ecological integrity of the basin being affected.

Additionally, there was some concern regarding the mention of 'potential for development', specifically in the Peel sub-basin, given the levels of protection outlined in the Peel Watershed Regional Land Use Plan. It was advised that governments review the plan and revise wording regarding any development.

Lastly, we heard that any reports that are developed from the implementation of these agreements should be as detailed as possible and be made in a manner easily accessible to the public.

Rights and Traditional Territory

One response expressed that the rights and traditional territory of First Nations are affected by these agreements and there are expectations for the Governments to enter full meaningful consultation prior to any decision that has the potential to infringe on treaty or Aboriginal Rights.

Another response supports the agreements and feels that they will not adversely affect, but rather uphold the treaty rights and responsibilities recognized and protected under First Nations' Final Agreements through embracing mechanisms and processes for cooperation between jurisdictions.

While it is believed that agreements are consistent with the minimum human rights standards for the survival, dignity and well-being of First Nations as recognized in the United Nations Declaration on the Rights of Indigenous Peoples, it was strongly recommended that the agreements also expressly acknowledge the importance of applying and upholding international human rights standards in the management of water.

Additionally, we heard that First Nations should be recognized as key rights holders and partners in the agreements, as the transboundary waters fall within traditional territories.

Bilateral Management Committees

To reduce burden and resources, feedback suggested that the Governments coordinate meetings of the Committees for the British Columbia- Yukon Bilateral Water Management Agreement and the Northwest Territories- Yukon Bilateral Water Management Agreement, given the overlap of interest, representation, and scope of the agreements.

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There was a recommendation to include the composition of the Bilateral Management Committees, including the number of members, qualifications, and whom members would be representing.

Traditional Knowledge

Feedback indicated the importance for both data collection and triggers to be informed by Traditional Knowledge, and First Nations are committed to sharing what they know about these watersheds as appropriate. The Governments are advised to provide capacity funding to First Nations for Traditional Knowledge studies of the transboundary streams to assist in the implementation of the agreements and gathering information regarding the health and observed changes to the streams over time.

Data Collection

There was support for the ongoing collection of additional baseline data relating to rate of flow, biological conditions, and surface and groundwater quality, given the gaps in knowledge. However, there was mention that the Governments ensure data collection undertaken via learning plans aligns with other monitoring activities in the area. An example of this is the activities in Peel Watershed Regional Land Use Plan. First Nations have expressed interest in being involved in data collection where applicable.

Revise Language

We received the recommendation to revise the following wording under **E5. Approach to Setting Transboundary Water Quality Objectives** from:

“In setting Transboundary Water Quality Objectives, the Parties will... recognize the terms of land claims agreements, which the Parties have reviewed and understood” in the Liard Agreement, and “In setting Transboundary Water Quality Objectives, the Parties will... recognize that NWT and Yukon have obligations under land claims agreements, which the Parties have reviewed and understood” in the Peel Agreement,

To:

“In setting Transboundary Water Quality Objectives, the Parties will... recognize that the Northwest Territories and Yukon have obligations under section 35 of the Constitution Act as well as land claims agreements, which the Parties have reviewed and understood. There are also ongoing land claim and treaty negotiations that must be considered and understood by the Parties as appropriate.”

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Another suggested revision in the agreements was to indicate that Learning Plans must establish triggers, as opposed to the current wording, which indicates that Triggers may be established.

Lastly, there was a strong recommendation to amend section 15.5 Aboriginal and Treaty Rights to read:

“This Agreement shall be construed as upholding any existing aboriginal and treaty rights as recognized and affirmed in section 35 of the Constitution Act, 1982, which include rights now existing by way of land claims agreements or which may be acquired either under land claims agreements or otherwise, and not as abrogating or derogating from them.”

Rather than how it is currently stated:

“Nothing in this Agreement shall be interpreted in a manner inconsistent with the exercise of any existing aboriginal and treaty rights as recognized and affirmed in Section 35 of the Constitution Act, 1982, which include rights now existing by way of land claims agreements or which may be acquired either under land claims agreements or otherwise.”

Recommended Additions

The following additions were recommended to include in the agreements for greater clarity and understanding:

- **2. Definitions:** Include definition for ‘wetlands’ given the complexity and variety of wetlands, plus the contribution they make to water quality.
- **6.1 General Quantity Commitments:** With regards to the upstream Party passing an amount of water equal to the sum of needs for the Ecological Integrity of the Aquatic Ecosystem plus 50% or more of available water to the downstream Party, it was advised that the agreements state the amount for ecological integrity and provide rationale for the “plus 50%” figure.
- **15.6 Public Engagement or Consultation:** Agreements should include specific details as to how public engagement and consultation will be done.
- **A3. Bilateral Water Management Actions:** Bilateral Water Management Actions will be designed in recognition of data availability constraints, opportunities and needs. Define what the threshold for determining ‘limited data availability’ and identify whether the data currently available for each watershed is considered limited or sufficient.
- **H1. Surface Water and Groundwater Learning Plan:** Add section to the ‘Watershed Profile’ that is specific to indigenous values.

Moving Forward

What are we doing in response to the feedback we received?

Following the consultation and engagement periods, we reached out to clarify some feedback and provide additional overview and explanation of the agreements. While much of the feedback received will have to be discussed with the Government of Northwest Territories, we believe we will be able to accommodate most of the technical recommendations within the Terms of Reference for each agreement once the Bilateral Management Committees are formed. Furthermore, recommended revisions and additions will be considered and coordinated into the agreements as agreed upon by the Government of Northwest Territories and the Government of Yukon.