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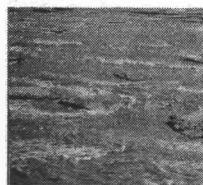


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# Northern River Basins Study



NORTHERN RIVER BASINS STUDY PROJECT REPORT NO. 84  
**LIFE AFTER NRBS: A PROPOSAL  
 FOR INTERJURISDICTIONAL  
 MANAGEMENT OF THE  
 PEACE, ATHABASCA AND SLAVE  
 RIVER BASINS**



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Prepared for the  
Northern River Basins Study  
in support of  
the Board

by

Dr. John Stager  
University of British Columbia

**NORTHERN RIVER BASINS STUDY PROJECT REPORT NO. 84**  
**LIFE AFTER NRBS: A PROPOSAL**  
**FOR INTERJURISDICTIONAL**  
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## **PREFACE:**

The Northern River Basins Study was initiated through the "Canada-Alberta-Northwest Territories Agreement Respecting the Peace-Athabasca-Slave River Basin Study, Phase II - Technical Studies" which was signed September 27, 1991. The purpose of the Study is to understand and characterize the cumulative effects of development on the water and aquatic environment of the Study Area by coordinating with existing programs and undertaking appropriate new technical studies.

This publication reports the method and findings of particular work conducted as part of the Northern River Basins Study. As such, the work was governed by a specific request from the NRBS Board and is expected to contribute information about the Study Area within the context of the overall study as described by the Study Final Report. This report has been reviewed by the Study Science Advisory Committee in regards to scientific content and has been approved by the Study Board of Directors for public release.

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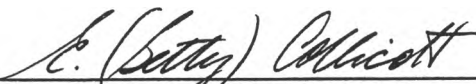
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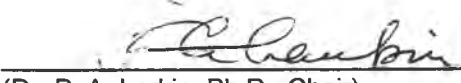
  
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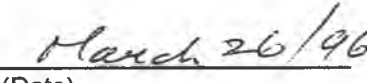
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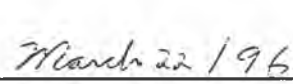
  
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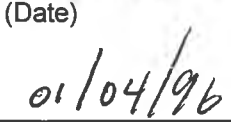
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# LIFE AFTER NRBS: A PROPOSAL FOR INTERJURISDICTIONAL MANAGEMENT OF THE PEACE, ATHABASCA AND SLAVE RIVER BASINS

## STUDY PERSPECTIVE

The management of the basins of the Peace, Athabasca and Slave Rivers in Alberta has been the topic of discussion for Northern River Basins Study Board members since the inception of the Study in September, 1991.

The Study Board's Question 16, as developed by the Board in February, 1992, identified the need to generate appropriate options for interjurisdictional bodies.

### ***Related Study Question***

- 16) *What form of interjurisdictional body can be established, ensuring stakeholder participation for the ongoing protection and use of the river basins?*

The Board's Strategic Planning Committee was given the leadership role in generating options for the Board's consideration and commissioned a study, "A Review of Options for Interjurisdictional Institutions for the Northern River Basins Study" by Steven A. Kennett and J. Owen Saunders, Canadian Institute of Resources Law, University of Calgary (NRBS Project Report No. 62), on the Board's behalf in 1995. The objectives of this study were 1) to develop a framework to guide the Study Board in the process of institutional design and 2) to describe a series of models that could be adopted for an interjurisdictional body.

Following the completion of that study project and initial discussion, this document was presented to the Board as a Discussion Paper to assist the Board with further discussions and deliberations. The paper proposed seven (7) principles to define the Study's work as well as seven (7) goals for the kind of river system wanted. Further, models of other organizational structures were reviewed.

Based on the preliminary results of NRBS stakeholders and household surveys (NRBS Project Report No.69) which supported the concept of a post-NRBS infrastructure, "the paper concluded that the Board's Question 16 was indeed legitimate, and needed an answer" (Dr. John Stager, author).

Following the paper's utilization as a discussion tool, the NRBS Science Advisory Committee recommended to the Board and the Board agreed that the paper be upgraded from a discussion paper to a full-fledged NRBS technical (project) report.

In its original discussion paper format, this report was utilized by the Board during their discussions and deliberations leading to recommendations concerning interjurisdictional basin management.



## REPORT SUMMARY

The Board of the Northern River Basins Study posed a series of questions as a basis for meeting its mandate. Question 16, which addressed the future, asked "*What form of interjurisdictional body can be established, ensuring stakeholders participation for the ongoing protection and use of the river basins?*"

This paper summarizes the working background for an answer. It sets the stage by proposing seven principles to crystallize the work of the Study, and in a similar number of goals, suggests what kind of river system is wanted. It then reviews models of other organizations structures used in similar situations. The uniqueness of the NRBS region makes it awkward to import something from outside. To make the case, special features about science and monitoring in the Basins, the overlap of special legislative conditions, and the roles of stakeholder, the public at large and First Nations are all examined to provide the background against which to decide. After considering preliminary results of a stakeholder and household survey which firmly supported the establishment of some post-NRBS infrastructure, the paper concludes that Question 16 is indeed legitimate and needs an answer.

Progress towards an answer is materially helped by a study by Steven Kennett and Owen Saunders (see references). Their pattern of thinking is applied to the NRBS situation and a series of conclusions offered as a basis for advancing an administrative strategy to recommend to the Board. In approaching these recommendations, a choice is exercised to propose a fairly firm and tightly constructed option, which might seem rigid but is calculated to be responsive to the very broad range of scientific and semi-political issues that are judged unique to this region. Furthermore, it seeks to be sensitive to constraints faced by present governments both in thinking and resources.

A two-tiered model is advanced, described through twenty-six separate recommendations. Based upon an Agreement between relevant governments, the first tier is a Board, with fairly broad representation that is seen as concerned mainly with interjurisdictional, whole river basin management. With due consideration, supported by research and public advice, this offers direction to the governments that created the Board. Separate from and independent of the Board, but within the Agreement, is a Committee, again, broadly representative of governments, First Nations, stakeholders and public, to oversee the stewardship of the management functions. Both units are seen to be economical in size and funded by partners in the Agreement. It is suggested that this be tried for five years, and reviewed thereafter. The proposal is designed so that it could fit within the Transboundary Management Agreement for Mackenzie River Basin which has been negotiated, but not yet signed. Appended to the paper, as an example, is a Draft Agreement of the type which the governments of Alberta, Northwest Territories, and Canada might conclude to meet the needs of the recommended structures.

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## 1.0 INTRODUCTION

The Northern River Basins, the drainage of the Peace, Athabasca and Slave river systems, have an impressively large area of catchment bounded by their drainage divides. By using the word basins in the title, we move easily to the concept of the area as a region, and a stage for understanding the Study and a basis for judging or criticizing the results. But the Study did not begin with the basins; it began with the river systems. The real map that we should use as reference is the 'circulation system', the trunk rivers, major tributaries and even finer dendritic streams which taken together is the life blood for this northern ecosystem. The distinction between region and rivers is worth making because the concerns and concepts for the Northern River Basins Study begin with river water as a flowing, renewing resource.

That having been said, what has been learned throughout the Study is that one has to go a long way from the river bank to capture all the things that have direct influence on the nature and quantity of river water. Land use practices, agriculture and forestry, the throb of industry and urban dynamics, and the global circulation of air borne wastes can all find traces in the basin waters. While we may study and attempt to prescribe for healthy aquatic systems, they cannot be entirely separated from other land based human activities, sometimes a world away.

The accidents of history have overlain the unity map of the river basins with a jurisdictional pattern that is quite incongruent. The basin is dominated by the province of Alberta, but has parts in British Columbia, Saskatchewan and the Northwest Territories. Clearly, any future prescription for comprehensive management of the rivers is interjurisdictional and will need government agreements, or cooperation at least, for success.

The recommendations from NRBS will doubtless include state of the environment concerns, some of which originate outside the basins, mitigative strategies, and short- and long-term ecosystem standards and goals. Moreover, the northern rivers tie together lands that not only have value by many human measures, but they have potential wealth. Both social and economic factors are bound to provoke change and call for choices. If what has been learned from the study is to have a chance to make a difference for future generations, we need a reliable system for monitoring the state of the rivers and directing the changes that inevitably will occur.

The structure and dynamics of NRBS, in themselves, have pointed to new directions. By establishing a widely representative board with true independence to manage the study, and by providing secure funding, a new way of doing things is amply demonstrated. It is a process that can run parallel with government functions and regulations, and yet view the subject in its transjurisdictional context. It can be argued that the impartiality of the Board plus the public way it has run its affairs has provided information and advice free of partisanship which in the long run commands respect. At the close of the Study, the government partners should reflect on these unlooked for results and acknowledge the extent of their own confidence in the process. It may well allow a different way of facing the future.

As a generality, it is suggested that to end NRBS without some new continuing and active attention, formally structured, would deny the momentum and degrade the work and results already accomplished. But we have to argue that such a continuation is more than just a “good thing”. It has to be set against what we have now. Our review of the water and land legislation shows that despite overlapping in both jurisdiction and intent, governments do have a working system that defines options, grants privilege, exacts performance, exercises controls - all in the name of the public. I am going to take the position that in large measure, governments do a good job in being stewards of the waters in the Northern River Basins. They get better at it by renewing their legislation and finding ways to share responsibilities and avoid conflict. Some on the board may not share this view, but I hope there will be enough common ground to see that we do not need to redesign the system all over again. If there is weakness, it is in treating naturally integrated river systems in their entirety despite lying in artificial neighbouring and overlapping jurisdictions. The Study emphasizes ecosystem, and it is for this reason another way to apply public values to the basin has to be found.

## **2.0 SETTING THE STAGE**

In anticipation of writing concluding statements with recommendations, the Board should adopt some commonly held understanding and values or principles to act as a basis for designing the future in the basins. They are:

The Board believes:

1. There needs to be respect for natural ecosystems, and maintaining the structure and functions of these systems ought to condition the way any modifications to them are contemplated or introduced.
2. That citizens of the Northern River Basins should exercise their choices about altering use and conditions in the ecosystems so that the opportunities for well being of subsequent generations is protected.
3. The northern rivers are the integrators in the basins, and there is a moral obligation to keep harmful upstream interventions from causing unwanted effects downstream.
4. There are toxic elements or substances in the environment of the Northern River Basins and other changes in the rivers that are unacceptable, and they need to be eliminated insofar as possible.
5. That appropriate decisions should be taken to prevent threats of serious or irreversible environmental damage to the Northern River Basins even in the absence of full scientific certainty.



6. Interests and concerns of stakeholder and the public at large have to be applied effectively to the policy, planning, decisions, standards, and management practices affecting the Northern Rivers.
7. The Aboriginal people resident in the Northern River Basins should have formal links to future arrangements for the region so as to contribute their traditional knowledge, protect their culture and accommodate political change.

There is a host of principled expressions to describe human values about the integrity and beauty of nature, the dignity of work and the importance of economies, rights of residents, etc., that apply to thinking about the future of the Northern River Basins. But if we could conclude that the seven statements above are sufficiently comprehensive in their broad interpretation, then they might be enough to build on.

In order to give effect to the principles, there are many desired attributes of the river basins that are implied. For example, the notion of finding or recognizing toxics and developing strategies to deal with them means we have to have good science, newest technology, and vigilant monitoring. Other parts of our principles will need the same things. It is through the various workshops that the Board has been having that we hoped to identify in fairly precise terms, what we envisage for the Northern River Basins in the post-NRBS era. I am offering below, in succinct form, a shopping list of those attributes.

### **3.0 WHAT KIND OF RIVER SYSTEMS DO WE WANT?**

In a sense we don't want the rivers to change very much; we have already altered them somewhat, and some of these changes we would like to reverse. But generally, we expect the desirable characteristics of the Northern River Basins to be more or less as follows:

1. The water should be safe to drink.
2. Any animals or plants from the river ecosystem that we choose to eat should also be safe from a health point of view.
3. The rivers should not pose threat to the aboriginal traditional lifestyle.
4. There has to be reasonable access to use the rivers for economic, industrial or municipal purposes.
5. Recognition is needed to give some security to the rights of current water users.

6. People ought to have recreational and aesthetic enjoyment of the natural or wilderness state of the Northern Rivers.
7. The rivers should still conserve ecological "capital" and support biodiversity.

The list is not in any priority order, and it is acknowledged that some of these characteristics do infringe upon one another. Also, in expressing these wishes as general statements, they do not take account of the geographic variability within the river systems. For example, on any particular stretch of a stream, one or more of the attributes above can have a higher priority by public consensus than the others. Solutions to conflicting standards may produce local, site specific compromises, but given the basins as a whole, there should be capacity to meet all the desirable conditions. It follows that in designing ways to resolve current and future competing needs, we want a publicly acceptable process.

#### **4.0 PREPARING THE GROUND**

The Strategic Planning Committee (SPC) of NRBS has been worrying about how to answer Question 16 for some time. Even though it was expected that the Other Uses Component was beavering away to provide answers, SPC continued to look for context and strategy. Early work of the Committee dwelt on the goal for the best possible science program and its presentation to the public, and on how effectively people in the basins could access and influence the study by the program of community meetings. As it turned to Life After NRBS, the Committee blocked out a series of questions that seemed important to pursue.

#### **4.1 THE LEGACY OF NRBS**

In terms of the non science aspects of the Study, the legacy is mainly in the process of operation. There was the Board with broad competence and interests that shared the full authority for the project. It projected an arms length independence from governments. It sought to conduct science in full view of public scrutiny in a way that one could bear upon the other. It looked to recognize and use the advice of a whole range of users of the aquatic ecosystem. If these were successes in the way the Study operated, then something should be put in place so that the approach could continue.

#### **4.2 OBJECTIVES FOR BASIN MANAGEMENT**

The study clearly showed that there was high value in most of the activities it engaged in, and surely there was a place for them to continue after the final report. For example, research would doubtless recommend that more was needed. Certainly there would be a need to monitor environmental conditions. Public participation is best and public education is clearly part of it. Also, there will be continuing interest in economic opportunities and infrastructural change that will need resolution. And First Nations are an abiding presence in whatever the future holds. All of these issues will not

end when NRBS ends, and this is another reason to see a continuing agency or entity that projects the benefits of the study.

### 4.3 INTERJURISDICTIONAL MODELS

The Committee was concerned to learn how other interjurisdictional, or intrajurisdictional resource issues were handled. Several examples were mentioned, mostly to do with water, and many were not far away. In the end, Alberta Environment Protection provided a précis and critique of the following: *The Prairie Provinces Water Board (PPWB)*, *The Mackenzie River Basin Committee (MRBC)*, *Fraser River Basin Board (FRBB)*, and *Chesapeake Bay Agreement (CBA)*. (Alberta Environmental Protection, 1994).

The PPWB, with partners of the three prairie provinces and the federal government is one of the first examples of interjurisdictional agreements in Canada to designate a river basin as its territory. It has been successful, for a long time, mainly in resolving water quantity issues from one side of a provincial border to the other. It also has committees on ground water and water quality, again with the transborder concerns at the forefront. It is instructive for NRBS but not suitable to adopt because it does not have any public participation.

The MRBC, partly because it deals with the Mackenzie drainage which includes the Northern Rivers, might be a good beginning place for a recommendation for Question 16. The master agreement which is complete but not yet signed by all parties has much of what is needed as a master template under which a bilateral transboundary agreement between Alberta, NWT and Canada could exist. There are some lingering hesitations because of the long time taken to reach even this yet incomplete stage.

The FRBB came to be because each of several agencies or interests attempted to design the future of the Fraser Basin on their own terms. The Federal government had its green plan for spawning fish, the province was concerned with pressures for economic development, and municipalities organized in the interest of their own orderly growth, while First Nations banded together to establish their birthright. Thus, FRBB joined all the parties, shared the costs and embarked on a master planning exercise based on a vision of sustainability. Most of the concentration is on process - how to organize and lay down the ways to plan in an efficient and effective way. Less emphasis is placed on research except as needed to plan. It has many of the characteristics of NRBS in set up even if the mandate seems broader. Both have a set time frame to finish by certain dates. Also, FRBB is an intrajurisdictional agreement with upstream/ downstream issues, but not the risks of cross border independent water control. It does not seem to be a model for an ongoing arrangement that is possible for post NRBS. There is an innovative funding trick here in having municipalities make per capita contributions although the province and Canada carry most of the load. Is this an idea for NRBS?

The CBA brings into effect the co-operation of the states surrounding Chesapeake Bay with the goal of cleaning up the bay, keeping it clean and providing for orderly change in a region of real

population pressure. Non government Panels and Commissions are used to develop strategy, and major public awareness education is employed to deliver the political will for serious co-operation. Recommendations do not shy away from proposing regulations and they also use economic incentive to achieve results. There are many interest group associations that have joined the crusade. Still the authority is with the individual states and any action will depend upon them. The scale of the problems in Chesapeake Bay is different than NRBS, and the already massive change from nature in the Bay area is not the same as northern Alberta or in NWT. But it represents the power of the public in an attempt to call the tune.

There was talk of other examples of interjurisdictional arrangements but no systematic search for a blueprint to apply took place.

#### **4.4 IS THE PRESENT MANAGEMENT SYSTEM ADEQUATE?**

The SPC recognized that a report card on how things are done today could influence any recommendations about a future system. The Alberta government is really in the driver's seat when it comes to use allocation of water and the protection of the aquatic ecosystem south of 60°, and it is the federal government north of 60°. In return for privileges in the use of water or water courses, certain conditions are imposed, and responsible follow through is expected. Yet no research was commissioned to write the report card on behaviour. In the case of some of the scientific studies, there may well be comment and even recommendations about the regulatory environment that can be backed with evidence. Overall, however, we are left with impressions and hearsay. At this point it may be risky to observe that not everyone believes that everything is being done by the book. But there is a level of distrust in what the government or industry report or what they say they do or do not do, that is expressed by the public. The suspicions are more acute across borders. The absence of research on this matter confines our recommendations to either doing a study of this sort or arguing for an agency to oversee the situation from a platform of independence and influence for results.

#### **4.5 WORKSHOPS**

The grand gathering at Jasper in June 1994 brought the Board, SAC and Study staff together to learn important background material and block out expectations for the end product of NRBS. Among other things, it strengthened public participation arguments, reinforced the need for ongoing research and monitoring, raised concerns about funding and the role of stakeholders in paying parts of the bill, wondered about how to balance contending land and water uses, and recognized the need for ways to resolve disputes.

At another point in December 1994, the Board held a strategic planning workshop in part about "Life after NRBS", but also reviewed water management and policy in Alberta. Again the questions of models arose, and questions similar to the ones raised at Jasper. What is emerging at this point is the recognition that the Mackenzie River Basin Committee and its master agreement is a touchstone for what should follow the study.

The SPC later met to commission a study on governance practices, and took time to review the overall goals for the basins, the interjurisdictional and intrajurisdictional problems, the public role and aboriginal presence. Again the Mackenzie River Basin Committee was put near the top of the solutions.

#### **4.6 OTHER WAYS TO GOVERN RIVER BASINS**

The Strategic Planning Committee contracted Steven Kennett and Owen Saunders to provide a systematic review of options for interjurisdictional institutions for the Northern River Basins. This helpful document is discussed later.

#### **5.0 SCIENCE AND MONITORING**

NRBS is a science project, has produced good science results, and looks to maintaining this momentum particularly in answer to public questions. The necessary science activity has not stopped because the Study has ended. There has also to be room for continued research into subjects that are science questions, not just public ones. And research design that is co-operative and integrative among disciplines is best adapted to the desired ecosystem approach of understanding the basins. Besides knowing and understanding, there is a need for the kind of science that provides the best alert system to identify and mitigate unwanted properties in the rivers and the life web dependent upon them. We already know of contaminants and toxic substances, and through research seek ways to subdue or eliminate them. Thus it is necessary to draw benefit from all sources of knowledge, and in the Northern River Basins it includes the traditional knowledge of First Nations.

The future of the basins cannot be responsibly determined without a continued stream of scientific and traditional knowledge. Thus recommendations about post-NRBS governance call for a structure that will at least provide the follow-up of research recommendations in the main report, and will report the results of ongoing science publicly on a timely basis. There should also be a means for having residents and other public interests take part in setting the research agenda and assessing the results.

*"Eating the Fish and Drinking the Water"* There is probably no other short cut expression to capture the essence of what the Northern River Basin Study wants to achieve. People need to know they can continue to eat fish and drink water without risk to themselves. Only within a healthy aquatic ecosystem is this likely. The safeguard of this proposition requires a systematic way of checking on the so-called health of the ecosystem that is generally referred to as monitoring. There are already requirements to measure that state of water quality, water use and in-stream flows to meet existing standards, but there is also a need to monitor ecological change and the unknown risks. At the same time, we need science and technology to upgrade the standards for water and its system, and the means to monitor them. Once again the residents and other interests are benefactors and proper provision for public advice and influence is called for, within an environment of open access to information.

## 6.0 THE WEB OF LEGISLATION

To prepare for recommendations about the future, the Board requested a review of jurisdictional responsibility and existing legislation on water matters for the river basins. There are many complexities and legal judgments that produce some uncertainty on particular issues. The review was mainly to appreciate the scene rather than assess the effectiveness of various laws.

Water resource management in the Northern River Basins is the responsibility of three governments: Canada, Alberta and the Northwest Territories. (Technically, British Columbia and Saskatchewan have parts of the basin but were not included in the review.) Although water is not mentioned, The Constitution Act of 1982 sets up exclusive and shared jurisdiction for water management. Broadly speaking, the federal government has exclusive responsibility for fisheries and navigation, and the provinces have exclusive rights over resources, and in this case water. Both levels of government can make laws about environmental management or conservation and protection, and for water these jurisdictions overlap or are shared in the case of transboundary settings like the Northern River Basins. Thus we can review the three cases as follows:

1. Alberta as a province owns the water resources and has prime responsibility for allocating, licensing and use under the existing Water Resources Act, and it protects water quality through the newer Alberta Environmental Protection Enhancement Act. On quality issues, the federal government can invade Alberta in the name of national standards and where cross-border questions arise. Even though the Feds have paramouncy, there is more likely to be co-operation and sharing or seconding function to Alberta in the name of efficiency.
2. Northwest Territories is different because resources, including water, are owned by the federal government, but some responsibilities like forest management have been delegated to the Government of the Northwest Territories (GNWT). The NWT Water Act, a federal act, controls both water quantity and quality issues and has a Water Board appointed by the Minister of DIAND which has public hearings for licensing. The Federal Minister is the ultimate authority and the federal government is paramount in transborder situations.
3. Canada has a range of quite old yet powerful "exclusive jurisdiction" statutes like the Fisheries Act. Others like the Canada Water Act set Canada wide standards, and some new "green" statutes, the Canadian Environmental Assessment Act and the Canadian Environmental Protection Act for instance, do the same. The acts provide for co-operation with provinces, but in case of doubt, the federal acts take precedence. There is in these laws nation wide provision for environmental impact assessment and potential for banning toxics and other water quality controls.

In a transboundary river basin where three parliamentary or legislative mandates can apply, the affected jurisdictions are pretty much compelled to work together through administrative agreements to harmonize their respective goals and responsibilities. Administrative arrangements for river basin management can range from minimal co-operation like the

Master Appointment Agreement in the Saskatchewan - Nelson basin, to a much more active delegation of each jurisdiction's mandate. In this latter case, a River Basin Authority with power to allocate and manage water would require some major delegation of legal authority that is not countenanced in existing legislation. Maybe we need a middle ground.

## 7.0 THE ROLE OF THE PUBLIC

NRBS throughout its mandate has conducted its business in a very public way. It is not surprising that Question 16 specifically asks for ways in which the public will continue to act on behalf of the Northern River Basins. But the experience gained so far has to instruct us in making recommendations about public participation.

In setting up the Board for NRBS, ministers departed from tradition and brought together representatives of a range of constituencies including appropriate government departments from Federal, Provincial and Territorial realms, elected municipal officials, agriculture and resource industry spokespersons, academe, environmental interests, and Aboriginal peoples. Management of the project by such a comprehensive cross section of interests is an exercise in public involvement that Question 16 alludes to. Without writing a definitive report card on the success of the NRBS Board, it can be taken that after four years any initial misgivings among Board members have greatly softened as mutual respect around the table has become a common purpose of doing the best job possible. It took compromise and cooperation, and learning into the bargain. The consequences have not only affected the running of the Study but were carried back to constituency camps by Board representatives. In this way involvement has been amplified and trust extended so that there is a *de facto* public connection to management. An important part of this is that a broader spectrum of experience is brought to the table, and there is a greater satisfaction with outcomes. It can and should be argued that this way of doing things is a good precedent for governments to follow.

There is another route to involving the public, and NRBS in a way pioneered this activity. The open Board determined to carry on open business, and took its show on the road. Multiple fora in most basin communities provided the chance to advertise the Study heavily and explain the purposes of research and other aspects of the work. Its main object, however, was to get local concerns to the Board directly, and the evidence gathered was fed back into planning and direction. Feelings of direct connection to NRBS extended into the communities, to the extent that just a few citizens were unaware of what the study was about. There were some concerns about the interpretation of evidence gathered in this way and other lessons about process have been learned. Nevertheless, it turned out to be the best way to bring the residents of the Northern River Basins into the Study, and alternatively, give the study credibility with the public.

If public trust can be achieved, then it should be made secure, and one area in which to do this is by the free flow of information on a timely basis. Reports and newsletters help but it is the sense that there are no secrets from anyone that really counts. The notion of public participation should have access to information built into it.

Another aspect of public-at-large is invoked in the term "stakeholders". Although not a very elegant term, it does define those for whom change or new directions in the river basins have direct consequences. In addition to individuals, citizens and residents, it includes entities like industries, municipalities, and interest groups of several types. Technically, it might include government departments, but by convention governments are the decision makers who affect the stakeholders. Here is an opportunity for those organized around a viewpoint or other purpose to play a role. In the case of NRBS, some stakeholders were present at community meetings; others communicated directly, and in a few cases, are actually represented on the Board. The Study itself did commission research to find out the stake of stakeholders, and get their advice. It may be important, however, to see what extent direct stakeholder presence is to be recommended.

Throughout this discussion of the public, nothing has been said about Aboriginal people. They have been, and are present in every aspect of public connection to NRBS. This bears separate consideration.

## **8.0 FIRST NATIONS**

Aboriginal peoples are different from other residents of the Northern River Basins by virtue of their heritage, their culture and their traditional lifestyle. The distinctiveness shows up in institutional and political forms through Treaty 8, reserves, the Indian Act, some cooperative agreements with governments, and current outstanding claims for land and self government. In the case of NRBS, three "Treaty 8" chiefs were appointed to the Board along with one "Treaty 8" Dene/Métis representative. There are other examples of boards or agreements, especially in the northern parts of Alberta, and in NWT, where specific representation of Aboriginal peoples is prescribed. The arguments for what may seem special treatment arise from the special relationship Native people have with the land. That relationship offers a different kind of experience and wisdom to any process that deals with new ways of using the Northern Rivers and their basins. Because we use the term "First Nation" we acknowledge the precontact intimacy of man and land which, although modified by technology, persists in a subsistence economy today. Its importance to the people who follow it gives reason to protecting the opportunity that it can be continued. Also, the traditional knowledge bequeathed to new generation is being offered in support of universal science as a way of making wise choices about the future in the basins.

The respect for First Nation governance has led NRBS to working within a protocol that provides for consensus decision making and protects Aboriginal participation from consequences they do not control. The experience is that both Aboriginal and non-aboriginal partners through an agreement can accomplish their purposes effectively and with good humour. What is sometimes distracting is the fact that the agreement itself is being followed in an environment of unfinished political business between Canada and some of its First Nations. Thus, if we were to recommend a post NRBS structure with defined Aboriginal participation, it may be difficult to offer a clear definition. Instead, we shall have to signal as clearly as possible our intent, and call on the good will of Aboriginal peoples to take up the invitations to partnership.



## 9.0 THE STAKEHOLDER SURVEY

The future of basin management was introduced into the stakeholder survey conducted for the Other Uses Component. Although it will be reported more extensively, an indication of the results are presented here to help answer Question 16 (Reicher and Thompson, 1994). The survey was set up in two parts. One was the household telephone contact and the results could be organized by kind of settlement you lived in, by ethnicity and by geographic sub-basins. The second was a survey of other stakeholders by function or interest. The groups were as follows:

municipal government; agricultural groups; agricultural service boards; commercial recreation; industrial users; trappers; commercial fishers; environment/recreation groups.

In each survey, post NRBS type questions were asked, and here are the summary of results.

- *Should we establish an ongoing, inter-governmental and stakeholder committee responsible for protection and use of river basins?*

Agree 76.8% Disagree 4.9% Don't know 18.4%

The overall agreement here has some underlying disquiet mainly because some groups are not that anxious and there are a lot of 'don't knows'.

- *Should the inter-governmental and stakeholder committee be responsible for developing resource regulations in the basins?*

Agree 79.4% Disagree 8.1% Don't know 12.4%

Again fair agreement, but also real differences between groups, especially industry, agricultural groups and commercial fishers. Also Aboriginals were more in favour than others.

- *Should the government/stakeholder committee be responsible for enforcing existing regulations?*

Agree 72.6% Disagree 15.4% Don't know 12.0%

Agreement here is still positive but less enthusiastic, and some like industry and agricultural boards do not support this idea.

- *Should this committee be responsible for conducting and coordinating research in the basins?*

Agree 79.9% Disagree 6.7% Don't know 13.4%

This apparent high level of support is not universally shared. Trappers and commercial fishers and agricultural boards are significantly different - statistically. The high 'don't know' clouds the picture, and in this question there were different responses from different geographical sub-basins.

- *Should the committee be responsible for issuing licences and permits in the basins?*  
Agree 49.9% Disagree 26.7% Don't know 23.4%

No matter how you look at these results, there is not only limp support, there is no consensus by groups, by ethnicity or by sub-basins.

- *Should the committee be responsible for preparing management plans for the basins?*  
Agree 82.3% Disagree 5.7% Don't know 12.0%

This level of agreement is pretty consistent no matter how you cut it. It is also high compared to others.

- *Should the committee be responsible for providing advice to the provincial, federal and territorial governments?*  
Agree 87.8% Disagree 3.2% Don't know 9.1%

This is the highest agreement of all questions, and consistently so by however we look at the results.

- *Should the committee be responsible for developing educational programs for residents of the basins?*  
Agree 80.5% Disagree 5.2% Don't know 14.2%

Again there is good agreement and consistency. A few more uncertain in the 'don't knows'.

- *Are you willing to participate in a government/stakeholder committee?*  
Agree 73.8% Disagree 7.0% Don't know 19.1%

On balance, people seem to commit personally or institutionally to this process. Some groups are less willing, and there is a fair level of uncertainty all round.

Before we put too much weight on these results, it may be useful to note that such a survey has high variability in understanding and/or expectations on the part of the respondents. Although the general ideas were explained before answers were given, we may need to be a bit cautious in our interpretation. That said, it does look as if there is very good support to form a government/stakeholder entity for the basins. Also, the weight of judgment comes down more on

the side of advice, influence, education than it does on the side of direct management, regulation and licensing. Thus there is evidence of public support for such a conclusion and any recommendation that may be based upon it.

## **10.0 THE PRIOR QUESTION: "DO WE NEED ANOTHER INSTITUTION?"**

Question 16 assumes some form of institution to follow NRBS. It might be useful to convince ourselves that one is needed. What are the arguments?

Given the principles and goals for NRBS adopted by the Board and reflected throughout the findings of the Final Report, there is a clearly implied continuity into the future. There are calls for:

- The recognition of the Northern River Basins as an integral entity, and the acknowledgement for its own sake and the sake of its residents that it is best dealt with as a whole. Thus despite borders, there are strong reasons for acting in a common interest.
- A continuing presence to follow up recommendations about still needed research. In fact, there is need to ensure that the Northern River Basins will always be research subjects for both scientific gains and public well being.
- Assurance that the traditional relationship of First Nations to the waters and the land is not compromised.
- A very public role for residents, interest groups, stakeholders and the public at large to determine the policies and practices in governing the river basins.

An option is to make all these recommendations and direct them to governments. We could suggest how governments should take up these tasks but still leave the responsibility to act with them.

The time honoured way of linking the public interest to environment policy and management has been through elected governments and their mandates to legislate. The pressure of public opinion, responsible ministers and dedicated public servants have already provided many instances of successful stewardship of natural resources. Some might argue that a very good system for protecting the public interest in water matters is already in place, and publicly funded. Not only that, it has industrial co-operation and shared responsibilities. If there is a shortcoming in the present way of doing things, it might be in not always sensing the specific subtle considerations that residents, stakeholders and other public groups bring to water policy and practices. Calling on the stakeholder survey for indications, it seems that existing government management should continue in place but there is value in having another formal mechanism to comment upon government/industry performance. NRBS has opened its own business directly to the public, and is convinced of the value of this approach.

The fact that we are concerned with the Northern River Basins as a whole, and the thrust of the final report is for a unity approach almost begs for something to be in place that has comprehensive responsibility. Separate jurisdictions making independent rules for rivers generate upstream - downstream pressures between neighbours and is a further reason to have institutional links. How far the interjurisdictional responsibility goes is yet to be considered.

With these arguments and perhaps other reasons:

**It is recommended that provincial and territorial governments, and the Government of Canada, co-operate to establish a separate body to have defined responsibilities concerning the aquatic and riparian ecosystems of Northern River Basins as a whole. (1)**

## **11.0 THE REVIEW OF OPTIONS FOR INTERJURISDICTIONAL INSTITUTIONS FOR THE NORTHERN RIVER BASINS**

The document of this title prepared by Steven Kennett and Owen Saunders in my judgment is excellent, and in the context of NRBS a very good handbook to lead us along a decision-making path (Kennett, Steven and J. Owen Saunders, 1995). Thus what follows is an exercise choosing from among options and presented for the Board's consideration.

### **11.1 CONCEPTUAL ELEMENTS OF INSTITUTIONAL DESIGN**

In proposing a new structure, we ask the following:

1. *Should it have governmental or non-governmental responsibilities?*

Core governmental functions derive from the ballot box, and call for determining and protecting the public interest, spending the public purse, managing publicly owned resources like water, and ensuring that decisions are respected. Unless there is a full democratic process, it is hard to see a new body with such core functions. It could, however, be established by agreement among governments, giving some authenticity, and perhaps even have some para-government administrative duties turned over to it. The fact that there is more than one government in the basin makes it sensible to think in terms of the non-governmental, especially as there is more flexibility to achieve broader participation from interest groups or other responsible constituencies.

**Conclusion: A new structure should not have governmental functions, except possibly some tasks seconded by governments.**

2. *Should it deal mainly with technical or political issues?*

Agencies that have technical issues to manage are best staffed with technicians, and they should have clear marching orders. Given the principles and aims for a post-NRBS structure, we are calling for consideration of broader management functions, potentially controversial and distinctly of a political nature. It may be hard for governments to create something that could reverberate back upon them but if there is to be a vehicle for considered commentary in public, it would have to be able to deal with the whole spectrum of aquatic concerns. In some cases, seemingly thorny issues could be resolved, and it would provide an arena for clearly difficult upstream-downstream questions to have rational consideration.

**Conclusion: The agenda will be more "political" than technical.**

3. *Does the new body need power or influence?*

Again, only governments have real authority. Are there any examples where a non-governmental body has had substantial power conferred upon it by a government, or in this case, by more than one government? Even our stakeholders did not really call for making and enforcing regulations or issuing licences. There may be room for seconding some minor powers, but for the most part this new structure will depend upon influence to win its way. Thus, we should concentrate upon heightening that influence. Appoint some public servants to link back to government action. Other participants should be knowledgeable, respected and publicly credible so that together their pronouncements have impact. It is useful too to reflect interests in the basins broadly on a board or panel since this enhances credibility. Also, a new body could provide judgments that are hard for a minister to ignore if it is perfectly open in its processes and makes sensible use of media releases.

**Conclusion: A new body should aim to succeed through exerting influence, and have impact through respected members and public proceedings.**

4. *Should a new body have functions that are centralized or dispersed?*

Recommendations for post-NRBS, if we follow the principles, will try to deal with the river basins as an ecological unit and hence be regional in dimension. A centralizing approach will permit the comprehensive thinking that is needed, and given the task of interjurisdictional integration required for basin policy and planning, a new agency could well be centralized. Yet another function exists in, for instance, the call to monitor, judge, or in other ways report on the state of the river basins. This is separate from the "operating" side of an agency's business. To that extent, then, there should be a separate area of responsibility.

**Conclusion: At the basin/regional level a new body is best served by a central purview, although other desired functions could be separately established.**

## 11.2 PURPOSES AND FUNCTIONS OF A NEW INTERJURISDICTIONAL BODY

1. *Intergovernmental Co-operation.* Such co-operation is, in this case, aimed at as much integration of basin management as the ecology principles call for. In reality, provinces, territories and the federal government already have their own agendas in the region, and so we should at least try to find a way for them to co-operate, rationalize and economize in a whole host of policy, regulatory and technical ways.
2. *Dispute Resolution.* Governments with their own authority have difficulty in participating in an interjurisdictional agreement, and transboundary conflicts have to be resolved. Although the courts are available, the experience in Canada is not clear. The more conventional means to solve such problems is to fall back on special panels and/or ask the ministers involved to conclude the arguments.
3. *Overseeing Basin Management.* The NRBS experiment offers good evidence that some form of overseeing basin management is wise. The cosmopolitan nature of the NRBS Board should be adopted by the overseeing agency that is external to government management and multi-government management agreements. This body should have the freedom to find its own route to render considered opinions, and should be able to have technical advice to support its deliberations. The whole process of going to the public, public education and open business can be reflective of contemporary society which could have resonance with political leadership.
4. *Multistakeholders.* Representative participation of stakeholders in an interjurisdictional setting can be directly operative as board or panel members. In this way they may contribute to policy, management strategies, or overseeing practices as important points of advice to governments. The system made open can draw on broad public involvement. In the northern context, the place of First Nations has already been recognized as distinct, and the discussion about First Nations (above) argues for direct participation in the interjurisdictional arrangements.
5. *The Research Role.* The new agency should have the capacity to comment with some authority upon a) current research in the basin, b) research needs, especially for ecosystem well-being and management, and c) the follow up of the NRBS research programs. It could possibly be given responsibility for new research, along with the budgets, by governments. It should have its own research capacity to make sure that its own operations occur with up to date and adequate knowledge for its tasks. There will be recommendations on research elsewhere in the NRBS Final Report that could bear upon this question.

### 11.3 MODELS TO CHOOSE FROM

Kennett and Saunders advance several models for interjurisdictional arrangements and discuss examples to illustrate the options. A brief comment on each follows.

1. *Intergovernmental Models.* These are commonly negotiated agreements between/among governments that define the purposes and procedures, in our case, for the care and keeping of a regional water basin. Where mandates are technical or professional, they call for technicians or experts, and such agreements may be given some authority. Most, however, are advisory to governments and do not go far to reflect a public concern. Yet there is no reason why an intergovernmental agreement cannot be crafted to broaden participation to outside governments, and incorporate more "political" questions into the agenda. [Examples discussed were *Prairie Provinces Water Board*; *Ottawa River Regulation Planning Board*; *Mackenzie River Basin Board*; *Interstate Compacts in the United States*; and *Northwest Power Planning Council*].
2. *The Independent Commission.* The keyword here is independent. Although appointed by governments, commissions are set apart like crown corporations reporting to a legislative body and not to ministers. Whether made up of several individuals with recognized integrity and competence, or a single Commissioner, they could have a wide ranging mandate comparable to what the NRBS Board desires for the northern rivers. To be successful they need security of tenure, ready access to technical expertise, capacity to consult publicly and to publish freely. An important possibility here is to perform as an Environmental Auditor General by issuing timely "report cards" on the health of the aquatic environment and how it is being handled. The concept of a commission may work better where there is one creator, one government. To serve two masters, a commission may be faced with a more circumscribed mandate. Also, as independent creatures they are not usually constituted as multistakeholder bodies, which by nature are constituency driven. [Examples discussed were *International Joint Commission*; *Commission on Resources and Environment*; and *Environmental Auditor General*.]
3. *Government-Driven Inclusive Model.* Such structures are created by governments but incorporate multistakeholder interests. NRBS is an example. The concept is clear enough but the reality of effectiveness is in the range of "authority" given by government to its creation. Often this approach is used to address particular issues, e.g. NRBS, but could be used to meet an expanded mandate like post-NRBS. They can have secretariats and science/technical working committees. They are limited to advisory roles but can have impact through credible performances and performers, especially if governments give up-front commitment to take recommendations seriously. The success of this style depends greatly upon the consensus building ability of the group. [Examples discussed are *Fraser Basin Initiatives*; *Round Tables*; *Chesapeake Bay Processes*; and *The Chelan Agreement*.]

4. *Stakeholder-Driven Inclusive Model.* In a sense these are grass-roots organizations. Stakeholders band together in a cause and set up the process and agenda. The key is they include all stakeholders who will join, even adversarial groups, in the interest of rational solutions to the problems that invoked the coalition. They are not intended to supplant government but point out new directions. There are sometimes problems with funding since they are self-supporting, and in time the enthusiasm may decline as resolution of difficulties are achieved. [Examples discussed are mainly from the U.S. and include *Henry's Fork Watershed Council*; and from Montana, *Upper Clark Fork River Basin*, *Muddy Creek Erosion Control*, and *Bitterroot Water Forum*.]
5. *Design Modules and Institutional Architecture.* The thesis is that what we wish to accomplish in designing a post-NRBS institutional arrangement can be done by grouping functions into discrete elements or modules. Each module has to pick up on some of the basic needs and has its own integrity and operation. For example, we have to reflect the principles for the river basins, and factor in the descriptive conditions that have been identified. Add to this the other concerns for First Nations, the public, stakeholders, government roles, etc. Later these modules are assembled into a kind of architecture representing the answer to Question 16.

This theoretical approach notwithstanding, there is need to recognize the geographic reality that the northern rivers are part of the Mackenzie River Basin, and will be influenced by existing political and institutional developments. For example the ratification of the *Mackenzie River Basin Transboundary Waters Master Agreement* is a significant element. It would provide the option of bilateral agreements under the master, a choice that is much in the minds of the Strategic Planning Committee.

## **12.0 THE MACKENZIE RIVER BASIN BOARD**

The proposed Board is set out in a Transboundary Water Agreement for the Mackenzie Basin approved by officials of the governments of Canada, Alberta, British Columbia, Saskatchewan, Yukon and Northwest Territories. The essence of the agreement has been described in the document prepared for the NRBS Board by Alberta Environmental Protection, (Appendix I), and by Kennett and Saunders, pp 22-24. Its three-fold purpose is; "to establish common principles for the co-operative management of the Aquatic Ecosystem of the Mackenzie River Basin (MRBB), to establish an administrative mechanism to facilitate application of these principles, and to make provisions for Bilateral Water Management Agreements. It deals with surface drainage, excluding ground water, and touches all the right buttons in the "Whereas's" like water a precious resource; preserve ecological integrity; equitable and sustainable use; present and future generations; consistent guiding principles; information exchange; co-operative management for sustainable use; and agreements to address interjurisdictional, boundary crossing point issues. It invokes principles of sustainability now and into the future; rights of jurisdictions to manage their own water provided no unreasonable harm is done to the ecosystem of the neighbour; early warning and consultation with



partners for agreement about any proposed new developments; and solemn commitment to resolved disputes amicably. The MRBB is to be 13 strong, representing all governments plus an Aboriginal member from each province and territory. It has a broad mandate to be concerned with every aspect of the rivers and lakes, and can support its actions with research, advisory committees, and a secretariat. The funding is from partner governments, within appropriations, and Canada acts as the banker.

In what might be seen as a broad ranging and fairly comprehensive agreement, MRBB does not have authority except to advise and influence its partners. It is charged with producing a state of the aquatic environment report every five years. An important sub-plot in this is provision for bilateral transboundary agreements where neighbouring jurisdictions provide for their mutual needs in water management across their common border. MRBB is to monitor such developments for the benefit of the basin as a whole. The weaknesses in the agreement include remarks in the preamble that say "co-operative management agreements are the most appropriate means of addressing interjurisdictional water quality, quantity and related issues *as boundary crossing points*" [emphasis added]. This gives pause to the real intentions in speaking about the ecosystem approach. Although the agreement is wise in appointing Aboriginal members to the board, it does not allude directly to participation of the public in any of its business. Another shortcoming is, if any partner chooses, the agreement is void after a year's notice. That said, the potential for benefit to NRBS is perhaps in developing a bilateral agreement between Alberta, the Northwest Territories, and Canada that can plug the holes in the dyke.

### **13.0 INVENTING THE WHEEL ALL OVER AGAIN**

Coming down to draft recommendations to answer Question 16 may call for a bit of reinvention. But the experience of NRBS, and the socio-political and enviro-geographical realities of where the rivers are located suggest that what is recommended has to fit in and thus may look like an original wheel.

To begin with, we will have to define the geographical area of the drainage basin to which recommendations apply. The NRBS rivers, as the focus of the Study, should figure prominently in any spatial definition of a basin. They are part of the whole Mackenzie River drainage, but they do form a discrete part, easily defined, which made it possible to launch the NRBS study in the first place. Being upstream of Great Slave Lake, the headwaters of the Mackenzie River proper, because of the upstream-downstream relationship are proxy for the environmental health of whole system.

**It is recommended that the headwaters of the Mackenzie drainage upstream of Great Slave Lake define the northern rivers for the following recommendations.** (2)

## 14.0 DESIGNING MODULES

Given that we envisage a future structure which does not take over government functions and deals with broad issues of river system management, the judgements needed have to be well informed and capable of influencing the outcomes.

### 14.1 MODULE I

The basic task of this module is to develop harmonious and up-to-date management of the aquatic and riparian resources for the whole basin. It addresses the work of governments at the present, and into the future.

*An intergovernmental model; with a few embellishments*

The northern rivers cross borders and the basins are in different jurisdictions. Also those jurisdictions, in some form, have exclusive rights in water matters and if the ecology of the rivers and integrity of basins are to prevail, then agreement is needed among governments. Paramountcy and national interest of the federal government notwithstanding, there is no one government which can assume full responsibility for treating the basin of the northern rivers as a natural unit. Furthermore, it is hard to conceive a way of engineering government co-operation and co-ordination except through an agreement among them.

**It is recommended that the governments of Canada, Alberta and the Northwest Territories conclude an Agreement for the purpose of ensuring that their separate mandates with respect to the present and future conditions of the northern rivers, are carried out within the concept of the basin as a unit and an integrated ecosystem. (3)**

A shortcoming throughout the NRBS process was the lack of direct participation from British Columbia and Saskatchewan since each has the capacity to influence downstream conditions. A new agreement, as recommended, should have a new attempt to expand the partnership.

**It is recommended that the intergovernmental Agreement provide for the partnership to be expanded to include British Columbia and Saskatchewan. (4)**

The partners in intergovernmental agreements have the option to recognize that the purposes of the agreement will be stronger if there is active participation from the society within the basins. The case for First Nations is made elsewhere, but recognized here.

**It is recommended that First Nations take part directly in the implementation of the intergovernmental Agreement. (5)**

A parallel arrangement should be made to co-opt representatives of the public at large.

**It is recommended that the public-at-large, resident in the river basins, take part directly in the implementation of the intergovernmental Agreement. (6)**

Apart from the overall purpose to co-operate and co-ordinate government mandates, the Agreement should reflect the values in the adopted NRBS Principles.

**It is recommended that the Principles adopted by NRBS govern the purposes of the Intergovernmental Agreement, namely:**

- that ecosystems are paramount;
- that the river system will serve future generations well;
- that downstream sites hold no disadvantage;
- that threats to the river system not be allowed;
- that unwanted river conditions be removed;
- that effective public participation is needed. (7)

Despite the way governments organize their mandates, pass laws, or discharge their responsibilities in water matters, there are many other aspects of land management that overlap onto the aquatic part. Basin wide concern for optimum water planning and use cannot ignore agriculture or forestry, for example. A truly comprehensive attempt to draw together all the influential factors, and the laws that govern them is necessary for good understanding and management.

**It is recommended that the Agreement be exercised to achieve comprehensive basin management, including the application of policies and laws governing both land and water quality and use. (8)**

Being mindful of the value of public, and particularly resident opinion in fashioning and executing the practices of managing an aquatic system, there should be provision to obtain this advice for the basin treated as a unit.

**It is recommended that the Agreement ensure that scrutiny and advice from an informed public be part of the usual business practices either through existing legislation or internal arrangements. (9)**

The Final Report from NRBS will acknowledge that there is much more to be learned about the rivers, their ecology and how they should be cared for to meet societal needs and values. Specific research recommendations and the call for other studies will be made, and there is need to follow up Report findings to see if there has been effective implementation.

**It is recommended that the Agreement provide for responsible action to see that the NRBS recommendations for continuing study are being implemented. (10)**

A Board is necessary to activate the Agreement. It should not be a large Board.

**It is recommended that a Board be appointed by the Partners, with membership representing those Partners, and both First Nations and public-at-large membership come equally from the province and the territories. Membership on the Board should be set so that decisions cannot be made by the Partners without the non-Partners, and vice versa. (11)**

There will be need to give the Board the assistance of support staff, access to scientific and technical advice, and some capacity to commission research in support of its purposes.

**It is recommended that the Board have unbiased secretariat services, its own science and technical assistance, and access to research capacity capable of working independently. (12)**

A function that we can expect with be necessary is dispute resolution. An agreement that is meant to get governments to work together on behalf of the rivers, their ecosystems, and the residents and stakeholders should be avoiding or overcoming disputes. In practice we know that disputes do occur and suggest that the agreement itself be used to solve such problems.

**It is recommended that Board be provided with the means to avoid interjurisdictional disputes and a way to resolve them. (13)**

## 14.2 MODULE II

As a result of the Northern River Basins Study, the Board has concluded that the public interest will best be served if some responsible body is created to oversee the state of the aquatic and riparian ecosystems of the Northern Rivers. The agency should be separate from the operating aspects of water management or the bodies that determine how waters are managed. But it should be free to examine and speak publicly on any or all aspects of matters related to the river systems. Properly established, the body will reflect the different interests of the resident society. It will be able to ascertain the true physical and biological conditions of the rivers and lakes, have unrestricted access to public documents and records, and be entirely independent to advise governments through open published reporting. It should expect to report annually and at any time of special urgency. It should also provide periodic reviews, say every five years, to give continuity and attention to the evolving relationship between society and ecology of the Northern Rivers.

### *A Government Driven Inclusive Model*

Drawing again on the NRBS experience, it is proposed that this Module be a creature of government but that it be able to do its business without government control. The degree of independence of a Commission, for example, is desirable but if this Module is to be in the same institutional architecture as Module I, then something that is appointed by governments in agreement, and including government participation is more compatible.

**It is recommended that the governments of Canada, Alberta and the Northwest Territories agree to the creation of a Panel of individuals for the purpose of overseeing the state of the aquatic and riparian ecosystems for the Headwaters of the Mackenzie River System. (14)**

The Panel in its membership has to take account of the three legal jurisdictions in the agreement, and with the argument that both the Panel and governments will be well served, government members should be on the Panel. At the same time, there are other elements of society that need to be at the table, including First Nations, resource developers, municipalities, ecological coalitions, basin residents, and perhaps others. Yet the Panel should not be so large as to be endangered in consensus making. Also, to keep its independence, no one constituency should be able to determine Panel decisions.

**It is recommended that the Panel be appointed by the Partners to have government representative, members from First Nations, representatives of municipalities, environmental coalitions, resource industries, and basin residents. The membership should be balanced between Alberta and Northwest Territories, provide for no dominance by interest group, and kept small but consistent with proper representation of the interests. (15)**

The fundamental purpose of the Panel is to act as overseer of the state of aquatic systems in the Northern Rivers. This means it needs capacity to monitor the government/industry monitors, to be able to alert the public about unexpected changes in water quantity, quality and human safety either directly or through ecological links, and in any way to give a public sense of security that the water resources in the basins are in good hands.

**It is recommended that the Panel be required to disclose what assurance the public has that the physical and biological conditions of the Northern Rivers are consistent with a healthy ecosystem and safety for human health. (16)**

The most significant single human change to the Northern Rivers is discharging industrial and municipal effluents into them. The ecosystem has changed with it, and it is imperative that constant watch is needed to keep these practices within safe bounds or gradually eliminate. There is a need to have a neutral, unbiased judgment on the success of monitoring programs, to see that monitoring and its concomitant control measures apply in an integrated way for the entire Northern River Basins, and that monitoring practices make full use of contemporary science.

**It is recommended that the Panel has as a central responsibility, judging the effectiveness and adequacy of water quality standards, their monitoring and control, on a basin wide basis. (17)**

It is equally important to have a neutral voice comment upon issues of water quantity in the Northern River Basins.

**It is recommended that the Panel assess and report publicly on the adequacy and effectiveness of water quantity allocation practices in the context of balanced needs for human and natural uses and on a basin wide basis.** (18)

Another role the Panel should play relates to its continuing public observation of how water policy and management practices are evolving in the Northern Rivers at the basin level. This means watching what goes on in Alberta, what goes on in the Northwest Territories, what Canada is doing, and relating that to the ecological and integrative perspective for the river basin as a unit.

**It is recommended that the Panel be required to study and report, on a continuing basis, the practices and circumstances of water management in the separate jurisdiction of the basin, and as they are co-ordinated for interjurisdictional purposes.** (19)

To discharge these mandates, the Panel will need a secretariat, reliable and independent scientific advice, technical support and access to research that it feels necessary to the tasks.

**It is recommended that the Panel have its own secretariat services, neutral but competent scientific and technical advice, and access to research capacity capable of working independently.** (20)

The Panel duties, for best results, have to be seen by the public as an act of stewardship for everyone. Thus, all necessary information has to be accessible to it, and the conduct of its business needs to include a program of public review and education.

**It is recommended that the Panel provide regular public reporting, conduct its business to include educational material and practices, and information exchange through community meetings.** (21)

### 14.3 THE ARCHITECTURE FOR MODULE I AND MODULE II

Given the history of water management in the Mackenzie drainage, and the evolution of interjurisdictional concerns for the entire basin, it is not unexpected to turn to the *Mackenzie River Basin Transboundary Waters Master Agreement*. As an intergovernmental agreement it is a template for other intergovernmental action affecting the same river basin. This is more appropriate given the Master Agreement expect and encourages the Partners to form alliances for bilateral arrangements that could address mutual problems but still be within the intent of the Master plan. The disappointment remains that the Master Agreement is still without the official signature of the participating Partners, and therefore, not in effect.

**It is recommended that the Mackenzie River Basin Transboundary Waters Master Agreement come into force as soon as possible. (22)**

This recommendation is made in the full knowledge that the whole process to reach this "almost" stage took over a decade, and delay seems to be endemic. Thus we should prepare to move forward but mindful that the Master Agreement is in the wings.

Module I calls for an intergovernmental agreement that is of the sort of bilateral pact described in the Mackenzie Master. Its functions are expanded to reflect the experience of NRBS and the needs the Study identified. It could fit the Master Agreement, but it certainly can stand on its own, and its creation is hereby recommended.

**It is recommended that the Intergovernmental Agreement (Module I) be established in accordance with the pattern and purposes set out in preceding recommendations.(23)**

Module II with its different role and responsibilities has a broad spectrum of participants, and only liaison appointments from governments. Nevertheless, the recommendation is that governments in partnership should create the Panel called for. Thus Module II could be nested within Module I and form part of the overall Agreement. The functions of Module II have to be safeguarded so that it can exercise its responsibilities independently.

**It is recommended that the Panel (Module II) be established within the Intergovernmental Agreement providing that it may function in the fashion set out in preceding recommendations. (24)**

Having presented the architecture for a post-NRBS system of basin governance, how long should it last? It is usual for agreements to have escape clauses for the Partners. The Mackenzie River Master Agreement, for instance, permits a Partner to withdraw on a year's notice, and thus effectively kill the Agreement. If the proposals put forward in this document are accepted for implementation, then there should be a start-up period sufficiently long to permit the intended purposes to take hold.

**It is recommended that any Partner may dissolve the Agreements after one year on written notice, but not until the Agreements have been in place for two years. (25)**

A final but not inconsequential consideration is the manner of funding. It is usual for Partners to assume fiscal responsibility in proportion to each's direct involvement. There are, however, many options which if they decide to go ahead, the Partners are better to negotiate rather than have prescribed. Still, the recommendations, if they are to be effective, should be funded reasonably in a way that takes full account of how the new agencies interpret their responsibilities.

**It is recommended that the Partners fund the implementation of the Agreements at a level and with enough protection to permit the fulfilment of the mandates. (26)**

## **15.0 POSTSCRIPT**

Attached by way of illustration is a Draft Agreement in the mode of what is being offered here. It is just at the idea stage but it might help to see how it would look on paper. (Appendix II)

**November 28, 1995 JKS**



## 16.0 RECOMMENDATIONS TO THE BOARD

1. **It is recommended that provincial and territorial governments, and the Government of Canada, co-operate to establish a separate body to have defined responsibilities concerning the aquatic and riparian ecosystems of Northern River Basins as a whole.**
2. **It is recommended that the headwaters of the Mackenzie drainage upstream of Great Slave Lake define the northern rivers for the following recommendations.**
3. **It is recommended that the governments of Canada, Alberta and the Northwest Territories conclude an Agreement for the purpose of ensuring that their separate mandates with respect to the present and future conditions of the northern rivers, are carried out within the concept of the basin as a unit and an integrated ecosystem.**
4. **It is recommended that the intergovernmental Agreement provide for the partnership to be expanded to include British Columbia and Saskatchewan.**
5. **It is recommended that First Nations take part directly in the implementation of the intergovernmental Agreement.**
6. **It is recommended that the public-at-large, resident in the river basins, take part directly in the implementation of the intergovernmental Agreement.**
7. **It is recommended that the Principles adopted by NRBS govern the purposes of the Intergovernmental Agreement, namely:**
  - that ecosystems are paramount;
  - that the river system will serve future generations well;
  - that downstream sites hold no disadvantage;
  - that threats to the river system not be allowed;
  - that unwanted river conditions be removed;
  - that effective public participation is needed.
8. **It is recommended that the Agreement be exercised to achieve comprehensive basin management, including the application of policies and laws governing both land and water quality and use.**
9. **It is recommended that the Agreement ensure that scrutiny and advice from an informed public be part of the usual business practices either through existing legislation or internal arrangements.**
10. **It is recommended that the Agreement provide for responsible action to see that the NRBS recommendations for continuing study are being implemented.**

11. **It is recommended** that a Board be appointed by the Partners, with membership representing those Partners, and both First Nations and public-at-large membership come equally from the province and the territories. Membership on the Board should be set so that decisions cannot be made by the Partners without the non-Partners, and *vice versa*.
12. **It is recommended** that the Board have unbiased secretariat services, its own science and technical assistance, and access to research capacity capable of working independently.
13. **It is recommended** that Board be provided with the means to avoid interjurisdictional disputes and a way to resolve them.
14. **It is recommended** that the governments of Canada, Alberta and the Northwest Territories agree to the creation of a Panel of individuals for the purpose of overseeing the state of the aquatic and riparian ecosystems for the Headwaters of the Mackenzie River System.
15. **It is recommended** that the Panel be appointed by the Partners to have government representative, members from First Nations, representatives of municipalities, environmental coalitions, resource industries, and basin residents. The membership should be balanced between Alberta and Northwest Territories, provide for no dominance by interest group, and kept small but consistent with proper representation of the interests.
16. **It is recommended** that the Panel be required to disclose what assurance the public has that the physical and biological conditions of the Northern Rivers are consistent with a healthy ecosystem and safety for human health.
17. **It is recommended** that the Panel has as a central responsibility, judging the effectiveness and adequacy of water quality standards, their monitoring and control, on a basin wide basis.
18. **It is recommended** that the Panel assess and report publicly on the adequacy and effectiveness of water quantity allocation practices in the context of balanced needs for human and natural uses and on a basin wide basis.
19. **It is recommended** that the Panel be required to study and report, on a continuing basis, the practices and circumstances of water management in the separate jurisdiction of the basin, and as they are co-ordinated for interjurisdictional purposes.

20. **It is recommended that the Panel have its own secretariat services, neutral but competent scientific and technical advice, and access to research capacity capable of working independently.**
21. **It is recommended that the Panel provide regular public reporting, conduct its business to include educational material and practices, and information exchange through community meetings.**
22. **It is recommended that the Mackenzie River Basin Transboundary Waters Master Agreement come into force as soon as possible.**
23. **It is recommended that the Intergovernmental Agreement (Module I) be established in accordance with the pattern and purposes set out in preceding recommendations.**
24. **It is recommended that the Panel (Module II) be established within the Intergovernmental Agreement providing that it may function in the fashion set out in preceding recommendations.**
25. **It is recommended that any Partner may dissolve the Agreements after one year on written notice, but not until the Agreements have been in place for two years.**
26. **It is recommended that the Partners fund the implementation of the Agreements at a level and with enough protection to permit the fulfilment of the mandates.**

## 17.0 REFERENCES

- Alberta Environmental Protection, 1994. *Review of Existing Mechanisms for Basin Management*, Edmonton, Alberta. 22pp.
- Kennett, Steven A. and J. Owen Saunders, 1995. *A Review of Options for Interjurisdictional Institutions for the Northern River Basins*, Canadian Institute of Resource Law, Calgary. 68 pp.
- Reicher, Philippe, Des, M.E., Consultant, and John P. Thompson, Alberta Environmental Protection, *Uses of Aquatic Resources in the Northern River Basins: Results of the Household and Stakeholders Surveys*, Northern River Basins Study Project Report No. 69, Edmonton, Alberta, December 4, 1995.

## APPENDIX I

### **MACKENZIE RIVER BASIN COMMITTEE**

#### History

The Mackenzie River Basin Committee (MRBC) was established in 1978 and includes representation from the Governments of British Columbia, Alberta, Saskatchewan, Northwest Territories, Yukon and Canada. Canada is represented by the Departments of Environment and Indian Affairs and Northern Development. The Committee produced the Mackenzie River Basin Study Report in 1981 and has been charged with the implementation of the recommendations of that report. The study produced 8 recommendations on water management in the Mackenzie River Basin. The primary recommendation was that each of the five provincial and territorial jurisdictions negotiate transboundary water management agreements at boundary crossing points in the basin (bilateral agreements).

Negotiations and background data collection on the bilateral water management agreements began in the early 1980's. In 1984 the Committee agreed that a master, "umbrella" agreement should be prepared to set out principles for water management in the basin and to provide a framework to guide the bilateral agreements. This agreement was negotiated by the Committee members and was the subject of public consultation workshops in 1991 and 1992. The outcome of the workshops was substantial revisions to the agreement to incorporate more of an "ecosystem approach" to water management.

The MRBC's other function, in addition to negotiating the transboundary agreements, has been to act as an information exchange and notification forum whereby the jurisdictions can advise of proposed developments which may affect the water resources of the basin. The Committee meets semi-annually and each jurisdiction reports on activities. The Committee also produces an annual report describing its activities over the preceding year.

#### Current Issues and Negotiations

The MRBC has now finalized the Transboundary Waters Master Agreement and has referred it to their respective Ministers with a recommendation for signing. Final workshops were held in winter, 1994 with aboriginal organizations in the basin. First Nations representatives raised concerns with respect to the consultation process, the make up of the Board to be formed under the agreement and their lack of standing as signatory parties to the agreement. Although these issues have not been fully resolved, signing of the agreement is proceeding with recognition that the aboriginal concerns, particularly those relating to self-government, will be addressed in other forums.

The MRBC members are continuing to negotiate bilateral agreements on the transboundary crossing points. These agreements are at varying stages. Some, such as NWT-Yukon and Alberta-Saskatchewan are essentially complete, while others, such as B.C.-Alberta have not reached the draft stage.

### **Potential Amendment of MRBC to Meet NRBS Requirements**

The Northern River Basins Study is currently looking at institutional arrangements for water management and environmental protection in the Peace-Athabasca-Slave basins and it has been suggested that the new MRBC could fulfil some of these requirements. Given the structure and functions of the proposed MRBC it is likely an appropriate vehicle to meet these needs. The advantages of such an approach include:

- The MRBC is structured with representation from all the jurisdictions in the basin and will have 5 members from First Nations groups.
- The Peace-Athabasca-Slave basins represent a significant portion of the Mackenzie basin and are part of the proposed MRBC's responsibility. Also, the MRBC's duties are similar to those that could be contemplated by the NRBS for its new institutional arrangements.
- Using the MRBC will avoid the duplication and expense of creating an additional body to meet the NRBS needs.
- The proposed MRBC has responsibility for the entire Mackenzie basin, not just the Peace-Athabasca-Slave portion. Although some members on the Board (ie. Yukon) may not wish to devote a large part of their time to this area, this area is experiencing the greatest development pressure.

Possible refinements to the MRBC to meet the long term needs of NRBS might include the following:

- Additional membership on the MRBC from other interested parties.
- Creation of an ongoing stakeholders advisory committee.
- Requirements to conduct public meetings and consultation.

## APPENDIX II

### **Draft Document - Example**

#### **ALBERTA-NORTHWEST TERRITORIES MACKENZIE HEADWATERS MANAGEMENT AGREEMENT**

##### **BETWEEN:**

**THE GOVERNMENT OF CANADA** as represented by the Minister of Indian Affairs and Northern Development and by the Minister of the Environment (hereinafter referred to as “Canada”)

##### **AND**

**THE NORTHWEST TERRITORIES** as represented by the Minister of Renewable Resources and the Commissioner of the Northwest Territories (hereinafter referred to as “Northwest Territories”)

##### **AND**

**THE PROVINCE OF ALBERTA** as represented by the Minister of Environmental Protection and the Minister of Federal and Intergovernmental Affairs (hereinafter referred to as “Alberta”)

##### **HEREINAFTER REFERRED TO AS THE ‘PARTIES’**

**WHEREAS** it is a fundamental right of residents of the Mackenzie River Headwaters Basin common to Alberta and the Northwest Territories to have access to clean water in an Aquatic Ecosystem that is stable and sustainable;

**WHEREAS** the Water Resources of the Mackenzie River Headwaters Basin common to Alberta and the Northwest Territories should be managed to preserve the Ecological Integrity of the Aquatic Ecosystem and to facilitate reasonable, equitable and sustainable use for current and future generations;

**WHEREAS** the Parties recognize that residents of the Mackenzie Headwaters Basin common to Alberta and the Northwest Territories have vital interest in the management of the Aquatic Ecosystem;

**WHEREAS** the Parties agree that the best means to maintain and protect the Aquatic Ecosystem is to adopt consistent water management principles and objectives, and to develop and implement cooperative administrative and management mechanisms;

**WHEREAS** the Parties recognize that the effects of existing and proposed developments and activities on the Aquatic Ecosystem respect neither physical nor political boundaries;

**WHEREAS** the Parties recognize that subsistence users are among the first people to be affected by changes to the Aquatic Ecosystem;

**WHEREAS** the Parties desire to enter into a cooperative water management agreement;

**WHEREAS** the Governor General in Council has pursuant to Order-in-Council no. \_\_\_\_\_ dated \_\_\_\_\_, authorized the Minister of Indian Affairs and Northern Development to execute this agreement on behalf of Canada;

**WHEREAS** the Northwest Territories Legislative Assembly through the authority of the *Water Resources Agreement Act*, S.N.W.T., 1983, c.9 has authorized the Minister of Renewable Resources and the Commissioner of the Northwest Territories to execute this agreement on behalf of the Northwest Territories; and

**WHEREAS** the Lieutenant Governor in Council has pursuant to Order-in-Council no. \_\_\_\_\_ dated \_\_\_\_\_, authorize the Minister of Environmental Protection and the Minister of Federal and Intergovernmental Affairs to execute this agreement on behalf of Alberta;

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**A. PURPOSE**

The purpose of this agreement is to cooperatively, protect, conserve, and manage the Ecological Integrity of the Aquatic Ecosystem of the Mackenzie River Headwaters Basin, that is common to Alberta and the Northwest Territories, while facilitating the sustainable use of the water's resources.

**B. DEFINITIONS**

"Aquatic Ecosystem" means the interacting components of air, land, water and living organisms including humans that relate to the Water Resources of the that part of the Mackenzie River Headwaters Basin covered by the agreement.



"Headwaters Basin" means the Mackenzie River Basin upstream from Great Slave Lake that is common to Alberta and the Northwest Territories.

"Board" means the Alberta-Northwest Territories Mackenzie Headwater Resources Board.

"Ecological Integrity" means that all necessary conditions must be present so that the components of the ecosystem can function each according to its own life system or physical equilibrium.

"Sustainability" means providing for condition or circumstance, to permit Ecological Integrity, according to established human needs and values.

"Panel" means the Alberta-Northwest Territories Mackenzie Headwater Resources Panel.

### **C. OBJECTIVES**

To achieve the purposes of this agreement the objectives are the following:

1. To establish publicly accepted standards of quality and flow conditions of Waters and Water Resources of the Headwater Basin.
2. To provide continuing review and revision of the above standards in the light of scientific and other new knowledge.
3. To provide for independent and open public review, and timely reporting of the state of the Aquatic Ecosystem in the Headwater Basin.
4. To prevent development from degrading the natural or ecological assets of the Headwater Basin, or exceeding the assimilative and regenerative capacities of the river system.
5. To ensure that development does not compromise traditional uses or economic relationships within the Headwater Basin.
6. To provide coordinated, multi-disciplinary research and monitoring to advance current and future understanding of the Headwater Basin river systems.
7. To include Traditional Knowledge as an essential component of all scientific research and monitoring.
8. To achieve virtual elimination of persistent toxic substances within the Headwater Basin.
9. To prevent Major Water Transfer into or out of the Headwater Basin.

## D. WATER MANAGEMENT PRINCIPLES

1. The Parties are committed to protect, conserve and sustain the use of Transboundary Waters to maintain the Ecological Integrity of the Aquatic Ecosystem for present and future generations.
2. The Parties will use or manage the use of the Water Resources of the Headwater Basin within their respective jurisdictions as they see fit, provided such use is consistent with the commitment above.
3. The Parties recognize the potential for upstream developments in British Columbia and in Saskatchewan to change the aquatic ecology. Alberta's responsibility to meet the terms of this agreement will be limited by the extent to which such changes occur.
4. The Parties will provide early and effective consultation, notification and sharing of information on development activities or emergency events that might affect the Ecological Integrity of the Aquatic Ecosystem in each other's jurisdiction.
5. The Parties support independent and open public review and reporting on the state of the Mackenzie Headwater Resources, the effectiveness of this Agreement, and other related matters.
6. The Parties undertake to resolve issues and differences in a cooperative and harmonious manner.

## E. ADMINISTRATION

There will be two separate and distinct parts to Administration.

1. Alberta-Northwest Territories Mackenzie Headwater Resources Board; and
2. Alberta-Northwest Territories Mackenzie Headwater Resources Panel.

### 1. Alberta-Northwest Territories Mackenzie Headwater Resources Board

There is hereby established a Transboundary Water agency called the *Alberta-Northwest Territories Mackenzie Headwater Resources Board* to implement the terms of this agreement.

- (a) The Board will consist of no more than **eight** members with each of the Parties represented therein as follow:

Alberta - two members; Northwest Territories - one member; Canada - one member. One Aboriginal member from each of Alberta and the Northwest Territories respectively. One other member from the public at large and a resident of the Basin from each of Alberta and the Northwest Territories respectively.

- (b) The Chair of the Board will be elected by the Board biannually.
- (c) Members representing the Parties will be appointed by their respective Ministers.
- (d) Aboriginal members and members of the public at large resident of the Basin representing either Alberta or the Northwest Territories, will be appointed by their respective Minister. The Minister shall insure that the individuals so appointed are properly representative and have the confidence of their respective communities.
- (e) Each member may designate an alternate member to act in his or her absence with full rights of membership.
- (f) The Board shall meet at least **three** times annually and at the call of the Chair.
- (g) A quorum for the Board shall be **six** members, and a two-thirds majority of the members present shall constitute **approval on any** question.
- (h) The expenses of the members shall be borne by the Parties that have appointed them.

#### 1.1 Duties of the Board

The Board shall act to carry out the purposes of the Agreement by:

- (a) providing a forum for communication, information exchange, consultation and coordination;
- (b) undertaking such studies, programs and activities that are required and report publicly thereon;
- (c) establishing a Secretariat and will comprise such personnel as the Board may direct. The Secretariat will carry out programs and other activities approved by the Board;
- (d) establishing and directing technical committees which may be needed to support the work of the Board;
- (e) recommending objectives, standards and guidelines for the quality and quantity of Water Resources, and the quality of the Aquatic Ecosystem;

- (f) encouraging consistent monitoring programs;
- (g) maintaining timely communication and dialogue with the residents of the Basin;
- (h) considering the cultural traditions and traditional knowledge of the Aboriginal residents, and ensuring that they contribute to the work of the Board and the benefit of the Aboriginal people themselves;
- (i) within limits set by the Parties,
  - i. creating working plans and associated budgets based upon a three year period to be reviewed and moved ahead annually, and
  - ii. establishing annual Board budgets, and
  - iii. authorizing expenditures within approved budgets including, *inter alia*, the operating costs of the Secretariat;
- (j) meeting as required but at least **three times annually**;
- (k) reporting to the Ministers in an **Annual Report** within three months after the end of the fiscal year;
- (l) carrying out such related **duties as the Parties may request**.

## 2. Alberta-Northwest Territories Mackenzie Headwater Resources Panel

There is hereby established a separate and independent agency called the *Alberta-Northwest Territories Mackenzie Headwater Resources Panel* to monitor and report publicly on the effectiveness of this agreement and on any matter related the Aquatic Ecosystem and Water Resources of the Basin.

- (a) The Panel will consist of no more than **ten** members with each of the Parties represented therein as follows:
 

Alberta - one member; Northwest Territories - one member; Canada - one member.  
 One Aboriginal member from each of Alberta and the Northwest Territories respectively.  
 Four other member from the public at large and a resident of the Basin, one each representing agriculture, resource industry, municipalities, academe and environmental interests, from either of Alberta or the Northwest Territories by agreement of the Partners.
- (b) Members of the Panel may not at the same time be members of the Board.
- (c) The Chair of the Panel shall be elected from among its members biannually.

- (d) Members representing the Parties will be appointed by their respective Ministers.
- (e) Aboriginal members and members of the public at large resident of the Headwaters Basin from either Alberta or the Northwest Territories, will be appointed by their respective Minister. The Ministers shall agree to the individuals and insure that those so appointed are properly representative and have the confidence of their respective communities.
- (f) Each member may designate an alternate member to act in his or her absence with full rights of membership. The alternate members may not be members of the Board or alternate members to the Board.
- (g) The Panel shall meet at least **three** times annually and at the call of the Chair.
- (h) A quorum for the Panel shall be **six** members, and a majority of the members present shall constitute approval on any question.
- (i) The expenses of the members shall be borne by the Parties that have appointed them.

## 2.1 Duties of the Panel

The Panel shall assume functions similar to an 'Auditor-General' in monitoring and reporting publicly on the effectiveness of this Agreement and on any matter related the Aquatic Ecosystem and Water Resources of the Headwaters Basin by:

- (a) undertaking such studies or inquiries as necessary to pass judgment on the implementation of the Agreement or state of the Aquatic Ecosystem of the Basin;
- (b) seeking and receiving the concerns of the Headwaters Basin residents and other stake holders with regard to any aspect of Waters of the Basin;
- (c) having the support of the Parties to provide any and all available information concerning the Aquatic Ecosystem and the Water Resources of the Headwaters Basin as requested;
- (f) issuing public reports and statements of its findings;
- (g) having Secretariat services provided for the Panel by the Parties;
- (h) within limits set by the Parties,
  - i. creating working plans and associated budgets based upon a two year period to be reviewed and moved ahead annually,
  - ii. establishing annual Board budgets, and
  - iii. authorizing expenditures within approved budgets;
- (i) meeting as required but at least **three** times annually;

- (j) reporting to the Ministers concurrently on the release of reports and findings, and with an Annual Report within three months after then end of the fiscal year;
- (k) carrying out such related duties as the Parties may request.

#### **F. COST SHARING**

1. All approved expenditures shall be borne by the Parties proportionately on the basis of the number of members each Party has appointed to the Board in the case of Board expenditures, or to the Panel in the case of Panel expenditures.
2. The Province of Alberta shall assume responsibility for financing all expenditures in the first instance, and it shall arrange annual auditing of accounts.
3. The Parties shall put in place the necessary mechanisms for the transfer and accounting of funds to meet the conditions of 1. (above) in accordance with established government practice.
4. The Board and the Panel shall keep complete records of all expenditures, properly documented and make them available for public audit.

#### **G. DISPUTE RESOLUTION**

1. Disputes arising at the Board or Panel shall be resolved in good faith and in any case by simple majority vote, all appointed members present and voting.
2. Disputed arising among the Parties shall be resolved in good faith and in case of impass, by referral to an independent panel convened by the Ministers to hear evidence and render a decision. The Ministers shall retain the authority for the final conclusion to any disputes.

#### **H. ABORIGINAL AND TREATY RIGHTS**

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 s.35 of the Constitution Act, 1982, which include rights now existing by way of land claims agreements or which may be acquired under land claims agreements.

## **I. AMENDMENT**

The Agreement may be amended with the consent of all Parties to it.

## **J. DURATION OF THE AGREEMENT**

1. The Agreement takes effect when signed by all the Parties and will continue in effect for a period of **five** years.
2. The Parties shall by the end of the fourth year ~~determine if the Agreement will be renewed~~ and the length of time it will continue in effect.
3. The Agreement may be terminated by any Party ~~upon~~ **one** year's written notice to the other Parties, but only after the Agreement has ~~been~~ in effect for two years.





### **APPENDIX III**

#### **TERMS OF REFERENCE**

No contractual Terms of Reference were prepared for the work documented in this report. The work was done by the author as a contribution from the Science Advisory Committee of the Board of the Northern River Basins Study. It represents a part of his responsibilities to the Board of the Northern River Basins Study.

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