Creating a Blue Dialogue Webinar Summary
Evolution in Transboundary Watershed Governance:
Lessons from the Mackenzie Basin
September 16th, 2015

Attendance: Approximately 75—local, First Nations, provincial, and federal government staff; students and researchers; private sector professionals; environmental NGOs

Introduction
On March 18th, 2015, the Governments of the Northwest Territories (NWT) and Alberta signed the historic transboundary water agreement Mackenzie River Basin: NWT-Alberta Bilateral Water Management Agreement (“the Agreement”). This summary is based on the September 16th, 2015 webinar Evolution in Transboundary Watershed Governance: Lessons from the Mackenzie Basin. This webinar shared the story behind the development and negotiation of the Agreement and explained what makes it innovative in Canada and the world. The webinar also discussed how the Agreement is connected to broader critical water and energy policy issues in Canada, and why similar transboundary agreements are critical to the successful governance of watersheds in Canada. The Agreement sets a high standard for aquatic ecosystem protection and cooperation between jurisdictions. It represents an important “social contract” between three governments: Aboriginal governments of the NWT, the Government of the NWT, and the Government of Alberta. This robust transboundary watershed governance arrangement is needed to ensure the long-term protection and integrity of Canada’s vast Mackenzie River Basin.

This webinar summary provides an overview of key elements in the Agreement, as well as the context and complexities of the negotiation process. In the webinar, the speakers shared insights into how the negotiation of the Agreement addressed critical downstream-upstream issues. The speakers also emphasized the importance of collaborating with and obtaining consent from Aboriginal governments and the value of securing political strategic backing throughout the negotiations. This discussion has relevance in other transboundary watersheds across Canada, given its insights into an applicable model for basin-level nested watershed governance and as an example of maintaining respectful relationships with Aboriginal governments in a watershed governance context.

Guest Speakers
Honorable J. Michael Miltenberger, Minister, Environment and Natural Resources, Government of Northwest Territories
Merrell-Ann Phare, Chief Negotiator, NWT-Alberta Bilateral Water Management Agreement; Executive Director, Centre for Indigenous Environmental Resources

About the Series
Hosted by the POLIS Water Sustainability Project at the Centre for Global Studies, University of Victoria, Creating a Blue Dialogue brings together expert water practitioners and thinkers, as well as emerging water leaders, to engage with innovative ideas on water policy and governance in Canada. By creating an online community of interest, the webinar series serves to strengthen the national capacity to engage with and solve problems, and raises awareness about emerging Canadian water issues, best practices, and policies.
The Mackenzie River is the largest north-flowing river in North America—its watershed encompasses nearly one-fifth of Canada’s land mass (See Figure 1). The Mackenzie River Basin is shared by Alberta, British Columbia, Saskatchewan, the Northwest Territories, and the Yukon Territory. The Basin’s headwaters and freshwater deltas, the Slave and Peace-Athabasca, are located in Alberta and B.C. Eighty percent of the Northwest Territories’ fresh water flows from Alberta.

The Mackenzie River Basin is a globally significant ecosystem. Its 1.8 million km$^2$ of boreal forest and wetlands absorb significant amounts of carbon and harbor extraordinary biodiversity. Freshwater flows from the Mackenzie River into the Arctic Ocean contribute to Arctic Ocean circulation, which is linked to the stabilization of the regional and global climate.$^i$ The Mackenzie region is also ecologically fragile. Climate change is projected to be more pronounced in northern basins than elsewhere, with warming rates almost double the global average.$^ii$ Both First Nations and scientists have observed, measured, and experienced these warming trends. The Basin is further threatened by additional stressors from increasing industrial developments.$^iii$ Water demand for natural resource extraction and from energy sectors pose significant risks to the ecological integrity of the Mackenzie system. Hydroelectricity generation in B.C. and oil sands development in Alberta impact the basin’s hydrology, as well as the quality and quantity of water in "downstream" jurisdictions—the Northwest Territories and the Yukon.

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**GOVERNANCE AT A GLANCE—Mackenzie River Basin**

| 3 provincial jurisdictions: Alberta, British Columbia, and Saskatchewan |
| 2 territorial jurisdictions: Northwest Territories and the Yukon |
| Aboriginal governments and land-claim agreements |
| Federal government |
| Devolution of authority over lands, water, and resources from the federal government to Northwest Territories (2014) |

**AGREEMENTS:**

Historically, responsibilities for land-use planning, environmental monitoring, and setting regulatory rules for development have been fragmented across federal, provincial and territorial agencies, and First Nations governments, each with differing levels of jurisdiction and authority over water, land, and mineral resources (See box, pg. 2). Yet in 1997, federal and provincial jurisdictions came together to develop the Mackenzie River Basin Transboundary Waters Master Agreement. The Master Agreement laid out shared governance principles, and identified the need to create bilateral agreements between upstream and downstream regions, including a NWT-Alberta Bilateral Water Agreement.

**Key Elements in the NWT-Alberta Bilateral Water Management Agreement**

The NWT-Alberta Bilateral Water Management Agreement is extensive and has several noteworthy elements. However, two core aspects of the Agreement are truly precedent-setting. First, the Agreement was designed to prioritize ecological protection and to respect and recognize ecosystem needs. Second, the Agreement is explicitly built upon principles of downstream-upstream cooperation.

**Aquatic Ecosystem Protection**

The primary objective of the Agreement is aquatic ecosystem protection. The status of ecosystem health is determined by a broad suite of ecological indicators (See Figure 2). For instance, for water quality, a classification system was developed to determine risk levels for Mackenzie tributary and main-stem rivers. For high classification rivers (i.e., those that are have high traditional use or are facing significant development pressures), site-specific water quality objectives will be set. Moreover, the Agreement states that chemicals that are human-made, toxic, bioaccumulative and persistent will be eliminated to below the level of detection. With respect to water quantity, the Agreement applies the principle of environmental flow needs. Based on Indigenous knowledge and scientific assessments, the flow regimes required to sustain functioning aquatic ecosystems are determined (generally 80-95% of the natural flow rate). The Agreement establishes that after these environmental flow needs are met, the remaining river flow will be split between Alberta and the Northwest Territories.

![Aquatic Ecosystem Health Indicators](image)

**Figure 2**: Aquatic ecosystem health indicators for the Slave River and Slave River Delta, Northwest Territories. Source: Government of the Northwest Territories Environment and Natural Resources.
Cooperation Agreement
A fundamental aspect of the Agreement is its Cooperative Risk Informed Management approach. This approach is built on principles of cooperation, prior notification, information sharing, and consultation. Importantly, the duties of “notification and consultation” not only apply to individual projects that might affect the ecological integrity of another party’s aquatic ecosystem, but are also required for broader changes in each jurisdiction’s respective legal and regulatory regimes. The Agreement also creates a bilateral management committee that operates on a consensus basis and that has responsibility for administering the Agreement. The Agreement was specifically designed to build cooperative management, while maintaining all legal options that may be available.

Challenges in the NWT-Alberta Bilateral Agreement negotiations
A defining element in the story of the Bilateral Agreement is the tremendous social, ecological, political, and economic complexity that characterized the entire process. This complexity created a number of hurdles and challenges that had to be addressed throughout the Agreement negotiation. Key sources of complexity are summarized below.

1. Ecological complexity
The physical geography of the Mackenzie River Basin includes both a massive land area and complex ecosystems, with insufficient supporting baseline data on hydrological and ecological functions and trends. Climate change further exacerbates ecological complexity. Scientific uncertainty and disagreement (for example, around how to measure and assess ecological health and environmental degradation in an ongoing way) was a challenge throughout the negotiations.

2. Dynamic political systems
Not only are the NWT and Alberta distinct in terms of their physical geography and population size and density, they also have vastly different political systems and relationships with Aboriginal governments. A central challenge in the negotiations was to find a way to respect existing relationships, engagements, and agreements (such as land-claim agreements) held between provincial, territorial, and federal governments, and Aboriginal governments.

3. Time pressures and conflicting timelines
Negotiations often succeed or fail due to time pressure, or conversely, due to a lack of urgency. The NWT aimed to continuously exert time pressure onto the negotiations in order to ensure the Agreement would be completed. The NWT negotiation team had strong and immediate political support, which remained consistent throughout the process.

A challenge shared by both negotiating parties was the issue of “conflicting clocks.” Bureaucracies tend to operate in years, or decades, whereas political and diplomatic decision-makers have fixed (and short-term) periods in which to affect change. NWT and Alberta were constantly grappling with the challenge of trying to compress timelines, and coordinate respective schedules within all of the involved agencies, departments, and cabinets.
4. **Simultaneous devolution negotiations between NWT and federal government**

NWT and the federal government were simultaneously negotiating a devolution agreement\(^1\) alongside the Bilateral Agreement. The devolution process contributed considerably to political and legal complexities in negotiating the Bilateral Agreement negotiations.

5. **The water-energy nexus across upstream-downstream jurisdictions**

Resource extraction is occurring in both the NWT and Alberta, but the jurisdictions have taken different approaches to the scale and pace of resource development. A core issue underlying the negotiation process was energy production in upstream Alberta, primarily oil sands development, which can be both water intensive and high risk. As a downstream jurisdiction, the NWT receives not only the waters flowing from Alberta, but also, by extension, the outcomes of Alberta’s decisions about energy development, environmental protection, and so forth. The NWT’s mandate was to ensure the Bilateral Agreement avoided “lowest common denominator” outcomes, and protected the rights and interests of NWT citizens, Aboriginal nations, and aquatic ecosystems.

**Overcoming Hurdles**

Given the tremendous complexity and multiple challenges facing the NWT-Alberta negotiations, it is no small feat that an Agreement was reached. Although there were many ways in which the obstacles facing the process were overcome, the following discussion provides insight into some of the principal ways the NWT strategically organized to ensure the Agreement succeeded to completion, satisfied NWT interests, and respected Aboriginal rights.

1. **An interests-based approach**

Perhaps the most important feature in the negotiation process was the interests-based approach agreed to by both the NWT and Alberta. This meant that all interests were considered valid and welcomed at the negotiating table—there were no value-judgments on the interests expressed or a requirement to justify these interests. This is a distinguishing feature of the Agreement negotiation process.

2. **Expert negotiating team**

The centerpiece of the NWT’s approach to the negotiations was the strategic decision to build an interdisciplinary, expert negotiation team. The internal team was composed of a negotiations/legal expert (with particular expertise in Aboriginal rights and law in Canada); scientific and engineering experts (who were together able to strengthen the team’s understanding of the ecological implications of proposals, thereby building a bridge between science and policy); and an Aboriginal Liaison. The Aboriginal Liaison worked closely with an Aboriginal Steering Committee, representing most of the NWT’s Aboriginal governments, and other Aboriginal government representatives. The process was built on principles of developing meaningful relationships, building support and consensus, and consent-based decision-making.

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\(^1\) Prior to this devolution, the federal government held responsibility for NWT waters. The devolution agreement was signed on April 1\(^{st}\), 2014 by the federal government, the NWT, and Aboriginal governments. The devolution gives final control of land, water, and resource development to the NWT.
3. Working closely with Aboriginal governments
The NWT's success in working closely with Aboriginal governments in the NWT was critically important for the negotiation process. As discussed above, the NWT had the challenge of determining how to respect land claim agreements and relationships with Aboriginal governments throughout the negotiation process. In particular, land-claim agreements in the NWT, along with the NWT Water Stewardship Strategy (2010), establish the requirement that "waters that flow into, within, or through the NWT are substantially unaltered in quality, quantity, and rates of flow" (See box, right). The NWT team was guided by the high standards established in existing agreements and brought these standards into the negotiation process. The team was determined to ensure that existing agreements would not be compromised by a weak Bilateral Agreement. Moreover, the team intended for the Agreement to provide another layer of protection for Aboriginal rights.

4. Strong political and external support and expert facilitation
The NWT negotiating team was further empowered and supported by the NWT Minister of Environment and Natural Resources, who also had the support and backing of the broader NWT Legislature. The close political involvement and strategic support of the NWT government proved to be invaluable, as this relationship enabled the NWT negotiating team to determine the acceptable risks they could take as they pushed for unprecedented – and at times controversial – aspects of the Bilateral Agreement.

Finally, the negotiating team had additional support from expert advisors, NGOs, and funders. The entire process was aided by an extremely effective facilitator. These experts and their complementary skill-sets and perspectives created a strong organizing structure for negotiations.

Why does this Bilateral Agreement matter to the rest of Canada?
A number of lessons from the process undertaken to achieve the NWT-Alberta Bilateral Water Management Agreement are relevant for other jurisdictions, and apply to issues beyond transboundary water management. The NWT has already begun to apply lessons learned through the Bilateral Agreement Negotiation process to other negotiations, including negotiation with the federal government to create Thaidene Nene National Park and discussions with Nunavut regarding a transboundary water agreement.

1. Collaboration with Aboriginal governments and respect for ‘consent’
This story highlights the importance and value of collaborating with Aboriginal governments and working together to reach Aboriginal consent. The NWT Government reached out to Aboriginal governments as partners at the beginning of the negotiation process, and Aboriginal values guided
much of the process and negotiations. Moreover, important policy documents that created the basis for the negotiations, like the *Northern Voices, Northern Waters Strategy* (2010), were co-created. Minister Miltenberger credited this approach with enabling the NWT and the negotiation team to work through the long-outstanding and complex transboundary waters agreement.

2. **Basin-level nested governance**
The multi-tier, multi-jurisdiction governance structure operating in the Mackenzie River Basin provides an example of a nested structure that could be relevant in other transboundary watersheds.

3. **Bilateral Agreements** govern the waters crossing borders between two jurisdictions (including NWT-Alberta, NWT-BC, NWT-Yukon, etc.) and implementation of actions is coordinated by a cooperative Bilateral Management Committee. Within each jurisdiction, further actions are taken around water management. Within the NWT, a variety of collaborative approaches are used to make decisions about water, and outcomes from these approaches inform broader scales.

4. **Emphasizes the need for continued research and attention on the issue of the water-energy nexus**
Tensions between water sustainability goals and resource extraction are common across Canada. The bilateral water agreement negotiations developed a cooperative process to deal with a wide range of complex interests and issues, including the dual goals of enabling resource extraction in upstream jurisdictions, while providing a framework to ensure aquatic protection in downstream jurisdictions.

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Support for the POLIS Water Sustainability Project’s 2015/2016 *Creating a Blue Dialogue* webinar series was provided by:

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**Endnotes/References**