17 PROVISION FOR PLAN AMENDMENTS

17.1 PLAN AMENDMENTS

In order for the Muskoka River WMP to remain current and to address future issues, the plan may be amended by following the amendment process set out in this section. Any change to the Muskoka River WMP requires an amendment to be submitted to the plan proponents and approved by MNRF. From time to time, new data, information, or issues may arise. MNRF retains the authority to amend a plan at any time, or issue an Order for the plan proponent(s) to amend the WMP.

17.2 The Amendment Process

Any party (Plan Proponent, MNRF, or 3rd Party) with an interest in the WMP may request an amendment to the WMP by bringing forward issues to the attention of the plan proponent(s).

An amendment request must be accompanied by sufficient information to allow the proponent(s) to determine whether the proposed amendment should proceed, and whether the amendment should be treated as minor or major. Proponent(s) must apply due diligence when considering proposed amendments.

The plan proponent(s) are responsible for:

- Receiving amendment requests;
- Assessing amendment requests based on criteria outlined in this section;
- Proposing amendments to MNRF; and
- Preparing amendment proposals for MNRF review

The multiple proponents for this WMP will work together when assessing an amendment request and prepare an amendment proposal (where necessary).

MNRF will review proposed amendments to ensure that plan proponents screen and process amendments consistent with the 2016 Maintaining Water Management Plans Technical Bulletin.

17.2.1 Types of Amendments

Changes to the Muskoka River WMP may include simple text corrections to significant modifications to an operating regime. In order to provide flexibility for a range of potential amendment requests, two categories of amendments (minor and major) exist. The categories are mainly differentiated by the expected level of public interest in the proposed change to the WMP.

Amendments may be subject to public and First Nations and Métis community engagement or consultation, dependent on the category of amendment (described below), as detailed in Section 3.5 of the Maintaining Water Management Plan Technical Bulletin, 2016.

17.2.1.1 Minor Amendments

Minor amendments are changes that do not affect the operating regime, plan objectives, are not expected to generate a high level of public interest, and are not expected to adversely affect Aboriginal and treaty rights. Minor amendments will not be subject to public and First Nations and Métis community engagement or consultation beyond discussions with a SAC (if applicable). Minor amendments may include:

- Changes in the presentation of information, factual or text corrections; and/or
- Changing a WMP to include a new dam and its associated Operating Plan (Section 2.1 of the Maintaining Water Management Plan Technical Bulletin, 2016)

17.2.1.2 Major Amendments

Major amendments are more significant in scale such as: changes to the operating regime or plan objectives, changes that could be expected to generate a high level of public interest or changes that might adversely affect Aboriginal and treaty rights. A major amendment will be subject to public, First Nations, and Métis community engagement or consultation. For major amendments where equivalent consultation and engagement has previously occurred through another process (e.g. previous notification that a change will be required, or amendments required after public consultation in other planning processes), the MNRF may exercise discretion to process the proposed change as a minor amendment on a case by

case basis.

17.2.2 Amendment Request

Individuals submitting an amendment request shall clearly articulate concerns and potential solutions. Amendment requestors shall participate in good faith opportunities undertaken to obtain Indigenous Communities, public and stakeholder input on proposed major amendments and should consider their ability to contribute towards those engagement opportunities.

An amendment request should provide sufficient information to allow plan proponent(s) to determine whether an amendment request should be investigated further. It is the responsibility of the individual(s) requesting the amendment to demonstrate that the request is credible, worthy of consideration and within the scope of the Muskoka River WMP and the LRIA.

The amendment request must contain the following information:

- A description of the changes being requested;
- The rationale for the changes being requested;
- Results of any pre-consultation completed with potentially affected parties; and
- Where changes in operations are proposed, a description of how the proposed operation changes may impact other dams subject to the WMP.

Upon receipt of an amendment request from a third party, the plan proponent(s) will acknowledge receipt of the request in writing to the third party and notify the MNRF that a request has been received. Where the MNRF receives an amendment request from a third party, the request will be forwarded to the plan proponent(s).

Where plan proponent(s) are considering submitting an amendment request to the MNRF, prior consultation with the MNRF, the SAC (if applicable) and other plan proponents may occur.

Plan proponents will maintain records for all amendment requests.

17.2.3 Review of Amendment Request and Categorization of Amendment

The proponent(s) is responsible for screening amendment requests to determine if the request should proceed through the amendment process, and for categorizing the amendment as minor or major. This determination will ensure the appropriate degree of public consultation for the plan amendment.

The assessment will consider the following criteria:

a) Is the amendment consistent with this Technical Bulletin?
b) Is the amendment consistent with the Muskoka River WMP objectives, or does the amendment propose a change to the WMP objectives?
c) Is there an alternative method to deal with the request rather than amending the WMP?
d) Is the request within the scope of the Muskoka River WMP?
e) Is the request related to any ongoing data or effectiveness monitoring commitments?
f) Is the request supported by other potentially affected parties?
g) Is the amendment required to comply with other regulatory requirements?
h) Has the amendment request been considered previously?
i) Does the amendment have the potential to negatively affect dam safety/public safety?
j) Does the amendment have potential impacts on socio-economic or environmental considerations?

Where an amendment request does not contain sufficient information to complete an assessment or make a recommendation to MNRF, the plan proponent will return the proposed amendment to the third party with a request for additional information.

When a plan proponent(s) has completed the screening of the amendment request, written notification will be provided to MNRF. The notification will include: a summary of the amendment request and supporting rationale, results of the assessment, a recommendation of whether the request should be further considered, and if so, the appropriate category for the amendment.

17.2.4 Review of Assessment Results

The MNRF will review the plan proponent's screening results and will:

- Agree with the recommendation;
- Request additional information; or
- Disagree with the recommendation.

Where the plan proponent(s) recommends against proceeding with the amendment request, and the MNRF is in agreement, the plan proponent(s) will notify the requestor of the decision with supporting rationale.

Where the MNRF agrees that the amendment request should proceed, the plan proponent(s) will develop and submit the final amendment proposal for MNRF consideration. The plan
proponent(s) will undertake any necessary planning, consultation, information gathering or other investigative activities associated with the amendment. Where the amendment is requested by a third party, the third party may be expected to support engagement activities.

Where the MNRF disagrees with the recommendation, the MNRF will discuss the proposed amendment with the plan proponent(s). The MNRF may subsequently direct the plan proponent(s) to proceed with consideration of the plan amendment.

17.3 Ordering an Amendment

When a decision is made to proceed through the plan amendment process, the MNRF may formalize the decision through the issuance of an Order to prepare an amendment or approve the amendment under the authority of LRIA Section 23.1(6). Plan proponent(s) may also request that the MNRF issue an Order to amend the plan.

The MNRF retains the authority to require a plan proponent to undertake a WMP amendment where the plan proponent is unwilling to consider reasonable requests or where there are significant concerns regarding a facility's operation.

When MNRF intends to order a plan proponent to amend a plan, the proponent(s) will be provided a notice of intent to issue an Order to amend the plan prior to the issuance of the Order. Upon receipt of a notice of intent to issue an Order to amend a plan, the proponent(s) has 15 days to submit a request for an inquiry to the MNRF. Requests for an inquiry under the LRIA are referred by the MNRF to the Office of the Mining and Lands Commissioner (OMLC). Additional detail regarding appeals to the OMLC are referenced in MNRF's LRIA Administrative Guide and Section 11 of the LRIA.

17.4 Amendment Preparation

Where the MNRF has determined that a proposed amendment request should proceed, the plan proponent(s) shall prepare the final amendment proposal, including completing consultation activities or information gathering in support of the proposed amendment. Where the amendment is requested by a third party, the third party requester should discuss opportunities for collaboration in preparing the amendment.

For minor amendments, the plan proponent(s) must engage the MNRF, other plan proponent(s) and the SAC (if applicable). Public and First Nations and Métis community engagement and consultation requirements for major amendments are described in the subsections 17.4.1 and 17.4.2.

17.4.1 Consultation and Engagement Requirements for Major Amendments

Plan proponent(s) and in certain circumstances third party amendment requestors, shall undertake public and First Nations and Métis community engagement and consultation when developing a major amendment. Specific requirements shall be discussed with the MNRF in advance. The scope of consultation and engagement may vary depending on:

- Scope and scale of the proposed major amendment;
- Level of public, stakeholder and First Nation and Métis community interest in dam operations;
- Level of potential impact on Aboriginal and treaty rights;
- Potential impacts on other regulatory approvals; and
- Potential impacts within the scope of the LRIA and the WMP.

Consultation and engagement approaches may include:

- Direct written notice;
- Open houses;
- Information sessions;
- Public notice; and/or
- Community meetings or workshops/focus groups.

Sufficient opportunity for reasonable engagement shall be provided and information regarding the amendment shall be communicated in concise plain language.

17.4.2 Consultation and Engagement Requirements Where EA Applies

In some instances, proposed changes to existing operations of the WMP will be subject to the Environmental Assessment (EA) Act, such as MNRF's Resource Stewardship and Facility Development Class EA, or the OWA Class EA.

In such cases, the EA Act requirements shall be completed in advance of submitting an amendment request. The plan proponent(s) is not required, but may elect, to incorporate WMP amendment considerations during the EA Act process.

Where proposed changes are subject to an EA, the proponent may not be required to complete any additional public and First Nations and Métis community engagement and consultation in support of the proposed WMP amendment where sufficient engagement activities have been completed as part of the EA process.

MNRF determination of whether consultation and engagement completed during the EA is sufficient for purposes of a WMP amendment shall be made as part of the Ministry's assessment of the WMP amendment screening results. Additional consultation and engagement shall not be required, unless the MNRF concludes that the EA consultation was insufficient. In this case, the MNRF will determine the scope and scale of additional consultation and engagement necessary for the purposes of the WMP amendment.

17.5 Amendment Submission

Following completion of any applicable consultation requirements, the plan proponent(s) will provide the MNRF, other plan proponent(s) where appropriate, and any third party requesters, a copy of the final amendment proposal including:

a) Amendment request and supporting rationale;
b) Proposed changes (replacement text) as they would appear within the approved plan;
c) Map of the area affected by the amendment (if applicable);
d) Record of consultation identifying the type of form of feedback sought, issues identified and steps taken by the proponent to modify the proposed amendment in response to comments (if applicable); and
e) Any other supporting information deemed applicable to the proposed amendment.

17.6 Amendment Review

All amendments to the Muskoka River WMP must be approved by the MNRF.

The MNRF will complete a review of the amendment submission. For proposed minor amendments, the MNRF will complete a review within 30 days of receipt of a complete submission. For proposed major amendments, MNRF will complete a review within 60 days of receipt of a complete submission.

During and/or following the review of the proponent's amendment submission, the MNRF may, with supporting rationale, request additional information required to complete the MNRF's review.

17.6.1 Requests for Additional Information

Where additional information is required, the MNRF will identify in writing the additional information requested and the rationale for the request. In such circumstances, the MNRF review timeline will be put on hold until the MNRF receives the requested information.

Upon receiving a request for additional information from the MNRF, the proponent may:

- Agree to provide the additional information by the specified time;
- Request a change to the specified time for submitting the information;
- Request a review by the Regional Director of the required information; or
- Refuse to provide the additional information.

Further details regarding the above scenarios can be found in Section 3.7.1 of the Technical Bulletin (2016).

17.7 Issuance of Decision

In issuing a decision on the proposed amendment, the MNRF shall either:

- Approve the amendment;
- Approve the amendment subject to changes considered advisable to further the purposes of the Act; or
- Refuse the amendment.

MNRF will provide the plan proponent(s) and any third party requester, as appropriate, written confirmation of its decision and supporting rationale.

If the amendment is approved, the WMP will be revised and a record of the amendment will be appended to the approved WMP.

Where the MNRF intends to refuse an amendment, a Letter of Intent to Refuse approval of the amendment will be issued to the proponent identifying the supporting rationale and any additional measures the proponent(s) can take to address any outstanding concerns. The Letter of Intent to Refuse approval of amendment will notify the proponent that unless the MNRF receives a request within 15 days from the proponent for an inquiry, the amendment will be refused.

Requests for an inquiry under the LRIA are referred by the Ministry of the Office of Mining and Lands Commissioner (OMLC). Additional information on appeals to the OMLC is detailed in MNRF's LRIA Administrative Guide.