

Under subsection 16(2) of New Brunswick Environmental Impact Assessment Regulation 87-83 – Clean Environment Act, the Lieutenant-Governor in Council, having considered the report and the recommendation of the Minister under subsection 16(1), gives approval for the proposed decommissioning (i.e., removal) of the Eel River Dam, as described in the document "Final Report - Environmental Impact Assessment for the Removal of the Eel River Dam" dated March 31, 2006, subject to the following conditions:

- (a) this approval does not relieve the proponent from the necessity to comply with other applicable federal and provincial Acts or Regulations. This includes, but is not limited to, compliance with the NB Crown Lands & Forests Act, and the federal Fisheries Act, Species at Risk Act, Indian Act and Navigable Waters Protection Act;
- (b) commencement of this undertaking must occur within three years of the date of this approval. Should commencement not be possible within this time period, the undertaking must be registered under the Environmental Impact Assessment Regulation (87-83) - Clean Environment Act again, unless otherwise stated by the Minister of Environment;

(c) implementation of the decommissioning project shall proceed in a phased or staged approach as outlined in Section 5.0 of the document "Final Report - Environmental Impact Assessment for the Removal of the Eel River Dam" dated March 31, 2006. The three implementation stages consist of:

(i) **Stage 1: Design, Permitting, Planning, and**

Communication - Stage 1, includes finalization of detailed design, acquisition of permits, stakeholder and Aboriginal communication/notification, preparation of an Environmental Management Plan (EMP) to ensure that environmental impacts of decommissioning are minimized, and implementation of shoreline protection measures,

(ii) **Stage 2: Initiate Physical Decommissioning Activities**

- Stage 2 consists of the excavation of a 150 m-wide opening in the north end of the dam, with the existing gates being utilized to control water flows as necessary to allow the work to be completed (excavation is proposed to begin at the north end of the structure and proceed to the south), and

(iii) **Stage 3: Complete Physical Decommissioning**

Activities - Stage 3 consists of the decommissioning (removal) of the remainder of the dam. This will be accomplished by continuing excavation activity in a southerly direction from the initial 150 m opening, until complete. Stage 3 will also include removal of the existing water-control structure, and any required site remediation/restoration;

(d) the proponent must develop a comprehensive EMP and submit it to the Director, Project Assessment and Approvals Branch for review, and receive approval prior to the start of ground-disturbing activities. Stakeholders identified in Section 2.2.1.3 of the document "Final Report - Environmental Impact Assessment for the Removal of the Eel River Dam" (dated March 31, 2006) must be provided with an opportunity to provide input on the EMP prior to finalization. The EMP must include an Environmental Protection Plan (linking mitigation measures to a location), project contingency plans (e.g., emergency response, etc.), and monitoring plans (e.g., compliance and environmental effects monitoring and/or any follow-up programs) - at a minimum, the EMP must include specific monitoring plans for:

(i) **Surface water (erosion & sedimentation)** - Should the monitoring program identify a change in surface water quality below the accepted criteria as determined by regulatory agencies, the proponent shall ensure that the Eel River Bar First Nation (ERBFN) and the general public are notified of any potential risks to human health and implement mitigative measures in order to address the issue. Such mitigation must be approved by the Director, Project Assessment and Approvals Branch, Department of Environment (ENV), prior to implementation,

(ii) **Surface water (faecal coliform)** - Should the monitoring program identify a change in surface water quality below the accepted criteria as determined by regulatory agencies, the proponent shall ensure that the ERBFN and the general public are notified of any potential risks to human health and implement mitigative measures in order to address the issue. Such mitigation must be approved by the Director, Project Assessment and Approvals Branch, ENV, prior to implementation,

(iii) **Groundwater** - Baseline groundwater monitoring must be conducted for all private wells that could be potentially affected by decommissioning activities, and in the event that the water quantity or quality of residential wells is impacted by the project, it will be the proponent's responsibility to investigate and potentially rectify the situation (including provision of an alternative water supply - e.g., drilling a new well or hook-up to the municipal drinking water system). The proponent must immediately notify the Manager of the Water Sciences Section, ENV of any complaint(s) received regarding water quantity or quality problems. If an agreement as to the cause of water problems cannot be reached between the proponent and the resident(s), ENV will provide independent third party arbitration, the results of which will be binding on the proponent and the owner of the impacted water supply, and

(iv) **Fisheries resources** - to monitor impacts/changes resulting from the project on selected fishery resources,

the EMP must also summarize project implementation details, including standard operating procedures, finalized project schedule and project team organizational structure (i.e., define and identify roles and responsibilities, accountability and reporting procedures during each stage of the project). Commencement of ground-disturbing decommissioning activities cannot be undertaken prior to approval of the EMP by the Director, Project Assessment and Approvals Branch, ENV;

(e) within six months of the date of this approval, the NB Department of Supply & Services (DSS) must provide a project implementation schedule (i.e., anticipated timelines) to all stakeholders identified in Section 2.2.1.3 of the document "Final Report - Environmental Impact Assessment for the Removal of the Eel River Dam" (dated March 31, 2006). Further, as part of Stage 1, DSS must formally notify NB Power Holding Corporation (NB Power) in writing as to the finalized project schedule - DSS must also incorporate into the project schedule a minimum 18 month period (i.e., from the date of this approval), for NB Power to develop an alternative industrial water supply for the Dalhousie Generating Station, prior to the initiation of Stage 2 of the project (i.e., initiation of physical decommissioning activities);

(f) avian species at risk field survey - a pre-construction field survey must be conducted to confirm that the yellow rail (*Coturnicops noveboracensis*), listed as a species of special concern under the federal Species at Risk Act, is not actively nesting in the impoundment. Should the survey identify active nests in the impoundment area, the project schedule must be finalized so that physical decommissioning activities are initiated at the end of the nesting season (i.e., once birds have left and nests are no longer active). The results of the survey are to be submitted to the Director, Project Assessment and Approvals Branch, ENV and the Canadian Wildlife Service of Environment Canada for review, and the proponent must receive approval from the Director, Project Assessment and Approvals Branch, prior to proceeding to Stage 2;

(g) the proponent shall conduct an examination of all sewer and drainage outfalls along the Eel River that could be affected by the decommissioning project, and implement any necessary measures to ensure their continued operation. This review must be completed as part of Stage 1 (Design, Permitting, Planning, and Communication), prior to the commencement of ground-disturbing activities. Any measures identified as necessary to ensure continued operation of the sewer and drainage outfalls must be completed prior to the start of Stage 2 (Initiation of Physical Decommissioning Activities). This information is to be submitted to the Director, Project Assessment and Approvals Branch, ENV for review, and the proponent must receive approval from the Director, Project Assessment and Approvals Branch, prior to moving to Stage 2;

(h) archaeological/heritage resources - a follow up program (i.e., field investigation) must be developed and conducted by a professional archaeologist immediately following decommissioning (as soon as conditions safely permit). The purpose of the field investigation will be to determine the condition of any heritage resources present within the assessment area that may be exposed following decommissioning and threatened by erosion or by future human activity/development. The field investigation (and subsequent final report) must meet the requirements of the Project Executive, Archaeological Services Section of the Department of Wellness, Culture and Sport (who may be contacted at (506) 453-2756;

(i) in the event of a modification to the obligations, commitments, monitoring and proposed mitigation measures pursuant to the preceding conditions, the proponent shall:

(i) request any modification in writing,

(ii) justify each modification relative to site-specific conditions,

(iii) explain how that modification provides an equal or greater level of environmental protection than the original measure,

(iv) submit to the Director, Project Assessment and Approvals Branch, ENV, detailed information concerning any necessary modification(s) to the obligations, commitments, monitoring and proposed mitigation measures, and

(v) not implement any modification until approval has been granted by the Minister of Environment;

(j) the proponent shall develop a tracking database that can be used to track and document compliance with all material, permit, and approval conditions and commitments made during the regulatory review process. The guidelines for this database shall be developed in consultation with the Project Assessment and Approvals Branch of ENV. This database is to be approved by the Director of the Project Assessment and Approvals Branch prior to initiation of decommissioning activities. Once approved, the proponent shall submit an electronic copy of the tracking database to the Project Assessment and Approvals Branch as a means of tracking and documenting compliance throughout project implementation. The proponent shall update the database, and provide such updates to the Department, on a monthly basis throughout implementation, until project completion or until such a time as determined by the Project Assessment and Approvals Branch;

(k) all of the above terms and conditions are an integral part of this approval, and the approval, including all terms and conditions, applies to the project notwithstanding the rights of any users, lessees, and/or subsequent owners;

(l) in addition to the preceding conditions, the proponent shall adhere to, and ensure adherence by all contractors, sub-contractors and workers for this project, to all conditions listed herein, and all obligations, commitments, monitoring and proposed mitigation measures as outlined in the document "Final Report - Environmental Impact Assessment for the Removal of the Eel River Dam" dated March 31, 2006, and related documents and correspondence as deemed applicable by the Minister to this project.