



Ministry of Forests
Ministry of Land, Water and Resource Stewardship
Ministry of Energy, Mines and Low Carbon Innovation Resources

NAME OF POLICY:	Water Use for Mineral Exploration and Placer Mining Policy
APPLICATION:	This policy applies to water authorization exemptions under Water Sustainability Regulation sections 34.2 to 34.5 pertaining to mineral exploration activities and placer mining activities.
ISSUANCE:	Executive Director, Water Protection and Sustainability Branch, Ministry of Land, Water and Resource Stewardship (LWRS); Director, Water Management Branch, Ministry of Forests (FOR); Executive Director, Mines, Competitiveness & Authorizations Division, Ministry of Energy, Mines and Low Carbon Innovation Resources (EMLI)
IMPLEMENTATION:	FOR, LWRS, EMLI
LEGISLATIVE REFERENCES:	<i>Water Sustainability Act</i> (Ch. 15, S.B.C 2014) [WSA] Water Sustainability Regulation (British Columbia Reg. 36/2016, as amended) [WSR] <i>Mines Act</i> (Ch. 293, S.B.C 1996) [MA]
RELATED POLICIES:	N/A
RELATIONSHIP TO PREVIOUS POLICIES:	This policy replaces the Interim Policy on Regulating Water Use in Mineral Exploration and Placer Mining (2020).
POLICY AMENDMENT PROCESS:	To amend this policy a request must be made in writing to the Executive Director, Water Protection and Sustainability Branch, LWRS; the Director, Water Management Branch, FOR; and Executive Director, Mines, Competitiveness & Authorizations Division, Regional Operations Branch, EMLI

Water Use for Mineral Exploration and Placer Mining Policy



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October 27, 2022
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APPROVED AMENDMENTS:		
Effective date	Approval date	Description/Summary of Changes:
March 18, 2020	February 18, 2020	New Interim Policy
December 13, 2022	October 27, 2022	Interim Policy updated and replaced by this policy

TABLE OF CONTENTS

1. POLICY STATEMENT	4
2. REASON FOR POLICY.....	4
3. DEFINITIONS.....	5
4. LEGISLATION	7
5. RULES FOR EXEMPTION.....	8
6. POLICY.....	10
6.1 <i>Mines Act</i> Permits and Prospecting for a Mineral under the WSA.....	10
6.2 Placer Mining Threshold.....	11
6.3 Water for Camp Use.....	11
6.4 Using Mechanical Hand Drills and Rock Saws.....	12
6.5 Cultural Heritage Resources	12
6.6 Recorded Water and Water Allocation Notations.....	13
7. GOVERNMENT PROCEDURES	13
7.1 Step 1: Initial NoW Review.....	15
7.2 Step 2: NoW Technical Assessment.....	16
7.2.1 First Nations Consultation.....	18
7.2.2 Avoiding or Mitigating Risk.....	18
7.3 Step 3: Referral to WSA Engineer (if applicable).....	19
7.3.1 Requiring WSA Authorization	19
7.4 Compliance and Enforcement	20
7.5 Suggested Referral Process	21

1. POLICY STATEMENT

This policy is intended to provide guidance on how [sections 34.2 to 34.5 of the WSR](#) apply to the diversion or use of water for mineral exploration activities and placer mining activities in British Columbia (B.C.). The policy provides guidance on the water authorization exemptions under [WSR ss. 34.2 to 34.5](#), suggests a referral process to assist government staff in evaluating any potential for impacts, and supports consideration of how water-related risks might be addressed, including when water authorization under the [WSA](#) may be required. Consideration of this policy is recommended as guidance for making these determinations; however, statutory decision makers retain discretion as described in the WSA and WSR.

2. REASON FOR POLICY

The policy assists with the review of Notice of Work (NoW) applications for [MA](#) permits related to mineral exploration activities or placer mining activities and their proposed diversion or use of water. This policy is intended to provide guidance for interpreting [WSR ss. 34.2 to 34.5](#) and considering whether proposed water diversion and/or use for mineral exploration activities or placer mining activities might require an application for a WSA authorization. Please note that those seeking to divert or use water for mineral exploration activities or placer mining activities without WSA authorization in accordance with [WSR ss. 34.2 to 34.5](#) are responsible for ensuring that they are compliant with those provisions as well as with all applicable legislation.

This policy:

1. Provides guidance on authorization exemptions under [WSR ss. 34.2 to 34.5](#) for the diversion or use of water for mineral exploration activities or placer mining activities in accordance with those provisions and/or without authorization under the WSA;
2. Provides guidance for government staff's review of whether the activities and proposed water diversion and/or use in the NoW application aligns with the [WSR ss. 34.2 to 34.5](#) exemption requirements;
3. Provides guidance for EMLI staff when reviewing the NoW application and assessing water-related risks or concerns and whether referral to a WSA Engineer may be advisable; and,
4. Provides guidance for FOR WSA Engineers when evaluating the NoW's potential for water-related risks, such as potential impacts on a stream, authorized water users, or cultural heritage resources, and in considering how such risks might be addressed, including whether a WSA authorization application may be required.

3. DEFINITIONS

Relevant terms defined under [WSA s.1 \[definitions\]](#): applicant, authorization, decision maker, divert, environmental flow needs, licence

The definitions below are provided for convenience; should they differ from what is listed in the WSA, the WSA definition takes priority.

“engineer”: except in the definition of "professional" in [WSA s.48](#), means a person (who is a professional engineer, a professional geoscientist or limited licence-holder) designated as an engineer under [WSA s.114 \(5\)](#)^{1,2}

“prospecting for a mineral”: means searching for a mineral (a) using hand-held tools in a manner that does not involve mechanical disturbance of the surface, or (b) in a prescribed manner

"recorded water": means water the right to the diversion or use of which is held under an authorization or another enactment

“sensitive stream”: means a stream designated by regulation as a sensitive stream

“unrecorded water”: means water in a stream or an aquifer that is not recorded water

Relevant terms defined under [WSR s.1 \[definitions\]](#): application, point of diversion

Relevant terms defined under [WSR s.34.2](#):

The definitions below are provided for convenience; should they differ from what is listed in the WSR, the WSR definition takes priority.

“mineral exploration activities”: means activities, described in paragraph (a) of the definition of “mining activity” in [MA s.1](#), performed in relation to minerals other than placer minerals

"Mines Act permit" means a permit issued under [MA s.10](#) in relation to mineral exploration activities or placer mining activities

“placer mining activities”: means activities, described in the definition of “mining activity” in [MA s.1 \[definitions\]](#), performed in relation to placer minerals and that involve the processing of less than 2 000 m³ of pay dirt per year³

¹ The Comptroller of Water Rights designates “engineers” for the purposes of the WSA. More information on WSA engineer designations is available online: [WSA Designations \(gov.bc.ca\)](#).

² Under [WSA s.114 \(8\) and \(9\)](#) the comptroller or water manager may exercise any power or perform any duty given under the WSA to an engineer or an officer.

³ A conversion rate for pay dirt is 2:1 (tonnes: cubic metres). See [Section 6.2](#) for more information.

Relevant terms defined under [MA s.1 \[definitions\]](#):

The definitions below are provided for convenience; should they differ from what is listed in the MA, the MA definitions takes priority.

“cultural heritage resource”: means a cultural heritage resource as defined in the [Mineral Tenure Act](#); which means an object, a site or the location of a traditional societal practice that is of historical, cultural or archaeological significance to British Columbia, a community or an Indigenous people

“inspector”: means a person appointed by the chief inspector as an inspector of mines [and delegated the power to issue permits under the MA from the chief permitting officer]

“mining activity”: means any activity related to

- (a) the exploration and development of a mineral, a placer mineral, coal, sand, gravel or rock, or
- (b) the production of a mineral, a placer mineral, coal, sand, gravel or rock, and includes the reclamation of a mine

“permit”: means a permit issued under [MA s.10](#)

Terms not defined in the WSA, WSR or MA:

The definitions below are intended to provide clarity and guidance and do not carry legal authority and should not be interpreted as the definitive description of the concepts.

“Indigenous Interest”⁴: refers to claimed or proven Indigenous rights, including title and Treaty rights that relate to section 35(1) of the *Constitution Act*, 1982, and that require consultation and, if appropriate, accommodation

“Notice of Work (NoW)”: an application to obtain or amend a [MA s.10](#) permit for work in and about a mine as described in the NoW application form

“pay dirt”: natural material, usually a sediment layer known to host placer minerals, that is extracted and washed, often through a sluice, during the placer mining operation resulting in the final recovery of concentrated placer minerals

“water allocation notation”: a warning flag or management tool for Ministry staff intended to provide guidance regarding water supply limitations on the source and the capacity of the source to provide for additional water use demand (the historical term is “water allocation restriction”)

⁴ Note: the term “Indigenous” is used in the Canadian context to refer to First Nations, Métis and Inuit peoples. Its intended use is synonymous with the term “Aboriginal” as it appears in the Section 35 of the *Constitution Act*, which affirms the explicit Aboriginal and treaty rights of First Nations, Métis and Inuit peoples in Canada.

4. LEGISLATION

A list of relevant legislation and regulation sections is provided below for reference. Refer to the Act or regulation for specific wording of a section. Additional provisions may also apply. The list below is provided for convenience; should it differ from what is listed in the legislation or regulation, the legislation or regulation takes priority.

Note: This policy reflects legislation and regulation provisions in effect at the time of writing. The policy may require updating as related legislation and regulation provisions are revised to align with the [United Nations Declaration on the Rights of Indigenous Peoples](#) (UNDRIP) (per the [Declaration on the Rights of Indigenous Peoples Act](#)) or are otherwise amended.

[WSA s.6\(3\)\(a\) and \(b\)](#) [*Use of water*] unrecorded water from a stream or an aquifer may be used for prospecting for a mineral.

[WSA s.12](#) [*Application and decision maker initiative procedures*] describes application processes and information a decision-maker may require for a decision.

[WSA s.15](#) [*Environmental flow needs*] mandatory requirement for a decision maker when deciding an application for an authorization, unless exempted, to determine and consider environmental flow needs (EFN) of a stream when authorizing water use, including from an aquifer if decision maker considers it is reasonably likely to be hydraulically connected to a stream.

[WSA s.93](#) [*Powers of engineers and officers*] details engineers' powers to inspect, take action and to issue orders to any person with right, permission or obligation under WSA, including to inspect works or activities or take other actions.

[WSA s.114](#) [*Administration*] describes authority to designate officials with powers and duties under WSA, including the ability of a water manager to exercise any power or perform any duty given under this Act to an engineer or an officer.

[WSR s.3](#) [*Applications for licences and use approvals*] prescribes requirements for persons applying for WSA authorizations (e.g., contact, source details including drawing, purpose, quantity, timing, appurtenancy); additional considerations for water storage by a dam.

[WSR s.34.2](#) [*Definitions - mineral exploration*] describes the definitions used in WSR ss.34.2 to 34.5.

[WSR s.34.3\(1\)](#) [*Exemptions - mineral exploration*] describes the conditions under which a person with a valid MA permit can divert or use water without a WSA authorization for use of water for mineral exploration activities or placer mining activities, or a camp associated with these activities.

[WSR s.34.3\(2\)](#) describes how a person who is exempt from holding a MA permit can divert or use water for mineral exploration activities, provided only mechanical hand drills or mechanical rock saws (designed to be carried and used by a single person) are used.

[WSR s.34.4](#) [*Rules for exemptions*] describes rules and restrictions that apply to diversion or use of water without WSA authorization for mineral exploration activities or placer mining activities.

[WSR s.34.5](#) [*Exception to exemptions*] describes when a WSA engineer may require that an application for a WSA authorization be made for the diversion or use of water for mineral exploration activities, placer mining activities or a camp associated with these activities.

[MA s.10](#) [*Permits*] describes the permitting requirements to start any work in, on or about a mine.

[Mines Fee Regulation s.1\(2\)](#) [*Interpretation*] For the purposes of this regulation, each cubic metre of pay dirt moved in a placer mine is deemed to be equivalent to 2 tonnes of pay dirt moved in the mine.

5. RULES FOR EXEMPTION

Persons seeking to undertake mineral exploration activities or placer mining activities without authorization to divert or use water under the WSA must meet the exemption requirements under [WSR ss.34.2 to 34.5](#). When a NoW application is submitted for mineral exploration activities or placer mining activities that involve the diversion or use of water, government staff should review the proposal to assess whether authorization under the WSA may be required in addition to the MA permit. This government review process is described in [Section 7](#).

Persons involved in such activities are encouraged to review the rules for exemption under [WSR ss.34.2 to 34.5](#) before submitting a NoW application, including to consider whether authorization under the WSA may be needed. Determining in advance whether a water authorization may be needed may help to save time and expenses. Policy and guidance on the exemptions are provided in [Section 6](#).

Reminder: Those seeking to divert or use water for mineral exploration activities or placer mining activities without WSA authorization in accordance with [WSR ss.34.2 to 34.5](#) are responsible for ensuring that they are compliant with those provisions as well as with all applicable legislation.

Summary of [WSR ss.34.2 to 34.5](#) exemption and rules (if met, WSA authorization is not required):

- The activities must meet the definitions of “mineral exploration activities” and/or “placer mining activities” as defined in [WSR s.34.2](#), (including reference to [MA s.1](#) definitions).
- The person must hold a permit under [MA s.10](#) in relation to the placer mining activity or mineral exploration activity unless otherwise exempt from holding such a MA permit.
 - The **holder of a MA permit** may divert and use water for a camp of no more than 20 people (operated and maintained in relation to permitted activities) associated with a mineral exploration activity or a placer mining activity but subject to the WSR rules and restrictions.
 - A person **exempted from a MA permit** may divert and use water for mineral exploration activities using mechanical hand drills or mechanical rock saws if the tools are designed to be carried and used by a single person only but subject to the WSR rules and restrictions.
- The person may only divert or use unrecorded water.
- The unrecorded water must not be from:
 - A stream or aquifer where there is a treaty water reservation (under [WSA s. 40](#)) or the Nisga’a water reservation ([under WSA s.41](#));⁵
 - A sensitive stream designated under [WSR s.17](#) and listed in [WSR Schedule B](#);
 - A point of diversion within a protected area, as defined in [WSR s.46](#);⁶
 - A stream to which a [WSA s.82](#) plan regulation [*dedicated agricultural water*] applies;⁷ or,
 - A stream when a temporary protection order under the WSA applies ([WSA ss. 86, 87, and 88](#)).⁸
- The person must not construct, install or place any permanent or semi-permanent works in the stream channel.
- The person must remove from the stream channel any pump, equipment or material constructed, installed or placed for diverting or using water from the stream after the placer mining activity or mineral exploration activity is completed.
- The water supply intake must be equipped with a screen, or otherwise modified, to:
 - Prevent potential loss of fish due to entrainment or impingement; and,
 - Minimize disturbance of, or removal of sand and gravel from, the stream channel.

⁵ Source for current water reservations includes: [Water Reservations \(gov.bc.ca\)](#).

⁶ Source for current protected areas includes: [iMapBC](#), [Protected Areas of British Columbia Act](#).

⁷ Source for current water sustainability plans includes: [Water Planning & Strategies \(gov.bc.ca\)](#).

⁸ Active temporary protection orders are listed at [Drought Information \(gov.bc.ca\)](#).

- The person must ensure that:
 - Any disturbance of the stream channel or of the stable natural materials and vegetation in and about the stream is minimized when accessing water from the stream;
 - Any water that is diverted is discharged without causing a significant risk of harm to public safety, the environment, land or other property;
 - The water supply and works of persons who are lawfully diverting or using water under the WSA are not adversely affected; and,
 - The diversion or use of water does not cause a risk of significant adverse impact to fish, wildlife or the aquatic ecosystem of a stream or adverse impact on a cultural heritage resource.

6. POLICY

6.1 *Mines Act* Permits and Prospecting for a Mineral under the WSA

Any work in or about a “mine” requires a MA permit or exemption ([MA s.10](#)). The [Mineral Titles Information Update No. 38](#) describes minor activities that are generally not considered to be a “mine” and **do not require a MA permit**, e.g., mineral exploration using hand-held tools and placer exploration work undertaken without mechanical disturbance of the land.

Note: Individuals exempt from the requirement to obtain a MA permit typically do not submit a NoW application, therefore the activities are not reviewed by government staff.

Much of the water diversion and use for these minor activities that **do not require a MA permit** may fall under the exemption in [WSA, s.6\(3\)](#), where a person may divert and use unrecorded water from a stream or an aquifer **without a WSA authorization** to “prospect for a mineral”.

“Prospecting for a mineral”, as defined in [WSA s.1](#), means searching for a mineral using hand-held tools in a manner that does not involve mechanical disturbance of the surface or searching for a mineral in a prescribed manner. This includes recreational hand panning and placer hand mining because these activities are restricted to the use of hand-held tools and do not involve mechanical disturbance of the ground surface.

Under the [Mineral Tenure Act](#) (MTA), placer hand mining may be conducted on a placer claim by the holder of a free miner’s certificate or with permission of the recorded holder of the placer title. Recreational hand panning is allowed in specified areas of B.C. under the MTA but may require the permission of the recorded holder of the mineral title if on a valid mineral claim.

6.2 Placer Mining Threshold

Under [WSR s.34.2](#), placer mining activities may qualify for an exemption from the requirement to obtain a water authorization if they:

- Mean activities described in the definition of “mining activity” in [MA s.1](#), performed in relation to placer minerals; and,
- Involve the processing of less than 2 000 m³ of pay dirt per year.

It is common in placer mining to measure pay dirt in tonnes rather than cubic metres. For example, per [s.1\(2\) of the Mines Fee Regulation](#) and the NoW application, the pay dirt conversion rate is 2:1 (tonnes: cubic metres).

6.3 Water for Camp Use

Only specific mining camps of no more than 20 people will be exempt from holding a water authorization if operated and maintained in relation to MA permitted activities. The exemption for camp use in [WSR s.34.3\(1\)](#) only applies to camps providing living quarters for no more than 20 people for mineral exploration activities or placer mining activities (defined in [WSR s.34.2](#)) under a MA permit. Note that these placer mining activities are limited to the processing of less than 2 000 m³ of pay dirt per year.

For example, a camp for placer mining may be exempt from the requirement to hold a water authorization only if the camp is for no more than 20 people, the placer mining activities process less than 2 000 m³ of pay dirt per year, and the person holds a MA permit for the placer mining activities.

There is no water authorization exemption for camps if the person does not hold a MA permit. Mineral exploration activities or placer mining activities that do not have a MA permit must obtain a WSA authorization to divert and use water for camp use unless an existing authorization already authorizes diversion and use from a water source for a particular camp.

Note: Regardless of whether a WSA authorization is required, water for camp use may still be subject to other statutory requirements, such as those under the [Drinking Water Protection Act](#). In the case of MA permit applications or WSA authorization applications, government staff may wish to consider referring those applications to the appropriate [Health Authority \(drinking water officers\)](#). Applicants involved in mining activities requiring related water for camp use should be encouraged to engage with the appropriate Health Authority when planning to construct a camp.

6.4 Using Mechanical Hand Drills and Rock Saws

Individuals undertaking mineral exploration activities (as defined in [WSR s.34.2](#)) who are **exempt from holding a MA permit** are also exempt from the requirement to obtain a WSA authorization if all of the following apply:

- The mineral exploration activities are conducted using only mechanical hand drills or mechanical rock saws;
- The tools above are designed to be carried and used by a single person only; and,
- The mineral exploration activities meet the rules for exemption in [WSR. 34.4](#) (see [Section 5](#) for a summary).

6.5 Cultural Heritage Resources

The term “cultural heritage resource” used in [WSR s.34.5 \(2\)\(b\)](#) aligns with its definition in the [MTA](#) (and as defined by cross-reference in the MA), where “cultural heritage resource” means an object, a site or the location of a traditional societal practice that is of historical, cultural or archaeological significance to B.C., a community or an aboriginal people.

Consideration of cultural heritage resources should be included when decision makers consider potential impacts on Indigenous Interests in connection with First Nations consultation (as further discussed below). These considerations may extend to broader First Nation interests or concerns such as related to objects, sites, or locations of spiritual significance identified by the First Nation.

When considering potential for adverse impact to a cultural heritage resource in respect of First Nations consultation, a decision maker might consider:

- The strength of the claim;
- The type and characteristics of the proposed activity;
- Whether the potential impacts could be avoided or mitigated; or,
- Whether concerns may be addressed by changes to the application or through terms and conditions under an applicable statutory decision.

Note: The [Heritage Conservation Act](#) protects all archaeological sites pre-dating 1846 as well as those archaeological sites for which identification standards have been prescribed, whether on Provincial Crown or private land. Disturbance and/or removal of artifacts from an archaeological site without a permit may result in penalties under that legislation. FOR’s Archaeology Branch should be involved where an archaeological site is identified.

6.6 Recorded Water and Water Allocation Notations

Under [WSR s.34.4\(2\)](#), only water that is unrecorded may be used or diverted without a WSA authorization for mineral exploration activities or placer mining activities (subject to the other rules for exemption). Unrecorded water is water considered to be potentially available for authorization because the rights to divert or use it are not held under existing authorizations or another enactment. Water sources that are fully recorded (i.e., allocated) may not have water available for further diversion or use.

A water allocation notation is a water management tool that provides guidance to Ministry staff and is used to indicate the potential lack of water availability on a source. Ministry staff place water allocation notations on streams and aquifers to alert other staff and prospective applicants to current or potential water allocation concerns. The presence of water allocation notations on a source may be an indicator that water may not be available for licensing or for short term use.

Individuals seeking to use or divert water for mineral exploration activities or placer mining activities without WSA authorization under the [WSR ss.34.2 to 34.5 exemptions](#) should be strongly encouraged to conduct advance research on the water source of interest, especially to understand any water supply constraints, including whether the source is recorded so water from it cannot be diverted or used under the rules for exemptions ([WSR s.34.4](#)). This may help to avoid investing time and expenses for water authorization applications with a high likelihood of refusal due to insufficient water availability. Note that stream hierarchy and hydraulic connectivity may impact whether water allocation notations also apply to connected sources.

Current water allocation notations are available on [B.C.'s Water Allocation Notations](#) webpage (via pdf and iMapBC). Additional guidance is available in the [Application of Water Allocation Notations to Water Authorizations](#) policy and the [Refusal of Applications on Over-subscribed Sources – For Applicants](#) policy.

7. GOVERNMENT PROCEDURES

The following recommended procedures are intended to guide government staff when considering how [WSR ss.34.2 to 34.5](#) might apply during the review of NoW applications for mineral exploration activities or placer mining activities involving the diversion or use of water. Table 1 (next page) provides a summary of how a review process for these purposes might be undertaken and [Section 7.5](#) provides a diagram of the suggested process.

Table 1. Summary of recommendations for government review of NoW applications pertaining to mineral exploration and placer mining activities proposing the diversion and/or use of water.

Step	Summary of Recommendations
<p>1. Initial NoW review</p>	<ul style="list-style-type: none"> • NoW application is received by government • An initial review of the NoW application is conducted, including the consideration of whether the proposed water diversion and use aligns with the rules for exemption under WSR ss.34.2 to 34.5 or if an application for water authorization may be necessary • NoW applicant is informed if a water authorization application (and possibly other authorizations) may be necessary, i.e., proposed water diversion and use does not meet the exemption requirements under WSR ss.34.2 to 34.5
<p>2. Technical Assessment of NoW</p>	<p><i>If government determines that the proposed water diversion and use may align with the exemption under WSR ss.34.2 to 34.5:</i></p> <ul style="list-style-type: none"> • Risks and concerns of proposed water diversion and use are considered and determination is made of whether any warrant referral to the WSA Engineer* • Consultation with First Nations on NoW application is conducted and any water-related concerns are shared with the WSA Engineer (if applicable) * • Possible measures are identified to avoid, mitigate or address any water-related concerns or potential adverse impacts to stream, stream flow, other water users, or cultural heritage resources* • Technical assessment is completed and decision is made on NoW application
<p>3. Referral to WSA Engineer (if applicable)</p>	<p><i>If government determines there are risks or concerns of potential adverse impacts to stream, stream flow, other water users or cultural heritage resources and a referral to a WSA Engineer may be warranted:*</i></p> <ul style="list-style-type: none"> • Referral is received and review of NoW application and First Nations' comments (if applicable) is conducted by WSA Engineer • Possible measures to avoid, mitigate, or address risks or concerns are considered in collaboration with EMLI • Determination of whether an application for WSA authorization is required due to potential for significant adverse impacts to stream, stream flow, other water users or adverse impacts to cultural heritage resources • Requirement of an application for WSA authorization is communicated to EMLI and NoW applicant (if applicable)
<p>*Note: Processes may occur concurrently.</p>	

7.1 Step 1: Initial NoW Review

Individuals apply for a MA permit to conduct mineral exploration activities or placer mining activities by submitting a NoW application to the Province. An initial review of the NoW application is typically undertaken by government staff before technical assessment and the potential referral of a NoW application to a WSA engineer. The initial review is to determine whether the proposed mineral exploration activities or placer mining activities include proposed water diversion and use and whether that aligns with the exemption requirements under [WSR ss.34.2 to 34.5](#) or whether further assessment of the proposal and its risks or concerns may be warranted. Table 2 provides a list of recommended questions to support this review.

Table 2. Recommended questions for government staff when conducting an initial review of NoW applications pertaining to mineral exploration activities and placer mining activities also proposing the diversion and/or use of water.

Questions		Yes	No
Answering “yes” to any of the following indicates that the proposal does not align with the WSR ss.34.2 to 34.5 exemption requirements and an application for WSA authorization may be necessary.			
1.	Is the NoW application for a purpose other than mineral exploration activities or placer mining activities?*	<input type="checkbox"/>	<input type="checkbox"/>
1. a)	If the NoW application is for placer mining activities, does it propose to process 2 000 m ³ or more of pay dirt per year? ⁹	<input type="checkbox"/>	<input type="checkbox"/>
2.	Does the NoW application propose water diversion and use for a camp larger than 20 persons?	<input type="checkbox"/>	<input type="checkbox"/>
3.	Does the proposed source of water have a water reservation as described in WSA s.40 or s.41 ? ¹⁰	<input type="checkbox"/>	<input type="checkbox"/>
4.	Is the proposed source of water a sensitive stream as designated (named and described) in WSR Schedule B ?	<input type="checkbox"/>	<input type="checkbox"/>
5.	Is the proposed point of diversion within the boundaries of a protected area as defined in WSR s.46 , such as a park, conservancy, recreation area or ecological reserve? ¹¹	<input type="checkbox"/>	<input type="checkbox"/>
6.	Is the proposed source of water subject to a water sustainability plan with dedicated agricultural water by regulation under WSA s.82 ? ¹²	<input type="checkbox"/>	<input type="checkbox"/>
7.	Is the proposed source of water subject to a temporary protection order under WSA ss.86, 87 or 88 ? ¹³	<input type="checkbox"/>	<input type="checkbox"/>

⁹ A conversion rate for pay dirt is 2:1 (tonnes: cubic metres) (see [Section 6.2](#)).

¹⁰ Source for current water reservations includes: [Water Reservations \(gov.bc.ca\)](#).

¹¹ Source for current protected areas includes: [iMapBC](#), [Protected Areas of British Columbia Act](#).

¹² Source for current water sustainability plans includes: [Water Planning & Strategies \(gov.bc.ca\)](#).

¹³ Active temporary protection orders are listed at [Drought Information \(gov.bc.ca\)](#).

*Under the WSA, common water use purposes and sub-purposes related to mineral exploration and placer mining include:

- “mining purpose” ([WSA s.2](#)),
- “industrial purpose” ([WSA s.2](#)) and industrial water use purposes ([WSR Schedule A](#)) such as,
 - “Miscellaneous industrial”, which includes the diversion of water to dewater a construction site, mine or similar excavation;
 - “Well drilling and transportation or utility corridor management”; and,
 - “Camps and public facilities”.

The initial review will determine whether the proposed water diversion or use associated with the NoW application:

1. **Does not align with [WSR ss. 34.2 to 34.5](#):** The proposal does not align with the rules for exemption and, therefore, a WSA authorization is likely required. Note that other authorizations may also be needed. The NoW applicant should be informed that a water authorization application is likely required and of possible next steps.
2. **May align with [WSR ss. 34.2 to 34.5](#):** The proposal may meet the rules for exemption and the NoW application will proceed to the technical review process for an assessment of water-related risks or concerns, including First Nations consultation and potential referral to a WSA Engineer for determination whether application for a WSA authorization is required (see [Section 7.2](#)).

7.2 Step 2: NoW Technical Assessment

If government determines that the NoW application for mineral exploration activities or placer mining activities includes diversion and use of water that may meet the [WSR ss.34.2 to 34.5](#) exemption requirements, then the NoW application is passed to EMLI staff for technical assessment, assessment of risks or concerns, First Nations’ consultation and decision on the NoW application by a Mines Inspector. This process includes an assessment of whether referral of a NoW application to a WSA Engineer may be advisable based on any water-related risks and concerns.

The NoW application for mineral exploration activities or placer mining activities, including any proposed diversion and use of water under [WSR ss.34.2 to 34.5](#), should be assessed for any concerns or risks of potential adverse impacts from proposed water diversion and use. Table 3 (next page) provides a list of recommended questions to support this assessment. The assessment may be done in collaboration with water program staff (FOR), including WSA Engineers.

Table 3. Recommended questions for government staff when determining whether referral to a WSA Engineer may be appropriate for NoW applications pertaining to proposed diversion and/or use of water for mineral exploration activities and placer mining activities under [WSR ss.34.2 to 34.5](#).

Questions		Yes	No
Answering “yes” to any of the following indicates that referral to a WSA Engineer may be appropriate.			
1.	Does the NoW application propose to construct, install or place any permanent or semi-permanent works for water diversion or use in the stream channel?	<input type="checkbox"/>	<input type="checkbox"/>
2.	Are there known water restrictions, water allocation notations or water reservations on the proposed water source?	<input type="checkbox"/>	<input type="checkbox"/>
3.	Is there a risk that the stream or stream channel will be adversely impacted or disturbed when gaining access to water from the stream?	<input type="checkbox"/>	<input type="checkbox"/>
4.	Is there potential for the water supply and works of persons who are lawfully diverting or using water (i.e., authorized water users under the WSA) to be adversely affected?	<input type="checkbox"/>	<input type="checkbox"/>
5.	Will the diversion, use, or discharge of water, whether from or to a stream or related aquifer, cause a risk of significant harm to fish, wildlife or the aquatic ecosystem of the stream?*	<input type="checkbox"/>	<input type="checkbox"/>
6.	Will the diversion or use of water from a stream or related aquifer pose a risk of adversely impacting a cultural heritage resource?	<input type="checkbox"/>	<input type="checkbox"/>
7.	Will the diversion, use or discharge of water in connection with the activities cause a significant risk of harm to public safety, the environment, land or other property?	<input type="checkbox"/>	<input type="checkbox"/>
8.	In relation to placer mining activities, will the activities operate without a settling pond and recirculation of water?	<input type="checkbox"/>	<input type="checkbox"/>

*Refer to the [Environmental Flow Needs Policy](#) for guidance. There are many factors that can be considered when evaluating risk of harm, including whether:

- a) the source type can reasonably support the proposed diversion and use;
- b) the intake size is reasonable for the proposed diversion;
- c) the intake is appropriately screened;
- d) any stream channel disturbance is minimal;
- e) there are known species at risk that might be adversely impacted;
- f) the impact of diversion of water by authorized water users in the area and their estimated water use already poses a risk to the environmental flow needs of a stream; and,
- g) the availability of unrecorded water is in question due to already existing demand for water by authorized users on the stream or related aquifer or due to known water restrictions, water allocation notations or water reservations on the water source.

In the event of referral of NoW application to a WSA Engineer, EMLI staff are encouraged to recommend a timeframe for response to the referral. However, WSA timeframes may also come into play, depending on water-related impacts or concerns. EMLI may also refer the NoW application to other government agencies and collaborative assistance as appropriate.

7.2.1 First Nations Consultation

Government is obligated to consult with First Nations whenever a statutory decision is being contemplated that might authorize activities that could adversely impact Indigenous Interests, such as existing or asserted Indigenous rights and/or treaty rights. This includes mineral exploration and placer mining NoW applications and their proposed water diversion and use.

The NoW application acts as the primary avenue for First Nations' consultation on the proposed mineral exploration activity and/or placer mining activity and associated diversion and/or use of water in view of the exemptions from water authorization requirements under [WSR ss.34.2 to 34.5](#). EMLI staff should ensure that NoW applications contain enough information about the proposed water diversion and use so that First Nations can reasonably contemplate the potential impact of the diversion and use of water on their Indigenous Interests. This might include, but is not limited to, information regarding:

- water source,
- volume of water,
- timing of diversion,
- rate of withdrawal,
- point of diversion,
- works, and
- location of work.

EMLI staff should refer the NoW application to a WSA Engineer if First Nations raise concern(s) related to potential adverse impacts from the proposed diversion and use of water on their Indigenous Interests, including any cultural heritage resource(s) (see [Section 6.5](#) for more information on cultural heritage resources). EMLI staff should inform First Nation(s) of next steps if they have concerns regarding the proposed diversion and use of water, such as when referral to a WSA Engineer may be necessary for consideration whether a WSA authorization application should be required.

Government policies, guidelines and specific consultation arrangements should assist staff in understanding the extent of engagement that may be required with First Nations and how the concerns should be considered and accommodated.

7.2.2 Avoiding or Mitigating Risk

Government may identify or request from the applicant possible measures to avoid, mitigate or address any concerns or risks of potential adverse impacts from proposed water diversion and use, such as by adding terms and conditions to a MA permit or working with the applicant to amend the mine plan. Potential adverse impacts or concerns identified

during the technical assessment or through consultation with First Nations (see [Section 7.2.1](#)) should be directed to the appropriate statutory decision makers with the authority to review and accommodate those impacts or concerns where appropriate.

Risks or concerns related to the diversion and use of water that cannot be avoided, mitigated or addressed through amendments to the mine plan, terms and conditions of a MA permit, or other means should be referred to a WSA Engineer (see [Section 7.3](#)). Those risks or concerns may generally relate to potential impacts from the volume or timing of the proposed water diversion and use or works on the stream, its flow, other water users, or cultural heritage resources. Concerns or risks may be avoided or mitigated through terms or conditions in a WSA water authorization if an application for an authorization is required by a WSA Engineer.

7.3 Step 3: Referral to WSA Engineer (if applicable)

If risks or concerns with the NoW applicant's proposed diversion and use of water are identified and EMLI staff refer the NoW application to a WSA Engineer, then the WSA Engineer will review the diversion and use of water proposed under the NoW application to determine whether a WSA authorization application may be required (see [Section 7.4](#)). The assessment involves determining whether there are risks or concerns regarding the proposed diversion and use of water that cannot be avoided, mitigated or addressed and that may merit application for a WSA authorization. This includes risk of significant adverse impact on the stream, including the flow of water within the stream, on other authorized water users, or a potential adverse impact on cultural heritage resources.

Where possible, it is recommended that the WSA Engineer work with EMLI staff on considering water-related risks or concerns and whether they can be reasonably avoided, mitigated or addressed through appropriate measures. An application for a water authorization may not be necessary if potential impacts or concerns can be avoided, mitigated or addressed.

When WSA Engineers are considering the potential for adverse impacts from water diversion or use on cultural heritage resources (e.g., concerns identified through consultation with First Nations on a NoW application), they may seek additional information about those cultural heritage resources from the First Nation (see [Section 6.5](#) for more information on cultural heritage resources). If the WSA Engineer requires additional information about those cultural heritage resources from the First Nation, then they should consult directly with the First Nation with respect to those concerns (with the assistance of FOR Indigenous Relations Advisors as needed).

7.3.1 Requiring WSA Authorization

Under [WSR s.34.5](#), a WSA Engineer may require an application for an authorization if diversion or use of water from a stream or related aquifer may:

- have significant adverse impact on the stream, stream flow, or other authorized water users; or,
- have an adverse impact on a cultural heritage resource (within the meaning of the [MTA](#)).

If an application for a WSA authorization is required, then decision on that application would determine whether the diversion and use of water for the mineral exploration activity or placer mining activity is granted or refused. The decision to require an application for WSA authorization is a statutory decision and WSA Engineers should deliver the decision to the client as a direction or an order. Notice of the statutory decision must be delivered in a manner consistent with [WSA s.117](#).

An application for a WSA authorization provides WSA decision makers with additional powers to collect information from an applicant. It also provides WSA decision makers with an opportunity to consult with First Nations and potentially accommodate any concerns through terms and conditions of a WSA authorization, or if risks cannot be avoided or mitigated, by refusal of the application. An application for an authorization also triggers the requirement to consider environmental flow needs of a stream, as described in [WSA s.15](#).

If a WSA Engineer responds to a NoW referral with a direction or an order that a WSA authorization application is required, then it is recommended that EMLI make reference to the WSA Engineer's direction or order in the cover letter of the MA permitting decision.

7.4 Compliance and Enforcement

Mines Inspectors that become aware of a potential non-compliance with [WSR ss.34.2 to 34.5](#) exemption requirements during inspections of mineral exploration activities or placer mining activities where water is being diverted or used without a WSA authorization may report the potential non-compliance to a WSA Engineer. Joint inspections between compliance and enforcement staff under the WSA and the MA are encouraged wherever appropriate.

A WSA Engineer has the authority, in accordance with [WSA s.93](#), to order an individual to come into compliance or to cease diverting or using water and to apply for a water authorization in accordance with the WSA if:

- it is found that an individual is not in compliance with [WSR ss.34.2 to 34.5](#); or,
- a WSA Engineer determines that the diversion or use of water may have a significant adverse impact on the stream, stream flow or other authorized water users or an adverse impact on a cultural heritage resource (as described in [WSR s.34.5](#)).

Any compliance and enforcement steps will typically involve exercise of discretion, assessment of relevant facts and considerations, and the application of expertise, as appropriate.

7.5 Suggested Referral Process

Figure 1 provides an outline of a suggested referral process to assist with government review of NoW applications pertaining to mineral exploration activities and placer mining activities and proposed water diversion and use under [WSR ss. 34.2 to 34.5](#). Alternative processes consistent with the WSR and the MA may also be pursued.

Figure 1. Suggested referral process for Government when considering water diversion and use under [WSR ss. 34.2 to 34.5](#).

