

W.A. Allen Questions (in black) and Kelly Thompson Responses (in blue), July 20, 2011
re Navigable Waters Protection Act

Ms. Thompson is:

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Preamble: On July 19, 2011, armed with a copy of the March 8, 2011 e-mail from Ms. Thompson to a Member of Parliament, I sent Ms. Thompson some background including a copy of her March 8 e-mail to the MP and copies of Xeneca files about The Chute development proposal on the Ivanhoe River.

- Notice of Completion, July 11, 2011
- Covering letter, July 14, 2011
- Environmental Report , July 14, 2011

I made the following statements before asking a series of questions. Ms. Thompson responded to me very quickly – by 7:15 A.M. the following morning, July 20. She deserves high praise for that responsiveness. This is what I said to her in my covering note.

Allen: A number of my colleagues have turned to me with questions about the Navigable Waters Protection Act in light of Feed In Tarriff proposals for hydroelectric developments on rivers in Northern Ontario under plans by the Ontario Government through its Green Energy and Green Economy Act. This wave of questions has come to me, no doubt, because of my open letter to the TRAN committee on Feb. 22, 2009 at the time that changes to the Act were being proposed. My letter was widely distributed and posted on several websites. You can see a copy at the website of Alberta Whitewater at <http://www.albertawhitewater.ca/pdfs/2009%2002%2022%20%20Allen%20to%20TRAN%20Committee.pdf>.

Some of the questions to me are coming from the Ottawa Valley where you responded on March 8, 2011 at 9:16 A.M. to a query from Cheryl Gallant, MP. Your response has had its own wide distribution since that time.....

With your March information in hand some of my colleagues who have continuing concerns about navigability are looking at the recent Notice of Completion and associated Environmental Report (ER) by Xeneca Power Development Inc. at a specific site, The Chute, on the Ivanhoe River west of Timmins, Ontario. Attached are copies of the ER, Notice of Completion and a covering letter about that specific site.

My colleagues consider themselves as interested parties who plan to attempt to resolve any outstanding navigability issues with Xeneca during the current review period and want to have reasonable positions as they enter that discussion. So I have some questions to which I request your response. I will be sharing your response with those who have an interest in this matter, including those who operate tourist businesses who feel that their businesses will suffer if the number of whitewater and canoeing tourists decline if the proposed facility is built. Where I cite your own words I use blue print for ease of reference.

The Questions and Responses:

Allen: 1a. Is the Ivanhoe River deemed to be a navigable water and thus subject to the provisions of the NWPA?

Thompson: * Per my response above Throughout the course of a waterway there may be portions that are navigable while other portions may not be. As a result, Transport Canada determinations of navigability are site specific. In general terms, any waterway capable of being used by the general public for any form of navigation such as pleasure, commercial or recreation (i.e. canoe/kayak) is deemed to be a navigable water and thus subject to the provisions of the NWPA.

- Allen Analysis: This response was the identical wording that Ms. Thompson used in her response to MP Gallant so she gets full marks for consistency. That means that if Ms. Thompson is asked about navigability of any other river by any other person there is high likelihood that she would use the same wording as she did in her two responses to MP Gallant and to me.

Allen: 1b. If so, what are the provisions of the NWPA which apply?

Thompson: The NWPA applies to any and all work on a navigable waterway. The specific sections would depend on if the work is new or existing, if existing was it previously approved, etc. Typically for a new work Section 5 is the mechanism which allows for construction and Sec 6 allows for enforcement of the Act.

Allen: 2a. Has Transport Canada received a "full application for approval of the specific work" at The Chute on the Ivanhoe River?

Thompson: Please contact the Access to Information Office and Policy (ATIP) Department at 1-877-636-0656 or by e-mail at info@tbs-sct.gc.ca for details of a Transport Canada file

Allen: 2b. Since the foreword of the ER, Section d, addresses the NWPA in a particular way, has Transport Canada received, reviewed and approved final detail engineering designs for all required structures in The Chute proposal?

Thompson: Please contact the Access to Information Office and Policy (ATIP) Department at 1-877-636-0656 or by e-mail at info@tbs-sct.gc.ca for details of a Transport Canada file

Allen: 2c. If not, is the public response to the Environmental Report a reasonable place for the public to request that this information be provided to the public and to Transport Canada before the end of the 60 day public consultation period?

Thompson: I am not familiar with the Environmental Assessment Process – Any questions related to Transport Canada's role in this process should be directed to the Programs Group of TC at EnviroOnt@tc.gc.ca

Allen: 3a. What [terms and conditions](#) requested by members of the public who are concerned about navigability at The Chute could reasonably be expected to be [deemed fit by the Minister of Transportation, Infrastructure and Communities](#) in order to minimize impacts on navigation?

Thompson: [Terms and conditions are determined by the reviewing NWP Officer on a case by case, site specific, project specific basis during the review of the Application for Approval under the NWPA. I am confident that the reviewing officer would gladly consider terms and conditions requested by the public, however, those terms and conditions are the discretion of the NWP Officer and the NWP Manager.](#)

- [Allen Analysis: I do not know who the NWP Officer or NWP Manager are for the Ivanhoe River. Nor do I know whether the same people are the officer and the manager for other rivers in Ontario. I do not know what criteria are used when these civil servants exercise their discretion about terms and conditions.](#)

Allen: 3b. Is it reasonable to expect that the proponent would maintain in good condition a portage around The Chute Dam? If so are there Parks Canada or other federal criteria that define "good condition" for a portage?

Thompson: [If the NWP Officer determine that a portage is required, maintenance would likely be a condition of approval. TC does not have a definition for "good portage" we typically looked for a gently sloped area, safely and appropriately placed, with adequate signage and a clear path. I cannot comment on any definitions used by Parks Canada](#)

- [Allen Analysis: I am not yet familiar with The Chute but other projects would flood parts of existing portages and also have dam structures which about steep terrain so the issue of portages deserves attention at all projects.](#)

Allen: 3c. What process of monitoring is put in place to ensure that any terms and conditions deemed fit by the Minister are maintained in the long term?

Thompson: [NWP Officers may perform compliance inspections during and after construction. However, meeting the terms and conditions on the Approval document is a matter of law and any offence is punishable by enforcement action or summary conviction.](#)

Allen: 4. Would you provide a copy of an exemplary plan for an existing hydroelectric dam where the Minister set terms and conditions not originally proposed and those terms and conditions subsequently were followed in an exemplary fashion?

Thompson: [Please contact the Access to Information Office and Policy \(ATIP\) Department at 1-877-636-0656 or by e-mail at \[info@tbs-sct.gc.ca\]\(mailto:info@tbs-sct.gc.ca\) for details of a Transport Canada file](#)

Allen: 5. Are there any other matters which parties interested in navigability might reasonably raise with the proponent but which have not specifically been raised in this message?

Thompson: [I am not familiar with the area, its normal usage or exactly what your concerns are, therefore I am unable to provide further comment.](#)