

# Chapter 6.2

## Completing Application Information Details: Rights Holder Engagement

### 6.2 Rights Holder Engagement

Rights holder engagement is required as part of the application process for CER related approvals, single activity Associated Activities (ACT) on Crown land, and single activity authorizations permitted under the Water Sustainability Act or multi-activity applications that include both AACT and water use activities. Submission of an application for any of the above applications must include additional application deliverables specific to rights holder engagement.

The rights holder engagement tab requires specific application information details. This section includes an overview of rights holder engagement, guidance regarding rights holder engagement, details related to rights holder engagement requirements and detailed instructions for completing the data fields within the rights holder engagement tab.

#### 6.2.1 Rights Holder Engagement Process Overview

The province coordinates resource management related to energy resource activities and is mindful of reducing adverse effects on long-term rights holders' interests. The methods used to engage rights holders may vary depending on the nature and scope of the proposed related activity. Rights holder engagement is a process to ensure appropriate engagement with rights holders in cases where the consultation and notification process does not apply.

## Rights Holder Defined

A rights holder is a person granted non-intensive occupation or use of Crown land by permit, licence or approval. Rights holder is defined under the RCNR and are indicated as follows:

Legislation	Permission
Land Act	Licence under Section 39
Forest Act	Forest licence Forestry licence to cut (major) Community forest agreement First Nations woodland licence Timber sale licence Timber licence Tree farm licence Woodlot licence
Range Act	Grazing permit Grazing licence
Wildlife Act	Guide outfitters licence for Crown land Guiding territory certificate for Crown land Registered trapline
Mineral Tenure Act	Mineral claim
Geothermal Resources Act	Geothermal exploration permit, lease or well authorization
Water Sustainability Act	Water licence (conditional or final)

The Regulator requires applicants to engage with rights holders prior to submitting an application. The applicant is expected to notify a rights holder if the proposed activity is within an area subject to the right of a rights holder (e.g., the proposed activity falls within a guide outfitter's tenure) or if the proposed activity is deemed to have the potential to adversely affect existing rights (e.g. if the proposed activity could result in impacts to downstream water rights holders).

If proposed activity is within an area subject to the right of a rights holder or as detailed in engagement requirements for Water Sustainability Act applications

below, and it is known to the applicant that the ability of the rights holder to exercise their rights are likely to be directly and adversely affected, the Regulator expects the applicant to engage the rights holder in consultation.

### Please Note:

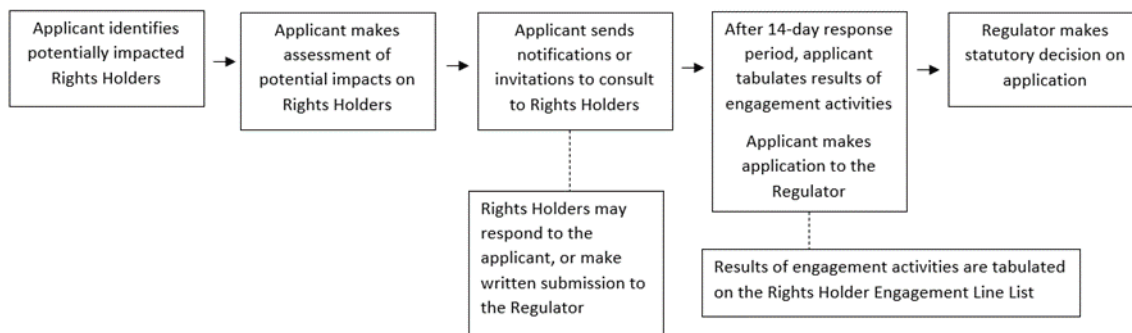
If a legal recipient chooses to designate someone to communicate on their behalf, a letter designating the representation must be sent to the Regulator. The letter must be addressed to the Regulator, state the name of the designate, outline the parameters of the representation, and be signed by the official recipient.

Letters must be provided for each application, as the Regulator will not keep a record of representation for use on other applications.

### Please Note:

For Power of Attorney, a copy of the legal document must be sent to the Regulator.

**Figure 6-K: Rights Holder Engagement Process**



### Who must carry out Rights Holder Engagement?

The rights holder engagement process must be carried out by applicants preparing applications for the following activities:

- Associated activities when submitted as a single-activity application (ie. not included in consultation and notification processes carried out on an ERAA activity).
- CER pipeline right-of-way applications.
- CER road right-of-way applications
- CER ancillary applications.

- Short-term water use authorizations when submitted as a single-activity application (ie. not included in consultation and notification processes carried out on an ERAA activity).
- Changes in and about a stream authorizations when submitted as a single-activity application (ie. not included in consultation and notification processes carried out on an ERAA activity).
- Water Licence applications.

In addition, the rights holder engagement process must be carried out in preparing revision or amendment applications if the revision or amendment will change the location of the activity or if the applicant expects the changes may lead to additional adverse impacts on rights holders.

Provincial and federal government agencies are not considered rights holders. Applicants are not obligated to engage agencies prior to submitting an application to the Regulator, however, applicants are encouraged to advise the Regulator of any provincial or federal interests, such as Land Act Map Reserves or Resource Features (as defined in the EPMR), as early as possible. The Regulator will facilitate any required engagement during the application review.

### **Please Note:**

If an Associated Activity was included in the Consultation and Notification process carried out under an ERAA application, but is being applied for separately from that ERAA application, further rights holder engagement is not required prior to application for the associated activity. However, the engagement information must be completed and uploaded into AMS on the applicable RHE Line List with the application.

### **Please Note:**

Prior to the submission of an application for a camp, applicants are required to notify the Peace River Regional District (PRRD) and the Northern Rockies Regional Municipality (NRRM) as a rights holder.

## **Rights Holder Engagement Requirements for CER Related Approvals and Associated Activity (AACT) Authorizations**

The province makes every effort to ensure that resource management is coordinated and that the related energy resource activities will not adversely affect long-term rights holders' interests. The methods used to engage rights holders may vary depending on the nature and scope of the proposed related activity.

Engagement materials provided to the rights holder must provide sufficient information to enable an understanding of the proposed activity and its relationship to the rights holder's legally granted interests. Generally, relevant information includes:

- Applicant name and contact information.
- Description of the location of proposed activity, and associated activities.
- Activity specifics including any significant structures and equipment to be added.
- Any roads that will be used to carry out the proposed activities.
- Approximate timing schedule of project where applicable.
- Map that shows the proposed activities in relation to rights holder's area of interest.
- Statement advising the rights holder may make a Written Submission to the Regulator and at any time prior to the application decision.
- Recipient response options. Clearly state options for recipients to respond including:
  - Responding directly to applicant.
  - Providing a Written Submission to the Regulator.

The Regulator requires the applicant to document their completed rights holder engagement process and include it with the application submission. Applications can be submitted to the Regulator once the rights holder engagement service period and response period timelines have passed.

## Methods of Service

Acceptable methods of service for the distribution of rights holder engagement materials are identified in the Service Regulation.

## Determining RHE Timelines – Service Period and Response Period for New Applications and Amendments

Prior to submitting an application, applicants must ensure service period and response period obligations have been met. The applicable response period begins once the service period obligations have ended and notice is deemed received. However, applicants may apply earlier if a letter of non-objection is received from impacted rights holders is received or by requesting a variance from engagement from the Regulator. If a written response is received within the prescribed engagement period, the applicant is required to submit the response including the applicant's written reply with the application.

Applications that include both related associated activities and water use activity will default to the latest application submission timeline; unless obligations have been met or a variance from the timeline is granted.

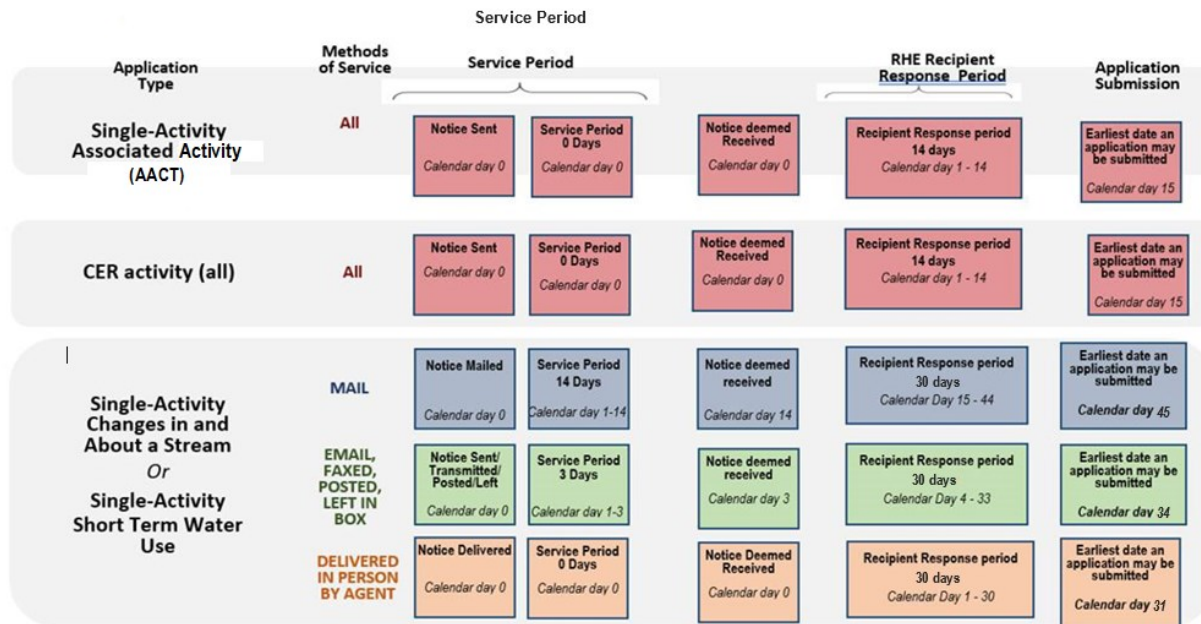
For specific application timeline examples, refer to Figure 6-L below.

## Best Practices

If there is a major schedule change for an activity, or if the permit holder decides not to carry forward with the planned activity, all recipients should be notified of the change.

**Figure 6-L: Application submission timelines using the Service Period and Response Period for Rights Holder Engagement (for both new applications and amendment applications)**

Timelines with respect to the amendment application submissions are managed internally.



## Rights Holder Engagement Requirements for Water Sustainability Act Authorizations

Approvals granted under the Water Sustainability Act (WSA) are defined in the WSA as rights holders whose water rights may be detrimentally affected by the issuance of the authorization under consideration. These include applications for (Short-Term Water Use (use approval), Changes in and about a stream (change approval) and Water Licences).

Water rights holders include:

- Water licensees.
- Applicants for water licences.
- Use approval holders.
- Use approval applicants.

The Water Sustainability Act also specifies that riparian owners and those land owners whose property may be physically affected by the issuance of the licence or authorization under consideration must also be notified. If access across private property is required the applicant must have land owner consent. On Crown land currently under treaty, riparian owners are generally expected to include those First Nations in whose traditional territory the proposed water withdrawals are to occur.

First Nations deemed as riparian owners will be engaged as per the Regulator's First Nations consultation process and therefore do not require notification during rights holder engagement.

A search of the [Water Licenses Web Query](#), along with the [North East Water Tool \(NEWT\)](#), the [Omineca Water Tool \(OWT\)](#), or the [North West Water Tool \(NWWT\)](#) should be completed before submitting a Short-Term Water Use Application, to assist with determining water rights holders on the same water source.

Applications for water diversion and use in the Blueberry River, Upper Beatton River, and Lower Sikanni Chief River Watersheds shall refer to the the New Environmental Flow Needs Framework for Water Management interim [guidance documentation and tool](#). For more information refer to [IU 2023-05](#) Implementing the Northeast British Columbia Treaty Agreements: New Framework for Water Management.

Applicants must notify and engage with rights holders, riparian owners and land owners as defined in the Water Sustainability Act, and provide a summary of that engagement with their application. For change approval applications, verification of the landowners consent is required and must be included with the application.

Rights holders, riparian owners and land owners must be notified according to the requirements outlined in Section 117 of the Water Sustainability Act (WSA) which specifies the ways in which a notice may be given or delivered. Section 117 also specifies when a notice may be deemed received depending on which delivery method has been utilized.



Section 13(1) of the WSA requires the decision maker to direct applicants to give notice; therefore, it is recommended that applicants contact the Regulator prior to providing notification.

Notification materials provided to rights holders, riparian owners and land owners must include:

- The name of the decision maker (BC Energy Regulator).
- The applicant name and contact information.
- A map indicating the POD location/s and/or the proposed works in relation to the rights holders, riparian owners or land owner's area of interest.
- A description of the proposed timing and extent of works.
- A statement advising the rights holder, riparian owner or land owner that they may object to the proposed water withdrawals via Written Submission to the Regulator within 30 days of receiving the notice.
- The BC Energy Regulator's Fort St. John mailing address to which objections can be sent.

Notification material must include sufficient information to enable an understanding of the proposed water withdrawals to be made and their relationship to the rights holders, riparian owners, or land owner's legally granted interests.

Notification template examples are provided as guidance regarding the required content of notices under the Water Sustainability Act. Refer to Example #5, which can be found [here](#).

## **Methods of Service**

Acceptable methods of service for the distribution of rights holder engagement materials and for standards used in determining when a document is to be deemed received, specific to water use activities, is outlined in Section 117 of the Water Sustainability Act.

## Service Period and Response Period timelines for New Applications and Amendment Applications Specific to Water Use Activities

Prior to submitting an application, applicants must ensure service period and response period obligations have been met. The applicable response period begins once the service period obligations have ended and notice is deemed received. However, applicants may apply earlier if a letter of non-objection is received from impacted rights holders is received or by requesting a variance from engagement from the Regulator. If a written response is received within the prescribed engagement period, the applicant is required to submit the response including the applicant's written reply with the application.

Applications that include both water use activity and related associated activities will default to the latest application submission timeline; unless obligations have been met or a variance from the timeline is granted.

For specific application timeline examples, refer to Figure 6-L.

The Water Sustainability Act gives the decision maker discretion to determine if further Rights Holder Engagement is required as well as if a decision can be rendered before the 30 day response period has expired. The Regulator encourages companies and the affected rights holder(s) to try to resolve concerns before contacting the Regulator

## Rights Holder Engagement Requirements for Water Use and Related Associated Activity Applications

The Regulator requires that the applicant document their completed rights holder engagement process and include with the application:

- The Rights Holder Engagement Line List.
- A description of all mutually acceptable agreements made including copies of all Letters of Non-Objection received. Letters of Non-Objection must be signed by the rights holder, riparian owner or land owner.

- Details of any known rights holder, riparian owner or land owner concerns and a description of any actions taken or measures applied by the applicant in response to these concerns.

Once the application is received the decision maker will determine if he or she is satisfied with the Rights Holder Engagement undertaken by the proponent.

## **Best Practices**

If there is a major schedule change for an activity, or if the permit holder decides not to carry forward with the planned activity, all recipients should be notified of the change.

## **Case File Numbers**

Case file numbers must be provided in applications when Written Submissions have been received and the concerns with respect to the proposed activities remain unresolved. The Regulator's Community Relations department is able to provide case file numbers upon receipt of information including the following:

- Copy of notification and map sent to recipient.
- Written responses and replies exchanged during the engagement timeline.
- Name, contact information and recipient type for those with unresolved concerns.
- If no documentation identifying unresolved concerns and mitigative actions, a brief summary noting verbal exchanges.

## **Please Note:**

Case file numbers are assigned for the designated person/activity are not interchangeable or reusable. If a case file number has been provided to you and you no longer require it (e.g. if issues are resolved prior to application) please advise the Community Relations department so the Regulator can cancel the case file number.

## 6.2.2 Written Submissions to Regulator

In order for the Regulator to make informed decisions it is necessary to understand interests or concerns of those who may be directly impacted by a proposed activity. The Regulator has adopted by policy the opportunity to make a Written Submission for those wishing to convey interests/concerns. The [Written Submission Form](#) available on the Regulator's website.

Written submissions are made directly to the Regulator and can happen at any time in the application process and may be made by any person.

The Regulator forwards written submissions to applicants. The applicant is not required to reply, however may be encouraged to respond in order to assist in resolution of issues. Completed [Written Submission Forms](#) are sent by email to [WrittenSubmissions@bc-er.ca](mailto:WrittenSubmissions@bc-er.ca), or submitted directly to the Regulator's Fort St. John or Dawson Creek offices. Written submissions are reviewed by the Regulator's statutory decision maker prior to making a statutory decision on the associated permit application.

## 6.2.3 Replying to Respondents

Rights holders with interests in or concerns about a company's proposed energy resource activity may submit a written response to the applicant or the applicant's designated contact.

Respondents may detail concerns and any proposed recommendations for mitigation. If the response is received within the applicable response period, the applicant is strongly encouraged to reply, in writing, as soon as possible. When part of the rights holder engagement process, this response is not mandatory but is a valuable opportunity to provide information to the rights holder and demonstrates a desire to address concerns.

Respondent concerns, proposed recommendations for mitigation and meeting requests must be tracked by the applicant. The Regulator provides the required [Rights Holder Engagement Line List Template](#) for applicants to use to track all

correspondence records. The completed RHE Line List along with respondent written responses and replies must be included in the application submission.

## 6.2.4 Unresolved Concerns

Conflicts not resolved before submitting an application affect the Regulator's review process and may determine whether an application is approved with changes, without changes or refused.

If there are unresolved concerns, the applicant is required to include details of the concerns and the proposed mitigation actions with the application submission. The Regulator uses the rights holder engagement documentation for evaluation and may:

- Make a decision on the application, based on the engagement documentation.
- Recommend the applicant continue consultation.
- Recommend the use of dispute resolution.

### Please Note:

To ensure decisions are made with full knowledge, it is important that all concerns that are unresolved at the time of application, including those outside of the Regulator's regulatory jurisdiction, are noted as unresolved concerns. It is also important to note if there are any concerns that were raised and responded to verbally.

## 6.2.5 Dispute Facilitation & Conflict Resolution

The applicant and recipient(s) after all reasonable efforts are made, may require facilitation services within the Regulator if issues remain unresolved. This non-mandatory process exists to aid communication and resolve interest-based differences between applicants and consultation and notification recipients.

This facilitation may be as simple as prompting the exchange of additional information to providing neutral mediation between parties. An assessment of the processes and activities completed and the specific circumstances will determine the type of facilitation service most effective. Landowner Liaisons within the Regulator's Community Relations Department are available to assist with dispute facilitation.

## 6.2.6 Variance Requests

Where the rights holder engagement process described in this manual is not practicable for a specific application, applicants may request permission to use alternate engagement practices or strategies. Variance requests must be made to the appropriate Authorizations Director prior to application. Written approval of alternate engagement practices or strategies must be included with the application.

## 6.2.7 Completing the Rights Holder Engagement Tab

Applicants should follow the instructions, answer questions and enter data in the Application Management System. Applicants are required to upload the following items onto the rights holder engagement tab:

- Rights Holder Engagement Line List. The line list is a summary record of the engagement activities performed with each recipient. The line list template is found on the Regulator website and includes an example for guidance.
- Engagement map showing the proposed activities in relation to rights holders' areas of interest. The map must cross reference rights holder engagement recipients from the Line List.
- All written responses from respondents and replies from the applicant. It is recommended that the package of responses and replies include a sample copy of the Notification and/or Invitation to Consult letters sent to recipients.
- Letters of non-objection (if applicable).