



Alec Sandra McDonald
Regulatory Officer
Gwich'in Land and Water Board
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November 18, 2015

Re: Request for Comments – Department of Transportation renewal of Water Licences G99L8-001 (Peel River Ferry Landings) and G99L8-002 (Mackenzie River and Arctic Red River Ferry Landings)

Thank you for the opportunity to provide comments on the Department of Transportation (DOT) renewal application of Water Licences G99L8-001 and G99L8-002 prior to the licence(s) expiry date(s) of November 30th 2015.

With respect to Canada's common law duty to consult with First Nations, it is the Gwich'in Tribal Council's position that the current review period of 21 days for a 25 year licence renewal does not allow for adequate time to form our opinions or allow the government (DOT) to accommodate our concerns regarding the renewal of the Peel and Mackenzie ferry crossing landings. We are seeking an extension of the review to facilitate adequate project review.

Of specific concern to the Gwich'in Communities of Tsiigehtchic and Ft. McPherson, is how the deposit of waste (unfiltered gravel) and periodic petroleum spills may affect the water course and quality of the substrate over the term of a 25 year licence. Currently the Gwich'in public is concerned about artificial accretion associated with the landings and how it is having an effect on traditional fishing grounds adjacent to the landings.

While the Mackenzie Valley Resource Management Act has been amended to allow for longer licence terms and perhaps shorter review periods it also contains provisions to promote the Government fiduciary duty to honour the Gwich'in Comprehensive Land Claim Agreement (GCLCA). If through devolution the MVRMA has become the responsibility of the GNWT, so has its fiduciary duty to honor the GCLCA. This can be found in Section 5 of the *Mackenzie Valley Resource Management — October 27, 2015*;

(1) Where there is any inconsistency or conflict between this Act and a land claim agreement, an Act giving effect to a land claim agreement or the Indian Act, the agreement, the Act or the Indian Act prevails over this Act to the extent of the inconsistency or conflict.

(2) For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the aboriginal peoples of Canada by the recognition and affirmation of those rights in section 35 of the Constitution Act, 1982

The Gwich'in Tribal Council calls on the Land and Water board to keep consistent with both the MVRMA and the GCLCA where Chapter 19.1.15 establishes that; *"No water use anywhere in the settlement area which, in the opinion of the Land and Water Board, will likely substantially alter the quality, quantity or rate of flow of waters on or flowing through or adjacent to Gwich'in lands, when such waters are on or flowing through or adjacent to Gwich'in lands, shall be authorized by the Land and Water Board unless the applicant for the authorization has entered into an agreement with the Gwich'in Tribal Council to compensate the Gwich'in for loss or damage which may be caused by such alteration, or the Land and Water Board has made an order for compensation under 19.1.16(a)."*

(a) If the Gwich'in Tribal Council and the applicant for a water-use authorization described in 19.1.15 or 19.1.18 do not reach an agreement on compensation within the time limit established by the Land and Water Board, either party may refer the matter of compensation to the Board and the Board shall determine compensation.

Chapter 19.1.17 continues on to establish items to consider during the formulation of compensation by a Land and Water Board should an agreement not be reached; including the effect of [the applicant's] water use on Gwich'in Lands, taking into account any cultural or special value of the lands to the Gwich'in.

It's disingenuous to propose a 25 year extension to a 5 year water license application originally submitted over 15 years ago. This is a new application and should be subject to all applicable processes provided in the MVRMA and GCLCA. Since this new application is projected end in the year 2040 and Gwich'in participant concerns in Ft. McPherson and Tsiigehtchic persist; it is our position that section 19.1.15 of the GCLCA be added to the context of this long term water licence review. Gwich'in beneficiaries in both affected communities enjoy lands adjacent to these landings; and use traditional fishing waters immediately downstream from the undertakings. The applicant (GNWT) should act appropriately and take the necessary steps to enter into an agreement with the Gwich'in Tribal Council

If you require further information or clarification please contact Gwich'in Lands and Resources – Lands Analyst, Tsatsiye Catholique at 867-777-7914 or at email TCatholique@gwichin.nt.ca

Sincerely



James Wilson

Gwich'in Tribal Council, President

CC Grace Blake, President, Gwich'ya Designated Organization
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