



Mackenzie Valley Land and Water Board
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Staff Report

Applicant: Department of Indian Affairs and Northern Development (DIAND) – Contaminants and Remediation Division (CARD)	
Location: Gordon Lake Group Remediation Project Gordon Lake Group Sites, NT	Application: MV2016L8-0006
Date Prepared: January 26, 2017	Meeting Date: February 16, 2017
Subject: Compensation Claim	

1. Purpose/Report Summary

The purpose of this Report is to present to the Mackenzie Valley Land and Water Board (MVLWB/the Board) a compensation claim that has been submitted by Duncan Cooke of Sandy Point Lodge (SPL), to determine whether compensation is to be awarded.

2. Background

- August 4, 2016 – Permit MV2016X0021 and Licence MV2016L8-0006 Applications submitted to the Board (attached);
- August 12, 2016 – Applications deemed complete and distributed for review and comment;
- September 20, 2016 – Comments on the Application due;
- September 20, 2016 – Letter from Duncan Cooke of Sandy Point Lodge to the MVLWB regarding engagement and consultation, and compensation (attached);
- September 23, 2016 - Letter from the MVLWB sent to DIAND-CARD (attached) regarding Duncan Cooke’s September 20th letter;
- September 28, 2016 - DIAND responds (attached) to MVLWB’s September 23rd letter regarding SPL concerns;
- September 29, 2016 - Proponent responses due on Application review;
- October 12, 2016 - Draft Permit and draft Licence circulated to parties for review;
- October 12, 2016 – Board staff request further information from SPL’s September 20th letter;
- October 28, 2016 – Comments due on draft Permit and draft Licence from reviewers;
- November 2, 2016 – SPL submits evidence for compensation claim (attached);
- November 3, 2016 – DIAND-CARD responses on the draft Permit and Licence review comments due;

- November 16, 2016 - DIAND-CARD response to compensation claim (attached);
- November 30, 2016 - SPL reply to DIAND-CARD's compensation response (attached);
- December 19, 2016 – Board meeting for Land Use Permit (MV2016X0021) Issuance;
- December 20, 2016 – Information request (IR) sent to SPL requiring further information on their compensation claim (attached);
- December 23, 2016 – Mr. Cooke requests to have his IR response remain confidential;
- December 24, 2016 – The Board decided to grant Mr. Cooke's request for confidentiality;
- January 4, 2017 – Board received IR response from SPL (attached);
- January 17, 2017 – Board received a letter from DIAND-CARD in reply to Mr. Cooke's IR response (attached); and
- **February 16, 2017 – Compensation Claim and associated evidence presented to the Board for decision.**

3. Discussion

Term of Licence

DIAND-CARD requested a seven-year term for the Licence MV2016L8-0006.

A type A Permit (MV2016X0021) application was submitted by DIAND-CARD along with the Licence application, and both applications and draft issuances were reviewed in a combined review process. The type A Permit MV2016X0021 was issued by the Board on December 19, 2016. In order to align the expiry of both authorizations, Board staff have recommended the Licence term end December 18, 2023.

Project Summary and Principal Remediation Activities

The primary objective of the Gordon Lake Remediation Project is to reduce, and where possible, eliminate the risk to the environment and human health caused by legacy environmental concerns from the nine abandoned mine and advanced exploration sites, to leave as minimal a presence in the area as possible, and to promote socio-economic benefits to Aboriginal people and other northerners.

The Gordon Lake Group Remediation Project has been developed based on the following hazard categories:

- Co-mingled impacted soil;
- Metals impacted soil;
- PHC impacted soil;
- Waste rock (with varying degrees of risk);
- Mine openings and underground workings;
- Trenches;
- Abandoned infrastructure and site buildings;
- Tailings;
- Non-hazardous waste;
- Hazardous waste;

- Unfired explosives; and
- Impacted water.

Based on these identified hazards, the following infrastructure is proposed for the remediation project:

Infrastructure	Location
• Tailings and Soil Containment Area (TSCA)	Camlaren
• Main Camp (max 75 persons)	Camlaren and/or Kidney Pond
• Hydrocarbon Landfarm	Camlaren
• Waste Rock and Soil Containment Area (WRSCA)	Kidney Pond
• Wastewater Treatment Facility	Camlaren and/or Kidney Pond

Aside from the undertakings described above at Camlaren and Kidney Pond, the work activities at the remaining sites consist primarily of the relocation of relatively small amounts of waste (tailings, contaminated soil, hydrocarbon contaminated soil, and potentially acid generating (PAG) waste rock) to the constructed centralized facilities at Camlaren and Kidney Pond.

Compensation Claim Submissions

On November 2, 2016, Mr. Cooke of Sandy Point Lodge submitted a compensation claim to the Board (attached). Sandy Point Lodge is a fly-in only fishing lodge located on Gordon Lake, NT. In his claim, Mr. Cooke expresses concerns of air traffic, noise, air pollution from vehicles and machinery, human activity, etc. and how this activity from the Gordon Lake project will negatively impact his business. On November 16, 2016, DIAND-CARD responded to Mr. Cooke’s claim (attached), stating that the remediation project will result in a net benefit for the users of Gordon Lake. DIAND-CARD also argued that due to the seasonality, duration, and scale of activities proposed, as well as the localized nature of the activities, the project is highly unlikely to adversely affect SPL. Mr. Cooke responded to this reply on November 30, 2016 (attached) stating that though net benefits may occur, this does not mean that SPL won’t be adversely affected while the project activities are being carried out.

On December 20, 2016, Board staff sent an Information Request (IR) to Mr. Cooke requesting further information on specific components of his compensation claim, with a deadline of January 4, 2017. Mr. Cooke agreed to provide the information, however on December 23, 2016, he requested the response remain confidential. The Board granted this request. On January 4, 2017, Mr. Cooke submitted his IR response to the Board. On January 12, 2017, a confidentiality agreement was signed by both Mr. Cooke and DIAND-CARD, and Board staff then provided DIAND-CARD with the IR response for their review. On January 17, 2017, DIAND-CARD submitted a letter in reply to the SPL IR response, in which it was stated, “...[DIAND-CARD] has no further comment regarding the Information Request Response from Mr. Duncan Cooke...”.

4. Comments

Mackenzie Valley Resource Management Act – 72.03

(5) The board shall not issue a licence in respect of a federal area unless the applicant satisfies the board that:

(a) Either

(i) The use of waters or the deposit of waste proposed by the applicant would not adversely affect, in a significant way, the use of waters, whether in or outside the federal area to which the application relates,

(ii) Every licensee and applicant to whom subparagraph (i) applies has entered into a compensation agreement with the applicant;

(b) compensation that the board considers appropriate has been or will be paid by the applicant to any other applicant who is described in clause (a)(i)(B) but to whom paragraph (a) does not apply, and to any of the following who were licensees, users, depositors, owners, occupiers or holders, whether in or outside the federal area to which the application relates, at the time when the applicant filed an application with the board in accordance with the regulations made under paragraphs 90.3(1)(d) and (e), who would be adversely affected by the use of waters or the deposit of waste proposed by the applicant, and who have notified the board within the time period stipulated in the notice of the application given under subsection 72.16(1)

Factors in Determining Compensation:

(6) In determining the compensation that is appropriate for the purpose of paragraph (5)(b), the board shall consider all relevant factors, including

(a) Provable loss or damage;

(b) Potential loss or damage;

(c) the extent and duration of the adverse effect, including the incremental adverse effect;

(d) the extent of the use of waters by persons who would be adversely affected; and

(e) nuisance, inconvenience and noise.

5. Analysis

Summary and Analysis of Compensation Claim and Evidence

Please refer to Appendix A, which includes a summary and analysis of the compensation claim, and evidence from the submissions. This table is provided in a separate attachment for purposes of confidentiality.

6. Recommendation

Board staff have prepared the following options for the Board's consideration:

1. Order a payment in an amount to be determined by the Board, and proceed to issue the Water Licence;
- OR
2. Determine that no compensation is payable, and proceed to issue the Water Licence.

7. Attachments

- [Water Licence Application;](#)
- [September 20, 2016 letter from SPL to MVLWB;](#)
- [September 23, 2016 letter from MVLWB to DIAND-CARD;](#)
- [September 28, 2016 letter from DIAND-CARD to MVLWB;](#)
- [October 12, 2016 Board staff letter to SPL requesting information;](#)
- [November 2, 2016 Compensation Claim;](#)
- [November 16, 2016 DIAND-CARD response;](#)
- [November 30, 2016 SPL response;](#)
- [December 20, 2016 Information Request;](#)
- January 4, 2017 IR response;
- [January 17, 2017 IR response reply;](#)
- Draft Reasons for Decision;
- Draft Decision Letter from the Board.

Respectfully submitted,



Kierney Leach
Regulatory Officer