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March 26, 2020

File: W2019L8-0001

Mr. Mark Cliffe-Phillips
Mackenzie Valley Review Board
200 Scotia Centre
Box 938, 5102-50th Avenue,
Yellowknife, NT X1A 2N7

Sent via Email

Dear Mr. Cliffe-Phillips,

Re: The Government of the Northwest Territories Department of Infrastructure – Notice of Preliminary Screening Determination – Application for Water Licence – Rae Access Road Maintenance, Behchokò, NT

The Wek'èezhii Land and Water Board (Board) met on March 24, 2020 and considered the Application from the Government of the Northwest Territories Department of Infrastructure (GNWT-INF) for Water Licence (Licence) W2019L8-0001 for the Rae Access Road Maintenance Project in accordance with the *Mackenzie Valley Resource Management Act* (MVRMA).

The Board conducted a preliminary screening based on the public record for the proceeding. Based on the evidence provided, the Board is satisfied the screening has been completed according to section 125 of the MVRMA and has decided **not to refer** the project to environmental assessment. The Board's reasons for decision, as required by section 121 of the MVRMA, are attached.

If the Board does not receive notice of referral to environmental assessment, it can proceed with issuance of Licence W2019L8-0001 on Monday, April 6, 2020.

Our Board and staff look forward to continued communications throughout the pause period. If you have any questions or concerns regarding this letter, please contact Ryan Fequet at (867) 765-4589.

Yours sincerely,

A handwritten signature in blue ink that reads "Joe Mackenzie".

Joe Mackenzie
Wek'èezhii Land and Water Board, Chair

Copied to: Wek'èezhii West Distribution List
Alexis Campbell, GNWT-INF

Attached: Preliminary Screening Reasons for Decision



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Reasons for Decision

Reference/File Number:	W2019L8-0001 (Type "B" Water Licence)
Applicant:	Government of the Northwest Territories Department of Infrastructure (GNWT-INF)
Subject:	Preliminary Screening Determination – Rae Access Road Type B Water Licence Application

Decision from the Wek'èezhii Land and Water Board Meeting of March 24, 2020

1.0 Decision

The Wek'èezhii Land and Water Board (WLWB or the Board) met on March 24, 2020 and considered the Government of the Northwest Territories Department of Infrastructure's (GNWT-INF) Application for a Type B Water Licence (W2019L8-0001).¹ The Board conducted a preliminary screening of this Application according to subsection 124(1) of the *Mackenzie Valley Resource Management Act* (MVRMA), based on GNWT-INF's application package and the public review. Based on the evidence provided, it is the Board's view that the proposed development is not likely to have a significant adverse impact on air, water or renewable resources or might be a cause of public concern and therefore, has decided not to refer the Project to Environmental Assessment, as set out in paragraph 125(2)(a) of the MVRMA.

2.0 Background

The WLWB received a Water Licence Application from the GNWT-INF on January 10, 2020.² The purpose of the Application is to undertake maintenance of the Rae Access Road, which includes: removal of existing corrugated steel pipes and the installation of new corrugated steel pipes; removal of culverts and installing

¹ See WLWB (www.wlwb.ca) Online Registry for [GNWT-INF - Water Licence Application - Jan 10 20](#)

² See WLWB (www.wlwb.ca) Online Registry for [GNWT-INF - Water Licence Application - Jan 10 20](#)

new culverts; and placement of fill into ponded wet areas along the side of the road bank. The Project is located on the Rae Access Road, near Behchokò, NT.³

The Application, Draft Licence,⁴ and the previous preliminary screening,⁵ were distributed for public review on January 15, 2020, inviting Parties to provide comments and recommendations using the Online Review System (ORS). In its cover letter, GNWT-INF indicated that the Application should be exempt from preliminary screening because “As the Water Licence works fall under the scope of MV2017X0008 it is believed to be exempt from preliminary screening”. In the Item for Review, reviewers were encouraged to provide comments and recommendations (e.g., on impacts and mitigations measures) to assist with the Board’s preliminary screening determination. Fisheries and Oceans Canada (DFO), the Government of the Northwest Territories Department of Environment and Natural Resources Water Resource Inspector (GNWT-ENR Inspector), and WLWB staff provided questions and/or recommendations by the deadline of February 12, 2020. The GNWT-ENR Environmental Assessment and Monitoring Section (EAM) and the Wek’èezhìi Renewable Resources Board (WRRB) provided letters indicating they had no comments or recommendations at this time. GNWT-INF submitted responses to the comments and recommendations by the response deadline of February 26, 2020. Reviewer comments and recommendations, as well as the proponent’s responses are available on the WLWB Online Registry.⁶

Since no concerns regarding timelines were raised during the public review and no requests to extend the reviewer comment deadline were received, the Board is satisfied that a reasonable period of notice was given to affected communities and First Nations, as required by subsection 63(2) of the *Mackenzie Valley Resource Management Act* (MVRMA). The Board is also satisfied that the Tłı̄ch̄ Government has been consulted in accordance with section 63 of the MVRMA.

In accordance with subsection 124(1) of the MVRMA, the Board must conduct a preliminary screening of the Application. The preliminary screening identifies potential impacts and mitigations for the proposed activities. As per subsection 125(2), the Board must: (a) determine and report to the Review Board whether, in its opinion, the development is likely to have a significant adverse impact on air, water or renewable resources or might be a cause of public concern; and (b) where it so determines in the affirmative, refer the proposal to the Review Board for an environmental assessment.⁷

3.0 Preliminary Screening

3.1 Preliminary Screening Exemption

GNWT-INF identified in its cover letter that the Project falls under the scope of Land Use Permit MV2017X0008 and that it believes the Application to be exempt from preliminary screening. Pursuant to Schedule 1 (section 2), Part 1, paragraph 2(b) of the *Exemption List Regulations*, developments exempt from preliminary screenings include the following:

³ See WLWB Online Registry for [GNWT-INF - Water Licence Application - Maps - Jan 10 20](#)

⁴ See WLWB Online Registry for [GNWT-INF - DRAFT Water Licence - Type B - Jan 10 20](#)

⁵ See WLWB Online Registry for [MV2017X0008 - GNWT-INF - Preliminary Screening Notification to Review Board - Aug 9 19](#)

⁶ See WLWB Online Registry for [GNWT-INF – Type B Water Licence Application – Review Summary and Attachments – Mar 16 20](#)

⁷ See the Mackenzie Valley Environmental Impact Review Board (www.reviewboard.ca) for the Environmental Impact Assessment Guidelines, 2004.

A development, or a part thereof, for which renewal or a permit, licence or authorization is requested that (a) has not been modified; and (b) has fulfilled the requirements of the environmental assessment established by the MVRMA, the *Canadian Environmental Assessment Act* or the *Environmental Assessment Review Process Guidelines Order*.

The Board identified that the preliminary screening previously done for Permit MV2017X0008 did not appear to include all activities and associated potential impacts described in the current Application. The Board thus completed a preliminary screening in review of this Application in accordance with subsection 124(1) of the MVRMA (see Sections 3.2, 3.3, and 3.4 of these Reasons for Decision).

3.2 Potential Impacts and Proposed Mitigations

During the public review, reviewers were encouraged to provide comments and recommendations (e.g., on impacts and mitigation measures) to assist with the Board’s preliminary screening determination. Comments and questions were received during the public review regarding potential impacts from the proposed Project. These are discussed in Table 1, along with the Board’s analysis of the potential impacts.

Table 1: Summary of Potential Impacts of the proposed Application and proposed Mitigations

Potential Impacts	Activity	Proposed Mitigations <i>Description of measures the Applicant intends to apply to reduce potential impacts, including consideration of cumulative impacts and climate change.</i>
Potential impacts to fish and fish habitat	Maintenance/repair work near stream crossings	<ul style="list-style-type: none"> • Concerns: <ul style="list-style-type: none"> ○ <u>Identified during the Public Review:</u> During the public review DFO commented that the Project as described in the Application has the potential to result in the harmful alteration, disruption or destruction of fish, or prohibited effects on listed aquatic species at risk (DFO comment 1). • Mitigations: <ul style="list-style-type: none"> ○ GNWT-INF responded that GNWT-INF had submitted a Request for Review to DFO on November 25, 2019. As stated in DFO’s recommendation, “DFO will ensure that any potential impact to fish and fish habitat will be avoided, mitigated or appropriately offset as per subsections 34.4(1) and 35(1) of the <i>Fisheries Act</i>.” ○ The Draft Licence also included a condition regarding compliance with DFO’s Working Near Water Manual. When asked by WLWB staff whether GNWT-INF would be following this manual as a Guideline (WLWB staff comment 2), GNWT-INF confirmed that it would be. The Board

		<p>notes that this condition can be included in the Licence to help mitigate potential impacts.</p> <ul style="list-style-type: none"> • Board Analysis and Determination: <ul style="list-style-type: none"> ○ Based on the mitigations described above with respect to fish and fish habitat, the Board does not believe these activities associated with the Project might have a significant adverse impact on air, water, or renewable resources, or might be a cause of public concern.
Potential impacts to beaver and muskrat habitat	Maintenance/repair work near stream crossings	<ul style="list-style-type: none"> • Concerns: <ul style="list-style-type: none"> ○ <u>Identified during the Public Review:</u> During the public review, WLWB staff noted that possible beaver or muskrat habitat may be present in the area of operation proposed for this project (WLWB staff comment 1). GNWT-INF was asked to describe potential impacts, if any, to wildlife habitat and to describe the measures GNWT-INF will use to mitigate potential impacts. • Mitigations: <ul style="list-style-type: none"> ○ GNWT-INF responded that there are no potential impacts as a result of the proposed activities. The ponded wet areas are not connected to a water source. At the culvert replacement site, erosion and sediment control measures will be installed and maintained during construction to protect the water quality. • Board Analysis and Determination: <ul style="list-style-type: none"> ○ Based on the lack of potential impacts, the additional mitigations related to erosion and sediment control measures, and the lack of concern raised by Parties, the Board does not believe these activities associated with the Project might have a significant adverse impact on air, water, or renewable resources, or might be a cause of public concern.
Potential impacts to water quality and aquatic habitat	Maintenance/repair work near stream crossings	<ul style="list-style-type: none"> • Concerns: <ul style="list-style-type: none"> ○ <u>Identified during the Public Review:</u> During the public review, WLWB staff noted that Heavy Equipment will be used to replace existing culverts (WLWB staff comment 3). WLWB staff requested GNWT-INF indicate whether it plans to use heavy equipment to work in water and if so, to describe the measures used to mitigate potential impacts. • Mitigations: <ul style="list-style-type: none"> ○ In its response, GNWT-INF stated that no Heavy

		<p>Equipment will enter open water at any time.</p> <ul style="list-style-type: none"> ○ The Draft Licence also included a condition prohibiting Heavy Equipment to enter open water at any time and GNWT-INF has responded that this reflects its plan. The Board notes that this condition can be included in the Licence to help mitigate potential impacts. <ul style="list-style-type: none"> ● Board Analysis and Determination: <ul style="list-style-type: none"> ○ Based on the mitigations described above, the Board does not believe these activities associated with the Project might have a significant adverse impact on air, water, or renewable resources, or might be a cause of public concern.
Potential impacts to water quality and aquatic habitat	Maintenance/repair work near stream crossings	<ul style="list-style-type: none"> ● Concerns: <ul style="list-style-type: none"> ○ <u>Identified during the Public Review:</u> During the public review, WLWB staff asked GNWT-INF whether it plans to place any topsoil, other material removed from the stream bank, or any un-used fill material within 100 metres of the Ordinary High-Water Mark of any Watercourse during its operation (WLWB staff comment 4). If yes, GNWT-INF was asked to describe what measures will be used to mitigate potential impacts. In response, GNWT-INF stated that it will be placing and storing excavated material (excluding old culverts) within 100 meters of the Ordinary High-Water Mark of the Watercourse. ● Mitigations: <ul style="list-style-type: none"> ○ GNWT-INF stated that it will be following DFO’s working near water manual, and installing and maintaining erosion and sediment control measures during the project to protect the water quality. ● Board Analysis and Determination: <ul style="list-style-type: none"> ○ Based on the mitigations described above, the Board does not believe these activities associated with the Project might have a significant adverse impact on air, water, or renewable resources, or might be a cause of public concern.
Potential impacts to water quality and aquatic habitat	Maintenance/repair work near stream crossings	<ul style="list-style-type: none"> ● Concerns: <ul style="list-style-type: none"> ○ <u>Identified during the Public Review:</u> During the public review, WLWB staff asked GNWT-INF to confirm whether the material to be used for infill

		<p>will be from a source that is clean and free from contaminants prior to use.</p> <ul style="list-style-type: none"> • Mitigations: <ul style="list-style-type: none"> ○ GNWT-INF stated that it believes the material is clean and free of contaminants. ○ The Draft Licence also included a condition requiring all material to be used to be clean and free of contaminants and from a source that has been authorized in writing by an Inspector. The Board notes that this condition can be included in the Licence to help mitigate potential impacts. • Board Analysis and Determination: <ul style="list-style-type: none"> ○ Based on the mitigations described above, the Board does not believe these activities associated with the Project might have a significant adverse impact on air, water, or renewable resources, or might be a cause of public concern.
<p>Potential impacts to the Community Government of Behchokò's sewage lagoon compliance point (i.e., SNP Station 2014-R3)</p>	<p>Repair/maintenance work at Km 7.5 is located at SNP station 2014-R3</p>	<ul style="list-style-type: none"> • Concerns: <ul style="list-style-type: none"> ○ <u>Identified during the Public Review:</u> The GNWT-ENR Inspector commented that a SNP Station 2014-R3 is located at Km 7.5 (Site 2) on the Rae Access Road (GNWT-ENR Inspector comment 1). The Inspector noted that this is a compliance point for the Community Government of Behchokò and "discharge of the lagoon has typically occurred shortly after spring freshet in the past few years but can occur anytime between May 1st to July 30th." • Mitigations: <ul style="list-style-type: none"> ○ In its comment, the GNWT-ENR Inspector stated that coordination with community water staff will need to occur for this work to be executed and recommended that communication with community staff and the Inspector take place to determine the best timing. In response, GNWT-INF stated that it was aware of this issue and that it would communicate with community staff and the Inspector regarding the timing of the culvert replacement. • Board Analysis and Determination: <ul style="list-style-type: none"> ○ Based on the GNWT-INF's commitment to work with community staff and the Inspector regarding the timing of the culvert replacement, the Board does not believe these activities

		<p>associated with the Project might have a significant adverse impact on air, water, or renewable resources, or might be a cause of public concern.</p>
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3.3 Public Concern

In addition to determining if the development is likely to have a significant adverse impact on air, water or renewable resources, the Board must also consider whether the proposed development might be a cause of public concern. Although public concern may be less clearly defined than the questions related to significant adverse impacts on air, water or renewable resources, it is the Board’s responsibility to evaluate public concern as a potential trigger for an Environmental Assessment.

The Board notes that no reviewers voiced public concern in review of the application. In addition, in reviewing the comments provided during the public review, the Board did not identify any comments or issues that indicate a possible cause for public concern.

3.4 Conclusion

The Board has reviewed all the evidence received from GNWT-INF and reviewers with respect to the preliminary screening of the Water Licence Application for maintenance of the Rae Access Road. Based on the mitigations, lack of public concern noted during the review process, and no comments from reviewers that this Project should be referred to the Review Board, the Board is of the opinion that the proposed development is not likely to have a significant adverse impact on air, water or renewable resources or might be a cause of public concern.

Signed the 26th day of March 2020, on behalf of the Wek’èezhii Land and Water Board



Witness



Joe Mackenzie
Chair, Wek’èezhii Land and Water Board