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September 24, 2020

File: W2020L8-0001

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

Sent by email

Dear Mark Cliffe-Phillips,

Re: Notice of Preliminary Screening Determination – Type A Application for Water Licence W2020L8-0001 – [Tłjchq All-Season Road, NT]

The Wek'èezhii Land and Water Board (Board) met on September 23, 2020 and considered a Type A Application from the Government of the Northwest Territories Department of Infrastructure (GNWT-INF) for increased water use to support the Tłjchq All-Season Road (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, the Board will make a recommendation to the Minister regarding issuance of Water Licence W2020L8-0001 on October 5, 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 Anneli Jokela at (867) 765-4588 or email ajokela@wlwb.ca.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Joseph Mackenzie".

Joseph Mackenzie
Chair, Wek'èezhii Land and Water Board

Copied to: TASR Distribution List
Ziaur Rahman, GNWT-INF

Attached: Preliminary Screening Reasons for Decision



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Reasons for Decision

Reference/File Number:	W2020L8-0001 (Type A Water Licence)
Permittee:	Government of the Northwest Territories Department of Infrastructure (GNWT-INF)
Subject:	Type A Water Licence Application – Increased Water Use to support the Tłjchq All-Season Road Preliminary Screening

Decision from the Wek'èezhìi Land and Water Board Meeting of September 23, 2020

1.0 Decision

The Wek'èezhìi Land and Water Board (WLWB or the Board) met on September 23, 2020 and considered a Water Licence Application (the Application) from the Government of the Northwest Territories Department of Infrastructure (GNWT-INF) for the Tłjchq All-Season Road (TASR or the Project). The Application proposed increased water use to support Construction of the Project. The Board conducted a preliminary screening of this Application according to subsection 124(1) of the *Mackenzie Valley Resource Management Act* (MVRMA) based on the application package and the public record for the proceeding. Based on the evidence provided, it is the Board's view that the proposed increased water use will not have a significant adverse impact on the environment or be a cause for public concern as set out in paragraph 125(1)(a) of the MVRMA. Therefore, the Board has decided to **not to refer** the Project to Environmental Assessment.

In accordance with subsection 125(1.1) of the MVRMA, the Board shall not issue a licence, permit, or other authorization for the development before the end of 10 days after the day on which the Review Board received the report of the determination. If no referral to Environmental Assessment is received by October 4, 2020, the Board will make a recommendation to the Minister regarding issuance of Water Licence W2020L8-0001.

2.0 Background

The TASR Project is a 97-kilometre (km) long dual-lane gravel highway running from km 196 on Highway 3 near Behchokò, to Whati, consisting of a 60 metre (m) right-of-way and 16 water crossings that require culverts and bridges. In addition to the Construction, operation, and maintenance of the road and Water crossings, the Project also requires the operation of camps. The Main Camp is located at km 19 of the TASR and houses up to 170 workers. The TASR Project has already undergone Environmental Assessment (EA).¹ Complete applications for a Type A Permit and Type B Water Licence were submitted to the Board on January 7, 2019. At the time, the Project required water use of less than 299 cubic metres per day (m³/day); therefore, only a Type B water licence was required. A subsequent preliminary screening was conducted for changes to the Project since the original Application in 2016 and the Environmental Assessment.² On May 30, 2019, the Board issued Type A Land Use Permit W2016E0004 and Type B Water Licence W2016L8-0001.^{3,4,5}

The purpose of this Application is to increase the daily water use limit for the Project, currently authorized through the Type B W2016L8-0001 Water Licence, from 299 m³/day to 900 m³/day. In accordance with Schedule H of the Waters Regulations, the use of 300 or more cubic metres per day triggers the need for a Type A Water Licence. As such, GNWT-INF submitted an application for a Type A Water Licence on May 13, 2020, which included an application form and an Engagement Record.⁶ In the Application, the GNWT-INF described its intent to use the increased water withdrawal to support Construction activities for the TASR such as: road compaction, dust suppression, winter road construction, and camp use by July 1, 2020. During a completeness check of the Application, Board staff noted that additional information relating to Engagement was necessary and deemed the Application incomplete.⁷ After an updated engagement record was submitted on June 15, 2020, the Application was deemed complete.⁸ In accordance with subsection 43(1) of the *Waters Act*, formal notice of the Application was included in the News North Newspaper on Monday June 22, 2020.⁹

2.1 Public Review

The Application was distributed for public review on the Board's Online Review System on June 17, 2020 and reviewers were encouraged to provide comments and recommendations (e.g., on impacts and mitigation measures) to assist with the Board's preliminary screening determination. A draft work plan was developed by Board staff and distributed for comment with the Application.¹⁰ Comments on the draft work plan were due June 23, 2020. No comments were received from Parties on the draft work plan and so on June 24, 2020, the Item for Review was updated to include the final work plan.¹¹ No concerns with

¹ See Mackenzie Valley Environmental Impact Review Board Public Registry (www.reviewboard.ca) for the [TASR Report of the Environmental Assessment and Reasons for Decision](#).

² See WLWB Online Registry (www.wlwb.ca) for [W2016E0004 – TASR – Preliminary Screening – May 30 19](#)

³ See WLWB Online Registry for [W2016E0004 – TASR – Land Use Permit – May 30 19](#)

⁴ See WLWB Online Registry for [W2016L8-0001 – TASR – Water Licence – May 30 19](#)

⁵ See WLWB Online Registry for [W2016L8-0001 – TASR – Land Use Permit and Water Licence Applications – Reasons for Decision – May 30 19](#)

⁶ See WLWB Online Registry for [W2020L8-0001 – TASR – Type A Water Licence Application – May 13 20](#)

⁷ See WLWB Online Registry for [W2020L8-0001 – TASR – Type A Water Licence Application – May 22 20](#); [W2020 L8-0001 – TASR – WL Application – Correspondence re- Engagement – May 25 20](#); [W2020L8-0001 – TASR – Type A Water Licence Application – Jun 1 20](#); [W2020L8-0001 – TASR – WL Application – Deemed Incomplete – Jun 2 20](#)

⁸ See WLWB Online Registry for [W2020L8-0001 – TASR – WL Application – Updated Engagement Record – Jun 15 20](#)

⁹ See WLWB Online Registry [W2020L8-0001 – TASR – Notice of Application – Jun 22 20](#)

¹⁰ See WLWB Online Registry for [W2020L8-0001 – TASR – Draft Work Plan – Jun 17 20](#)

¹¹ See WLWB Online Registry for [W2020L8-0001 – TASR – Work Plan – Jun 24 20](#)

the timelines were raised during the public review and no requests to extend the reviewer comment deadline were received; thus, the Board is satisfied that a reasonable period of notice was given to affected communities and First Nations, as required by subsections 63(2) and 63(3) of the *Mackenzie Valley Resource Management Act* (MVRMA). The Board is also satisfied that the Tłıchq Government has been consulted in accordance with subsection 63(4) of the MVRMA.

Comments and recommendations on the Application were due July 7, 2020 and responses were due July 14, 2020. Comments on the Application were received from Environment and Climate Change Canada (ECCC) and Fisheries and Oceans Canada (DFO). Tłıchq Government (TG) indicated that it had no comments. Board staff also provided questions during the public review. GNWT-INF provided responses by the response deadline of July 14, 2020. Reviewer comments and recommendations, and proponent responses are available on the WLWB Online Registry.¹²

2.2 Public Hearing

The Public Hearing was advertised in accordance with section 43 of the *Waters Act*.¹³ In preparation of the Public Hearing, a Pre-Hearing conference was held on July 21, 2020 via videoconference to discuss the procedural details of the Public Hearing, identify any preliminary legal issues, and to briefly review and discuss the Board's Rules of Procedures and work plan. The Pre-Hearing Conference was attended by GNWT-INF, DFO, ECCC, the Wek'èezhii Renewable Resources Board (WRRB), the North Slave Metis Alliance (NSMA), and Board staff and legal counsel.

The Board received no notification that any Party intended to appear and make representations at the hearing and GNWT-INF consented to the disposition of the matter without a public hearing.¹⁴

The Public Hearing was therefore canceled on August 11, 2020, in accordance with subsection 41(3) of the *Waters Act*. Formal notice of the cancellation was included in the News North Newspaper on Monday August 17, 2020.¹⁵ The TASR distribution list was notified of the cancellation via email and an updated work plan was distributed.^{16, 17}

2.3 Remaining Process

Following the cancellation of the Public Hearing, a Draft Water Licence was distributed for review on August 20, 2020.¹⁸ When this draft was distributed, Board staff indicated that:

- The purpose of the Draft Water Licence was to allow reviewers to comment on Board staff's suggested conditions based on the evidence on the record thus far;
- The Draft Licence was not intended to limit in any way the scope of reviewers' comments; and
- The Board was not bound by the contents of the Draft Water Licence and would make its decision at the close of the Proceeding based on all the evidence and arguments filed by all Parties.

¹² See WLWB Online Registry for [W2020L8-0001 – TASR – Application – Review Summary and Attachments – Jul 14 20](#)

¹³ See WLWB Online Registry for [W2020L8-0001 – TASR – Notice of Public Hearing – Jul 13 20](#)

¹⁴ See WLWB Online Registry for [W2020L8-0001 – GNWT-INF No Objection to Proceed without Public Hearing – Aug 4 20](#)

¹⁵ See WLWB Online Registry for [W2020L8-0001 – TASR – Cancellation of Public Hearing – Notice – Aug 17 20](#)

¹⁶ See WLWB Online Registry for [W2020L8-0001 – TASR – Cancellation of Public Hearing – Notice – Aug 11 20](#)

¹⁷ See WLWB Online Registry for [W2020L8-0001 – TASR – Work Plan – Aug 11 20](#)

¹⁸ See WLWB Online Registry for [W2020L8-0001 – TASR – DRAFT WL and SNP – Aug 20 20](#)

After review of the Draft Water Licence, the WRRB, TG, and DFO indicated they had no further comments. In addition, the GNWT-INF did not provide comments on the Draft Water Licence. Reviewer comments on the Draft Licence are also available on the WLWB Online Registry.¹⁹

As per Rule 61 of the Mackenzie Valley Land and Water Boards’ Rules of Procedure, the Board may issue an Information Request to any Party at any stage of any Proceeding.²⁰ An Information Request seeking clarification on water capacities and locations for withdrawals was sent to the GNWT-INF on September 3, 2020.²¹ The GNWT-INF’s response to the IR was received on September 9, 2020.²²

Since no interventions were received, no closing arguments were expected. This step in the proceeding was removed when Board staff updated the work plan on August 11, 2020.

3.0 Reasons for Decision

The Board completed a preliminary screening of the Application in accordance with subsection 124(1) of the MVRMA. The preliminary screening identifies potential impacts and mitigations for the proposed activities. In accordance with section 125 of the MVRMA, the Board must conduct a preliminary screening of the Application to determine whether the project might have a significant adverse impact on the environment or might be a cause for public concern.²³

3.1 Potential Impacts and Proposed Mitigations

In section 10 of the Application, the GNWT-INF indicated that there would be “no additional impacts anticipated from the extraction of increased water volumes”. The Board has conducted its own analysis of potential impacts and proposed mitigations of the Application and summarized it in Table 1 below:

Table 1: Summary of Potential Impacts and proposed Mitigations

Potential Impact	Activity	Proposed Mitigations <i>Description of measures that can be applied to reduce potential impact, including consideration of cumulative impacts and climate change.</i>
Reduction, loss, or alteration of water	Withdrawal of water from a watercourse or waterbody	Potential Concerns: <ul style="list-style-type: none"> • Excessive water extraction could impact fish and fish habitat, especially from ice-covered water bodies through oxygen depletion, loss of over-wintering habitat, and/or reductions in littoral habitat (see DFO Protocol for Winter Water Withdrawal from Ice-covered Waterbodies in the Northwest Territories and Nunavut). • Water fluctuations may also have impacts on beaver and muskrat habitat (see DFO Protocol for Winter Water Withdrawal from Ice-covered Waterbodies in the Northwest Territories and Nunavut). • Volume of water drawn could deplete groundwater level and surface water recharge • Water withdrawal could impact sewage and grey water Waste volumes and/or management (ECCC comment 4)

¹⁹ See WLWB Online Registry for [W2020L8-0001 – TASR – DRAFT WL and SNP – Review Summary and Attachments – Sep 10 20](#)

²⁰ See WLWB page for [MVLWB Rules of Procedure Including Public Hearings \(2018\)](#)

²¹ See WLWB Online Registry for [W2020L8-0001 – TASR – Information Request – Sep 3 20](#)

²² See WLWB Online Registry for [W2020L8-0001 – TASR – Information Request Response – Sep 9 20](#)

²³ See the Mackenzie Valley Environmental Impact Review Board for the [Environmental Impact Assessment Guidelines](#), 2004.

		<p>Mitigations:</p> <ul style="list-style-type: none"> • Water will be withdrawn from several approved sources, not just one (section 10 of the Application). • Water extraction will proceed from proposed locations after the appropriate bathymetric and hydraulic assessment are completed (section 10 of the Application) • GNWT has committed to follow the 2010 DFO Protocol for Winter Water Withdrawal from Ice-covered Waterbodies in the Northwest Territories and Nunavut (section 10 of the Application) • There are no anticipated changes to sewage/grey water volumes from increased water use and no change to monitoring or contingency plans (response to ECCC comment 4 and 5) • The GNWT-INF no longer plans to do groundwater extractions (see response to ECCC comment 3 and Board staff comment 4) • The Board can carry over conditions from the Type B W2016L8-0001 Water Licence where: <ul style="list-style-type: none"> ○ authorized water sources each have their own restrictions on withdrawal; ○ the Licensee is required to obtain written authorization for the location from an Inspector prior to locating a Water intake in a fish bearing Watercourse; ○ the Licensee is required to operate in accordance with plans such as the Water Monitoring and the Fish and Fish Habitat Protection Plan; and ○ the Licensee is required to not destroy or damage beaver or muskrat dams or lodges without approval from GNWT-ENR, and shall minimize disturbance to beaver and muskrat activities <p>Board Analysis and Determination:</p> <ul style="list-style-type: none"> • Based on the mitigations described above and the lack of concerns raised by Parties, the Board believes the proposed activities within the Application will not have a significant adverse impact on the environment or be a cause for public concern.
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3.1.2 Summary of Potential Environmental Impacts

The Board considered whether increased Water use might have a significant adverse impact on the environment. Mitigation measures for potential impacts are identified in Table 1 above. These mitigation measures include existing Water Licence conditions, as well as activities and commitments made by the GNWT-INF in the Application package, and its responses to public review comments.

3.1.3 Public Concern

The Board must also consider whether a proposed development might be a cause of public concern. Although public concern may be less clearly defined than the questions related to significant adverse environmental impacts, 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.

3.1.4 Overall Preliminary Screening Determination

The Board has reviewed all the evidence received from the GNWT-INF and reviewers with respect to the Preliminary Screening of the proposed increased water use to support the TASR Project. Based on the information provided by the GNWT-INF in the Application package and the public review; the current requirements of the Water Licence; the lack of public concern raised during the review process; and the absence of comments indicating that this Application should be referred to the Mackenzie Valley Environmental Impact Review Board (MVEIRB), it is the Board's view that the proposed Water use will not have a significant adverse impact on the environment or be a cause of public concern.

Signed the 23rd Day of September, 2020, on behalf of the Wek'èezhii Land and Water Board



Witness



Joseph Mackenzie
Wek'èezhii Land and Water Board, Chair