



**Mackenzie Valley Land and Water Board**  
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February 16, 2018

File: MV2017L1-0002

The Honourable Robert C. McLeod  
Department of Environment and Natural Resources  
Government of the Northwest Territories  
P.O. Box 1320  
Yellowknife, NT X1A 2L9

Email: [Robert\\_C\\_McLeod@gov.nt.ca](mailto:Robert_C_McLeod@gov.nt.ca)

Dear Minister McLeod:

**Board Recommendation for Approval of Type B Water Licence  
Enbridge Pipelines (NW) Inc. Line 21 Segment Replacement Project**

The Mackenzie Valley Land and Water Board (MVLWB) has completed its regulatory process for the Enbridge Pipelines (NW) Inc. Line 21 Segment Replacement Project near Fort Simpson, NT. A motion was passed by the Board to forward the attached Water Licence and Reasons for Decision to you for your approval.

As this is a Type B Water Licence for which a public hearing was held, it requires your signature as stated in section 72.13 of the *Mackenzie Valley Resource Management Act* as delegated under Schedule A of the Delegation Instrument. The MVLWB recommends your approval and signature.

Should you have any questions, please feel free to contact Shelagh Montgomery, Executive Director, at [smontgomery@mvlwb.com](mailto:smontgomery@mvlwb.com), or by phone at (867) 766-7457.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Mavis Cli-Michaud".

Mavis Cli-Michaud  
MVLWB Chair

Copied to: Distribution List

Attached: Water Licence MV2017L1-0002  
Reasons for Decision



**Mackenzie Valley Land and Water Board  
Water Licence**

Pursuant to the *Mackenzie Valley Resource Management Act* and Regulations, the Mackenzie Valley Land and Water Board, hereinafter referred to as the Board, hereby grants to:

Enbridge Pipelines (NW) Inc.  
(Licensee)

of **10175 101 Street, Edmonton, AB T5J 3S4**  
(Mailing Address)

hereinafter called the Licensee, the right to alter, divert, or otherwise use water subject to the restrictions and conditions contained in the *Waters Act* and Regulations made thereunder and subject to and in accordance with the conditions specified in this Licence.

Licence Number:	MV2017L1-0002
Licence Type:	B
Water Management Area:	Northwest Territories 03
Location:	Min Latitude: 61°52' N, Max latitude: 61°44' N Min Longitude: 121°13' W Max longitude: 121°9' W
Purpose:	To use water and dispose of waste and associated uses
Description:	Industrial use - Off Right-of-Way activities for the Line 21 Segment Replacement Project
Quantity of Water <b>not to be exceeded</b> :	299 m <sup>3</sup> /day 10,000 m <sup>3</sup> /year
Effective date of licence:	
Expiry date of licence:	

This Licence issued and recorded at Yellowknife includes and is subject to the annexed conditions.

**Mackenzie Valley Land and Water Board**

  
Chair

  
Witness

Approved by

Honourable Robert C. McLeod  
Minister of Environment and Natural Resources

**Type B Water Licence MV2017L1-0002**  
**Enbridge Pipelines (NW) Inc. – Industrial Use – Segment Replacement and Associated Activities**

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## Part A: Scope and Definitions

### 1. Scope

- a) This Licence entitles the Licensee to use Water and dispose of Waste for industrial undertakings for the off Right-of-Way activities associated with the installation of a new segment of pipeline, including the following:
  - i. Withdrawal and use of Water from the Mackenzie River and the Liard River;
  - ii. Construction, use, and maintenance of all access roads, drill sites, camps, laydown and storage areas, barge landing site, Sumps, and related facilities;
  - iii. Installation and maintenance of erosion control measures;
  - iv. Other related activities, including Reclamation; and
  - v. Fuel and hazardous materials storage.
- b) This Licence is issued subject to the conditions contained herein with respect to the taking of Water and the depositing of Waste of any type in any Waters or in any place under any conditions where such Waste or any other Waste that results from the deposit of such Waste may enter any Waters. Whenever new Regulations are made or existing Regulations are amended by the Commissioner in Executive Council under the Act, or other statutes imposing more stringent conditions relating to the quantity or type of Waste that may be so deposited or under which any such Waste may be so deposited this Licence shall be deemed, upon promulgation of such Regulations, to be automatically amended to conform with such Regulations.
- c) The Licensee shall take every reasonable precaution to protect the environment.
- d) In conducting its activities under this Licence, the Licensee shall make best efforts to consider and incorporate any scientific and Traditional Knowledge that is made available to the Licensee.
- e) Compliance with the term and conditions of this Licence does not excuse the Licensee from its obligation to comply with the requirements of any applicable Federal, Territorial, or Municipal laws.

## 2. Definitions

In this Licence: MV2017L1-0002

**Act** - the *Waters Act*, S.N.W.T. 2014, c.18.

**Analyst** - an Analyst designated by the Minister by subsection 65(1) of the Act.

**Board** - the Mackenzie Valley Land and Water Board established by subsection 99(1) of the *Mackenzie Valley Resource Management Act*.

**Engagement Plan** - a document, developed in accordance with the Board's June 2013 *Engagement and Consultation Policy and the Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits* describes proposed engagement activities during the life of the undertaking.

**Inspector** - an Inspector designated by the Minister under subsection 65(1) of the Act.

**Licensee** - the holder of this Licence.

**Minister** - a duly appointed member of the Executive Council who is responsible for the *Waters Act* or the department responsible for administering that Act.

**Modification** - a change, other than an expansion, that does not alter the purpose or function of a structure.

**Ordinary High Water Mark** - the usual or average level to which a body of water rises at its highest point and remains for sufficient time so as to change the characteristics of the land. In flowing waters (rivers, streams) this refers to the "active channel/bank-full level" which is often the 1:2 year flood flow return level. In inland lakes, wetlands, or marine environments, it refers to those parts of the Watercourse bed and banks that are frequently flooded by water so as to leave a mark on the land and where the natural vegetation changes from predominately aquatic vegetation to terrestrial vegetation (excepting water tolerant species). For reservoirs, this refers to normal high operating levels (full supply level).

**Permeability** - the capacity to transmit Water through a medium.

**Project** - the undertaking described in Part A, item 1.

**Receiving Environment** - for the purpose of this Licence, the natural aquatic environment outside of the Controlled Area that receives any deposit or discharge of Waste, including Seepage, runoff or Wastewater, from the Project.

**RECLAIM** - the current version of a computer-based spreadsheet program used to estimate Reclamation costs.

**Reclamation** - the activities which facilitate the return of areas affected by the Project to viable and, wherever practicable, self-sustaining ecosystems that are compatible with a healthy environment, human activities, and the surrounding environment.

**Regulations** - Regulations promulgated pursuant to section 63 of the Act.

**Right-of-Way** - that portion of the Line 21 Right-of-Way that falls within the area where the licenced land-use

operation will be conducted.

**Spill Contingency Plan** - a document, developed in accordance with Indian and Northern Affairs Canada's April 2007 *Guidelines for Spill Contingency Planning*, that describes the set of procedures to be implemented to minimize the effects of a spill.

**Sump** - a man-made pit or natural depression in the earth's surface used for the purpose of depositing waste that does not contain Toxic Material, such as non-toxic Drilling Waste or Sewage, therein.

**Toxic Material** - any substance that enters or may enter the environment in a quantity or concentration or under conditions such that it:

- a) Has or may have an immediate or long-term harmful effect on the environment or its biological diversity;
- b) Constitutes or may constitute a danger to the environment on which life depends; or
- c) Constitutes or may constitute a danger in Canada to human life or health.

**Traditional Knowledge** - the cumulative collective body of knowledge, experience and values built up by a group of people through generations of living in close contact with nature. It builds upon the historic experiences of a people, and adapts to social, economic, environmental, spiritual and political change.

**Unauthorized Discharge** - a discharge or spill of any Water or Waste not authorized under this Licence.

**Waste** - any Waste as defined in section 1 of the Act.

**Wastewater** - the Water that is generated by the Project or originates on-site and contains Waste that requires treatment or any other Water management activity.

**Waste Management Plan** - a document, developed in accordance with the Board's March 2011 *Guidelines for the Development of a Waste Management Plan* which describes the methods of Waste management from Waste generation to final disposal.

**Water** - any Water as defined in section 1 of the Act.

**Watercourse** - a natural body of flowing or standing water or an area occupied by water during part of the year, and includes streams, springs, swamps and gulches but does not include groundwater.

**Water Use** - a use of Water as defined in section 1 of the Act.

## Part B: General Conditions

1. The Licensee shall ensure a copy of this Licence is maintained on site at all times.
2. All references to policies, guidelines, codes of practice, statutes, Regulations or other authorities shall be read as a reference to the most recent versions, unless otherwise denoted.
3. The Water Use Fee shall be paid annually in advance of any Water Use, in accordance with the Mackenzie Valley Land and Water Board's March 2013 *Water Use Fee Policy*.
4. All information submitted to the Board, as required by this Licence, shall:
  - a) Be submitted in a form acceptable to the Board;
  - b) Be in accordance with the Board's *Document Submission Standards*; and
  - c) Include a section within each submission which identifies wherein the pertinent requirements of this Licence are addressed.
5. The Licensee shall operate in accordance with approved plans referred to in this Licence, including such revisions as may be made pursuant to the conditions of this Licence and as approved by the Board. If any plan is not approved by the Board, the Licensee shall revise the plan as directed and resubmit it to the Board for approval.
6. The Licensee shall annually review the plans referred to in this Licence and make any necessary revisions to reflect changes in operations, or as directed by the Board. All revisions to plans shall include a brief summary of the changes made, be in a format consistent with the Mackenzie Valley Land and Water Board's *Standard Outline for Management Plans*, and be submitted to the Board for approval at least 60 days prior to any proposed changes to the requirements in the approved plans.
7. The attached Schedules and any compliance dates specified in this Licence may be amended at the discretion of the Board. If any compliance dates for the submission of a plan, report, or program falls on a weekend or holiday, the plan, report, or program shall be submitted on the following business day.
8. Meters, devices, or other such methods used for measuring the volumes of Water used and Waste discharged shall be installed, operated, and maintained by the Licensee to the satisfaction of an Inspector.
9. The Licensee shall act in accordance with the **Engagement Plan**, once approved by the Board.
10. Within 60 days following issuance of this Licence, the Licensee shall submit a revised **Engagement Plan** to the Board for approval. The Licensee shall not commence operations until the Board has approved the Plan. The Plan shall meet the objectives outlined in the Board's *Engagement and Consultation Policy* and the *Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits*.
11. Beginning March 31, 2019, and no later than every March 31st thereafter, the Licensee shall submit to the Board, an **Annual Water Licence Report**, which shall include, but not be limited to the following information:
  - a) The monthly and annual quantities in cubic metres of fresh Water obtained from all sources;
  - b) A summary of engagement activities conducted in accordance with the approved **Engagement Plan**, required in Part B of this Licence, undertaken during the previous calendar year and shall include a brief description of activities planned for the forthcoming year;
  - c) A summary of **Construction** activities conducted in accordance with Part E of this Licence, undertaken during the previous year calendar year;

- d) A summary of **Modifications** and/or major maintenance work conducted in accordance with Part F of this Licence, undertaken during the previous year calendar year;
- e) A summary of activities conducted in accordance with the approved **Waste Management Plan**, required in Part G of this Licence, undertaken during the previous calendar year, including:
  - i. A summary of updates or changes to the process or facilities required for the management of Waste;
  - ii. Monthly and annual quantities in cubic metres of all solid Waste deposited, identified by location (including Sumps);
  - iii. Monthly and annual quantities in cubic metres of all liquid Waste deposited, identified by location (including Sumps);
  - iv. A map depicting the location of the Sumps; and
  - v. A description and performance evaluation of each preventative and mitigative measure implemented to address any issues.
- f) A summary of activities conducted in accordance with the approved **Sediment and Erosion Control Plan**, required in Part G of this Licence, undertaken during the previous calendar year, including:
  - i. A description and performance evaluation of each preventative and mitigative measure implemented to address erosion control issues and an assessment of any re-vegetation programs;
  - ii. A description of any erosion susceptible areas encountered and a summary of activities to prevent or mitigate erosion; and
  - iii. A report of the performance of erosion mitigations applied in previous years.
- g) Tabular summaries of all data and information generated under the **Turbidity Monitoring Plan**, in excel or an electronic and printed format acceptable to the Board. The Licensee shall provide raw data in electronic form to the Board.
- h) A summary of activities conducted in accordance with the approved **Spill Contingency Plan**, required in Part I of this Licence, undertaken during the previous calendar year, including:
  - i. A list and description for all Unauthorized Discharges that occurred during the previous calendar year, including the date, NWT spill number, volume, location, summary of the circumstances and follow-up actions taken, and status (i.e. open or closed), in accordance with the reporting requirements in Part I of this Licence; and
  - ii. An outline of any spill training and communications exercises carried out during the previous calendar year.
- i) A summary of activities conducted in accordance with the approved **Closure and Reclamation Plan**, required in Part J of this Licence, completed during the previous calendar year, including a summary of updates or changes made, photographs of the affected areas, and an outline of any work anticipated for the next year;
- j) A summary of actions taken to address concerns, non-conformances, or deficiencies in any reports filed by an Inspector; and
- k) Any other details requested by the Board by November 1st of the year being reported.



### **Part C: Conditions Applying to Security Requirements**

1. Prior to the use of Water or the disposal of Waste, the Licensee shall post and maintain a security deposit in accordance with Schedule 1, item 1.
2. Upon request of the Board, the Licensee shall submit an updated Project reclamation liability estimate utilizing the current version of RECLAIM or another method acceptable to the Board.
3. The amount of the security deposit required by Part C, item 1 may be revised by the Board based on estimates of the Project's reclamation liability referred to in Part C, item 2 or based on such other information as may become available to the Board.
4. If the amount of the security deposit is revised by the Board as described under Part C, item 3, the Licensee shall post the revised amount with the Minister within 90 days of the Board giving notice of the revised amount.

**Part D: Conditions Applying to Water Use**

1. The Licensee shall obtain all Water from the Mackenzie River or the Liard River unless otherwise approved by the Board.
2. The total daily quantity of fresh Water withdrawn shall not exceed 299 cubic metres.
3. The total annual quantity of fresh Water withdrawn shall not exceed 10,000 cubic metres.
4. The Licensee shall equip and maintain the Water intake with a screen designed to prevent impingement and/or entrainment of fish. The screen shall have a mesh size sufficient to ensure no entrainment of fish, as outlined in Fisheries and Oceans Canada's 1995 *Freshwater Intake End-of-Pipe Fish Screen Guidelines*.

**Part E: Conditions Applying to Construction**

1. The Licensee shall ensure that all structures intended to contain, withhold, divert, or retain Water or Wastes are designed, constructed, and maintained to prevent escape of Waste to the Receiving Environment.

## **Part F: Conditions Applying to Modifications**

1. The Licensee may, without written approval from the Board, carry out Modifications to any structures, provided the following requirements are met:
  - a) The Licensee has notified the Board and an Inspector, in writing, of such proposed Modifications at least 60 days prior to beginning the Modifications;
  - b) The Modifications do not place the Licensee in contravention of either the Licence or the Act;
  - c) The Board has not, during the 60 days following notification of the proposed Modifications, informed the Licensee that further information is required or that review of the proposal will require more than 60 days;
  - d) An Inspector has authorized the proposed Modifications and provided a letter of notification to the Board; and
  - e) The Board has not rejected the proposed Modifications.
2. Modifications for which all of the conditions referred to in Part F, item 1, have not been met, may be carried out only with written approval from the Board.

## **Part G: Conditions Applying to Water and Waste Management**

1. The Licensee shall manage Water and Waste with the objectives of minimizing impacts of the Project on the quality of Water in the Receiving Environment through the use of appropriate mitigation measures, monitoring, and follow-up actions.
2. The Licensee shall ensure that any unauthorized Wastes do not enter any Waters.

### **Management Plans and Monitoring Programs**

3. The Licensee shall act in accordance with the **Waste Management Plan**, once approved by the Board.
4. Within 60 days following issuance of this Licence, the Licensee shall submit a revised **Waste Management Plan** to the Board for approval. The Licensee shall not commence operations until the Board has approved the Plan. The Plan shall be in accordance with the Mackenzie Valley Land and Water Board's March 2011, or subsequent editions, *Guidelines for the Development of a Waste Management Plan*, and shall include, but not be limited to, information regarding the following:
  - a) Information regarding Sump use including:
    - i. Composition of Waste type disposed; and
    - ii. Associated monitoring and maintenance program.
  - b) Information about Sump monitoring including:
    - i. Details for monitoring, including rationale, that will be undertaken with respect to Sump management during the Project; and
    - ii. Any other information about Sump monitoring that will be performed to meet the objectives in Part G, item 1 of this Licence.
  - c) Information about responses to Sump monitoring results:
    - i. A description of how the Sump monitoring information will be assessed and generally what types of actions will be taken in response to the Sump monitoring results.
  - d) Community engagement associated with siting and construction of Sumps.
5. Sewage shall be disposed of at a licensed facility that has the appropriate capacity. Written verification from the municipality noting that the licensed facility is authorized to accept the waste and has the appropriate capacity, shall be submitted to the Board prior to the initial disposal of sewage.
6. The Licensee shall construct and maintain the Sump(s) to the satisfaction of an Inspector.
7. If the initial Sump is not constructed of low Permeability materials, the Licensee shall construct an off-site Sump to the satisfaction of an Inspector.
8. The Licensee shall not discharge or decant Wastes, including Wastewater, to any Watercourse or to the ground surface within 100 metres of the Ordinary High Water Mark of any Watercourse.
9. Prior to the discharge or decant of Wastes, including Wastewater, the Licensee shall:
  - a) Obtain a representative sample of the Waste or Wastewater using the best methods available and describe in detail the prevailing conditions and how the sample was obtained;
  - b) Locate all discharge areas to the satisfaction of an Inspector; and
  - c) Indicate in writing to an Inspector and the Board;
    - i. The results of the sampling and analysis;
    - ii. The location of decant;
    - iii. The volume of decant;

- iv. The method of decant;
  - v. The direction of flow;
  - vi. The location of fresh waterbodies where the decanted Wastes or Wastewater may go, if applicable; and
  - vii. The ability of all discharge areas to absorb the decanted Wastes or Wastewater under different conditions.
10. The Licensee may commence discharging or decanting upon receipt of an Inspector's approval.
11. All analyses shall be conducted in accordance with methods prescribed in the current edition of *Standard Methods for the Examination of Water and Wastewater* or by such other methods as may be approved by the Analyst.
12. The Licensee shall act in accordance with the **Sediment and Erosion Control Plan**, once approved by the Board.
13. Within 60 days following issuance of this Licence, the Licensee shall submit to the Board, for approval, a **Sediment and Erosion Control Plan**. The Plan shall meet the objectives listed in Part G, item 1, and shall include, but not be limited to, information regarding the following:
- a) Information regarding erosion and sediment control methodologies;
    - i. A summary, with appropriate maps or diagrams, of the Project site identifying areas susceptible to erosion;
    - ii. The process and criteria for assessing erosion risk;
    - iii. A description of the best management practices that will be employed for different Project activities and for different levels of assessed risk;
    - iv. Any other information required to describe how erosion and sediment release into the Receiving Environment will be minimized.
  - b) Information about monitoring including:
    - i. Details for monitoring, including rationale, that will be undertaken with respect to erosion and sediment control during all phases of the Project; and
    - ii. Any other information about monitoring that will be performed to meet the objectives in Part G, item 1 of this Licence.
  - c) Information about responses to monitoring results:
    - i. A description of how the monitoring information will be assessed and generally what types of actions will be taken in response to the monitoring results.
14. The Licensee shall implement and maintain sediment and erosion control measures, where appropriate, to prevent entry of sediment into any Watercourse.
15. The Licensee shall act in accordance with the **Turbidity Monitoring Plan**, once approved by the Board.
16. Within 60 days following issuance of this Licence, the Licensee shall submit to the Board, for approval, a **Turbidity Monitoring Plan**. The Licensee shall not commence drilling until the Board has approved the Plan. The Plan shall meet the objectives listed in Part G, item 1, and shall include, but not be limited to, information regarding the following:
- a) Sampling locations,
  - b) Frequency of sampling,
  - c) Sampling methods,
  - d) Parameters to be tested,

- e) Duration of the Turbidity Monitoring Plan,
- f) A management response framework, including action levels, and
- g) Information about proposed management responses.

17. The Licensee shall submit to the Board on the 1<sup>st</sup> of each month, for the duration of the Turbidity Monitoring Plan, a Turbidity Monitoring Plan Results Report which provides an analysis and interpretation of the sampling results, and any other details as requested by the Board.

## **Part H: Conditions Applying to Spill Contingency Planning**

1. The Licensee shall act in accordance with the **Spill Contingency Plan**, once approved by the Board.
2. If, during the term of this Licence, a spill and/or an Unauthorized Discharge occurs or is foreseeable, the Licensee shall:
  - a) Implement the Spill Contingency Plan;
  - b) Report the incident immediately via the 24-hour NWT Spill Report Line at (867) 920-8130 in accordance with the instructions contained in the Spill Report Form NWT 1752/0593;
  - c) Report each spill and/or Unauthorized Discharge to the Board and an Inspector within 24 hours; and
  - d) Submit a detailed report on each spill and/or Unauthorized Discharge, including descriptions of root causes, response actions and any changes to procedures to prevent similar occurrences in the future, to the Board and an Inspector within 30 days.
3. All spills and Unauthorized Discharges of Water or Waste shall be reclaimed to the satisfaction of an Inspector.



## Part I: Conditions Applying to Closure and Reclamation

1. The Licensee shall act in accordance with the **Closure and Reclamation Plan**, once approved by the Board.
2. Within 60 days following issuance of this Licence, the Licensee shall submit a **Closure and Reclamation Plan** to the Board for approval. The Plan shall include, but not be limited to, information regarding the following:
  - a) Project description;
  - b) Closure and end land use goals, objectives, and criteria;
  - c) Community engagement associated with closure and Reclamation planning;
  - d) Sites affected by spills or Unauthorized Discharges;
  - e) Sites affected by permafrost degradation;
  - f) Requirements for closure and Reclamation including but not limited to:
    - i. Methods to restore natural drainage and watercourse banks; and
    - ii. Any areas which may have been affected by the Project such that potential pollution problems exist.
  - g) A phased approach for completing the activities and implementation schedule;
  - h) Maps delineating all disturbed areas; and
  - i) Any other details pertaining to closure and Reclamation requested by the Board.
3. The Licensee shall endeavour to carry out progressive Reclamation of areas as soon as reasonably practicable.

**Part J: Conditions Applying to Watercourses**

1. The Licensee shall ensure materials placed below the Ordinary High Water Mark are free of any contaminants, debris or fine material.
2. The Licensee shall not remove naturally occurring material from the bed or banks of any Watercourse below the Ordinary High Water Mark other than identified in the complete application.
3. The Licensee shall minimize the disturbance of riparian vegetation within the immediate boundary of any Watercourse crossing to the extent practicable.

**Signed on behalf of the Mackenzie Valley Land and Water Board**



**Chair**



**Witness**

**Schedules**  
**Annexed to Water Licence MV2017L1-0002**  
**Enbridge Pipelines (NW) Inc.**

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Schedule 1: Security Requirements

## **Schedule 1**

### Part C, item 1: Conditions Applying to Security Requirements

1. Pursuant to section 35(1) of the Act and section 11 of the Waters Regulations, the Licensee shall post security in the amount of \$335,000.00.

**Annexes**  
**Annexed to Water Licence MV2017L1-0002**  
**Enbridge Pipelines (NW) Inc.**

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Annex A: Concordance Table of Items Requiring Submission

Annex B: Table of Revision History

**Annex A: Concordance Table of Items Requiring Submission in Water Licence MV2017L1-0002**

Table 1 summarizes the information the Licensee is required to submit as per the Water Licence conditions. It supplements the Water Licence. If there are any discrepancies between Table 1 and the body of the Water Licence, the Water Licence conditions prevail.

**Table 1: Concordance Table of Items Requiring Submission**

<b>Part of Licence</b>	<b>Report Title/Require Action</b>	<b>Timeline for Submission</b>
<b>B</b>	Engagement Plan	- Within 60 days following issuance of this Licence
<b>B</b>	Annual Water Licence Report	- March 31 each year
<b>C</b>	Security Deposit	- Prior to the use of Water or the disposal of Waste
<b>F</b>	Modifications - Notification	- 60 days prior to carrying out modifications
<b>G</b>	Waste Management Plan	- Within 60 days following issuance of this Licence
<b>G</b>	Sediment and Erosion and Control Plan	- Within 60 days following issuance of this Licence
<b>G</b>	Turbidity Monitoring Plan	- Within 60 days following issuance of this Licence
<b>G</b>	Turbidity Monitoring Plan Results Report	- 1 <sup>st</sup> of each month
<b>I</b>	Spill Contingency Plan	- Within 60 days following issuance of this Licence
<b>I</b>	Detailed Spill and Unauthorized Discharge Report	- Within 30 days of each spill and Unauthorized Discharge
<b>J</b>	Closure and Reclamation Plan	- Within 60 days following issuance of this Licence

**Annex B: Table of Revision History for Water Licence MV2017L1-0002**

**Table 1: Updates and changes that have been made to the Water Licence since issuance:**

<b>Date</b>	<b>Location of change</b>	<b>Description of change</b>



**Mackenzie Valley Land and Water Board**  
**7th Floor - 4922 48th Street**  
**P.O. Box 2130**  
**YELLOWKNIFE NT X1A 2P6**  
**Phone (867) 669-0506**  
**FAX (867) 873-6610**

**Reasons for Decision**

Issued pursuant to paragraph 40(2)(c) of the Mackenzie Valley Land Use Regulations (MVLUR), section 72.25 of the *Mackenzie Valley Resource Management Act* (MVRMA), and section 54 of the *Waters Act*

<b>Water Licence and Land Use Permit Applications</b>	
<b>File Number</b>	MV2017P0013 and MV2017L1-0002
<b>Company</b>	Enbridge Pipelines (NW) Inc.
<b>Project</b>	Line 21 Segment Replacement Project – Off Right-of-Way Activities

**Decision from Mackenzie Valley Land and Water Board meeting of**

February 1-2, 2018



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These Reasons for Decision describe the Mackenzie Valley Land and Water Board’s (the MVLWB or the Board) regulatory process and set out the Board’s decisions on Applications made by Enbridge Pipelines (NW) Inc. (Enbridge) to the Board on March 23, 2017 for Water Licence (Licence) MV2017L1-0002 and Land Use Permit (Permit) MV2017P0013.

A summary of the Applications is provided in Section 2 below, followed by the regulatory process in Section 3. Section 4 describes the legislative requirements applicable to this regulatory process, leading to the Board’s decisions, with supporting rationale in Sections 5 and 6.

**1.0 List of Abbreviations and Definitions**

Anniversary Date	Effective date of Licence as seen on the Licence
Applicant or Enbridge	Enbridge Pipelines (NW) Inc.
Applications	Enbridge applications for Type A Land Use Permit and Type B Water Licence
Board or MVLWB	Mackenzie Valley Land and Water Board
CanNor	Canadian Northern Economic Development Agency
DFN	Dehcho First Nations
ECCC	Environment and Climate Change Canada
EMA	Environmental Management Agreement
GNWT	Government of the Northwest Territories
HDD	Horizontal Directional Drilling
IR	Information Request
Licence	Water Licence
LKFN	Łı́ıdlı́ Kúé First Nation
MVEIRB	Mackenzie Valley Environmental Impact Review Board
MVLUR	Mackenzie Valley Land Use Regulations
MVRMA	<i>Mackenzie Valley Resource Management Act</i>
NEB	National Energy Board
Permit	Land Use Permit
Project	Off Right-of-Way activities associated with the Norman Wells Line 21 Segment Replacement Project
Right-of-Way	That portion of the Line 21 Right-of-Way that falls within the area where the land-use operation authorized by the MVLWB will be conducted
SCC	Supreme Court of Canada
SKFN	Sambaa K’e First Nation
Standard Template	MVLWB’s <i>Standard Land Use Permit Conditions Template</i>

**2.0 Summary of Applications**

On March 23, 2017, Enbridge submitted Applications for a new Licence MV2017L1-0002 and new Permit MV2017P0013.<sup>1,2</sup> Additional information was submitted by Enbridge to support their Applications on April 25, 2017, May 5, 2017, and September 22, 2017.<sup>3,4,5</sup> These Applications are for Enbridge to conduct off Right-of-Way activities for the replacement of a segment of the Norman Wells Line 21 pipeline that runs from Norman Wells, NT to the Alberta/NT border near Fort Simpson, NT (the Project).

On March 10, 2017, Enbridge filed Applications with the National Energy Board (NEB) as follows:

<sup>1</sup> See [Licence MV2017L1-0002 Application](#)  
<sup>2</sup> See [Permit MV2017P0013 Application](#)  
<sup>3</sup> See [Supplemental Information dated April 25, 2017](#)  
<sup>4</sup> See [Supplemental Information dated May 5, 2017](#)  
<sup>5</sup> See [Supplemental Information dated September 22, 2017](#)

- An application to install a new segment of pipe, pursuant to section 58 of the *National Energy Board Act*; and
- An application to decommission an existing segment of pipe, pursuant to section 45.1 of the *Onshore Pipeline Regulations*.

The operation of the pipeline and use of the 20-metre Right-of-Way are licensed by the NEB under order #AO-4-MO-19-93. As such, the activities applied for that occur on the Right-of-Way fall under the jurisdiction of the NEB.

## **2.1 MVLWB Applications**

The existing Line 21 pipeline extends from Norman Wells, NT to Zama, Alberta, a total length of 869 km. In 2016, through regular maintenance and inspection, increased rates of slope movement were identified near the Mackenzie River crossing, approximately 9 km east of Fort Simpson, NT. In order to protect the pipeline from the impacts of further slope movement, and to support continued safe operation of the pipeline, Enbridge is proposing to replace a segment of the existing pipeline that passes under the Mackenzie River. The Project includes installation of up to 2,500 metres of new pipeline below the Mackenzie River using a Horizontal Directional Drilling (HDD) method. The existing segment of pipe will be decommissioned in place.

The scope of activities off the Right-of-Way that will be considered by the MVLWB, as applied for by Enbridge, is listed below:

### Site Clearing, Use, and Maintenance:

- All access roads (except those already permitted), camps, staging/laydown storage, well sites, barge landing, sumps, related facilities, and the south and north work sites, where necessary.

### Mobilization of Equipment:

- Transportation and set up drill and supporting equipment.

### The Use of Water:

- For drilling fluid make-up water and hydrostatic testing.

### Site Restoration:

- Surface grades and drainages will be restored.
- Excavations will be backfilled.
- Brushing and peat will be rolled back over disturbed.
- The north shore shoofly access and the north shore barge landing will be remediated.
- Erosion and sediment controls will be installed.

### Demobilization:

- Demobilization of drilling and supporting equipment at the North and South Work Sites, and all camp infrastructure.

### Water Discharge:

- Pump-off discharge (to land) of: ponded surface water (if required), hydrostatic test water, separated water from drilling fluid, unused stored water (if required).

Drilling Mud, Drill Fluid and Drill Cuttings Storage and Disposal:

- Spent drill fluid and/or cuttings disposal sumps to be located off Right-of-Way.

Camp Setup and Operation:

- Camps will be set up off the Right-of-Way.

Waste Storage:

- Some wastes may be temporarily stored off the Right-of-Way prior to offsite disposal, e.g., domestic wastes, cleared vegetation.

Fuel Storage:

- Depending on the final layout of the drill and supporting equipment at the North and South Work Sites, fuel may be stored on and/or off the Right-of-Way.

## **2.2 NEB Applications**

For information regarding the scope of the activities considered by the NEB, see Hearing Order MH-001-2017, released by the NEB on 18 May 2017 under filing number A83697-6.<sup>6</sup> On January 25, 2018, the NEB approved the Application as filed by Enbridge and issued Reasons for Decision.<sup>7</sup>

## **3.0 Regulatory Process**

On March 23, 2017, Enbridge submitted Applications to the Board for a New Permit MV2017P0013 and Licence MV2017L1-0002. The Applications were deemed incomplete on March 31, 2017.<sup>8</sup> On April 19, 2017, additional information was received through discussions with the Government of the Northwest Territories (GNWT) and with Board legal counsel to clarify eligibility, and the Applications were subsequently deemed complete and review commenced.<sup>9</sup> Distribution of the completeness letter advised the Parties that the Board was satisfied that the Applications were in the form and contained the information required by section 19 of the MVLUR and section 34 of the *Waters Act*; that the regulatory process would proceed; and that the legislated timeline defined in subsection 47(1) of the *Waters Act* had commenced. The review of the Applications commenced following the distribution of this letter.

On April 25, 2017 and May 5, 2017, Enbridge submitted additional information to the Board to support their Applications. On May 9, 2017, Łíídlı̄ Kúę First Nation (LKFN) requested an extension to the review comment deadline, as they were seeking more time to review the additional information submitted by Enbridge. Board staff approved a 6-day extension, requiring comments to be submitted on May 15, 2017 rather than May 9, 2017 and extended the Proponent response deadline to May 18, 2017.

By May 15, 2017, comments and recommendations regarding the Applications, as well as the draft Permit and Licence conditions, were received by the Board from the following groups: Dehcho First Nations (DFN), LKFN, Smbaa K'e First Nation (SKFN), Environment and Climate Change Canada (ECCC), GNWT

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<sup>6</sup> See [Hearing Order MH-001-2017](#) released by the NEB on May 18, 2017

<sup>7</sup> See [Reasons for Decision](#) released by the NEB on January 25, 2018

<sup>8</sup> See [MVLWB Incomplete Letter dated March 31, 2017](#)

<sup>9</sup> See [MVLWB Complete Letter dated April 19, 2017](#)

Department of Lands (GNWT-Lands), Imperial Oil Limited, and Board staff. On May 19, 2017, Enbridge responded to the groups' comments and recommendations.<sup>10</sup>

On May 18, 2017, a letter was received from the NEB stating that under MVRMA subsection 124(4) their obligation to conduct a Preliminary Screening could be satisfied through the MVLWB process.<sup>11</sup>

On May 25, 2017 the Board invoked paragraph 22(2)(b) of the MVLUR and issued two Information Requests (IRs): IR 1 to Enbridge<sup>12</sup> and IR 2 to LKFN.<sup>13</sup> Enbridge responses to IR 1 were received on June 7, 2017 and sent out for review and comment.<sup>14</sup> By June 15, 2017 reviewer comments were received from DFN, LKFN, SKFN, and GNWT-Lands.<sup>15</sup> DFN submitted additional comments on June 20, 2017 (after the due date of June 15, 2017). The response from Enbridge, dated June 21, 2017, did not respond to these comments. On July 20, 2017, the Board allowed the late DFN comments to be considered, and as such, directed Board staff to provide Enbridge with the opportunity to respond to DFN's comments by noon MT on July 28, 2017.<sup>16</sup> Enbridge responded on July 21, 2017.<sup>17</sup>

A response to IR 2 was received on June 20, 2017 from LKFN.<sup>18</sup>

On July 26, 2017, the NEB issued a statement to their distribution list, which included the MVLWB, that they would be postponing the oral portion of their hearing until the MVLWB issues a decision on the applicability of section 157.1 of the MVRMA.<sup>19</sup>

On August 3, 2017, the Board met to consider the applicability of section 157.1 of the MVRMA to the Applications. A determination was made by the Board that section 157.1 applies to the Applications, and as such, the Project was exempt from preliminary screening.<sup>20</sup> The Board's reasons for its section 157.1 decision were released on August 10, 2017.<sup>21</sup>

On August 3, 2017, the Board also directed Board staff to organize a formal Public Hearing for the Board to hear public concerns and recommendations prior the issuance of the Permit and Licence. On August 10, 2017, Board staff sent a draft work plan for the proceeding, which included the proposal of a Public Hearing to take place the week of October 23, 2017, to the distribution list.<sup>22</sup> By August 16, 2017, comments and recommendations on the draft work plan were received from SKFN, GNWT- Lands and ECCC.<sup>23</sup> Board staff

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<sup>10</sup> The full text of these comments can be found on the public registry as document '[MV2017P0013 - Enbridge - Review Comment Table from Applications - May 25 17](#)

<sup>11</sup> See [NEB Letter to MVLWB, dated May 18, 2017](#)

<sup>12</sup> See [MVLWB IR 1 to Enbridge, dated May 31, 2017](#)

<sup>13</sup> See [MVLWB IR 2 to LKFN, dated May 31, 2017](#)

<sup>14</sup> See [Enbridge Responses to IR 1, dated June 7, 2017](#)

<sup>15</sup> The full text of these comments can be found on the public registry as document '[MV2017P0013 MV2017L1-0002- Enbridge - Review Comment Table with Attached Comments - Aug 3 17](#)

<sup>16</sup> See [MVLWB Letter to Enbridge Allowing an Opportunity for Enbridge to Respond to the DFN Late Comments, dated July 20, 2017](#)

<sup>17</sup> See [Enbridge Response to the DFN Late Comments, dated July 21, 2017](#)

<sup>18</sup> See [LKFN Response to IR 2, dated June 20, 2017](#)

<sup>19</sup> See [NEB Letter to All Parties, Notifying Parties of the Postponement of Their Public Hearing, dated July 26, 2017](#)

<sup>20</sup> See [MVLWB Letter to Enbridge, dated August 3, 2017](#)

<sup>21</sup> See [MVLWB Reasons for Decision dated, August 10, 2017](#)

<sup>22</sup> See [Draft Work Plan, dated August 10, 2017](#)

<sup>23</sup> See [Review Comments Received on Draft Work Plan dated August 16, 2017](#)

subsequently circulated the final work plan to the distribution list on August 17, 2017.<sup>24</sup> This included the scheduling of an optional Public Hearing as per section 24 of the MVRMA and subsection 41(1) of the *Waters Act*.

A public notice of the hearing was published in News North during the week of August 28, 2017, as per paragraph 43(2)(a) of the *Waters Act*.<sup>25</sup>

On August 28, 2017, Board staff re-circulated the draft Licence and Permit to Parties for additional review and comment. Parties were asked to provide comments and recommendations with their written interventions to the Board.

A pre-hearing conference was held on September 15, 2017 in Yellowknife, NT to discuss the organization and process for the Public Hearing, written interventions and presentations, notices of intent to appear at the hearing, and to briefly outline the Board's (2004) *Rules of Procedure, Including Public Hearings (Rules)*.<sup>26</sup> The pre-hearing conference was attended in-person by representatives from Enbridge, GNWT-Lands, GNWT Environment and Natural Resources (GNWT-ENR), GNWT Justice, NEB, and LKFN; and by teleconference by, Canadian Northern Economic Development Agency (CanNor), GNWT Industry, Tourism, and Investment (GNWT-ITI), Imperial Oil Limited, DFN, and LKFN. Summary notes were recorded and distributed on September 22, 2017.<sup>27</sup>

As per the Board's approved work plan (V.3), October 3, 2017 was set as the deadline for Interveners to submit their interventions.<sup>28</sup> Interventions were received from GNWT, DFN, SKFN, and LKFN.<sup>29,30,31,32</sup>

In reviewing the October 3, 2017 submissions, Board staff noted that the LKFN intervention only listed topics of concern but did not provide a clear statement of their position on the topics of interest/concern that would have allowed Enbridge the opportunity to prepare fulsome responses by the October 12 deadline set out in the work plan. As a result, Board staff sent LKFN an email on October 4, 2017 (with a copy to the distribution list), outlining this concern and stating that the deadline for submitting interventions had passed. As such, no new information could be submitted to the MVLWB record without submitting a written motion to the Board requesting a ruling in accordance with the Board's Rules.<sup>33</sup> On October 5, 2017, LKFN submitted a motion requesting permission of the MVLWB to file supplementary submissions.<sup>34</sup> The LKFN request also included their supplementary information. Board staff sent the motion and supplementary submissions to the distribution list.<sup>35</sup> Parties were provided the opportunity to comment as follows:

- 1) Any party, other than the Applicant (Enbridge), was asked to submit to Board staff no later than 5:00PM, October 10, 2017, if they feel they will be affected by the LKFN request (with rationale).

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<sup>24</sup> See [Work Plan dated August 17, 2017](#)

<sup>25</sup> See [Notice of Public Hearing, dated August 28, 2017](#)

<sup>26</sup> See [Pre-hearing conference – Agenda, dated August 25, 2017](#)

<sup>27</sup> See [Pre-hearing conference – Summary Notes, dated September 22, 2017](#)

<sup>28</sup> See [Work Plan, V.3, dated August 28, 2017](#)

<sup>29</sup> See [GNWT Intervention, dated September 29, 2017](#)

<sup>30</sup> See [DFN Intervention, dated October 2, 2017](#)

<sup>31</sup> See [SKFN Intervention, dated October 3, 2017](#)

<sup>32</sup> See [LKFN Intervention, dated October 3, 2017](#)

<sup>33</sup> See [MVLWB Email to LKFN, dated October 4, 2017](#)

<sup>34</sup> See [LKFN Motion to the Board, dated October 5, 2017](#)

<sup>35</sup> See [Board Staff Email to the Distribution List, dated October 5, 2017](#)

- 2) The Applicant (Enbridge) was asked to provide any comments on the LKFN request, or possible submissions of the other Parties, no later than 5:00PM, October 11, 2017.

Responses were received from the GNWT on October 10, 2017 and from CanNor on October 11, 2017.<sup>36,37</sup> Both indicated that they supported LKFN's motion to submit supplementary information.

On October 11, 2017, Enbridge stated that they did not object to the late filing, provided that their deadline to respond to interventions would be extended one day to ensure their response could appropriately incorporate any relevant issues raised by LKFN.<sup>38</sup>

On October 12, 2017, the Board approved the LKFN motion and extended the response deadline as requested by Enbridge.<sup>39,40</sup> Enbridge's responses to the interventions were received on October 13, 2017.<sup>41</sup> They included supporting information as follows:

- 1) A82415-22 Attachment 21 Revised Archaeological Overview Assessment;<sup>42</sup>
- 2) A83286-21 Draft Environmental Protection Plan;<sup>43</sup>
- 3) A85119-8 Appendix 6 Mackenzie River Sediment Modelling RPS Report;<sup>44</sup> and
- 4) A85119-9 Appendix 7 Turbidity Monitoring Plan.<sup>45</sup>

On October 16, 2017, Public Hearing presentations were received from LKFN (including supporting documentation) and the GNWT.<sup>46</sup> In reviewing the submissions, Board staff noted that the supporting documentation submitted with LKFN's presentation contained new information.

On October 17, 2017, LKFN submitted a motion requesting that certain information in the submitted presentation and in the supporting documentation (specifically the Indigenous Knowledge and Land Use Study) be kept confidential.<sup>47</sup> LKFN requested permission of the Board to redact certain information (maps and data on traditional land uses) from the publicly available version so as to not have the data and maps used in inappropriate ways. LKFN noted that the unredacted and full versions could still be made available to the Board, Enbridge, and other Interveners in the hearing.

Board staff sent the LKFN presentation, supporting documentation, and request for confidentiality to the Interveners and Enbridge and provided the opportunity for them to comment.

On October 18, 2017, a response was received from SKFN stating that they hoped the Board would accept the new information provided by LKFN and that, although not specifically referenced in their letter, urged all Parties to respect the confidentiality of LKFN's Traditional Knowledge study and the need to keep the

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<sup>36</sup> See [GNWT Response to Board Staff, dated October 10, 2017](#)

<sup>37</sup> See [CanNor Response to Board Staff, dated October 11, 2017](#)

<sup>38</sup> See [Enbridge Response to Board Staff, dated October 11, 2017](#)

<sup>39</sup> See [MVLWB Decision on LKFN Motion, dated October 12, 2017](#)

<sup>40</sup> See [MVLWB Decision on Enbridge Extension and Revised Work Plan \(V.4\), dated October 12, 2017](#)

<sup>41</sup> See [Enbridge Responses to Interventions, dated October 13, 2017](#)

<sup>42</sup> See [Enbridge Revised Archaeological Overview Assessment, dated October 13, 2017](#)

<sup>43</sup> See [Enbridge Draft Environmental Protection Plan, dated October 13, 2017](#)

<sup>44</sup> See [Enbridge Final Report for Sediment Modelling in the Mackenzie River, dated October 13, 2017](#)

<sup>45</sup> See [Enbridge Draft Turbidity Monitoring Plan, dated October 13, 2017](#)

<sup>46</sup> See [GNWT Public Hearing Presentation, dated October 16, 2017](#)

<sup>47</sup> See [LKFN Motion for Confidentiality, dated October 17, 2017](#)



study off the public registry.<sup>48</sup> The GNWT provided a response on October 19, 2017 indicating they did not object to the new evidence and supported LKFN's motion to redact certain information in the publicly available documents.<sup>49</sup>

On October 19, 2017, Enbridge stated that they did not intend to raise any objections regarding LKFN's additional evidence or their motion regarding confidentiality.<sup>50</sup> The Board accepted the new LKFN information and approved the request for confidentiality.<sup>51</sup>

On October 17, 2017, Board staff circulated the draft Public Hearing agenda.<sup>52</sup>

On October 17, 2017, Board staff sent out a reminder to DFN and SKFN that the deadline to submit a presentation for the Public Hearing had passed and asked for an update on when these were expected. DFN submitted its presentation on October 17, 2017 and SKFN on October 18, 2017 (including supporting information).<sup>53,54,55</sup> Enbridge submitted its presentation October 20, 2017.<sup>56</sup>

On October 19, 2017, the GNWT sent a letter to the Indigenous governments and organizations of the Dehcho Region, with a copy to the Board, stating that they would be relying on the consultation process based on the MVLWB proceeding, as well as Enbridge's engagement, to assist in fulfilling their government's duty to consult.<sup>57</sup>

On October 20, 2017, LKFN submitted the redacted version of the Indigenous Knowledge and Land Use Study along with their hearing presentation.<sup>58,59</sup>

During the period of October 23-26, 2017, the NEB held the oral portion of their Public Hearing.

On October 26, 2017, LKFN submitted a request for clarification on the hearing agenda to Board staff asking what the contingency plan would be should the need for additional time be required.<sup>60</sup> The Board updated its hearing agenda to take LKFN's concerns into consideration.<sup>61</sup>

The first portion of the Public Hearing was held on October 27-28, 2017, at the Community Centre in Fort Simpson, NT. Interpretation services in English and South Slavey were provided, and the proceeding was recorded and transcribed in English.<sup>62</sup>

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<sup>48</sup> See [SKFN Response to LKFN Motion for Confidentiality, dated October 18, 2017](#)

<sup>49</sup> See [GNWT Response to LKFN Motion for Confidentiality, dated October 19, 2017](#)

<sup>50</sup> See [Enbridge Response to LKFN Motion for Confidentiality, dated October 19, 2017](#)

<sup>51</sup> See [MVLWB Decision Letter, dated October 19, 2017](#)

<sup>52</sup> See [MVLWB Draft Public Hearing Agenda, dated October 17, 2017](#)

<sup>53</sup> See [SKFN Public Hearing Presentation, dated October 18, 2017](#)

<sup>54</sup> See [SKFN Public Hearing Presentation Attachments, dated October 18, 2017](#)

<sup>55</sup> See [DFN Public Hearing Presentation, dated October 17, 2017](#)

<sup>56</sup> See [Enbridge Public Hearing Presentation, dated October 18, 2017](#)

<sup>57</sup> See [GNWT Letter to Indigenous Governments and Organizations, dated October 19, 2017](#)

<sup>58</sup> See [LKFN Redacted Indigenous Knowledge and Land Use Study, dated October 20, 2017](#)

<sup>59</sup> See [LKFN Redacted Public Hearing Presentation, dated October 20, 2017](#)

<sup>60</sup> See [LKFN Request for Clarification on the Agenda, dated October 26, 2017](#)

<sup>61</sup> See [MVLWB Public Hearing Agenda, dated October 26, 2017](#)

<sup>62</sup> See Public Hearing – Transcripts for [Day 1](#) and [Day 2](#), dated October 27 and 28, 2017

Toward the close of the first day of the hearing, it became apparent to the Board that more than two days would likely be required to get through the agenda based on the number of questions the First Nations were asking Enbridge. As a result, at the end of the second day, the Applicant and Interveners were informed that the hearing would adjourn until it could be reconvened at a date to be determined by the Board, in consultation with Enbridge and Interveners. On November 10, 2017, Board staff issued an update providing details on the reconvening of the Public Hearing, which was set for January 8-9, 2018.<sup>63</sup>

At the end of day two of the October hearing, it was also noted that DFN had questions of Enbridge that could not be addressed within the time allotted. On October 31, 2017, Board staff clarified the next steps for DFN requesting that they submit their remaining questions in writing to Enbridge.<sup>64</sup> On November 10, 2017, DFN submitted their questions<sup>65</sup> and Enbridge submitted their written responses on November 21, 2017.<sup>66</sup>

In addition to the post-hearing follow-up related to DFN's questions and the scheduling of the reconvened Hearing, Board staff also compiled a list of commitments made during the Public Hearing. These were distributed and placed on the record on December 11, 2017.<sup>67</sup>

On November 20, 2017, the Board issued a Directive to Parties on the reconvening of the Public Hearing and provided an updated work plan.<sup>68</sup>

A pre-hearing conference for the reconvened Public Hearing was held on November 22, 2017 in Yellowknife, NT to allow Parties to better understand the hearing completion process, provide clarity on the issues to be discussed at the Public Hearing when it reconvened, and to discuss the possibility of allowing revised presentations from Parties.<sup>69</sup> The pre-hearing conference was attended in-person by representatives from GNWT-Lands, GNWT-ENR, and GNWT-Justice; and by teleconference by Enbridge, GNWT-Lands, GNWT-ITI, DFN, SKFN, and LKFN. Summary notes were recorded and distributed on December 1, 2017.<sup>70</sup>

On December 1, 2017, the agenda for the reconvened Public Hearing was distributed.<sup>71</sup> Clarification was also provided on the process for oral and written closing arguments.<sup>72</sup>

On December 4, 2017, DFN submitted a revised presentation.<sup>73</sup> GNWT submitted a letter confirming that they would not be making any changes to their presentation.<sup>74</sup>

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<sup>63</sup> See [Board Staff Letter to Interveners on the Reconvening of the Public Hearing, dated November 10, 2017](#)

<sup>64</sup> See [Board Staff Email to DFN on Submitting Outstanding Questions to Enbridge, dated October 31, 2017](#)

<sup>65</sup> See [DFN Outstanding Questions for Enbridge, dated November 10, 2017](#)

<sup>66</sup> See [Enbridge Response to DFN's Outstanding Questions, dated November 21, 2017](#)

<sup>67</sup> See [Public Hearing – List of Commitments, dated December 11, 2017](#)

<sup>68</sup> See [MVLWB Directive to Parties on the Reconvening of the Public Hearing, dated November 20, 2017](#)

<sup>69</sup> See [Pre-hearing Conference for Reconvened Public Hearing – Agenda, dated November 22, 2017](#)

<sup>70</sup> See [Pre-hearing Conference for Reconvened Public Hearing – Summary Notes, dated December 1, 2017](#)

<sup>71</sup> See [Agenda for the Reconvened Public Hearing, dated December 1, 2017](#)

<sup>72</sup> See [Clarification on the Oral and Written Closing Argument, dated December 1, 2017](#)

<sup>73</sup> See [SKFN Updated Presentation, dated December 4, 2017](#)

<sup>74</sup> See [GNWT Letter Confirming Their Presentation Would Not Be Updated, dated December 4, 2017](#)

On December 15, 2017, GNWT submitted a letter to the Board indicating their intent to make a recommendation in their closing comments that the MVLWB circulate an updated draft Licence for review and comment by Interveners prior to the close of the public record for this Application.<sup>75</sup>

On December 19, 2017, the Board issued IR 3 to Enbridge requesting that, per paragraph 26(5)(d) of the *Waters Act*, information be submitted to satisfy the Board that the financial responsibility of the Applicant is adequate for the completion of the undertaking, any mitigation measures as may be required, and closure and reclamation.<sup>76</sup> Enbridge was asked to provide the Board with financial statements and evidence about previous performance of the company in the NWT sufficient to show that they have the financial responsibility to meet the requirements of paragraph 26(5)(d) of the *Waters Act*. On December 21, 2017, Enbridge requested an extension of one week to submit the requested information. This was granted by Board staff on December 22, 2017.<sup>77</sup> On January 3, 2018, Enbridge submitted their response to IR 3.<sup>78</sup>

The Public Hearing was reconvened on January 8-9, 2018 in Fort Simpson, NT. Interpretation services were provided in English and South Slavey, and the proceeding was recorded and transcribed in English.<sup>79</sup> On January 8, 2018, the Town of Hay River submitted a letter of support for the Enbridge project.<sup>80</sup> On the same day SKFN also submitted an revised presentation, noting that it contained no new information.<sup>81</sup> A joint statement from LKFN and Enbridge was also made to the Board on January 8, 2018.<sup>82</sup> The joint statement noted that LKFN and Enbridge had reached an Environmental Management Agreement (EMA), that LKFN was satisfied that Enbridge has adequately consulted them, and that LKFN had no remaining concerns regarding the use of water and temporary use of lands that Enbridge had applied for. The hearing process was completed on January 9, 2018 as planned and a list of commitments made during the reconvened hearing was compiled by Board staff and made available to the public on January 23, 2018.<sup>83</sup>

On January 12, 2018, Interveners submitted written closing arguments to the Board.<sup>84</sup> Enbridge submitted their written closing argument on January 17, 2018.<sup>85</sup> Interveners had an opportunity, in their closing arguments, to update their position based on issues raised during the regulatory process, to summarize their final recommendations to the Board, and to respond to any commitments made during the reconvened Public Hearing.

On February 1 and 2, 2018, the Board met to make decisions regarding the Applications.

#### **4.0 Legislative Requirements**

In conducting the review process for the Applications as described in Sections 2 and 3 above, the Board has ensured that all applicable legal and procedural requirements have been satisfied.

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<sup>75</sup> See [GNWT Letter, dated December 15, 2017](#)

<sup>76</sup> See [MVLWB IR 3 to Enbridge dated December 19, 2017](#)

<sup>77</sup> See [MVLWB Email Granting an Extension to Enbridge's Response to IR3, dated December 22, 2017](#)

<sup>78</sup> See [Enbridge Response to IR3, dated January 3, 2018](#)

<sup>79</sup> See Public Hearing – Transcripts for [Day 1](#) and [Day 2](#), dated January 8 and 9, 2018

<sup>80</sup> See [Town of Hay River Letter of Support, dated January 8, 2018](#)

<sup>81</sup> See [SKFN Updated Presentation, dated January 8, 2018](#)

<sup>82</sup> See [Joint Statement from LKFN and Enbridge, dated January 8, 2018](#)

<sup>83</sup> See [Public Hearing – Updated List of Commitments, dated January 23, 2018](#)

<sup>84</sup> See Closing Arguments: [DFN](#); [SKFN](#); [LKFN](#); [GNWT](#) (including an updated [RECLAIM](#)), dated January 12, 2018

<sup>85</sup> See [Enbridge Closing Arguments, on January 17, 2018](#)

#### 4.1 General

The use of land, water, and the deposit of waste proposed by the Applicant is of a nature contemplated by the MVRMA and the *Waters Act*.

#### 4.2 MVRMA Part 3: Duty to Consult (Aboriginal Matters)

In exercising its authority under the MVRMA, generally, the Board must ensure that the concerns of Aboriginal people have been taken into account.<sup>86</sup> It must also consider the importance of conservation to the well-being and way of life of Aboriginal peoples of Canada, specifically those to whom section 35 of the *Constitution Act, 1982* applies and who use an area of the Mackenzie Valley.<sup>87</sup> Accordingly, the Board works with proponents, affected parties (including Aboriginal organizations/governments), and other parties (such as other boards and regulators) to ensure that potential impacts of proposed projects are understood and carefully considered before decisions are made with respect to the issuance of Permits and Licences.

In order to address the question of Aboriginal consultation it is first helpful to understand the general process through which the Board considers an application.<sup>88,89</sup> Following the initiation of engagement and the submission of an application, a proposed project goes through several stages in the Board's approval process. The application is reviewed to ensure that all necessary information is included and to confirm that the right types of Permit and Licence have been applied for. This check for completeness is completed within ten days of receipt.

The application and supporting documents are uploaded to the Board's webpage and then an application package is distributed to stakeholders, including: appropriate federal and territorial government departments and agencies; land owners; affected communities and Aboriginal organizations; Renewable Resource Boards; heritage regulators; and other interested parties. For the distribution list that the Board used, see Table 1 below.

**Table 1: Organizations on Distribution List for Permit MV2017P0013 and Licence MV2017L1-0002**

Acho Dene Koe First Nation	INAC - Yellowknife (General)
Athabasca Denesuline Council	Kátl'odeeche First Nation
CanNor	Ka'a'gee Tu First Nation
Canadian Broadcasting Corporation (CBC)	Liard First Nation (Yukon)
Deh Cho Land Use Planning Committee	Liard First Nation (Yukon)
Deh Gáh Got'ie Dene Council	łíídlı́ Kúé First Nation (Ft Simpson)
Dehcho First Nations	Mackenzie Valley Environmental Impact Review Board (MVEIRB)
Deline Got'ine Government	Mackenzie Valley Land and Water Board
Dene Nation	Naha Dehe Dene Band
Dene Tha' First Nation	National Energy Board

<sup>86</sup> See [MVRMA, paragraph 114\(c\)](#)

<sup>87</sup> See [MVRMA, 1998, paragraph 60.1\(a\)](#)

<sup>88</sup> See [MVLWB Guide to the Land Use Permitting Process](#) (2013).

<sup>89</sup> See [MVLWB, Guide to Completing Water Licence Applications to the Mackenzie Valley Land and Water Board](#) (2003).

Department of Fisheries and Oceans	Norman Wells Land Corporation
Digaa Enterprises Ltd.	Norman Wells Renewable Resources Council
Enbridge Pipelines Ltd.	North Slave Métis Alliance
Environment and Climate Change Canada	Northwest Territory Métis Nation
Fort Norman Métis Nation Local #60 Land Corporation	Pehdzéh Kǰ First Nation (Wrigley)
Fort Norman Renewable Resources Council	Ross River Dena Council
Fort Providence Métis Council #57	Sahtu Health and Social Services
Fort Providence Resource Management Board	Sahtu Land Use Planning Board
Fort Simpson Métis Local #52	Sahtu Renewable Resource Board
General Public	Sahtu Secretariat Incorporated
GNWT – Education, Culture and Employment (ECE)	Sambaa K’e First Nation (Trout Lake)
GNWT – Environment and Natural Resources (ENR)	Sahtu Land and Water Board
GNWT – Infrastructure (INF)	Snap Lake Environmental Monitoring Agency
GNWT – Industry, Tourism and Investment (ITI)	Town of Norman Wells
GNWT – Lands	Transport Canada
GNWT – Municipal and Community Affairs (MACA)	Tthets’ek’ehdeli First Nation (Jean Marie River)
GNWT – Office of the Regulator of Oil and Gas Operations (OROGO)	Tulita Band Council
Hamlet of Fort Liard	Tulita District Land Corporation
Hamlet of Fort Providence	Tulita Land Corporation
Hamlet of Tulita	West Point First Nation
Hay River Métis Government Council	Wek’èezhii Land and Water Board
INAC – Contaminants and Remediation Division	Workers' Safety and Compensation Commission
INAC – NWT Inspectors	

The Board requested that reviewers provide comments with respect to the Applications and associated management plans. For a Type A Permit, as was the case in this application, within 42 days of receipt of a complete application, unless additional information is required, the Board will either: (a) issue a Permit with conditions; (b) conduct a hearing under section 24 of the MVRMA or require that further studies or investigations be made; (c) refer it to the MVEIRB for environmental assessment; or (d) refuse to issue the Permit if a requirement set out in section 61 or 62 of the MVRMA has not been met or for any other reason as provided for in legislation. For a Type B Licence, as was the case in this application, within nine months the Board shall make a decision. When the review is completed, comments are forwarded to the proponent for a response.

The Applications were then assessed to determine if they were exempt from Part 5 of the MVRMA: if it is not, it goes to preliminary screening. In this case, as noted above, the Board sought submissions from the Parties on the question of whether section 157.1 of the MVRMA applied to exempt the Enbridge Project from part 5 of the MVRMA. The Board decided that section 157.1 applied. Consequently, no screening was required.

#### 4.2.1 *The Board’s Role in Consultation*

The scope of the Board's authority and jurisdiction in relation to the Applications made by Enbridge is limited to activities occurring off the Right-of-Way. The Board is only making part of the overall decision regarding the Line 21 Segment Replacement Project. The Crown's obligations in relation to section 35 of the *Constitution Act, 1982* are shared with National Energy Board and with the GNWT and include the whole of the project. The GNWT obligations pertain to the final decision on the Licence and its decision-making roles in land occupancy and management. The GNWT indicated in its letter of October 19, 2017, to the Board that it would be relying on the Board's process to assist in fulfilling its duty to consult on this Project.<sup>90</sup> The scope of the MVLWB's consultation is related to the decisions that it will make.

The Board's requirements for engagement are set out in its *Engagement and Consultation Policy* (2013; the Policy).<sup>91</sup> The Policy was developed to ensure that the Board's obligations for achieving meaningful consultation (as set out by the land claims and applicable legislation) with all affected parties, including Aboriginal groups in the Mackenzie Valley, are met and consultation results clearly articulated. The Policy has three broad objectives, namely to guide proponents in proactive engagement related to land and water applications; to assist the Board to meet its own statutory requirements by providing a forum for consultation on concerns and proposed mitigations; and to assist in ensuring the adequacy of Crown consultation.

The core of the Policy is as follows:

1. To require proponents to initiate dialogue and engagement planning with affected parties, particularly affected Aboriginal organizations/governments, in advance of an application with the goals of:
  - explaining the project;
  - identifying concerns and potential environmental impacts (including any potential for impacts to Aboriginal and treaty rights);
  - addressing concerns raised; and
  - ensuring appropriate levels and types of engagement are carried out over the life of an authorization or project.
2. To apply consultative approaches throughout a proceeding, which assist affected parties to meaningfully contribute to the assessment of impacts on the environment and the establishment of appropriate mitigations in order for the Boards to meet statutory responsibilities pursuant to the MVRMA and the *Waters Act* and their regulations.
3. To assist in ensuring, and if necessary rule on, the adequacy of Crown consultation before making a final decision or recommendation, taking into account information gathered during proponent engagement and through its consultative processes.<sup>92</sup>

The Board's responsibility is related in part to recent case law in which the role of administrative tribunals has been defined in terms of the Crown duty to consult. In 2017 the Supreme Court of Canada (SCC) made decisions in two cases: *Clyde River (Hamlet) v Petroleum Geo-Services Inc.* and *Chippewas*

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<sup>90</sup> GNWT, [Aboriginal Consultation Obligations and Enbridge Line 21 Replacement Reviews](#) [letter], filed October 19, 2017

<sup>91</sup> See [MVLWB Engagement and Consultation Policy, dated June 1, 2013](#)

<sup>92</sup> See [MVLWB Engagement and Consultation Policy, dated June 1, 2013](#), p.10.

of the *Thames First Nation v Enbridge Pipelines Inc.*<sup>93,94</sup> In both decisions, the SCC clarified that, while the duty to consult rests with the Crown, the decisions of tribunals, like the MVLWB, can constitute “Crown conduct” that triggers the duty to consult.

In the *Clyde River* decision, the SCC found that an independent tribunal is “the vehicle through which the Crown acts”, meaning that the approval process of such a body would trigger the Crown’s duty to consult.<sup>95</sup> In the *Chippewas* decision, the Court similarly found that a NEB approval process constituted Crown action that triggered the duty to consult. As stated in its decision:

A decision by a regulatory tribunal would trigger the Crown’s duty to consult when the Crown has knowledge, real or constructive, of a potential or recognized Aboriginal or treaty right that may be adversely affected by the tribunal’s decision.<sup>96</sup>

In the *Clyde River* decision, the SCC emphasized the need for tribunals to look at the impacts of proposed activity on Aboriginal rights, and not just on the environment. The *Clyde River* decision also charged the tribunals with appropriate authorities to ensure the duty to consult has been discharged.<sup>97</sup>

#### 4.2.2 *Notifications and Initial Engagement*

The following is a high-level summary of notifications and early engagement activity undertaken by Enbridge on the Project. For more detail on the timing of engagement activities, see Section 3.0 of these Reasons for Decision, as well as material filed by Enbridge in support of their applications, specifically their Aboriginal and Stakeholder Engagement Summary (Appendix VIII).

In accordance with the *Engagement and Consultation Policy* and associated guidelines, the Board requires proponents to engage with potentially affected parties prior to and during the operation of a project. Engagement ensures that affected parties are able to develop an understanding of a proposed project or component of a project; provide feedback during the engagement process on issues of concern with regards to a project; and work towards building relationships with proponents that are operating in an area.<sup>98</sup>

Consultation for the Project began in January 2017, when Enbridge began engaging with stakeholders identified as being either potentially affected by or having an interest in the Project. These were identified based in part on the MVLWB Distribution List for the Dehcho region as well as the Applicant’s past experience. Also submitted to the Board was an engagement log that summarized engagement up to March 10, 2017. The initial engagement included several groups that were not directly involved in subsequent engagement or the Public Hearing. Some of these fall under the umbrella of DFN (e.g., Fort Simpson Metis Council Local #52, Tthets’ek’éhdéj First Nation (Jean Marie River), and Pehdzéh Kí First Nation). Others were from the Sahtu region where the Line 21 Pipeline originates, but not located

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<sup>93</sup> 2017 SCC 40, *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.* [*Clyde River*]

<sup>94</sup> 2017 SCC 41, *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.* [*Chippewas*]

<sup>95</sup> *Clyde River* at 29.

<sup>96</sup> *Chippewas* at 29.

<sup>97</sup> *Clyde River* at 39.

<sup>98</sup> MVLWB, [Information for Proponents on the MVLWB's Engagement Requirements](#) (2014).

near the actual project area (e.g., Tulita Dene Band, Fort Norman Metis Land Corporation, Norman Wells Land Corporation, and Tulita District Land Corporation).

The range of engagement activities included distribution of project information by mail, in-person meetings, telephone calls, fact sheets, an open house in Fort Simpson on February 28, 2017, and information available online or by telephone. The engagement log included a summary table of Aboriginal and stakeholder concerns which were aggregated and accompanied by Enbridge's responses. It also included a record of contacts and correspondence with Aboriginal and stakeholder groups. In their interventions and during the first part of the Public Hearing in October 2017, all of the Aboriginal Interveners were critical of the initial engagement by Enbridge.<sup>99</sup> The company's history of engagement on Line 21 as a whole was raised as an issue by SKFN, and all Aboriginal Parties were critical of the structure and contents of the engagement log. For example, in an exchange at the Public Hearing session on the October 27, 2017, Enbridge responded to a question from SKFN and confirmed that there had not been to date, an opportunity for communities to review the engagement log.<sup>100</sup> LKFN also raised concerns over the completeness of the engagement log.<sup>101</sup> This issue was not explicitly resolved at the Public Hearing. Board staff recommended that the Engagement Plan be resubmitted to address the comments, concerns, and recommendations received during the regulatory process (see Sections 4.2 and 5.3 of these Reasons for Decision). The Parties reported at the final day of the Public Hearing, January 9, 2017, that these issues are addressed in the EMAs signed between Enbridge and themselves.<sup>102</sup>

#### *4.2.3 The Board's Hearing Process and Participation of Aboriginal Groups*

Aboriginal communities and organizations were engaged throughout the review phase of the Board's process. Review comments were received by LKFN, SKFN, and DFN. In the case of LKFN, in May 2017 they applied for and received an extension to the review comment deadline in order to review additional information submitted by Enbridge.

On October 5, 2017, LKFN submitted a motion requesting permission of the MVLWB to file supplementary submissions relating to current and historical land use, which were included with the request. LKFN subsequently submitted a motion requesting that certain sensitive information in the submitted presentation and in the supporting documentation (specifically the Indigenous Knowledge and Land Use Study) be kept confidential. The material was accepted by the Board, which accommodated LKFN's request for confidentiality.

For more detail, please see Section 3.0 of these Reasons for Decision and Section 2 of the Staff Report prepared for the Board. Reference may also be made to the Board's Rules of Procedure.<sup>103</sup>

#### *4.2.4 Aboriginal Parties and Their Concerns*

A number of issues were raised by the Aboriginal participants in the Board's process, including reviewers, Interveners, and residents of First Nations communities. All of the Parties that registered as

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<sup>99</sup> See MV2017L1-0002 MV2017P0013 - Enbridge - Staff Report, January 30, 2018, [Table 3](#).

<sup>100</sup> See Public Hearing – Transcript for [October 27, 2017](#), page 115: 8-13.

<sup>101</sup> See Public Hearing – Transcript for [October 28, 2017](#), page 67: 15-18.

<sup>102</sup> See Public Hearing – Transcript for [January 9, 2018](#), page 46: 16-25, 47: 1-6.

<sup>103</sup> See [MVLWB Rules of Procedure, Including Public Hearings \(2004\)](#).



Intervenors (i.e., LKFN, SKFN, and DFN) were active throughout the Board's process. Overall, the greatest number of comments was received from LKFN in their Intervention, which is appropriate as the community closest to the Project area. Section 4 of the Staff Report details a number of issues raised by reviewers throughout the Board's regulatory process. Issues raised by the Parties generally fell into five categories:

1. Process issues;
2. Technical issues;
3. Environmental issues;
4. Socio-economic issues; and
5. General issues.

**Process issues** raised by Aboriginal groups included the overlap of MVLWB and NEB processes (as both boards were simultaneously reviewing the project within their respective jurisdictions). At the Public Hearing, the community participants (i.e., LKFN and SKFN) expressed concerns that the two processes might be duplicated or not work in harmony. Per section 24.1 of the MVRMA, the Board can coordinate its activities with other boards, such as the NEB. Given that the two boards were working within their own timelines and processes, there was no formal coordination between the two bodies. However, the Board did its best within its authority to be aware of other regulatory decisions as they became known, and to engage with its counterpart as appropriate. For example, NEB staff participated in the Board's first pre-hearing conference.<sup>104</sup> Other process issues included LKFN's application to submit supplemental information in their intervention after the deadline. In this case the Board made a sincere attempt to satisfy LKFN's concerns. None of these Process issues required any conditions for the Licence or Permit.

**Technical issues** included discussion of matters within the Board's authority that were related to execution of the Project. These included comments on Licence and Permit conditions and recommendations around management plans. All three Aboriginal parties addressed such issues in their reviews, interventions, and presentations at the Public Hearing. Topics included the contents of the Waste Management Plan, including the suggestion of a separate Sump Construction and Monitoring Plan; spill response and notification of communities; a proposed Turbidity Management Plan and Noise Management Plan; and the contents of the Engagement Plan. The last topic was repeatedly discussed by all parties, with concerns expressed consistently by all around the adequacy of engagement by Enbridge, the appropriate tracking of community concerns and comments, and involving the affected First Nations in the updating of the Engagement Plan. The Board has dealt with many of these concerns under Conditions related to the relevant Plans. Based on the joint statement made by Enbridge and LKFN, and in the closing statements of Aboriginal Intervenors at the Public Hearing, formal engagement arrangements have been negotiated between Enbridge and the Aboriginal parties.<sup>105</sup> These appear to include EMAs, and the establishment of a joint Environmental Management Committee). The Board is not privy to these specific arrangements, but all First Nations intervenors indicated at the Hearing that they were satisfied with the outcome.

**Environmental issues** included a range of concerns related to wildlife and habitat. Some of these potentially fell under Board jurisdiction (i.e., permafrost changes, water quality monitoring), while

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<sup>104</sup> See [Pre-hearing conference – Summary Notes, dated September 22, 2017](#).

<sup>105</sup> See [MV2017P0013 MV2017L1-0002 - Enbridge Pipeline Inc. - LKFN and Enbridge Joint Statement to MVLWB](#), dated January 8, 2018.

others did not (i.e., cumulative effects, the establishment of an Indigenous monitoring body and concerns about the management of wildlife populations). Of the issues under the Board's jurisdiction, permafrost monitoring and mitigation is covered by Conditions related to permafrost avoidance as well as certain actions prescribed by the appropriate management plans. Other issues within the Board's jurisdiction were the protection of wildlife habitat and water quality, and they are specifically addressed in the Permit and Licence conditions.

**Socio-economic issues** included topics such as local economic benefits and employment, contracting opportunities, and the social and cultural effects of development. These fall outside of the Board's jurisdiction. However, these were expressed repeatedly, both in the Interventions and at the Public Hearing. A number of these issues were closely linked by participants to engagement by Enbridge. They include: preferential hiring of Aboriginal persons and businesses; the social effects of development and the suggested establishment of a Women's Advisory Panel; the relative economic effects of the Project; and the accommodation of families affected by the Project. These issues were noted and entered into the permanent record either as the filed Interventions or in the transcripts of the Public Hearing.

**General issues** are ones that did not fit neatly under the preceding headings. Issues that fall under this category include: the history of communication with Enbridge on this Project; the history of federal and corporate consultation on Line 21 as a whole; and access to land and accommodation for infringements thereupon (which falls under the NEB process as it concerns activity on the Right-of-Way).

#### 4.2.5 *Subsequent Engagement and Board Process*

In the case of the Line 21 Segment Replacement Project, the Board deemed the Applications exempt from preliminary screening. Despite this decision, the Board decided to conduct a Public Hearing. Because of Aboriginal concerns and the complexity of the regulation of the Project, a Hearing was felt to be the most appropriate tool to fully explore issues and recommendations prior to considering the issuances. Aboriginal communities and organizations were engaged throughout the planning and conducting of the Public Hearing. All three Parties attended the pre-hearing conferences to inform the October 2017 and January 2018 Public Hearing sessions and contributed to drafts of the Board's work plan.

The Public Hearing was held at the Community Centre in Fort Simpson, NT, first on October 27-28, 2017 and then reconvening on January 8-9, 2018. Interpretation services in English and South Slavey were provided, and the proceeding was recorded and transcribed in English. In an email to the Board sent prior to the Public Hearing on October 27, 2017, LKFN expressed their reservations about the amount of time required to address the outstanding technical questions that it and other First Nations groups had raised.<sup>106</sup> The decision to adjourn rather than conclude the hearing after the first two day session was made when it became apparent to the Board that more than two days would likely be required to get through the agenda and to fully hear the First Nations and community perspectives on the Project. As a result, the Applicant and Interveners were informed that the hearing would adjourn until it could be reconvened at a date to be determined by the Board, in consultation with Enbridge and Interveners. This effectively doubled the time available to the Aboriginal Interveners. At the end

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<sup>106</sup> See LKFN, [MV2017P0013 MV2017L1-0002 Request for clarification regarding MVLWB](#) agenda [email], October 26, 2017.

of day two of the October hearing, it was also noted that DFN had outstanding questions of Enbridge that could not be addressed within the time allotted. DFN was allowed to submit these questions during the adjournment to allow Enbridge to address them.

It should be noted that the Aboriginal parties, as with all Interveners, had the opportunity to review hearing transcripts as with the various public products of the Board's process.

#### 4.2.6 Views of the Board

As noted in 4.2.1. above, the Board's *Engagement and Consultation Policy* has three broad objectives: 1) to guide proponents in proactive engagement related to land and water applications; 2) to meet its own statutory requirements by providing a forum for consultation on concerns and proposed mitigations; and 3) to assist in ensuring the adequacy of Crown consultation.

Regarding the first objective, the level of engagement by Enbridge was adequate. In accordance with the Policy and the MVLWB Engagement Guidelines, Enbridge initiated dialogue with Aboriginal organizations and governments in the Dehcho region in January 2017, prior to filing their applications with the MVLWB in March 2017.<sup>107</sup> Further, they filed a draft Engagement Plan as part of their Applications and committed to its revision and execution through the EMAs that were signed between Enbridge and each regionally affected First Nation on January 11, 2018. Further, Enbridge provided detailed explanation of the Project and heard the concerns of Interveners regarding potential impacts to the environment and Aboriginal and treaty rights through engagement and at the Public Hearing.

This is not to say that there were no opportunities for improvement. As noted earlier, several Aboriginal parties stated at the Public Hearing that Enbridge's engagement prior to that time had been insufficient to their needs. Consultation with Dene communities was highlighted as a concern that had to date was not felt to have been adequate. For example, at the Public Hearing session on October 28, 2017, counsel for LKFN asserted that the project area was on unceded and unsettled land and remained under Dene title. As stated by Daniel T'selieie:

And the context we're working with is a context where we're on unceded LKFN land. This is -- this has been well established. The -- the Paulette caveat has -- has confirmed this, and LKFN asserts -- Dene title here. That's -- that's Aboriginal title in the context of the Canadian legal system. There's no settled land claim, so in that context, a change in additional use of land without consulting LKFN is -- is a matter of concern for the community.<sup>108</sup>

Regarding the second objective, namely facilitating the effective contribution of all Parties in the process, the Board has determined its process was sufficiently robust. The process provided opportunities for review of draft Permit and Licence conditions, the filing of written interventions, making oral presentations to the Board, cross-examining Enbridge at the Public Hearing, and providing oral and written closing arguments.<sup>109</sup> The Parties were engaged frequently and in detail. As an example, between August 10 and December 12, 2017, the external work plan itself went through six versions, in which the Applicant and Interveners all had opportunity to provide input.<sup>110</sup> In addition,

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<sup>107</sup> MVLWB, [Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits](#) (2013)

<sup>108</sup> See Public Hearing – Transcript for [October 28, 2017](#), page 71: 6-15.

<sup>109</sup> For a summary of review see these [Reasons for Decision](#), section 3.0, page 8.

<sup>110</sup> See the draft [External Work Plan V.1](#), dated August 10, 2017, and [Work Plan V.6](#) dated December 12, 2017.

the optional Public Hearing, originally scheduled for two days, was extended to four to allow additional time to obtain the views of Interveners and the public. The Board also facilitated speakers of local Aboriginal languages by providing translation at the Public Hearing. Opportunities were made available to First Nation groups and community members to address issues and review documents, either formally through interventions or by recognizing individual members of the public.<sup>111</sup>

Indications were received from the Aboriginal parties that the Board's process was fair and comprehensive. Consultation through the Board's process was considered adequate, and outstanding issues were resolved either through the process itself (from deeming the application complete through review and finally the Public Hearing), or through separate agreements with Enbridge that had been facilitated by the Board's engagement activity.

From the written closing arguments by Dehcho First Nations:

Dehcho First Nations would like to express our appreciation to the members and staff of the Mackenzie Valley Land and Water Board for running a fair and transparent regulatory process.

DFN is satisfied that the Board's process provided a venue for DFN and our member communities to be heard and better understood by the Board and Enbridge representatives.<sup>112</sup>

From the written closing arguments by Łíídlıı Kúé First Nation:

As a result of negotiations with Enbridge – in part facilitated and encouraged by the MVLWB's regulatory process – LKFN reached two agreements with Enbridge. These two agreements provide for concrete mechanisms that ensure, to LKFN's satisfaction, that impacts on the environment and Aboriginal and treaty rights will be addressed for the Project.<sup>113</sup>

From the written closing arguments by Sambaa K'e First Nation:

Sambaa K'e First Nation (SKFN) has participated throughout the process in order to communicate our concerns and to ensure that we can protect the Sambaa K'e watershed now and for future generations.

I am pleased that the Board's process provided a venue for SKFN to be heard and better understood by Enbridge representatives.<sup>114</sup>

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<sup>111</sup> For more detail see these Reasons for Decision, section 3.

<sup>112</sup> See Closing Arguments, [DFN](#), page 1; dated January 12, 2018.

<sup>113</sup> See Closing Arguments: [LKFN](#), page 2; dated January 12, 2018.

<sup>114</sup> See Closing Arguments: [SKFN](#), page 1, dated January 12, 2018.

Regarding the final objective, namely the adequacy of Crown consultation, the Board has determined that the duty to consult in relation to matters within its jurisdiction has been satisfied. Administrative tribunals such as Land and Water Boards under the MVRMA can rule on questions of law. The Board therefore has the authority, if necessary, to assess the adequacy of Crown consultation before making a final decision or making a recommendation to the responsible Minister and may use remedies available to it in addressing Aboriginal consultation issues.

As a result of these decisions, tribunals such as the MVLWB need to satisfy themselves that project authorizations do not breach constitutionally protected rights, including Aboriginal or treaty rights. The *Clyde River* decision also charged the affected tribunal to delay issuing approvals until it assesses if the duty to consult has been discharged.<sup>115</sup>

The question then becomes one of the adequacy of consultation, and whether the consultation conducted satisfies the Crown's duty to consult. The MVLWB has limited jurisdiction and authority, and its proceeding is only a part of the Crown decision-making process for this project. However, as a vehicle of the Crown, it must contribute to ensuring that the duty to consult Aboriginal peoples has been discharged fairly and honourably. The Board's *Engagement and Consultation Policy* lists four tools in its procedure for ruling on the adequacy of Crown consultation.<sup>116</sup> These are described below:

1. Tracking issues raised by potentially impacted Aboriginal organizations/governments
  - Board staff tracked all such issues. They also kept a record of Aboriginal groups' recommendations for Permit and Licence conditions and general process.
2. Addressing requests for rulings
  - No motions were filed for a ruling on the adequacy of Crown consultation. However, in its written final argument in the Public Hearing, Enbridge stated, "we ask the Board to find that consultation with potentially affected Indigenous groups was adequate."<sup>117</sup>
3. Ruling on adequacy of consultation within its own process
  - Potential impacts to asserted or established rights were described by the Parties themselves and have been addressed through the negotiation and signing of various agreements with Enbridge. For example, as stated in the written closing argument of LKFN, "As a result of negotiations with Enbridge – in part facilitated and encouraged by the MVLWB's regulatory process – LKFN reached two agreements with Enbridge. These two agreements provide for concrete mechanisms that ensure, to LKFN's satisfaction, that impacts on the environment and Aboriginal and treaty rights will [be] addressed for the Project."
  - The Policy outlines procedures for undertaking strength of claim analysis, compelling evidence for the same from responsible agencies per section 22 of the MVRMA or using administrative remedies in the absence of such information. No motion for ruling on strength of claim was received by the Board. However, it is clear that the affected First Nations have strong claims, both as signatories to Treaty 11 and as parties to the ongoing

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<sup>115</sup> *Clyde River* at 39.

<sup>116</sup> See [MVLWB Engagement and Consultation Policy, dated June 1, 2013](#), Appendix F.

<sup>117</sup> See [Enbridge Written Final Argument](#), January 17, 2018, p.4.

negotiation of a comprehensive land claim. Because of the environmental agreements made with Enbridge, there was no reason to explore the issue further.

- All of the Aboriginal Interveners expressed in their closing arguments that they were satisfied with the level and quality of consultation derived through the Board's process.
4. Ruling on projects coming out of environmental assessment or environmental impact review
- No environmental assessment was required for the Applications, so no evidence was available to consider from such a process.

In summation, the Board finds that Aboriginal parties were engaged throughout the entirety of the Board process. This included project pre-engagement by the proponent, application review, and direct participation in the Public Hearing. The Board's role in regard to the Crown's duty to consult was discharged in several ways, as directed by its own *Engagement and Consultation Policy*. Issues relating to potential impacts that were raised by Aboriginal parties were noted by the Board, analyzed, and tracked through the process. Aboriginal parties expressed that the Board process was adequate in regard to consultation and making their voices heard. The Board therefore finds that Crown consultation has been adequate on the Applications related to the Line 21 Segment Replacement.

A list of issues raised by Aboriginal parties is included in [Appendix 1](#), as are the means by which the Board addressed them.

#### **4.3 MVRMA Parts 3 and 4 and *Waters Act*: Land and Water Regulation and MVLWB**

The Board has jurisdiction to issue this Licence and Permit as per subsection 102 of the MVRMA.

##### *4.3.1 General*

The Board has considered the people and users of the Mackenzie Valley, and any Traditional Knowledge and scientific information that was made available to it during this regulatory proceeding, as per section 60.1 of the MVRMA.

##### *4.3.2 Public Notice*

Notice and copies of the Applications were provided in accordance with sections 63 and 64 of the MVRMA. The Board is satisfied that a reasonable amount of time was given to communities, First Nations, and the public to participate in this regulatory process by making submissions to the Board.

##### *4.3.3 Water Use Fees*

Enbridge is required to pay water use fees, as per subsection 8(1) of the Waters Regulations, prior to the start of operations. Water use fees must be paid annually hereafter for the duration of the Licence on or before its Anniversary Date.

##### *4.3.4 Existing Licensees*

With respect to paragraph 26(5)(a) of the *Waters Act*, the granting of this Licence to Enbridge will not adversely affect, in a significant way, any existing Licensee or any other applicant, provided they comply with the conditions of the Licence. There are no applicants with precedence. No Licensees or other applicants contacted the Board within the statutory period. The Board is

satisfied that no other licensees or applicants will be affected by the Enbridge Licence MV2017L1-0002.

#### 4.3.5 *Compensation to Existing Water Users*

Paragraph 26(5)(b) of the *Waters Act* prohibits the issuance of a Licence unless the Board is satisfied that appropriate compensation has been or will be paid by the Applicant to people who were, at the time when the Applicant filed its Applications with the Board, members of the classes of water users, depositors, owners, occupiers, or holders listed under paragraph 26(5)(b) of the *Waters Act*, who would be adversely affected by the use of waters, or deposit of waste proposed by the Applicant.

During the initial review of the Applications, LKFN submitted comments to the Board stating that they must be compensated and expressing concerns about security calculations.<sup>118</sup> The Board issued IR 2 to LKFN requesting that they confirm if they intended to submit a claim for compensation under the *Waters Act*.<sup>119</sup> On June 20, 2017, LKFN responded that they would not be submitting a claim for compensation under the *Waters Act*.<sup>120</sup>

The Board received no claims for compensation either during the prescribed period or afterwards. Provided that compliance with the Licence conditions is achieved, the Board does not believe that any water users or persons listed in paragraph 26(5)(b) of the *Waters Act* will be adversely affected by the use of Waters or the deposit of Waste proposed by the Applicant.

#### 4.3.6 *Water Quality Standards*

With regard to subparagraph 26(5)(c)(i) of the *Waters Act*, the Board is satisfied that compliance with the Licence conditions will ensure that waste will be collected and disposed of in a manner which will maintain water quality consistent with applicable standards and the Board's *Water and Effluent Quality Management Policy*. These are discussed further in Section 5.8 of these Reasons for Decision (Part G of the Licence: Conditions Applying to Waste and Water Management).

#### 4.3.7 *Effluent Quality Standards*

There are no effluent quality standards prescribed in the Waters Regulations. The Board is satisfied that compliance with the Licence conditions will protect the receiving waters and environment.

#### 4.3.8 *Financial Responsibility*

The Board must satisfy itself of the financial responsibility of Enbridge under paragraph 26(5)(d) of the *Waters Act* before it can issue the Licence.

On December 19, 2017, the MVLWB issued IR 3 to Enbridge stating that as per paragraph 26(5)(d) of the *Waters Act*, the Board must be satisfied, before a Licence is issued, that the financial responsibility of the Applicant is adequate for the completion of the undertaking, any mitigation

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<sup>118</sup> See [LKFN Comments on Applications, dated May 19, 2017](#)

<sup>119</sup> See [MVLWB IR 2 to LKFN, dated May 31, 2017](#)

<sup>120</sup> See [LKFN Response to IR 2, dated June 20, 2017](#)

measures as may be required, and closure and reclamation.<sup>121</sup> As such, the MVLWB requested Enbridge provide the Board with financial statements and evidence about previous performance of the company in the NWT, sufficient to show that they had the financial capacity to meet the requirements of paragraph 26(5)(d) of the *Waters Act*.

On January 3, 2018, Enbridge submitted their response to IR 3 in which they stated they are a 100% owned subsidiary of Enbridge Inc.<sup>122</sup> Enbridge itself does not fund operations directly and like many Enbridge Inc. subsidiaries, relies on Enbridge Inc. for capital as needed. Enbridge Inc. has proven they have significant access to capital (their Liquidity and Capital Resources can be seen in their Third Quarter Report, which was attached to the IR responses) as described in their Reports to Shareholders as well as previous filings which are available online. As with other subsidiaries of Enbridge Inc. that do not fund their operations directly, Enbridge Inc. acts as a central funder for these entities and provides both debt and equity capital as needed on market or regulated terms.

Further information on security can be seen in Sections 5.4.1, 6.4, and Appendix 2 of these Reasons for Decision.

As a result, and for the reasons set out above, the Board is satisfied that the financial capacity of the Applicant is adequate and meets the requirements of paragraph 26(5)(d) of the *Waters Act*.

#### *4.3.9 Minimization of Adverse Effects*

With regard to subsection 27(2) of the *Waters Act*, it is the opinion of the Board that compliance with the Licence will ensure that any potential adverse effects on other water users, which might arise because of the issuance of the Licence, will be minimized.

#### *4.3.10 Time Limit*

The Board is satisfied it has adhered to subsection 47(1) of the *Waters Act*, which requires it to make a decision within a period of nine months after the day on which an application is made or a notice advertised as per subsections 43(1) and 43(2) of the *Waters Act*.

### **4.4 MVRMA Part 5: Environmental Review**

#### *4.4.1 Preliminary Screening*

On July 20, 2017, the Board met and confirmed the activities associated with the Applications were exempt from Part 5 of the MVRMA pursuant to section 157.1 of the MVRMA. Associated Reasons for Decision were issued by the Board on August 10, 2017.<sup>123</sup> Consequently no preliminary screening was conducted.

### **5.0 Decision – Water Licence MV2017L1-0002**

After reviewing the evidence and submissions from Enbridge and the written comments and submissions from parties received by the Board and the Staff Report prepared for the Board, and having due regard to the facts, circumstances, and the merits of the submissions made to it, and to the purpose, scope, and intent of the MVRMA and the *Waters Act*, the Board has determined that Licence MV2017L1-0002 should

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<sup>121</sup> See [MVLWB IR 3 to Enbridge, dated December 19, 2017](#)

<sup>122</sup> See [Enbridge Response to IR3, dated January 3, 2018](#)

<sup>123</sup> See [MVLWB Reasons for Decision – Preliminary Screening Exemption Confirmation, dated August 19, 2017](#)



be issued, subject to the scope, definitions, conditions, and term contained therein. The Board's determinations and reasons for this decision are set out below.

The scope, definitions, conditions, and term set forth in the Licence have been developed to address the Board's statutory responsibilities and the concerns that arose during the regulatory process. The Reasons for Decision set out below focus on the major concerns and issues raised by parties, including those that were the subject of substantive argument submitted by one or more parties.

## **5.1 Term of Licence**

In its initial application, Enbridge proposed a start date of May 2017 and a completion date of November 2017.<sup>124</sup> With the Board invoking paragraph 22(2)(b) of the MVLUR and issuing two IRs on May 25, 2017, Enbridge submitted a letter to the project stakeholders informing them that project execution would be moved to 2018 as the current schedule was no longer feasible.<sup>125</sup>

Enbridge confirmed a term of three to five years for the Licence during the October 27-28, 2017 portion of the Public Hearing.<sup>126</sup> When Board staff asked the Interveners their thoughts on an appropriate length to the term of the Licence during the January 8-9, 2018 reconvened Public Hearing, the GNWT, DFN, and SKFN indicated they would provide a response within their final written arguments to the Board.<sup>127</sup> LKFN indicated that a term of three years would be an appropriate timeframe as the EMA had been negotiated until the end of 2020.

In their closing arguments, the GNWT recommended a term of five years for the Licence based on the project duration, minimum monitoring requirements, and the anticipated term of the associated Permit.<sup>128</sup> DFN and SKFN did not provide recommendations to the Board regarding the term of the Licence.

Subsection 26(2) of the *Waters Act* allows for a Licence term of not more than 25 years. After reviewing the submissions made during this regulatory process, and taking into consideration the closely linked Permit, the Board has determined an appropriate term for this undertaking is five years.

## **5.2 Part A: Scope and Definitions**

Part A of the Licence contains the scope and definitions for terms used throughout.

### *5.2.1 Scope*

The scope of the Licence ensures the Licensee is entitled to conduct activities which have been applied for. In setting out the scope of the Licence, the Board endeavoured to provide enough detail to identify and describe the authorized activities, without being unduly restrictive or prescriptive, and to allow for project flexibility throughout the life of the Licence.

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<sup>124</sup> See [Licence MV2017L1-0002 Application](#)

<sup>125</sup> See [Enbridge Letter Updating Project Stakeholders of the New Proposed Starting Date, dated June 7, 2017](#)

<sup>126</sup> See [Public Hearing Transcripts for Day 2, dated October 28, 2017](#)

<sup>127</sup> See [Public Hearing – Transcripts for Day 1, dated January 8, 2018](#)

<sup>128</sup> See [GNWT Closing Arguments, dated January 12, 2018](#)

In their September 22, 2017 application update to the Board, Enbridge provided a map that showed the proposed HDD entry and exit points to be fully on the Right-of-Way.<sup>129</sup> During the October 27-28, 2017 Public Hearing, Board staff asked if Enbridge would be providing recommendations to the Board about modifying the scope due to their proposed changes to the location of HDD entry and exit points. In response, an Enbridge representative stated “I think that's a good point. Will we have an opportunity to provide comment on the -- the scope as written in the draft conditions?” As a response, Board staff said that “Ideally certainly during this hearing, and there will be once we reconvene and close, there will be an opportunity for closing arguments and might be the time.”<sup>130</sup> Enbridge did not provide a recommendation to the Board during the hearing nor in their closing arguments.<sup>131</sup>

Understanding that these sites are more than just an entry or exit point related to the activities, the Board has kept them within the scope as associated activities that may occur off the Right-of-Way. The Board did, however, rename the area of activity as “drill sites,” as opposed to the term “well sites” that was used in the draft Licence conditions, version 2, which was distributed for public review, as it better defines the activity taking place.

The Board added in the activity “laydown and storage areas” to the scope of the Licence as it was missing from the draft Licence conditions, version 2, that was distributed for public review on August 25, 2017. This activity was described in the additional information submitted by Enbridge to support their Applications on April 25, 2017<sup>132</sup> and has been included in the ‘Scope of Activities as Considered by MVLWB (off the Right-of-Way)’ section of the work plans since issuing version 1 on August 17, 2017.<sup>133</sup> Adding in this activity will provide added clarity without being restrictive.

Part A, items 1 b) through 1 e) are consistent with other recently issued Water Licences. These conditions ensure that the scope of the authorization includes all water uses and deposits of waste associated with the Project, reflect and comply with all applicable legislation for the life of the authorization, and consider and incorporate scientific and Traditional Knowledge where available in the Licensee’s effort to protect the environment.

In their submission dated September 29, 2017, LKFN provided comments on the draft conditions.<sup>134</sup> They recommended that Part A, item d) be updated “To ensure that this condition is met: the Łíídlı́ Kúé First Nation requests that a Condition for Approval include:

- 1) A Dehcho First Nations Line 21 Advisory Committee; and
- 2) Dehcho First Nations environmental monitoring during construction and follow up inspections post-construction”.

The Board determined that this recommendation would be more appropriately addressed through the EMAs (First Nations will work cooperatively with Enbridge through the EMAs to address these recommendations).

### 5.2.2 Definitions

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<sup>129</sup> See [Supplemental Information dated September 22, 2017](#)

<sup>130</sup> See Public Hearing – Transcripts for [Day 2](#) pg. 131-132, dated October 28, 2017

<sup>131</sup> See [Enbridge Closing Arguments, on January 17, 2018](#)

<sup>132</sup> See [Supplemental Information dated April 25, 2017](#)

<sup>133</sup> See [Work Plan dated August 17, 2017](#)

<sup>134</sup> See [LKFN Comments on Draft Conditions, dated September 29, 2017](#)

The Board defined items in the Licence to ensure a common understanding of conditions, to avoid future differences in interpretation, and to use wording similar to that used in previously issued Licences. Where appropriate, the Board created new definitions, changed standard wording, or used specific definitions to describe specific facilities related to this Project as described below:

Artesian Aquifer – this definition was removed from the Licence conditions, version 2, which was distributed for public review as the condition associated with this definition no longer applies. That is, all drilling will occur on the Right-of-Way.

Project – this definition was included to ensure that references to the Project throughout the licence are consistent and clearly understood as to what they are referring to.

RECLAIM – in their comments on the Draft Licence, the GNWT recommended updating the definition for “RECLAIM” to include the oil and gas version of the RECLAIM model which was used to develop the security estimate for this Project.<sup>135</sup> As well, the GNWT noted that the author of the program does not need to be specified in the definition as the RECLAIM model may change over time. To ensure the flexibility of this definition for other activities that may have a RECLAIM specific model in the future, and to not limit the definition with further descriptors, the Board decided to include the GNWT’s recommendation to remove the author, as well as remove the specific activities that were originally described.

Reclamation – this definition was included because this is a specific activity that is related to this Project which is referenced in the scope of the Licence.

Right-of-Way – this definition was included to clearly define the area to which the Licence applies.

### **5.3 Part B: General Conditions**

Part B of the Licence contains general administrative conditions regarding compliance and conformity with the MVRMA and *Waters Act* and is consistent with standard conditions found in previous Licences issued by the Board. This section addresses water use fees and conformity and compliance with submissions to the Board. This section also addresses measuring devices, public engagement requirements, and requirements for the Annual Water Licence Report. The Board notes that conditions related to a Surveillance Network Program were removed from the Licence, as well as the Annex A, as they no longer apply as a stand-alone condition.

Part B, item 2, clarifies that all references to policies, guidelines, codes of practice, statutes, regulations or other authorities shall be read as a reference to the most recent versions, unless otherwise denoted. This standard practice allows for flexibility in Licence conditions when documents are updated during the life of the Licence.

Part B, items 4 and 5 address plan and program submission requirements and adherence under the Licence. Part B, item 6 requires Enbridge to annually review all plans and resubmit any updates or

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<sup>135</sup> See [GNWT Comments on Draft Conditions, dated September 29, 2017](#)

changes, as required, for Board approval. Updates and revisions to these plans must be approved by the Board prior to the implementation of any activity not identified in existing, approved plans. This condition ensures that all applicable plans are regularly reviewed and updated so they reflect changes in technology and/or changes and phases of the project throughout the life of the authorization.

During the regulatory review process, SKFN recommended that all revisions to plans include a detailed and comprehensive summary. The intent of including a brief summary is to highlight all the sections that were changed, regardless of how small, so as to help reviewers focus their review. As indicated in this condition, the submission of the revision is to be in a format consistent with the Mackenzie Valley Land and Water Board's Standard Outline for Management Plans. In these standards, it describes a section to be included as the Revision History & Conformity Table. This table should be easy to read and indicate where the changes have occurred within the plan.

Part B, item 7 allows the Board to update the Schedules, which are attached to and form part of the Licence, and to update compliance dates as necessary. Changes to these licence components are largely administrative matters and within the Board's authority.

Part B, items 9 and 10, refer to the Engagement Plan submitted by Enbridge with the Permit and Licence Applications. During the review of the Applications, concern was expressed consistently by all Aboriginal Intervenors regarding the adequacy of engagement by Enbridge. Further details can be seen in Section 4.2 of these Reasons for Decision. In acknowledgement of Enbridge's commitment to update the Engagement Plan, and to address the comments, recommendations, and concerns brought forward by reviewers throughout the regulatory process, the Board included Part B, item 10 in the Licence which requires an updated Engagement Plan to be submitted to the Board, for Board approval, within 60 days following issuance of the Licence.

The Engagement Plan is required to describe proposed engagement activities during the life of the Project and shall be in accordance with the Board's *Engagement and Consultation Policy* and the *Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits*. The Board expects Enbridge to work with stakeholders when updating the Plan, to ensure their concerns and recommendations are addressed.

Part B, item 11 outlines the requirements for the Annual Report. The Annual Report has been designed so that the Board and all reviewers have the opportunity to be updated on all project components and activities on an annual basis and provide comments, questions or feedback as necessary. The purpose of the Annual Report is to provide a summary of activities that have occurred on site during the previous year. These summaries include volumes of water, volumes of waste (generated, moved, disposed of), engagement activities, summary of works completed on site, summaries of all monitoring data, and anticipated activities for the following year. Annual Report requirements are intended to provide clarity for the submission of information summaries already being captured through existing plans and programs and are not meant to be onerous.

During the regulatory review process, SKFN made several recommendations regarding the information to be submitted as part of the Annual Report. These included inspection activities and any actions to be undertaken in response to inspections, details on the sumps (e.g. map with locations, and details of deposited waste (composition, volume, test results)). The Board notes that inspection reports are already public documents and are posted to the MVLWB public registry as they are submitted. Further details regarding the sumps have been included as a new section to the

Annual Water Licence Report as a result of additional requirements under the Waste Management Plan (further details on this are included in Section 5.8 of these Reasons for Decision) and address SKFN's recommendations.

#### **5.4 Part C: Conditions Applying to Security Requirements and Schedule 1**

The Board is authorized to require the Licensee to provide security to the Minister by subsection 35(1) of the *Waters Act*. Subsection 35(2) of the *Waters Act* specifies how the security may be applied.

Part C of the Licence, by reference to Schedule 1, sets the level of security to be maintained by the Licensee and sets out requirements related to posting and updating security. As in other licences, the Board may request a security update from the proponent at any time, and may adjust the security amount at any time, based on available information. Specifically, Part C, items 3 and 4 stipulate that the Board can revise the security deposit and that the Licensee will post the new deposit within 90 days. This condition pertains to both increases and reductions in security.

The remainder of this section of the reasons addresses how the Board set the security deposit amounts stipulated in the Licence and the Permit. The security deposits required by these two instruments are discussed together since the estimates deal with the same project and are intimately linked.

##### *5.4.1 Security Deposit Amounts*

The Board has determined that the total security deposit amount shall be \$860,000.00. Consistent with the Board's normal practice, the Board adopted the split between land and water security estimates in RECLAIM and has placed the land liability amounts under the Permit and the water liability under the Licence, as well as rounding the estimates. \$335,000.00 is required under the Licence and \$525,000.00 is required under the Permit.

A detailed explanation of how the Board determined the total security deposit is provided in Appendix 2: Reclamation Security.

#### **5.5 Part D: Conditions Applying to Water Use**

Part D of the Licence contains conditions related to water use for the Project. These are consistent with standard conditions found in previous Licences issued by the Board.

Enbridge indicated in their Licence Application that water was to be obtained from the Mackenzie River and the Liard River (assessed at a maximum of 10,000 m<sup>3</sup> withdrawal limit, and to a daily limit of less than 299 m<sup>3</sup>). Following discussion with Enbridge, the draft Licence conditions, version 2, that was distributed for public review indicated a total annual quantity of 40,000 m<sup>3</sup>. In their closing arguments, Enbridge reiterated that they would need to withdraw a total of approximately 10,000 m<sup>3</sup> of water, limited to 299 m<sup>3</sup> per day. The Board has indicated sources and quantity of water use in Part D, items 1, 2, and 3 based on the information provided by Enbridge during the review process.

During the regulatory review process, LKFN recommended that Enbridge provide schedules and reports of water usage to Dehcho First Nations as a part of this section. The Board determined that this recommendation is adequately addressed through the requirement of an Annual Water Licence Report, as required in Part B, item 11 of the Licence.

## **5.6 Part E: Conditions Applying to Construction**

Part E of the Licence contains conditions related to construction activities and is consistent with standard conditions found in previous Licences issued by the Board.

During the regulatory review process, LKFN recommended that the Dehcho First Nation Community environmental monitoring program be implemented during construction and post-construction activities in order to oversee water quantity and quality testing. The Board's jurisdiction does not extend to requiring Enbridge to implement a "Dehcho First Nation Community environmental monitoring program". Enbridge has previously committed to environmental monitors, wildlife monitors, turbidity monitoring, and cultural monitors for the project.<sup>136</sup> The Board can ensure that monitoring requirements are in place prior to, during, and post-construction. In order to address environmental concerns, the Board has included conditions that require the gathering of further information on sumps in the Waste Management Plan, as required in Part G, item 4 of the Licence, a Sediment and Erosion Control Plan, as required in Part G, item 13 of the Licence, and a Closure and Reclamation Plan, as required in Part I, item 2 of the Licence. As these Plans are for Board approval, they will be publicly reviewed, allowing for incorporation of comments or concerns raised.

## **5.7 Part F: Conditions Applying to Modifications**

Part F of the Licence contains conditions outlining when and how modifications of existing or planned physical works may be authorized. They ensure the Board and the Inspector are kept informed and have the opportunity to request more information or reject the proposed modification. This section is closely linked to the construction section (Part E), which contains conditions related to the design and construction of structures intended to contain, withhold, divert, or retain Water or Wastes. This section relies on the definition of a modification, outlined in Part A, "a change, other than an expansion, that does not alter the purpose or function of a structure." These conditions are consistent with standard conditions found in previous Licences issued by the Board. The purpose of Part F is to streamline the process for authorizing modifications and ensure that any proposed changes to structures that might be outside the scope of the Licence are brought to the Board's attention.

During the regulatory review process, SKFN recommended that they be informed of modifications to the project and be provided the opportunity to comment if concerns arise regarding changes or alterations to the project. The Board notes that any notification of a modification submitted to the MVLWB becomes publicly available through posting to the MVLWB public registry. The Board also notes that this request can become a trigger for engagement through the Engagement Plan, which Enbridge has committed to updating, allowing an affected party to be notified of any upcoming submission to the MVLWB.

## **5.8 Part G: Conditions Applying to Waste and Water Management**

Part G of the Licence contains conditions applying to waste and water management activities and is consistent with standard conditions included in previous Licences issued by the Board. Site-specific conditions were developed where necessary. The Board notes that conditions related to an Artesian Aquifer were removed from this section as they no longer apply as a stand-alone condition; that is, since drilling activities were revised by Enbridge to occur on the Right-of-Way.

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<sup>136</sup> See [Public Hearing – Transcripts for Day 2, dated October 28, 2017](#)

Part G, item 1 sets out the objectives for the management of water and waste. This condition is consistent with the principles of objective-based regulation: it essentially defines the objectives of any required management actions, plans or reports. This condition is standard for Licences issued by the Board and reminds the Licensee of the need to manage water and waste with the goal of minimizing impacts on the receiving environment.

### **Management Plans and Monitoring Programs**

Submittal and adherence to a waste management plan is a standard condition for Licences issued by the Board. Waste Management Plan is a defined term in the Licence, ensuring that the required plan adheres to the Board's *Guidelines for the Development of a Waste Management Plan*.

Throughout the regulatory review process, comments and recommendations were received from the GNWT and SKFN regarding the current version of the Waste Management Plan and that further details should be included in the Plan. In a response to concerns, Enbridge stated that as they finalize the Waste Management Plan, it would be shared with the Board as well as Interveners. For these reasons, the Board included Part G, item 4 in the Licence, which requires a revised Waste Management Plan within 60 days following issuance of the Licence.

The GNWT and SKFN also submitted recommendations to the Board for the requirement of a Sump Construction and Monitoring Plan condition. Some of the information being requested included:

- a) site-specific information on the sump locations (such as soil characteristics, grade, and proximity of water bodies);
- b) final design details on the sumps (such as depth and capacity);
- c) operational detail (such as capping method, material used);
- d) details regarding a monitoring program (including action levels and groundwater monitoring);
- e) schedule of the monitoring program; and
- f) a list of parameters to be assessed (such as slumping of the sumps, pooling of water, status on the regrowth of vegetation).

During the Public Hearing, the GNWT stated that as the drilling muds are to be composed of non-toxic materials, groundwater monitoring would not be necessary, but that visual inspections of sumps should be carried out.

The Boards' authority to regulate the management of waste is described in subsection 26(1) of the MVLUR and sections 11 and 27 of the *Waters Act*. As such, the Board developed, and approved, the *Guidelines for Developing a Waste Management Plan*. These guidelines can be applied to a wide range of projects and provide details on how Waste should be managed for the specific project. These guidelines also provide general information on what should be included in the Waste Management Plan for deposit of waste to a sump. For these reasons, the Board included, within Part G, item 4, a list of items required to be submitted within a revised Waste Management Plan.

During the regulatory review process, the GNWT recommended that if Enbridge intended to deposit waste in an NWT community Solid and Liquid Waste Disposal Facility, that it would be necessary to confirm that disposal of such wastes would not contravene the *Waters Act* or the *Environmental Protection Act* and related Regulations and Guidelines, and that the receiving facility is:

- a) authorized to accept any industrial waste streams originating from outside municipal boundaries; and
- b) demonstrate that the community, where the receiving facility is located, has been consulted, and has consented in writing, regarding the use of its infrastructure for disposal of the waste streams.

Enbridge responded that only domestic wastes and sanitary wastes will be disposed of at municipal facilities and prior to disposal, they will consult with the facility or municipality to obtain written permission and to ensure the facility is licensed to accept the waste.

The Board included Part G, item 5 in the Licence to address this recommendation by the GNWT. This condition is consistent with other Permits issued by the Board.

Enbridge stated in their Application that following completion of hydrostatic testing, the test water will be analyzed and, if determined to meet the Canadian Council of Ministers of the Environment (CCME) Canadian Water Quality Guidelines (guidelines), it will be discharged over land. Should the water not meet the CCME guidelines, the water will be stored in the available storage tanks and treated to meet CCME guidelines before discharging to land or hauled to an off-site disposal facility.

During the regulatory review process, concern was raised by SKFN regarding the quality of water that may be discharged to land, as it may contain toxic chemicals should the water come into contact with other chemicals on-site. Enbridge stated that hydrotesting will be completed only on new piping and pipe components and that the water will not come into contact with any hydrocarbon source throughout the course of the Project. Potential impacts to the water will be restricted to metals such as iron (from metal flakes). Enbridge expects that the hydrotest water quality will be similar to the water quality in the Liard River, where the water will be sourced. Water samples will be obtained before and after hydrotests to assess water quality and the most suitable method of disposal.

No recommendations were made to the Board regarding the parameters Enbridge should test for, nor any suggestions made for effluent quality criteria. The Board included Part G, items 8-11 in the Licence, which relate to the discharge or decanting of waste, including wastewater. These conditions provide the Inspector final determination on when discharge can occur (after reviewing the analytical results). These conditions are also consistent with standard conditions found in previous Licences issued by the Board.

The Board included Part G, items 12-14 relating to sediment and erosion control. During the regulatory review process, Enbridge stated that they had a concern with a stand-alone Sediment and Erosion Control Plan as there are a minimal number of controls required based on the project description, and mitigation measures will be outlined in the project Environmental Protection Plan. The Board notes that the Environmental Protection Plan is not a Board approved document, and as such, has required the submission of a Sediment and Erosion Control Plan. This ensures that the sediment and erosion planning requirements proposed by Enbridge can be assessed by reviewers prior to approval. A list of details was included in the Part G, item 13 outlining the required content of this Plan. This condition is also consistent with standard conditions found in previous Licences issued by the Board.

During the regulatory review process, the recommendation was raised by SKFN, LKFN, and the GNWT to require a Turbidity Monitoring Plan and Surveillance Network Program as a condition of the Licence. In their closing arguments, the GNWT stated that the Board has the authority to require turbidity



monitoring to detect the presence of drilling “waste”, as that term is defined in the *Waters Act*, resulting from an inadvertent return, and recommended that the Board require approval of this Plan prior to commencement of drilling. In response, Enbridge stated that should the NEB approve the Project, they will already be required to implement a Turbidity Monitoring Plan; therefore, the inclusion of a condition would be unnecessary and redundant (as would a surveillance network program). No recommendations were made to the Board regarding testing requirements to be conducted under a Surveillance Network Program.

To address these concerns, the Board included Part G, item 16, requiring the submission of a Turbidity Monitoring Plan for Board approval. The list of information requirements to be included in the Plan addresses the recommendations presented to the Board through the regulatory review process.

The Board also included Part G, item 17, requiring Enbridge to submit a monthly Turbidity Monitoring Plan Results Report. This will ensure that the sampling results are made public through posting to the MVLWB public registry.

### **5.9 Part H: Conditions Applying to Contingency Planning**

Part H of the Licence contains conditions related to spill contingency planning and reporting, reclamation of spills and unauthorized discharges, and emergency response. The purpose of this part is to ensure that Enbridge is fully prepared to respond to spills and unauthorized discharges. The planning and reporting requirements in this part ensure that Enbridge has identified the lines of authority and responsibility, has an action plan for responses to spills and unauthorized discharges, and has established reliable reporting and communication procedures. This will ensure that any spills or unauthorized discharges are effectively controlled and cleaned up, with the goal of preventing or limiting damage to the receiving environment. The conditions in Part H are consistent with standard conditions found in previous Licences issued by the Board.

Part H, item 1 outlines the requirement for Enbridge to act in accordance with the Spill Contingency Plan. This Plan is a defined term in the Licence, referencing Indian and Northern Affairs Canada’s *Guidelines for Spill Contingency Planning*. Enbridge included a Spill Contingency Plan, dated March 23, 2017, with their Applications.

The Board has not yet made a decision regarding the adequacy of the Spill Contingency Plan under the Licence. The Board will wait for approval of this Licence, prior to considering this Plan, as otherwise the Board would be prejudging the Minister’s decision on the Licence.

During the regulatory review process, SKFN, LKFN, and DFN recommended that Indigenous parties be included in notifications of spills. The Board notes that any notification submitted to the MVLWB would become public and would be made available by posting to the MVLWB public registry. The Board also notes that this request can become a trigger for engagement through the Engagement Plan, which Enbridge has committed to updating, allowing an affected party to be notified when a spill occurs.

### **5.10 Part I: Conditions Applying to Closure and Reclamation**

Part I of the Licence contains conditions applying to closure and reclamation. The Licence conditions applying to the security deposit (Part C and Schedule 1 of the Licence) are closely related to Part I; the security deposit is directly related to the activities to be described in the closure plan, and updates to the closure plan often results in updates to the security deposit.

During the regulatory review process, DFN recommended that Enbridge submit a Closure and Reclamation Plan and LKFN and SKFN recommended that they be allowed to review this Plan when submitted. Part I, item 2, is the condition that the Closure and Reclamation Plan be for Board approval, which is consistent with other Licences issued by the Board. This means that the Plan would be sent out for review for a period of time, allowing reviewers the opportunity to submit any comments or concerns to the Board.

During the regulatory review process, the GNWT recommended that the Board consider permafrost as a part of reclamation, should it be encountered (i.e., any indication that it exists – slumping, erosion, etc.). During the October 27, 2017 Public Hearing, Enbridge stated that if permafrost is encountered, then mitigations will be employed, and if required, permafrost would be considered in a reclamation program. The Board has included, as a component of the Plan, the requirement that information be provided on sites that have been affected by permafrost degradation.

#### **5.11 Part J: Conditions Applying to Watercourses**

Part J of the Licence contains conditions related to watercourse activities and is consistent with standard conditions found in previous Licences issued by the Board.

During the regulatory review process, Enbridge asked if the proposed activity to improve the existing shoo-fly access from the barge landing to the north work site would be in compliance with condition Part J, item 2. This condition was updated in version 2, which was distributed for public review, to provide clarity to Enbridge that this condition did not apply to those areas identified in the complete application. No further comments on this matter were received.

#### **5.12 Annex A: Concordance Table of Items Requiring Submission**

Annex A of the Licence contains a table that summarizes the information Enbridge is required to submit asset out by the Licence conditions.

#### **5.13 Annex B: Table of Revision History**

Annex B of the Licence contains a table which identifies updates and tracks changes made to the Licence. This table is currently blank because this is a new Licence, but it will be updated throughout the life of the Licence.

### **6.0 Decision – Land Use Permit MV2017P0013**

After reviewing the evidence and submissions from Enbridge and the written comments and submissions from parties received by the Board and the Staff Report prepared for the Board, and having due regard to the facts, circumstances, and the merits of the submissions made to it, and to the purpose, scope, and intent of the MVRMA, the Board has determined that Permit MV2017P0013 should be issued, subject to the scope, definitions, conditions, and term contained therein. The Board’s determinations and reasons for this decision are set out below.

The scope, definitions, conditions, and term set forth in the Permit have been developed to address the Board’s statutory responsibilities and the concerns that arose during the regulatory process, including those concerns raised by Aboriginal participants and communities about the effects on the exercise of

Aboriginal rights. The Reasons for Decision set out below focus on the major concerns and issues raised by parties, including those that were the subject of substantive argument submitted by one or more parties. They also address evidence which resulted in the inclusion of new or revised conditions that differ from those in the Standard Land Use Permit Conditions Template.

The Board notes that during the regulatory review process, SKFN raised concerns regarding the impacts of noise, on both human and wildlife receptors, and recommended a comprehensive Noise Mitigation Plan to be submitted. Enbridge acknowledged the concern around possible impacts of noise and agreed to explore potential noise abatement strategies.

Possible impacts from noise can be mitigated under subsection 26(1) of the MVLUR (see paragraphs (b) to (e)). As such, the Board has included standard conditions, consistent with recently issued Permits (see Sections 6.4.2 to 6.4.5 in these Reasons for Decision). The Board also notes that there are provisions in the MVLUR that apply to protection of wildlife Habitat (see paragraph (h)). Further details can be found in Section 6.4.8 of these Reasons for Decision. Lastly, the Board notes that impacts to Habitat will be minimal as the Project is short term and is temporary in duration.

### **6.1 Term of Permit**

Enbridge has applied for a term of five years for the Permit.<sup>137</sup> Subsection 26(5) of the MVLUR allows for a Permit term of not more than five years. After reviewing the submissions made during this regulatory process, the Board has determined an appropriate term is five years.

### **6.2 Part A: Scope of Permit**

The scope of the Permit ensures the Permittee is entitled to conduct activities which have been applied for. In setting out the scope of the Permit, the Board endeavoured to provide enough detail to identify and describe the authorized activities, without being unduly restrictive or prescriptive, and to allow for project flexibility throughout the life of the Permit. Enbridge's Line 21 Segment Replacement Project is understood to include only the lands described and identified in the Application. Part A, items 2 and 3 are standard conditions consistent with recently issued Permits. These conditions ensure that the Permittee complies with the conditions of the Permit and any applicable legislation. The scope of the Permit has been updated, from version 2 which was distributed for public review, to address comments and recommendations received during the regulatory review process. See Section 5.2.1 of these Reasons for Decision for further detail.

### **6.3 Part B: Definitions**

The Board defined items in the Permit to ensure a common understanding of conditions, to avoid future differences in interpretation, and to use wording similar to that found in previously issued Permits. For the most part, the definitions used wording from the MVLWB's *Standard Land Use Permit Conditions Template* (Standard Template). Where appropriate, the Board created new definitions,

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<sup>137</sup> See [Permit MV2017P0013 Application](#)

changed standard wording, or used specific definitions to describe specific facilities related to this Project as described below:

Flowing Artesian Well – this definition was removed from the Permit conditions, version 2, which was distributed for public review as the condition associated with this definition no longer applies. That is, all drilling will occur on the Right-of-Way.

Right-of-Way – this definition was included to clearly define the area where this Permit applies.

#### **6.4 Part C: Conditions Applying to All Activities**

The subheadings below correspond to the headings in the conditions section of the Permit, as outlined in section 26(1) of the MVLUR. Most conditions in the Permit are from the MVLWB's Standard Template and are not discussed in detail in these Reasons for Decision unless notable due to recommendations or concerns raised during the public review. Where applicable, the Board's reasons for including non-standard conditions are discussed.

##### **6.4.1 26(1)(a) Location and Area**

During the regulatory review process, Enbridge asked for the Board to confirm that clearing the land for the south camp would meet the condition of Part C, item 1. The intent of this condition is to minimize disturbance by locating camps, which are heavy use areas, on Durable Land or previously cleared areas that would endure repeated use. The Board notes that these land clearing activities were described in the Applications and that no further comments on this matter were received.

##### **6.4.2 26(1)(b) Time**

During the regulatory review process, SKFN recommended that Indigenous Parties be included in notifications of commencement of operations. The Board notes that any notification submitted to the MVLWB would become public by posting to the MVLWB public registry. The Board also notes that this request can become a trigger for engagement through the Engagement Plan, which Enbridge has committed to updating, allowing an affected party to be notified when commencement of operation occurs.

The Board included condition 8 in the Permit as recommended by the GNWT to address the activities to be conducted during the winter months. This condition is consistent with the Board's Standard Template.

##### **6.4.3 26(1)(c) Type and Size of Equipment**

During the regulatory review process, LKFN recommended that the Board address the risks related to barge traffic in relation to fish and fish habitat. The Board notes that provisions in the MVLUR apply to protection of habitat for wildlife and fish, but not wildlife or fish. The Board included condition 10 in the Permit which is intended to minimize disturbance and erosion of stream banks. Portable ramps eliminate the need for dirt push-outs or earth ramps that may cause erosion and sedimentation into streams and damage fish habitat. This is a condition from the Board's Standard Template and is intended to ensure Enbridge conducts their land-use operation in such a way as to minimize disturbance to habitat for wildlife and fish.

During the regulatory review process, Enbridge stated that, in relation to the 'Fire-Fighting Equipment' condition, fire-fighting equipment will be demobilized when construction is completed. The intent of this condition is to ensure that fire-fighting equipment is available where there is a risk of a land-use operation starting a fire. The Board notes that once the land-use operation is complete, the fire-fighting equipment can be removed from site.

#### 6.4.4 *26(1)(d) Methods and Techniques*

The Board notes that the 'Oil and Gas Drill Casings' condition was removed from this section, that was included in the Permit conditions, version 2, which was distributed for public review, as the activity occurs on the Right-of-Way.

The Board included conditions 12 and 13 in the Permit as recommended by the GNWT to address the activities to be conducted during the winter months. These conditions are consistent with the Board's Standard Template.

#### 6.4.5 *26(1)(e) Type, Location, Capacity, and Operation of All Facilities*

During the regulatory review process, SKFN recommended that the 'Sumps From Water' condition be modified to require the company to produce a map showing the locations of the sumps and information on the contents of the sumps. The Board notes that this has been addressed under the requirement of an Annual Water Licence Report, under the associated Licence, as a result of including further details required under the Waste Management Plan (further details on this are included in Section 5.3 of the Reasons for Decision).

SKFN also recommended that a condition be added detailing what drilling fluids are allowed to be used. The Board has included from the Standard Template, condition 32 in this Permit, 'Drilling Chemicals', to ensure that only those chemicals, which were identified in the complete Application, are used. Should a change be required from those identified in the complete Application, usage would need to be authorized in writing by the Board. The Board notes that to issue an authorization in writing, a review process would be required, thereby providing reviewers the opportunity to comment and make recommendations to be considered by the Board.

#### 6.4.6 *26(1)(f) Control or Prevention of Ponding of Water, Flooding, Erosion, Slides, and Subsidence of Land*

During the regulatory review process, concern was raised about the impacts the Project may have on permafrost (specifically related to sump locations and the clearing of vegetation). In response, Enbridge committed to a permafrost assessment that would be included as apart of the sump construction assessment. The Board included condition 18 in the Permit, consistent with the Board's Standard Template, requiring Enbridge to insulate the ground surface beneath all structures, as a mitigation measure that will help prevent impacts to permafrost. The Board has also included condition 71 in the Permit, consistent with the Board's Standard Template, requiring Enbridge to not clear areas larger than identified in the Applications. In the associated Licence, the Board has included, as a component of the Closure and Reclamation Plan under Part I of the Licence, sites

affected by permafrost degradation. Further details can be seen in Section 5.10 of these Reasons for Decision.

During the regulatory review process, Enbridge asked for the Board to confirm if matting constitutes 'insulation' for the purpose of the 'Permafrost Protection' condition. As the intent of this condition is to protect permafrost, any suitable material that can be laid down to protect the ground on which buildings, equipment, and materials are to be placed or stored, particularly buildings or structures that are heated, should suffice. The Board recommends Enbridge engage with the Inspectors to address any concerns with the proposed mitigation measures.

The Board notes that the 'Flowing Artesian Well' condition was removed from this section, that was included in the Permit conditions, version 2, which was distributed for public review, as the activity occurs on the Right-of-Way.

The Board included conditions 23 through 26 in the Permit as recommended by the GNWT to address the activities to be conducted during the winter months. These conditions are consistent with the Board's Standard Template.

#### *6.4.7 26(1)(g) Use, Storage, Handling, and Ultimate Disposal of Any Chemical or Toxic Material*

During the regulatory review process, DFN requested notification of when there is a change to the drilling fluids or additives relating to the 'Drilling Chemicals' condition. The Board notes that this condition states that any changes to the chemicals identified in the complete Application require written authorization from the Board. The Board notes that to receive written authorization, a review process would be required, thereby allowing reviewers the opportunity to provide comments, recommendations, or feedback to be considered by the Board.

SKFN also recommended that the 'Chemical' condition be modified to allow First Nations an opportunity to comment on new fluids, additives, or chemicals being requested. The Board notes that for this Permit, direct approval of individual chemicals is not necessary because conditions for Waste disposal already prevent deposit of any Toxic Material (as defined in definitions section). As well, the Board notes that the standard 'Drilling Chemicals' condition has been included and can address this recommendation, as any changes to fluids or additives would be for Board approval. The current wording of the standard condition allows the Board and Inspector to review the chemical and take action if they are concerned that its use may impact the environment. If appropriate, the Board may require an updated management plan to be submitted for Board approval.

SKFN, LKFN, and DFN recommended that Indigenous Parties be included in notifications of spills under the 'Report Spills' condition. The Board notes that any notification submitted to the MVLWB would become public by posting to the MVLWB public registry. The Board also notes that this request can become a trigger for engagement through the Engagement Plan, which Enbridge has committed to updating, allowing an affected party to be notified when a spill occurs.

The Board has updated the 'Report Spills' condition, to include 'a) implement the Spill Contingency Plan' with reflects the standard wording in the Licence condition.

#### *6.4.8 26(1)(h) Wildlife and Fish Habitat*

The Board notes that provisions in the MVLUR apply to protection of wildlife habitat, not wildlife. Impacts to wildlife are under the jurisdiction of the GNWT through the *Wildlife Act*. The Board included condition 44 in the Permit, which requires Enbridge to prevent damage to wildlife and fish Habitat. This is a condition from the Board's Standard Template and is intended to ensure Enbridge conducts their land-use operation in such a way as to minimize disturbance to wildlife and fish Habitat. The Board also notes that impacts to Habitat will be minimal as the Project is short term, which will ensure that Aboriginal uses of the area can resume as soon as possible after the Project is complete.

#### 6.4.9 26(1)(i) Storage, Handling, and Disposal of Refuse or Sewage

A Waste Management Plan is a standard requirement for land use permits issued by the Board. This Plan is intended to ensure that all waste management activities are carried out in a way that is consistent with best practices and applicable guidelines to minimize waste released from the Project. This Plan is also required under Part G of the Licence and the Board's reasons for including this Plan, and requiring revisions and resubmission, are described in Section 5.8 of these Reasons for Decision. The Board mirrored these conditions with the Licence requirements to ensure one submission will satisfy conditions of both the Licence and Permit. The Board endeavoured to provide enough detail in this list of informational items to address the concerns raised, without being unduly restrictive or prescriptive. The intent is to allow Enbridge the flexibility of providing further information pertaining to waste management, as discussed during the regulatory review period and as described in the *Guidelines for the Development of a Waste Management Plan*. It is possible that Enbridge may not be able to provide all the necessary details in their revised Waste Management Plan submission to the Board for approval (as listed in condition 46) prior to commencement of operations. In this event, Enbridge shall submit available details, along with rationale for any omission, for consideration by the Board.

During the regulatory review process, the GNWT recommended that should Enbridge intend to deposit waste in an NWT community Solid and Liquid Waste Disposal Facility, then further information would be required to ensure the municipality can accept the Waste. The Board included condition 50 in the Permit to address this recommendation by the GNWT. This condition is consistent with other Permits issued by the Board. The Board's reasons associated with this section are described in Section 5.8 of the Reasons for Decision.

#### 6.4.10 26(1)(j) Protection of Historical, Archaeological, and Burial Sites

The conditions included in this section are all consistent with the Board's Standard Template. The Archaeological Buffer condition typically sets the buffer at 150 metres. However, the Board set the buffer at 30 metres following a recommendation received from GNWT during the regulatory review process. GNWT noted that accurate locations and site boundaries will be recorded in the footprint of the Project during the archaeological impact assessment of the project, and the 30-metre buffer is sufficient for site avoidance.

The GNWT also recommended that the Board add the standard Archaeological Impact Assessment condition to the Permit. Enbridge disagreed with this recommendation as an Archaeological Overview Assessment had been conducted for the Project which did not recommend an archaeological impact assessment.

As part of their presentation for the Public Hearing, LKFN submitted an Indigenous Knowledge and Land Use Study that was conducted in 2017 that presents cultural, economic and ecological values. In their closing arguments, the GNWT noted that once this document was reviewed, no further archaeological work would be required. Accordingly, they retracted their original recommendation of including an Archaeological Impact Assessment condition.

The GNWT provided updated phone numbers for the Prince of Wales Northern Heritage Centre, and the Board updated the condition appropriately.

During the regulatory review process, DFN recommended that the affected First Nation or Aboriginal organization be notified if a suspected archaeological site was discovered. The intent of Condition 53 is to protect newly discovered archaeological sites and ensure they are registered with the Prince of Wales Northern Heritage Centre. MVLUR paragraph 12(a) requires notification of the Board or an Inspector, but not direct notification of the GNWT or affected First Nation or Aboriginal organization. MVLUR paragraph 12(b) requires the Board or Inspector to notify any affected First Nation or Aboriginal Government and the GNWT (Prince of Wales Northern Heritage Centre), and to consult them regarding the nature of the materials, structures or artifacts and any further actions to be taken. Direct notification of Prince of Wales Northern Heritage Centre and affected First Nations or Aboriginal organizations is an extra requirement for Enbridge that has been added by the Board, one which is not in the MVLUR. It ensures that the GNWT or affected First Nation or Aboriginal organization receive timely notifications.

#### *6.4.11 26(1)(k) Objects and Places of Recreational, Scenic, and Ecological Value*

The Board did not require conditions in this section to satisfy its mandate and did not receive any comments during the review of the draft Permit.

#### *6.4.12 26(1)(l) Security Deposit*

The Board is authorized to require the Permittee to provide security to the Minister by subsection 32(1) of the MVLUR. Subsection 32(2) of the MVRMA specifies how the security may be applied.

The Board has included a requirement for security in the Permit. The Board's reasons associated with this section are described in Section 5.4 of the Reasons for Decision, in conjunction with reasons for security required by the Licence. The security deposits required by these two instruments are discussed together since the estimates deal with the same project and are intimately linked. The conditions included in this section are all consistent with the Board's Standard Template.

#### *6.4.13 26(1)(m) Fuel Storage*

A Spill Contingency Plan is a standard requirement for land use permits issued by the Board. This Plan is intended to ensure that an action plan for responses to spills and Unauthorized Discharges and has established to effectively control and clean up spills and Unauthorized Discharges, with the goal of preventing or limiting damage to the receiving environment.

The Board has approved the Spill Contingency Plan under the Permit because it meets the requirements of the guidelines, reflects the scope of the proposed activities, and no comments were received recommending the resubmission of an updated Plan.



This Plan is also required under Part H of the Licence and the Board's reasons are included in Section 5.9 of these Reasons for Decision.

#### *6.4.14 26(1)(n) Methods and Techniques for Debris and Brush Disposal*

The Board did not receive any comments on these conditions during the review of the draft Permit. The conditions included in this section are all consistent with the Board's Standard Template.

#### *6.4.15 26(1)(o) Restoration of the Lands*

During the regulatory review process, LKFN stated that natural revegetation is not an adequate mitigation measure as vegetation clearing could lead to permafrost thaw and degradation. The intent of the 'Natural Vegetation' condition is to minimize the risk of introducing foreign seeds or plants to the area, especially if there is a natural source of seeds in the immediate area. Concerns related to permafrost were addressed in other conditions imposed by the Board (see Section 6.4.6 of these Reasons for Decision as an example). As such, the Board included condition 76 in the Permit, requiring Enbridge to prepare the site in such a manner as to facilitate natural revegetation, based on local conditions.

As seen in the Indigenous Knowledge and Land Use Study submitted by LKFN, the Project area has been identified as an area where traditional activities take place. As such, the Board included condition 78 in the Permit, requiring Enbridge to restore any trails used by traditional land users, that were impacted by the Project activities.

#### *6.4.16 26(1)(p) Display of Permits and Permit Numbers*

The Board did not receive any comments on these conditions during the review of the draft Permit. The conditions included in this section are all consistent with the Board's Standard Template.

#### *6.4.17 26(1)(q) Biological and Physical Protection of the Land*

An Engagement Plan is a standard requirement for land use permits issued by the Board. This Plan is intended to ensure adequate and effective engagement with potentially affected parties has occurred prior to the submission of the Applications (in the form of the Engagement Log) and is planned for throughout the life of the Project. This Plan is also required under Part B of the Licence and the Board's reasons for including this Plan, and requiring revisions and resubmission, are described in Section 5.3 of these Reasons for Decision. The Board mirrored these conditions to the extent possible with the Licence requirements to ensure that one submission will satisfy conditions of both the Licence and Permit, should the Licence be approved by the Minister.

During the regulatory review process, SKFN recommended that all revisions to plans include a detailed and comprehensive summary. The intent of including a brief summary is to highlight all the sections that were changed, regardless of how small, so as to help reviewers focus their review. Further reasons can be found in Section 5.3 of these Reasons for Decision.

## **7.0 Conclusion**

Subject to the scopes, definitions, conditions, and terms set out in the Licence and Permit, and for the reasons expressed herein, the MVLWB is of the opinion that the land-use activities, water use, and waste

disposal associated with the off Right-of-Way activities for the Line 21 Segment Replacement Project can be completed by Enbridge while providing for the conservation, development, and utilization of waters in a manner that will provide the optimum benefit for all Canadians and in particular for the residents of the Mackenzie Valley.

Water Licence MV2017L1-0002 and Land Use Permit MV2017P0013 contain provisions that the Board deems necessary to ensure and monitor compliance with the MVRMA, *Waters Act*, and the Regulations made thereunder, and to provide appropriate safeguards in respect of Enbridge's use of the land and water affected by the Project.

SIGNATURE

Mackenzie Valley Land and Water Board



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Mavis Cli-Michaud, Chair

February 16, 2018

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Date

## **Appendix 1: List of Concerns Addressed by the Board**

The following table outlines issues recorded by the MVLWB throughout the regulatory process for Applications MV2017P0013 and MV2017L1-0002. The table indicates the Area of Concern, which is an aggregation or paraphrasing of concerns presented to the Board; the source(s) of the concern; and the Board's response(s) to the issue.

Concerns raised have been divided into five broad types:

1. Process issues;
2. Environmental issues;
3. Technical issues;
4. Socio-economic issues; and
5. General issues.

The term "Public" has been used with reference to feedback received from Aboriginal community members during the Board's process. It does not include feedback from non-Aboriginal public sources.

<b>Area of Concern</b>	<b>Raised By</b>	<b>How Addressed</b>
<b>Process Issues</b>		
Aligning MVLWB Process with NEB	LKFN, SKFN	Some information sharing occurred, though the two processes are separate. See Reasons for Decision section 4.2.4.
Compensation under <i>Waters Act</i>	LKFN	Application for compensation did not proceed.
MVLWB should post management plans separately and number versions appropriately	SKFN	Already practice on Registry.
Request to refer application to MVEIRB for Environmental Assessment	DFN, LKFN	Board determined that project exempt from preliminary screening per MVRMA section 157.1 (August 3, 2017).
Scope – confirmation of what activities are within Board’s purview	SKFN	Addressed at Public Hearing (October 28, 2017).
<b>Environmental Issues</b>		
Habitat – minimize impacts to fish habitat through timing of drilling	LKFN	Permit condition “Habitat Damage” minimizes habitat disturbance.
Habitat – recommend downstream fish habitat assessment	LKFN	No action taken as Project is short-term.
Habitat – risks from drilling fluids	Public, LKFN	Permit condition “Habitat Damage” and the Turbidity Monitoring Plan.
Habitat – risks from land use	Public, LKFN	Permit condition “Habitat Damage” minimizes habitat disturbance.
Habitat – risks to fish habitat from barge traffic	LKFN	Permit condition “Portable Ramps” minimizes scour.
Permafrost – general concern of degradation	DFN, LKFN, SKFN	Noted in record.
Permafrost – potential effects of sumps	LKFN	Commitment from Enbridge to assess sump locations for permafrost and mitigate through avoidance where possible (Public Hearing, October 28, 2017). See also Waste Management Plan and Closure and Reclamation Plan.
Permafrost– recommendations for risk assessment, monitoring, and protection	DFN, LKFN	Permit condition “Permafrost Protection”; and Closure and Reclamation Plan under Water Licence.

<b>Area of Concern</b>	<b>Raised By</b>	<b>How Addressed</b>
Sumps – detail on sump location (including maps), size, capacity and closure methods minimizes habitat disturbance to be provided to the Board and reviewers	SKFN	Sump locations and maps are provided in the Annual Report. Closure described at high level in the Closure and Reclamation Plan. Details on sump capacity not directly addressed, but Waste Management Plan includes community engagement on siting and construction of sumps.
Sumps – obtain community input on sump placement	DFN	Waste Management Plan includes community engagement on siting and construction of sumps.
Traditional Knowledge – implementation via proposed Dehcho Line 21 Advisory Committee	LKFN	Out of scope – MVLWB is only concerned with Line 21 Segment Replacement, not entirety of Line 21. The Board also determined that this recommendation would be more appropriately addressed through the Environmental Management Agreements between Enbridge and the communities.
Traditional Knowledge – observations of climate change	Public	Noted in record.
Traditional Knowledge – role in decision making	Public, LKFN	Water Licence Part A, Condition 1(d) requires the Licensee to make best efforts to consider and incorporate any scientific and Traditional Knowledge that is made available to them.
Water Quality and Quantity – testing; upstream and downstream sampling	LKFN	See Turbidity Management Plan.
Wildlife – importance of wildlife to way of life	Public, DFN, LKFN, SKFN	Noted in record.
Wildlife – research on inconnu and caribou	Public	Studies cited posted to Registry.
Wildlife – sharing of proponent’s historical wildlife data with communities	LKFN	Outside of jurisdiction; noted in record. Enbridge committed to share this data (Public Hearing, October 27, 2017).
Wildlife – timing of project activities to minimize impacts	LKFN, SKFN	Permit condition “Migratory Bird Disturbance”. Enbridge project schedule includes winter construction which will reduce risk of turbidity and vegetation impacts on fish and wildlife.
<b>Technical Issues</b>		
Aquatic Effects Monitoring Program (AEMP) – fairness and equity in the facilitation, development and management of an AEMP	LKFN	AEMP not required – covered by Turbidity Monitoring Plan.
Aquatic Effects Monitoring Program (AEMP) – in place prior to work activity	LKFN	AEMP not required – covered by Turbidity Monitoring Plan.

<b>Area of Concern</b>	<b>Raised By</b>	<b>How Addressed</b>
Aquatic Effects and Monitoring Program (AEMP) – request for barge types, schedules, and landing procedures	LKFN	AEMP not required. No further action.
Chemicals – notify communities if changes made in chemicals used	SKFN	Permit condition “Drilling Chemicals”; proposed changes would be posted to Registry.
Closure and Reclamation Plan – plan required	LKFN, SKFN	Covered by Licence “Part J: Conditions Applying to Closure and Reclamation”. See Closure and Reclamation Plan.
Closure and Reclamation Plan – submit to DFN for review	LKFN	Already subject to normal review by Parties through submission to Board and posting on Registry.
Closure and Reclamation Plan – suggested contents	DFN, SKFN	See Closure and Reclamation Plan.
Closure and Reclamation Plan – update draft	DFN	Final Closure and Reclamation Plan to be required of Enbridge.
Drilling Fluids – consult with communities if any changes are proposed	DFN	Permit condition “Drilling Chemicals”; proposed changes would be posted to Registry.
Drilling Fluids – risks and possible mitigations of inadvertent return	LKFN, SKFN	See Spill Contingency Plan.
Drilling fluids – use only Bentonite clay and water	LKFN	Covered by Permit condition “Drilling Chemicals”. Only chemicals identified in the Application would be used, and any change would require Board approval.
Engagement Plan – annual review	SKFN	Concern not pursued by Parties in later process - may be addressed in Environmental Management Agreements.
Engagement Plan – design and file in collaboration with Aboriginal groups	DFN, LKFN, SKFN	To be addressed in Environmental Management Agreements.
Engagement Plan – engagement log to be jointly agreed to by all Parties	SKFN	Concern not pursued by Parties in later process – may be addressed in Environmental Management Agreements.
Engagement Plan – recommend chronological tracking of concerns and how they have been addressed	DFN	Enbridge committed to detailed tracking of concerns, actions, and status (Public Hearing, October 27, 2017) and to be very specific in the engagement log (Public Hearing, October 28, 2017).
Engagement Plan – recommend including a list of triggers for engagement	LKFN	Triggers described in MVLWB Engagement Guidelines, Appendix F. Specific triggers to be finalized in Engagement Plans through discussion with affected groups.
Engagement Plan – recommend issuing a plain language annual report	SKFN	Concern not pursued by Parties in later process - may be addressed in Environmental Management Agreements.

<b>Area of Concern</b>	<b>Raised By</b>	<b>How Addressed</b>
Engagement Plan – update Plan to reflect triggers for notification related to various management plans	DFN	Concerns noted. Enbridge committed to updating the Engagement Plan that includes community input into project plans (Public Hearing, October 28, 2017).
Engagement Plan – update with greater detail (including schedule, timeline, notification triggers and process)	DFN, LKFN, SKFN	Enbridge committed to detailed tracking of concerns, actions, and status (Public Hearing, October 27, 2017) and to be very specific in the engagement log (Public Hearing, October 28, 2017).  Triggers described in MVLWB Engagement Guidelines, Appendix F. Specific triggers to be finalized in Engagement Plans through discussion with affected groups.
Heritage Resources – general concern over archaeological sites	DFN	Noted in record.
Heritage Resources – update communities in event of archaeological site disturbance	DFN	Covered by Permit condition “Site Discovery and Notification”.
Management Plans (general) – water and waste management plans need to be submitted to Dehcho First Nations for review and approval prior to Project activity commencement	LKFN	Already subject to normal review by Parties through submission to Board and posting on Registry.
Management Plans (general) – revisions should have comprehensive (not brief) summary	SKFN	Noted. See Reasons for Decision section 5.3.
Modifications to Project – recommendation to notify community if changes are made	LKFN, SKFN	Can be addressed as a trigger under the Engagement Plan. Significant changes that involved amending Management Plans would be subject to review and Board approval.
Monitoring – community-based monitoring, post-closure (recommended during decommissioning and continue for 5 years)	LKFN	(re: community-based monitoring) Not in jurisdiction. (re: post-closure monitoring) Licence Part I, standard condition requiring a Closure and Reclamation Plan. Not submitted at this time. Term of Water Licence is 5 years, which is 4 years past likely project duration.
Monitoring – community-based monitoring – recommend community monitors for leak detection system / investigation	LKFN	Out of jurisdiction.

<b>Area of Concern</b>	<b>Raised By</b>	<b>How Addressed</b>
Monitoring – community-based monitoring – recommend community monitors for permafrost investigation	LKFN	Outside of jurisdiction.
Monitoring – permafrost monitoring – design monitoring to increase understanding of permafrost regime	LKFN	Permafrost is addressed in Permit primarily through mitigation and limiting of impacts (see Permit conditions “Permafrost Protection” and “Waste Management Re-submission,” and Water Licence Part G requirements on sump construction). Response will be informed by information available at the time.
Monitoring – recommend an independent community-based monitoring program	DFN, LKFN, SKFN	Out of jurisdiction – addressed in Environmental Management Agreements.
Monitoring – recommend ground-presence for visual observations and measurement of depth to pipeline	LKFN	Out of jurisdiction – activities on Right-of-Way are regulated by NEB.
Monitoring – wildlife activity	LKFN	Outside of jurisdiction.
Noise – potential effects on wildlife	Public, DFN, SKFN	Board jurisdiction over wildlife is limited to habitat so standard conditions apply. For example, see Permit condition “Migratory Bird Disturbance”. Enbridge committed to sharing noise mitigation strategies (October 27, 2017).
Noise Management Plan – recommend including such a plan	SKFN	Board jurisdiction over wildlife is limited to habitat, so standard conditions apply. For example, see Permit condition “Migratory Bird Disturbance”. Enbridge committed to sharing noise mitigation strategies (October 27, 2017).
Permafrost – methods of mitigation	DFN, LKFN	Permafrost is addressed in Permit primarily through mitigation and limiting of impacts (see Permit conditions “Permafrost Protection” and “Waste Management Re-submission,” and Water Licence Part G requirements on sump construction). Response will be informed by information available at the time.



<b>Area of Concern</b>	<b>Raised By</b>	<b>How Addressed</b>
Project Commencement – notify communities	SKFN	Addressed in Reasons for Decision section 6.4.2. The Board notes that any notification submitted to the MVLWB would become public and posted to the MVLWB public registry. The Board also notes that this request can become a trigger for engagement through the Engagement Plan.
Reclamation and Restoration – natural revegetation is not adequate, and clearing could lead to permafrost thaw and degradation	LKFN	Board decided to apply standard condition “Natural Vegetation” based on local conditions. See rationale in MVLWB Standard Land Use Permit Conditions Template. See also Permit condition “Permafrost Protection”.
Reporting – annual report, discussion of contents	SKFN	See Licence Part B, item 11 for the requirements of the Annual Report. A description of its context is in the Reasons for Decision section 5.3.
Reporting – annual report on aquatic environment (issues and impacts)	LKFN	Already included in Annual Water Licence Report.
Reporting – increased frequency of reporting to inform decision making (i.e., more than an annual report)	SKFN	Standard reporting conditions apply given the short duration of the project. Additional engagement activity be addressed through Engagement Plan.
Reporting – water and waste management reports need to be submitted to Dehcho First Nations for review	LKFN	Already included in Annual Water Licence Report; subject to normal review by Parties through submission to Board and posting on Registry.
Secondary Containment – definition required	DFN	Definition provided in Land Use Permit.
Security – estimate should address fairness and equity to values and consider changes to way of life	LKFN	See Reasons for Decision, Appendix 2.
Security – recommendation that Enbridge conduct an estimate of security using the RECLAIM Model	SKFN	Security estimate based on RECLAIM; see Reasons for Decision, Appendix 2.
Sediment and Erosion Control Plan – recommend inclusion of such a plan, to minimize impacts to environment and wildlife	LKFN	Already included in draft and final Water Licence.

<b>Area of Concern</b>	<b>Raised By</b>	<b>How Addressed</b>
Sediment and Erosion Control Plan – recommend that conditions be applied regarding water and waste management, including soil and erosion control management plans cited in the NEB Conditions for Approval and advanced by Dehcho First Nations	LKFN	Out of jurisdiction - NEB process is separate from MVLWB process. Additionally, no further comment was received on conditions during Written Closing Arguments.
Spill Contingency Plan – need a regionally relevant and coordinated emergency response	LKFN	Spill Contingency Plan is a standard condition in both the Permit and Licence.
Spill Contingency Plan – outline risks and details associated with drilling	LKFN, SKFN	Included in Spill Contingency Plan.
Spill Notification – communities to be updated in event of spill, and/or in follow-up	DFN, LKFN, SKFN	Already covered by Licence “Part I: Conditions Applying to Spill Contingency Planning” and Permit Condition “Report Spills” – spill notifications would be posted to Registry.
Turbidity Monitoring Plan – would support GNWT’s recommendation of a Turbidity Management Plan	SKFN	Turbidity Monitoring Plan has been included as a condition of the Licence for Board approval.
Waste Management Plan – a detailed revised plan is required before site planning/reconnaissance is complete	SKFN	Enbridge agreed to submit a Waste Management Plan to be posted prior to commencement of drilling.
Waste Management Plan – include analysis of alternatives to on-site disposal	SKFN	Included in draft Waste Management Plan.
Waste Management Plan – recommend groundwater monitoring near sumps	SKFN	Groundwater monitoring not required due to the nature of drilling fluids proposed for on-site disposal.
Waste Management Plan – obtain Aboriginal input / review	LKFN	Already subject to normal review by Parties through submission to Board and posting on Registry.
Water Quality – detailed Water Quality Monitoring plan that will be in place prior to any work activities	LKFN	Addressed in current version of Turbidity Monitoring Plan.
Water Quality – general concern regarding effects on downstream water quality	Public, DFN, LKFN, SKFN	Addressed in current versions of Water Licence conditions, Waste Management Plan, Spill Contingency Plan, and Turbidity Monitoring Plan.
Waste Management Plan – (re: drilling waste) provide assessment of options for removing drilling waste from site vs. using sumps	SKFN	Information provided in current version of Waste Management Plan.

<b>Area of Concern</b>	<b>Raised By</b>	<b>How Addressed</b>
Waste Management Plan – (re: drilling waste) recommend removal of drilling waste from site	DFN, LKFN	Current version of Waste Management Plan addresses options for drilling waste. Waste will be removed from site if waste does not meet criteria.
Water and Waste Management – potential risks of hydrostatic testing	SKFN	Enbridge clarified that water would not come into contact with oil and discharge should be similar to river water. Information on discharged water to be provided to Inspector per Licence Part G.
Water and Waste Management – schedule and report of water usage	LKFN	Addressed in Licence Part B, requirement of Annual Report.
<b>Socio-economic Issues</b>		
Accommodation – capacity funding	LKFN, SKFN	Out of jurisdiction.
Accommodation – long-term relationship agreement	LKFN	Out of jurisdiction – addressed in Environmental Management Agreements.
Accommodation – Environmental Management Committee for entire Line 21	LKFN	Out of jurisdiction – addressed in Environmental Management Agreements.
Accommodation – royalty and revenue sharing agreement	LKFN	Out of jurisdiction – addressed in Environmental Management Agreements.
Economic Concern – effects of development	Public, DFN, LKFN	Out of jurisdiction.
Economic Concern – hiring of local Aboriginal workers and companies	DFN, LKFN, SKFN	Out of jurisdiction.
Economic Concern – mitigation of effects of development on local harvesters and land users	LKFN	Out of jurisdiction – addressed in LKFN Process Agreement.
Social Concern – contents of Indigenous Awareness Training by Enbridge	DFN	Out of Jurisdiction.
Social Concern – define Code of Conduct for Enbridge employees	DFN	Outside of jurisdiction. Enbridge committed to make this information available to the Board for review (Public Hearing, October 27, 2017).
Social Concern – impact to community from temporary workers	DFN, LKFN, SKFN	Out of jurisdiction – addressed in Environmental Management Agreements.
Social Concern – recommend forming a Women’s Advisory Panel	DFN, LKFN, SKFN	Out of jurisdiction – addressed in Environmental Management Agreements.

Area of Concern	Raised By	How Addressed
Other Issues		
Consultation – allowing a supplementary submission would assist the Board in ensuring its constitutional obligation to consult and accommodate affected Aboriginal groups	LKFN	Agreed – LKFN allowed to submit supplementary submission on Indigenous Knowledge and Land Use in advance of the Public Hearing.
Consultation – Boards are responsible for fulfilling the duty of the Crown to consult	SKFN	Agreed – see Reasons for Decision section 4.2.
Consultation – history of concerns communicated to Enbridge and/or Crown	SKFN	Out of jurisdiction.
Consultation – insufficient engagement by proponent	LKFN	Out of jurisdiction.
Cumulative Effects – impacts arising from project	LKFN	Out of jurisdiction.
Inspections – notify community of frequency/schedule	SKFN	Out of jurisdiction – however, general schedule discussed by GNWT at Public Hearing (January 8, 2018).
Land Access – possible negative effects to local Aboriginal families	Public, LKFN	Out of jurisdiction.
Land Access – risk of general public access to community members’ properties via project area	Public	Noted in record.
Land Access – update easement agreement with Enbridge	LKFN	Out of jurisdiction (GNWT process).
Mobilization of equipment – effects on community members, harvesting	LKFN	Out of jurisdiction. Permit conditions limit equipment on site, but do not directly regulate economic impacts on land users. Ancillary effects of equipment use that could affect land use are addressed through conditions related to noise, spills, impacts to habitat, etc.

## Appendix 2: Reclamation Security

### Introduction

This appendix provides a detailed explanation of how the Board arrived at the reclamation security as discussed in the main body of the Reasons for Decision (sections 5.4 and 6.4) and required by conditions in the Licence and Permit. The Board required the posting of reclamation security deposits for the off Right-of-Way activities associated with the Line 21 Segment Replacement Project (the Project) as presented in Table A-1.

**Table A-1. Total Security Deposits Required for the Project**

	<b>Cost</b>	<b>Land Liability</b>	<b>Water Liability</b>
<b>TOTAL COSTS</b>	<b>\$860,000</b>	<b>\$525,000</b>	<b>\$335,000</b>

### Reclamation Security Estimates – Evidence Submitted to the Board

Enbridge completed the Land Use Permit Security Worksheet with the Application and determined a total security of \$98,115.50.<sup>138</sup> During the review of the Applications, GNWT noted that a RECLAIM model for Oil and Gas related activities should have been used to calculate security for this project. The GNWT recommended that Enbridge conduct an estimate of security using the RECLAIM Model v.7.0 (Oil and Gas Version) and to provide all supporting information and associated rationale needed to complete the estimate.

In their intervention the GNWT stated that discussions had taken place between themselves and Enbridge regarding the amount of security that should be required to cover project-related liabilities (attached).<sup>139</sup> Due to the technical nature of the RECLAIM Model, the GNWT agreed to conduct an initial estimate of liability and share it with Enbridge for review and discussion. In a response, Enbridge indicated a general agreement with the draft estimate, with some minor areas of difference.<sup>140</sup> At that time, the GNWT recommended a total of \$863,402 be required for the undertaking (\$525,851 for land liability and \$337,551 for water liability).

During the January 8, 2018 reconvened Public Hearing, Board staff asked GNWT some clarification questions regarding the amount of security being recommended and some of the line items within the RECLAIM Model. In their closing arguments, the GNWT amended their recommendation on security based on the new information provided during the Public Hearing, as well as through discussions with Enbridge following the Public Hearing.<sup>141</sup> The amended recommended security total is now \$856,835 (\$522,909 for land liability and \$333,926 for water liability).

A breakdown of GNWT's security estimate is shown in Table A-2.

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<sup>138</sup> See [Draft Security Estimate Provided by Enbridge, dated April 21, 2017](#)

<sup>139</sup> See [GNWT Intervention, dated September 29, 2017](#)

<sup>140</sup> See [Enbridge Responses to Interventions, dated October 13, 2017](#)

<sup>141</sup> See [GNWT Closing Arguments with an updated RECLAIM Model, dated January 12, 2018](#)

**Table A-2. GNWT Security Estimate Calculation**

Capitol Cost Item	Component	Cost	Land Liability	Water Liability
Wells and Facilities		\$0	\$0	\$0
Buildings and Equipment		\$388,605	\$242,803	\$145,803
Chemicals and Contaminated Soil Management		\$51,186	\$25,593	\$25,593
Surface and Groundwater Management		\$0	\$0	\$0
Interim Care and Maintenance		\$0	\$0	\$0
Subtotal: Capital Costs		\$439,791	\$268,396	\$171,396

Indirect Cost Item	Component	Cost	Land Liability	Water Liability
Mobilization/Demobilization		\$225,310	\$137,502	\$87,808
Post-Closure Monitoring and Maintenance		\$51,000	\$31,124	\$19,876
Engineering	5%	\$21,990	\$13,420	\$8,570
Project Management	5%	\$21,990	\$13,420	\$8,570
Health and Safety Plans/Monitoring & QA/QC	1%	\$4,398	\$2,684	\$1,714
Bonding/Insurance	1%	\$4,398	\$2,684	\$1,714
Contingency	20%	\$87,958	\$53,679	\$34,279
Market Price Factor Adjustment	0%	\$0	\$0	\$0
Subtotal: Indirect Costs		\$417,043	\$254,513	\$162,530
<b>TOTAL COSTS</b>		<b>\$856,835</b>	<b>\$522,909</b>	<b>\$333,926</b>

In Enbridge’s closing arguments, they did not provide any further comments for or against the security estimate that the GNWT provided.<sup>142</sup>

<sup>142</sup> See [Enbridge Closing Arguments, dated January 17, 2018](#)