



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

PRE-HEARING CONFERENCE [For Reconvened Public Hearing]

Enbridge Pipelines (NW) Inc.

Off Right of Way activities for the maintenance of the Norman Wells (Line 21) pipeline
 Water Licence and Land Use Permit Applications
 (MV2017L1-0002 & MV2017P0013)

Date:

November 22, 2017, 10:00 am – 12 noon MST (adjourned at 10:47am)

Location:

Mackenzie Valley Land and Water Board (MVLWB), Board Room, Yellowknife, NT (or by teleconference)

Please refer to agenda attached at the end of this document.

Attendance:

Shelagh Montgomery	MVLWB	Executive Director	in person
Chris Hotson	MVLWB	Regulatory Manager	in person
Angela Plautz	MVLWB	Senior Regulatory Policy Advisor	in person
Angela Love	MVLWB	Regulatory Specialist	in person
David Finch	MVLWB	Regulatory Specialist	in person
Arusa Shafi	GNWT Lands	Project Assessment Analyst	in person
Tamika Mulders	GNWT Lands	Project Assessment Analyst	in person
Laurie McGregor	GNWT ENR	Environmental Assessment Analyst	in person
Rohan Brown	GNWT Justice	Legal Counsel	in person
John Donihee	MVLWB	Legal Counsel	by telephone
Johnny Lennie	GNWT ITI	Manager, Oil and Gas Planning	by telephone
Kyle Christensen	GNWT Lands	Resource Management Officer II	by telephone
Jarret Hardisty	GNWT Lands	Manager, Resource Management	by telephone
Carrie Breneman	Dehcho First Nations	Environmental Consultant	by telephone
Sarah McKenzie	Enbridge Pipelines (NW) Inc.	Manager, Regulatory Affairs	by telephone
Duncan Purvis	Enbridge Pipelines (NW) Inc.	Legal Counsel	by telephone
Ramona Salamucha	Enbridge Pipelines (NW) Inc.	Legal Counsel	by telephone
Lorraine Land	Liidlii Kue First Nation	Legal Counsel	by telephone
Dieter Cazon	Liidlii Kue First Nation	Lands & Resources Staff	by telephone
Jessica Jumbo	Sambaa K'e First Nation	Environmental Coordinator	by telephone



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Meeting convened at 10:00 am.

1. MVLWB staff opening comments

- Shelagh Montgomery (MVLWB) opened the conference and noted it was not technical, but logistical in nature.
- The Public Hearing will reconvene on January 8-9, 2018, at the community hall in Fort Simpson. Hours will be 9am-5pm on January 8 with an evening session from 7pm-9pm, and 9am-2pm on January 9.
- A teleconference line will be available. Participants should notify Angela Love (MVLWB) if they expect to use it.

2. Roundtable introductions

Nine people were attended in person and 11 joined by telephone (see attendance list above).

3. Hearing structure, format, and representation

- Shelagh Montgomery (MVLWB) provided information on the reconvened Public Hearing’s format. She confirmed that it will be held in Fort Simpson at the Community Hall, on January 8 and 9, 2018. Day 1 is expected to run from 9am-5pm, with a public session from 7pm-9pm. Day 2 is planned for 9am-2pm.
- A teleconference line will be available; please contact Angela Love (MVLWB) if anticipating you will need the line (which will be available for call-in and listening purposes). If anything changes regarding teleconference needs or in-person attendance, please let Angela Love know prior to the Hearing.
- The parties outlined how many people they expected to bring to the reconvened Public Hearing and the estimated lengths of their presentations (see table below).

Party	Expected number of participants?	Expected time required for presentation?	Notes
GNWT	2 – from ITI 3-4 – From Lands 3 – ENR 1 - Legal	~30 min	- Will need a phone line for Wildlife biologist - Not expected to cross examine (brief if they do)
LKFN	7 presenters (TK, elders, fish/aquatics and permafrost expert, lawyer)	~90 min	- May need the phone line for experts - Questions for the GNWT (~45-60 min)
DFN	2 people	~20-30 min	- Questions for the GNWT - May have clarification questions to LKFN or SKFN



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SKFN	5 people	~45-60 min	- Not anticipating any questions to other parties (but some may come up)
Enbridge	6 people	n/a	- Not anticipating any questions to other parties (but some may come up)

- The format of the Public Hearing will follow MVLWB Rules of Procedure (available online at <https://mvlwb.com/sites/default/files/mvlwb/documents/Final%20Rules%20of%20Procedure%20Jan%2014%202004.pdf>).
- A directive was issued by the Board on November 20, with expectations for the reconvened Hearing and the Work Plan. The Board requested that Parties’ comments and questions focus on activities that fall within its scope. The directive also set out the order of presentations at the Public Hearing. The order of presentations at the reconvened Public Hearing will be: GNWT, DFN, SKFN, LKFN.¹
- GNWT, DFN, and SKFN were given the opportunity to revise their presentations following the late submission of the LKFN traditional land use study. A reminder was given that no new written evidence would be accepted at the reconvened Hearing.
- The Board predicts that the reconvened Public Hearing will close at the end of Day 2, following oral closing arguments by the Parties.
- Lorraine Land (LKFN counsel) expressed concern re: length of oral closing and lack of submission of written closing arguments, linking this to issues of procedural fairness and legal implications for Aboriginal consultation. She added that oral presentations do constitute evidence, so she questioned the statement in the directive referring to “no new evidence.” She asked if it was possible for the Board to reconsider its position on closing arguments.
 - John Donihee (MVLWB counsel) replied that the omission was in relation to comments about new evidence. The Board will not accept new written evidence, but it understands that oral evidence will be considered new as it is introduced. The Board’s concern is to avoid the last-minute filing of documents as it is under tight timelines due to statutory requirements. The hope was that oral arguments would be brief. To help planning, he asked the Parties how long they anticipated needing for cross-examination.
 - Tamika Mulders (GNWT) – GNWT does not expect to cross examine but may do so based on the discussion around presentations.
 - Carrie Breneman (DFN) – DFN will have questions for GNWT; questions for SKFN and LKFN were not planned but might involve clarification (and would likely be few in number).

¹ Note that Enbridge made its presentation at the October 27-28, 2017 Hearing. DFN then submitted questions for Enbridge following the Public Hearing, to which Enbridge responded on November 21.



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- Jessica Jumbo (SKFN) – SKFN did not anticipate having many questions.
- Lorraine Land (LKFN) – LKFN’s questions for GNWT would take about 45-60 minutes. If there was no opportunity for written final arguments or expanded oral closing arguments, more time would be devoted to cross examination. She suggested that the Board consider the submission of written final arguments very shortly following the Hearing, so that oral closing could be succinct.
 - Shelagh Montgomery (MVLWB) confirmed that MVLWB had discussed this internally.

NOTE FROM BOARD STAFF: Following the Pre-Hearing Conference, the Board decided to allow oral closing arguments of 30 minutes duration, followed by the submission of written closing arguments by 5:00 PM January 12, 2018.

- Duncan Purvis (Enbridge counsel) – Enbridge was not likely to have many questions, though this depended on the presentations made. He asked if there were any barriers to cross examination of non-adverse parties, or discouragement of “sweetheart” cross examination.
 - John Donihee (MVLWB counsel) responded that the Board did not generally allow “sweetheart” cross examination to go on very long, but the Board’s process is not rigid. Parties may cross examine each other as long as it’s reasonable. He added that the extra 2 days of Hearing time are happening because the Board responded positively to requests for latitude in cross examination. He anticipated that the Parties will cooperate going forward. Longer oral closing arguments with written submissions could be an option, and he could work with Shelagh Montgomery to bring this to the Board.
- Shelagh Montgomery (MVLWB) stated that staff will draft an agenda for the reconvened Public Hearing following this call. An opportunity may exist for closing arguments to exceed 5 minutes, depending upon how full the agenda looks. She added that a final agenda was expected to be available around December 1.
- Laurie McGregor (GNWT) asked if there was any chance of the reconvened Public Hearing going beyond 2pm on Day 2.
 - Shelagh Montgomery (MVLWB) responded that the Board’s schedule would not allow it.
- The MVLWB will allow outside parties to cross examine intervenors. The Chair will monitor the cross examination and can intervene if necessary.
- Laurie McGregor (GNWT) noted that the directive allowed for 30-minute rounds of questions from each Party. She indicated that a single round was acceptable if it saved time.



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- Shelagh Montgomery (MVLWB) said that they would look into it. The use of rounds arose on the spot in October to work through timing issues.

4. Procedural and legal details

- John Donihee (MVLWB counsel) stated that no new legal or procedural issues had been raised. If any came up it would be appreciated to hear of them promptly. The Public Hearing will be run in a similar manner as the one in October.
- Laurie McGregor (GNWT) asked when the legislated 9-month timeline ended to submit the Water Licence to the Minister of Environment and Natural Resources. According to the work plan, the tentative date for a draft Water Licence to be sent to the Minister is January 30, 2018. She asked if MVLWB expected to need an extension. If a request was forthcoming, advance notice would be appreciated.
- Rohan Brown (GNWT counsel) encouraged the Board to examine carefully if the proposed dates fell within the 9-month timeline.
 - Shelagh Montgomery (MVLWB) stated that Board staff were tracking the timeline. Her understanding was that the target window was in the first two weeks of February. If an extension was needed then the MVLWB would let GNWT know.
- Rohan Brown (GNWT counsel) stated that he would share with MVLWB the process that GNWT used to determine the date.

NOTE FROM BOARD STAFF: Following the Pre-Hearing Conference, Board staff received an e-mail from GNWT outlining their interpretation of how the legislation sets out when the “clock stops” during the 9 months for a water licence proceeding. That interpretation differs from that of the Land and Water Boards. Based on Board staff’s tracking of the file, on the day of the Pre-Hearing Conference, we were at Day 183 in the proceeding. Board staff intend to follow up with GNWT on interpretation of section 50 of the *Waters Act*.

5. Next steps in Process / Review of Updated Work Plan

- Shelagh Montgomery (MVLWB) stated that the final Public Hearing agenda was expected to be circulated to Parties on December 1, 2017.
- There is an opportunity for GNWT, DFN, and SKFN to update their presentations. The deadline to do so is December 4. Presentations should be provided in PDF and PowerPoint formats. The revised presentations must be accompanied by an explanatory cover note, and changes limited to reflecting the traditional land use information introduced by LKFN.
- The reconvened Public Hearing is scheduled for January 8-9, 2018, at the Fort Simpson community hall (the same venue as the October Hearing).



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- Any undertakings resulting from the Public Hearing will likely be due during the week of January 10-16, 2018.
- The Board anticipates making its decision by the end of January 2018. At that time the Water Licence will be sent to the Minister for review and decision.

6. Revisions to presentations

- Carrie Breneman (DFN) noted that it was clear at the October Public Hearing that the Board wanted Parties' comments directed specifically to conditions in the Water Licence and Land Use Permit. DFN was planning to adjust its presentation to reflect this focus and asked if this was acceptable.
 - Shelagh Montgomery (MVLWB) responded that it was acceptable to do so.

7. General questions

- Sarah McKenzie (Enbridge) observed that on the scope of activities laid out in the directive, the Horizontal Directional Drilling (HDD) south exit was not listed as being on the right-of-way. However, at the October Public Hearing it was stated that the HDD exit would be on the right-of-way.
 - Shelagh Montgomery (MVLWB) noted that the correction would be made by staff.

Adjourned @10:47 am



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Water Licence and Land Use Permit Applications
(MV2017L1-0002 & MV2017P0013)**

Date:

November 22, 2017, 10:00 am – 12 noon MST

Location:

Mackenzie Valley Land and Water Board, Board Room, Yellowknife, NT (or by teleconference)

Teleconference Details:

1-866-512-0904 (call-in number)

6103809 (participant code)

Purpose:

The purpose of the Pre-Hearing Conference is to allow parties to better understand the Hearing process and to provide clarity on the issues that will be discussed at the Public Hearing when it resumes on January 8 and 9, 2018. Traditionally, this meeting is attended, in-person or by conference call, by both Interveners and their legal counsel.

Parties should be prepared to discuss the following:

- Any preliminary legal issues or matters of clarification that parties feel the Board should address before the Hearing is reconvened;
- A list of topics that your party will address in your evidence;
- A list of representatives who will be presenting; and
- An indication of how much time you will need to present your intervention.

Please note that no new evidence will be admitted or introduced at the Public Hearing.

Agenda:

The meeting will follow the following agenda topics:

	Topic
1.	MVLWB staff opening comments
2.	Roundtable introductions
3.	Hearing structure, format, and representation
4.	Procedural and legal details
5.	Next steps in Process / Review of Updated Work Plan
6.	Revisions to presentations
7.	General questions