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Staff Report

Applicant: Government of the Yukon – Department of Highways and Public Works	
Location: Yukon/NWT Border to Inuvik	File Number: MV2019L8-0013 & MV2019X0027
Date Prepared: October 24, 2019	Date of Board Meeting: November 21, 2019
Subject: Transboundary Determination and Further Studies Required	

1. Purpose

The purpose of this Report is to present to the Mackenzie Valley Land and Water Board (MVLWB/the Board) a request that the Board confirm the project is transboundary as outlined in the Boards Governance Policy, as well as consider that further studies or investigations be made for the Government of the Yukon – Department of Highways and Public Works Land Use Permit (Permit) Application MV2019X0027 as per paragraph 22(2)(b) of the Mackenzie Valley Land Use Regulations.

2. Background

- October 3, 2019 – Applications received;
- October 15, 2019 – Applications deemed complete and distributed for review;
- October 24, 2019 – Request submitted by the Gwich'in Renewable Resources Board to extend the comment and recommendation submission date;
- October 24, 2019 – Board staff granted the extension to the comment deadline and notification to all the distribution list that the date has changed;
- November 14, 2019 – Comments and recommendations submitted by reviewers; and
- **November 21, 2019 – Further Study Required request presented to the Board and responses due from the Government of the Yukon – Department of Highways and Public Works;**
- November 25, 2019 – end of 42-day timeline.

3. Discussion

On October 3, 2019, the Government of the Yukon – Department of Highways and Public Works submitted applications for the Dempster Fibre Project (DFP), that will see the construction of an approximately 800-km fibre optic line from Dawson City, Yukon, to Inuvik, Northwest Territories. For the purposes of the Land Use Permit and Water Licence application, the project is defined as the section of the DFP located in the Northwest Territories.

The fibre optic cable will enter the Northwest Territories at the Yukon/Northwest Territories border and then travel approximately 271 km north to Inuvik. The project is located entirely within the Gwich'in Settlement Area (GSA), passing through the communities of Fort McPherson and Tsiigehtchic.

MV2019X0027 – Government of the Yukon – Department of Highways and Public Works – 22(2)(b) – Transboundary Determination

Project Components:

- Fibre optic cable and conduit to be installed adjacent to the Dempster Highway along the Right of Way, extending from the Yukon border to Inuvik; and
- Handholes along the route.

The project will connect to an existing terminal facility in Inuvik and to existing buildings in communities along the route to provide service to those communities.

Construction and operation of the project will require the following supporting activities:

- Geotechnical drilling to supplement any potential gaps or unknown conditions that are encountered;
- Use of pre-existing staging areas for equipment and materials (up to five staging areas may be used at one time);
- Construction of temporary camps to accommodate work crews;
- Clearing of vegetation as required in the right of way;
- Installation of conduits and fibre optic cable; and
- Ongoing operations and maintenance.

Eligibility

The Government of the Yukon has been working with the Government of the Northwest Territories, Department of Lands and the Department of Infrastructure. In the application, two letters were provided from the GNWT indicating that they are in support of the project and that they are willing to work with the Government of the Yukon.

Type of Area

This Project is located in a non-federal area.

Transboundary Project

As outlined in the MVRMA as well as the Board Governance Policy, a transboundary development is one that:

- a) is proposed in more than one area, either a management area or outside any management area, and is sufficiently connected to proposed or existing development activities in a different area, through interdependence or linkage, to be considered as one entity; or
- b) is proposed for one area, either a management area or outside of any management area, is likely to have an impact in a different area.

When considering if a project is transboundary, decisions are required relating to the interdependence as well as the linkage that the project has to the different management areas.

Interdependence is defined as a development that is located, or is to be located, either within a management area or outside of a management area, but the development could not proceed without the use of land or water located in a different area or a deposit of waste is to happen in a different area.

Linkage is determined if the development is to use land or waters or deposit of waste within one management area, or outside a management area where the undertaking is to use land or water within a different area is inevitable or a deposit of waste within a different area is inevitable.

It is Board staff opinion that this application is transboundary (application attached). The interdependence is that the activities cannot be completed without crossing from the Yukon into the Gwich'in Settlement Area.

Term

The Yukon Government has applied for a term of 5 years.

Comments

Triggers

The activities as described trigger a Type A permit as per with paragraph 4(a) and (b) of the Mackenzie Valley Land Use Regulations:

- (4) No person shall, without a Type A permit, carry on any activity that involves*
 - (a) on land outside the boundaries of a local government,*
 - (ii) the use of a vehicle or machine of a weight equal to or exceeding 10 t, other than on a road or on a community landfill, quarry site or airport,*
 - (iii) the use of a single container for the storage of petroleum fuel that has a capacity equal to or exceeding 4 000L,*
 - (iv) the use of a self-propelled motorized machine for moving earth or clearing land.*
 - (v) the leveling, grading, clearing, cutting or snowploughing of a line, trail or right-of- way, other than a road or existing trail to a building, that exceeds 1.5 m in width or 4 ha in area, for the purpose other than the grooming of recreational trails; or*
 - (b) On land within or outside the boundaries of a local government,*
 - (i) The use of motorized earth-drilling machinery the operating weight of which, excluding the weight of drill rods, stems, bits, pumps and other ancillary equipment, equals or exceeds 2.5 t, for a purpose other than the drilling of holes for building piles or utility poles or the setting of explosives within the boundaries of the local government,*
 - (ii) The use of a campsite outside a territorial park for a duration of or exceeding 400 person-days,*

In support of the Application, the Government of the Yukon has submitted a type B water licence application.

4. Public Review

On October 23, 2019, the Gwich'in Renewable Resources Board (GRRB) requested that additional time be granted to reviewers to complete a full review of the applications submitted by the Government of the Yukon – Department of Highways and Public Works. On October 24, 2019, Board staff granted the request for extension as Board staff rely fulsome input from all stakeholders in preparing recommendations for the Boards consideration.

With the extension being granted, the response submission date has been adjusted to allow the Government of the Yukon – Department of Highways and Public Works ample time to respond in a fulsome manner.

5. Security

n/a

6. Conclusion

The comments and recommendations from reviewers along with the responses from the Government of the Yukon are a necessary part of the application process as they assist in the completion of the preliminary screening as well as the formation of the conditions.

7. Recommendation

Board staff recommend the Board:

- a) **Make a determination that the Application for Land Use Permit MV2019X0027 and Water Licence MV2019L8-0013 submitted by the Government of the Yukon – Department of Highways and Public Works are transboundary.**
- b) **Invoke paragraph 22(2)b) of the Mackenzie Valley Land Use Regulations to allow for additional time to gather information respecting the lands proposed to be used in the land use operation.**

A draft decision letter is attached.

8. Attachments

- [Land Use Permit MV20190027](#)
 - [Land Use Permit Application](#)
- [Water Licence MV2019L8-0013](#)
 - [Water Licence Application](#)
- Documents that Apply to Both the Land Use Permit Application and Water Licence Applications
 - [Project Description Report](#)
 - [Waste Management Plan](#)
 - [Spill Contingency Plan](#)
 - [Engagement Plan and Log](#)
- [Comment Extension Request from the Gwich'in Renewable Resources Board](#)
- Draft Decision Letter from the Board

Respectfully submitted,



Tyree Mullaney
Regulatory Specialist