



7th Floor - 4922 48th Street,
P.O. Box 2130, Yellowknife NT X1A 2P6

Tel: 867-669-0506 Fax: 867-873-6610
www.mvlwb.com

Reasons for Decision

Issued pursuant to paragraph 40(2)(c) of the Mackenzie Valley Land Use Regulations (MVLUR)

Land Use Permit Application	
File Number	MV2020L0014
Company	Northwestel Inc.
Project	Communications Sites
Location	Paterson Lake, Brown Lake, Mackay Lake, Courageous Lake, and Anarin Lake, NT
Date of Decision	January 21, 2021

These Reasons for Decision set out the Mackenzie Valley Land and Water Board's (the Board or MVLWB) regulatory process and decisions on an Application made by Northwestel Inc. (Northwestel or Permittee) to the Board on October 26, 2020 for Land Use Permit (Permit) MV2020L0014.

1.0 Summary of Application

On October 26, 2020, Northwestel submitted a new Permit Application, MV2020L0014, for five microwave repeater stations.¹ These repeater stations are located near Paterson Lake, Brown Lake, Mackay Lake, Courageous Lake, and Anarin Lake (covered by Permits MV2013L0015 and MV2016L0034). Each site, approximately one hectare in size, has a tower, two pre-fabricated buildings, and two 13,600 L double wall fuel tanks. This new Permit will allow for the continuation of operation and maintenance of these sites.

2.0 Outline of Regulatory Process

The Application was deemed incomplete on November 5, 2020.² Additional information was submitted on November 30, 2020.³ On December 10, 2020, Northwestel's Application was distributed to the Distribution List for public review on the Online Review System (ORS). As part of the public review, Board staff requested comments and recommendations to assist with the Board's preliminary screening determination.

By January 4, 2021, comments and recommendations regarding the Application were received from the following Parties: Government of the Northwest Territories (GNWT)-Department of Lands (Lands)

¹ See Land Use Permit MV2020L0014 Application ([hyperlink](#)), dated October 26, 2020.

² See MLWB Letter – Application Incomplete ([hyperlink](#)), dated November 5, 2020.

³ See Land Use Permit MV2020L0014 Application with Additional Information ([hyperlink](#)), dated November 30, 2020.

Inspector, GNWT-Lands Regional Office, GNWT-Prince of Wales Northern Heritage Centre (PWNHC), and Board staff.⁴ By January 11, 2021, Northwestel responded to Parties' comments.

On January 21, 2021, the Board met to make decisions regarding the Application. These decisions and related reasons are described below.

3.0 Legislative Requirements

This Project is subject to the MVRMA and the MVLUR. The proposed use of land for this Project is of a nature contemplated by the MVRMA. Accordingly, the Board has jurisdiction to issue this Permit as per subsection 59(1) and section 102 of the MVRMA.

In conducting its regulatory process for the Application as described above, the Board has ensured that all applicable legislative requirements have been satisfied, as required by section 62 of the MVRMA and as outlined in the subsections below. The Board has considered the people and users of the land and water in the Mackenzie Valley, and any Traditional Knowledge and scientific information that was made available to the Board during this regulatory proceeding, as per section 60.1 of the MVRMA.

3.1 Consultation and Engagement

In exercising its authority under the MVRMA, the Board must consider the importance of conservation to the well-being and way of life of Indigenous peoples of Canada, as per subsection 60.1(a) of the MVRMA, specifically those to whom section 35 of the *Constitution Act, 1982*, applies and who use an area of the Mackenzie Valley. Accordingly, the Board works with applicants, affected parties (including Indigenous governments and organizations), 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.

The Board's requirements for engagement are set out in the *Engagement and Consultation Policy* (the Policy).⁵ The Policy was developed to ensure that the Board's obligations for achieving meaningful consultation (as set out by land claims and applicable legislation) with all affected parties, including Indigenous groups in the Mackenzie Valley, are met and engagement and consultation results clearly articulated.

3.1.1 Engagement and Public Notice

The Applicant's engagement efforts are detailed in the Engagement Plan (Version 1) and Record,⁶ submitted with the Application. The Board has approved the Applicant's Engagement Plan (Version 1), and the Board's reasons for this decision are described below in Section 6.4. Following issuance, the Applicant must continue engagement efforts as outlined in the approved Engagement Plan (Version 1) and as required in the Permit.

The Application was posted to the Board's Public Registry and distributed through the ORS. As the Project is located in the Akaitcho Region and the Wek'èzhii Resource Management Area, the appropriate organizational reviewers, governments, First Nations, and Indigenous organizations

⁴ See Review Comment Summary Table – Application ([hyperlink](#)), dated January 11, 2021.

⁵ See www.mvlwb.com à Resources à Policies and Guidelines: MVLWB Engagement and Consultation Policy ([hyperlink](#)), (June 1, 2013).

⁶ See Land Use Permit MV2020L0014 Application with Additional Information ([hyperlink](#)), dated November 30, 2020.

were included in the Distribution List.⁷ The Distribution List was used throughout this regulatory process to circulate submissions, information, and updates relevant to the proceeding; the List was periodically updated, and (when requested) individuals with specific interests in the Project were added.

The Board is satisfied that notice of and access to copies of the Application was given to fulfill sections 63 and 64 of the MVRMA, and that a reasonable amount of time was given for participation in this regulatory process by making submissions to the Board.

3.2 Eligibility

The Board is of the opinion the Applicant's satisfactorily fulfills the eligibility requirements set out in paragraph 18(b) of the MVLUR. No issues were raised regarding eligibility during the regulatory process. The proposed activities and uses of land are of a nature contemplated by the MVRMA.

3.3 Land Use Fees

The application fee of \$150.00 was submitted as set out in section 19 and Schedule 1 of the MVLUR.⁸

3.4 Time Limit

In the case of a Type A permit, section 22 of the MVLUR requires the Board to make its decision within 42 days after the application was deemed complete. As outlined in Section 1 and 2 above, the Board is satisfied it has fulfilled this requirement.

4.0 Preliminary Screening

On January 21, 2021, the Board met and confirmed the activities associated with the Application was exempt from preliminary screening based on Part 1, Schedule 1, Section 2 (a and b) of the *Exemption List Regulations* to the MVRMA. Consequently, no further preliminary screening was conducted.

5.0 Analysis of Adequacy of Plans

A Waste Management Plan, Spill Contingency Plan, and Engagement Plan were included with the Application.

The Waste Management Plan, Spill Contingency Plan, and Engagement Plan meet applicable guidelines and sufficiently reflect the scope of the proposed activities.

6.0 Decision

In making its decision and preparing these Reasons for Decision, the Board has reviewed and considered:

- 1) The evidence and submissions received by the Board from the Applicant;
- 2) The comments and recommendations, evidence, and submissions received by the Board from Parties during the regulatory process; and
- 3) The Staff Report prepared for the Board.

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 MV2020L0014 should

⁷ To access the Distribution List, use the hyperlink in the Review Comment Summary Table – Application ([hyperlink](#)), dated December 10, 2020.

⁸ See Application Fee ([hyperlink](#)), dated January 19, 2021.

be issued, subject to its scope, defined terms, conditions, and term, which has 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.

Many of the conditions the Board has included in the Permit are from the MVLWB *Standard Permit Conditions Template* (Standard Permit Conditions)⁹, which includes general rationale for each standard condition. The Standard Permit Conditions have been established by the Land and Water Boards (LWBs) based on information from LWB policies and guidelines, other applicable guidelines and best practices, meetings with Inspectors, input from LWB staff, and feedback from a public review. Each standard condition has been evaluated against the following five characteristics of an ideal condition as laid out in the MVLWB *Standard Process for New Conditions*:¹⁰

- Clearly part of LWBs' authority;
- Has a clear purpose and rationale;
- Is practical and enforceable;
- Matches the scale of the project; and
- Does not conflict with existing legislation (i.e. is not less stringent).

As such, standard conditions are not discussed in detail in these Reasons for Decision except as they specifically relate to concerns or recommendations raised during this regulatory process. The Board's reasons for developing and including project-specific conditions are detailed below.

6.1 Term of Permit

Northwestel has applied for a term of 5 years for the Permit. 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 for the Permit 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 and which have been subject to Part 5 of the MVRMA. 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.

6.3: Part B: Defined Terms

The Board defined certain terms 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. The definitions are consistent the Standard Permit Conditions.

6.4 Part C: Conditions Applying to All Activities

Standard conditions are not discussed in detail. Any changes from the Draft Permit Conditions, relate to concerns or recommendations raised during this regulatory process, are detailed in the below table and corresponding section.

⁹ MVLWB (2019) *Standard Land Use Permit Conditions Template Version 2.2* ([hyperlink](#)).

¹⁰ MVLWB (2013) *Standard Process for New Conditions* ([hyperlink](#)).

Condition Title	Change	Rationale
REPAIR EROSION	Removed	Inspector recommended removal.
OFF-ROAD VEHICLE TRAVEL	Removed	Inspector recommended removal.
PREVENTION OF RUTTING	Removed	Inspector recommended removal.
SUSPEND OVERLAND TRAVEL	Removed	Inspector recommended removal.
VEHICLE MOVEMENT FREEZE-UP	Removed	Inspector recommended removal.
WASTE MANAGEMENT		Refer to 26(1)(i) Storage, Handling, and Disposal of Refuse or Sewage section in text below.
ARCHAEOLOGICAL BUFFER	Change to condition	Inspector recommended change.
SECURITY DEPOSIT	Change to condition	Refer to 26(1)(l) Security Deposit section in text below.
SPILL CONTINGENCY PLAN		Refer to 26(1)(m) Fuel Storage section in text below.
ENGAGEMENT PLAN		Refer to section 26(1)(q) Biological and Physical Protection of the Land in text below.

The subheadings below correspond to the headings in the conditions section of the Permit, as outlined in subsection 26(1) of the MVLUR and provides further rationale where necessary.

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.

Northwestel included a Waste Management Plan, Version 2, with the Application. The Board considered this Plan as part of the Application Package.

The Board has approved the Waste Management Plan, Version 2, because it meets the Board’s Guidelines, and sufficiently reflects the scope of the proposed activities.

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.

Northwestel completed the Board’s reclamation security worksheet and determined a total reclamation cost of \$198,300.00. During the review, the GNWT-Lands Inspector did not provide any recommendations, but rather stated that the security will be determined by the Board.

Board staff have completed the closure cost estimate worksheet and have calculated that the cost to remediate the site would be \$86,193.19. The table below summarize the differences between these estimates.

	Northwestel	Board staff	
Capitol Cost Item	Cost	Cost	Notes/Activity Included
Camp	\$24,450.00	\$4,425	-Board staff considered all structures to be temporary, as all infrastructure will be removed at the end of operations as per the application.
Regulated/Hazardous Materials	\$0.00	\$2,500	-Board staff have added five pieces of heavy equipment to this item which were identified by Northwestel.
Hydrocarbon Storage and Transfer	\$66,700	\$48,937.50	- Board staff have accounted for two 13,600 L double walled envirotanks at each site.
Land Disturbance	\$500	\$4,240	- Board staff have accounted for disturbed land at 4.24 Ha as per the application and the Final Plans submitted for each of the previous Permits.
Equipment	\$7,500	\$7,500	-No inconsistencies.
Multipliers			
Site Access	2	2	-No inconsistencies.
Performance	1	0.85	-Board staff note that the applicant has completed the term of a Permit.
Environmental Risk	1	0.75	-Board staff note that all locations are on previously disturbed lands.
Final Estimate	\$198,300.00	\$86,193.19	

*The numbers in these columns do not directly add up because of multipliers (for site access, performance, and environmental risks) used in the security template

The Board has determined that the total security deposit amount shall be \$86,000.00.

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(s) for responses to spills and Unauthorized Discharges has been established to effectively control and clean up spills and Unauthorized Discharges, with the goal of preventing or limiting damage to the receiving environment.

Northwestel included a Spill Contingency Plan, Version 1, with the Application. The Board considered this Plan as part of the Application Package.

During the review period, comments were received recommending updates to the Spill Contingency Plan, including:

- A list of Reportable Spill Quantities,
- The NT-NU Spill Report Form, and
- The Inspectors name and contact number.

An updated Spill Contingency Plan was submitted by Northwestel in response to these comments, containing the recommended information.

The Board has approved the Spill Contingency Plan, Version 2, as it meets the Board's Guidelines, sufficiently reflects the scope of the proposed activities, and addresses the recommendations.

26(1)(g) 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 Application (in the form of the Engagement Record) and is planned for throughout the life of the Project.

The Board assesses engagement adequacy of applications through the Board’s *Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits*,¹¹ and the Board’s *Engagement and Consultation Policy*.¹² Northwestel included an Engagement Plan and Record in the Application submitted November 30, 2020. Based on these submissions, the Board concluded that Northwestel’s pre-engagement for the Applications was determined to be in accordance with the Guidelines and Policy.

The Board has approved the Engagement Plan because it meets the Board’s Guidelines and Policy, and sufficiently reflects the scope of the proposed activities.

The Board expects Northwestel to work with stakeholders when updating future versions of the Engagement Plan, to ensure their concerns and recommendations are addressed.

7.0 Conclusion

Land Use Permit MV2020L0014 contains provisions that the Board deems necessary to ensure and monitor compliance with the MVRMA and the Regulations made thereunder, and to provide appropriate safeguards in respect of Northwestel Inc’s use of the land affected by the Permit.

SIGNATURE

Mackenzie Valley Land and Water Board



Mavis Cli-Michaud, Chair

January 21, 2021

Date

¹¹ See www.mvlwb.com à Resources à Policies and Guidelines: MVLWB Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits ([hyperlink](#)) (June 5, 2018).

¹² See www.mvlwb.com à Resources à Policies and Guidelines: MVLWB Engagement and Consultation Policy ([hyperlink](#)) (June 1, 2013).