



Jean Marie River First Nation
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September 22, 2020

RE: LUP MV2020W0002: Terms and Conditions Request for Review

While we are grateful to have received our LUP, we are very disappointed with some of your Terms and Conditions; including denying our request for waiving the Security Deposit, #49.

Your Terms and Conditions and a \$25000 Security Deposit are un-realistic for such a small scale and benign land use activity as logging. The LUP in its current form makes it both physically and economically impossible for JMRFN to log its Timber Cutting Licence (issued by Dehcho Region of ENR to harvest 5000 m³ of saw logs), and to achieve any economic development from our sawmill.

We are asking the MVLWB to review the LUP Terms and Conditions, and are again requesting that the Security Deposit be waived. We present our document, "JMRFN Review of Land Use Permit MV2020W0002" for your consideration.

Please exempt any amendment to the LUP from your Screening process.

Stanley Sanguéz

Chief

Cc T Lacusta, Manager, ENR Forest Resources.

JMRFN Review of Land Use Permit MV2020W0002

Sept 22, 2020

In this review of LUP MV2020W0002 to harvest sawlogs under a Timber Cutting Licence (TCL) issued by the Dehcho Region of the Ministry of the Environment and Natural Resources (ENR), it appears to JMRFN that the underlying theme is that MVLWB needs to more fully understand and acknowledge the ENR Regulatory items that control the operations of timber harvesting in the NWT, and how these Regulatory items interact with those of the MVLWB, and an LUP. And more specifically, how they all interact with the TCL #TL 005332, issued to Jean Marie River First Nation (JMRFN),

The Annual Operating Plan (AOP) is the pivotal document to the TCL, that outlines legislatively defined Terms regarding road and cut block boundary locations, road construction practices, creek crossings, timber harvesting, and deactivation Activities. The AOP is guided by the Engagement Plan (LUP Term 75) as well.

An inclusive description and Regulatory function of the AOP was provided in detail in “Section 6 Summary of Operations” and “Appendix C: GNWT-ENR Timber Cutting Licence Requirements” of the LUP Application. The AOP was referred to as a guiding document of all harvesting Activities throughout the LUP Application, because of its role as a legally approved document. The AOP is required by GNWT Regulations, ENR Permits, and guided by ENR Forest Resources Policy documents. These are:

- A. Forest Management Regulations Parts 13, 16 and 36.
- B. TL 005332 Terms and Conditions.
- C. Commercial Timber Harvest Planning and Operations Standard Operating Procedures Manual (with a Water Body Classification and associated management practices).

Although the AOP role was partially acknowledged in the LUP “Scope of Permit” (per items “d and f” below); the AOP Regulatory requirements, and its interaction with the Engagement Plan, was not adequately acknowledged, or respected in many LUP Terms. For example, items “d” and “f” specifically defaulted to the AOP, regarding road and landing deactivation and debris disposal, yet Terms 66-71 were issued dictating how these activities would be performed, in direct interference with the AOP mandate, and the Engagement Plan (Term 75).

d) Maintenance and deactivation of specific side roads and landings in accordance with Annual Operating Procedures (AOP);

(f) Disposal of debris in accordance with relevant direction(s) from ENR and measure included in the Permittee’s AOP.

JMRFN must adhere to both its TCL Terms, and those of the LUP; however, there are Terms contained within the LUP that are inconsistent with the intent and/or the requirements of the TCL and its AOP. The LUP should not put the Licensee in conflict with its TCL Regulatory requirements and the Engagement Plan, or include Terms that require JMRFN to compromise ENR’s mandate to manage the forest resources.

The thorough application of the knowledge of ENR forest legislation and policy requirements for an AOP should avoid the issuance of LUP Terms that are not necessary, and/or contain Regulatory interference,

conflicts, and overlaps with ENR. With these thoughts in mind, below are LUP Terms that need specific attention.

DETAILED TERMS REVIEW:

To follow in our review of the LUP are specific Terms in LUP MV2020W0002:

- A. The requirement for a Security Deposit (of \$25,138). #49.
- B. A review of Terms that are an issue. (#4,6,7,15,16,34,47-49, 52, 65-71).

A. SECURITY DEPOSIT REVIEW Term 49

In our application for this LUP, we requested that the Security Deposit be waived. JMRFN is disappointed with the “Reason’s for Decision” assumptions and mis-interpretations of our Application. We are questioning the need for this Deposit and again are requesting it be waived.

Mackenzie Valley Land Use Regulations:

32. (2) In setting the amount of security pursuant to subsection (1), the Board may consider

- (a) the ability of the applicant or prospective assignee to pay the costs referred to in that subsection;
- (b) the past performance of the applicant or prospective assignee in respect of any other permit;
- (c) the prior posting of security by the applicant pursuant to other federal legislation in relation to the land-use operation; and
- (d) the probability of environmental damage or the significance of any environmental damage.

A Review of “the past performance of the applicant or prospective assignee in respect of any other permit” and “the probability of environmental damage or the significance of any environmental damage.”:

This is a “Scope of Permit” of a simple logging operation to harvest surface rights that are a renewable resource, that is under a Timber Cutting Licence, issued by Dehcho Region, ENR, GNWT:

JMRFN’s Scope of Permit was defined in the LUP Application as follows:

“Section 6: Summary of Operations:

Site Activities are required as follows:

1. Field planning, to plan and field locate the roads, landings, and harvesting boundaries; in order to obtain an Annual Operating Plan (AOP) from ENR, per the Timber Cutting Licence and the “Commercial Timber Harvesting Planning & Operations SOP Manual”, requirements for timber harvesting and fire protection planning. See Appendix C for AOP requirements per Regs.
2. Road access is required from the Jean Marie River Road onto the harvesting areas. This is a Public road, managed by GNWT Infrastructure. Infrastructure have an over-lapping LUP on this application area (that is 1 km off each side of the road centerline).

3. Mobilization and demobilization of logging equipment via transportation equipment exceeding 10 tonnes to and from the harvest area.
4. Road building, maintenance and deactivation: Build new roads and temporary log storage areas (i.e.; "landings") for all-season, or winter use. Maintain and deactivate said roads and landings, per AOP direction.
5. Harvesting timber with power saws, and mechanical equipment (exceeding 10 tonnes), in order to conduct: tree felling; skidding of trees to the landings; merchandizing trees on the landings; decking & storing logs on the landings; loading & hauling logs from the landings, deactivation of the roads and landings, and woody debris piling.
6. Woody debris disposal: Per direction from ENR & the AOP. May require the piling of woody debris (un-merchantable logs, trees, branches and tops), and may require burning of said debris piles."

This Scope of Permit is not only governed by an AOP approved by ENR, but it also inherently has a very low probability of environmental damage, and the significance of any environmental damage is very low. The following information items support this conclusion:

- ENR requires an Annual Operating Plan, which describes what, where, why, when, and how the area will be logged and reclaimed to their standards, in order to ensure there is no environmental damage, and the rejuvenation of the forest.
- Section 6 of the Application identifies the equipment is on Site for only limited time periods (of <30 days/year), and that not all of the equipment is on site simultaneously. No fuel is stored on site.
- The new access roads are built to a low road class standard of 4-5 meters wide intended for a single use extraction of logs. These roads and landings are simple bladed structures on flat ground, with no, or minimal ditching or excavation needed.
- There are no known creek crossings on any road in this LUP. Any crossings that may be found by the AOP field work will be obviously be a small waterbody not identified on a map, that is very likely to be defined by ENR's Waterbody Classification system as low risk water body, and it will be duly managed by the AOP.
- These roads and landings will be located in the AOP, built, and deactivated, as directed by said approved plan. Because of the AOP process, very little deactivation will be required, due to locating bladed structures on low grades, on flat ground, and the avoidance of sensitive areas that will require deactivation.
- These logging roads and landings do not have the higher probability of environmental damage of large earthwork projects; such as, building public roads or quarry permits, and they have a much lower significance of environmental damage, if a non-compliance occurs. In fact you would have to "work hard" to be so completely negligent as to create any environmental damage of any significance on a logging operation governed by an AOP and inspected by ENR Officers. The fact that ENR Dehcho did not request a \$2500 Performance Deposit on JMRFN's current TCL, supports this conclusion.
- LUP MV2014W0017 was issued to support a 25,000 m3 Timber Cutting License. Patterson's have a long history of timber harvesting in the NWT. Likewise, JMRFN historically logged many areas, and more recently held two previous Timber Permits and LUP's, under its wholly owned company, JMR Log Homes Ltd.
- LUP MV2003W0040 (TP001946) included an ice bridge across the Jean Marie River, and a 4.5 km access road, and it required no Security Deposit. MV2002W0039 had an 1/2 km access road to log 1000 m3 adjacent to the JMR Access Rd, and it had no Security Deposit They both have received Clearance Letters.
- The Scope of Permit harvesting Activities and equipment used on these past logging areas since 1995 were essentially the same, and the probability and significance of environmental damage are

the same. The collective history of these logged sites, including those of JMRFN, going forward over time have showed no environmental damage, and it supports the conclusion by the MVLWB of “no adverse environmental effect”.

- The Security Deposit for MV2014W0017 of \$20,037 was recommended to be waived in a MVLWB Staff Report. The only difference from the JMRFN LUP is that the area to be logged in MV2014W0017 is 5 times the magnitude. Therefore, JMRFN will require 1/5 less effort to conduct its harvesting Activities, with 1/5 less exposure time of the equipment on site, and will need 1/5 less fuel.

The JMRFN Sawmill Project, which this LUP and the Timber Cutting Licence are to enable, has over 20 years of political and financial support from GNWT (Industry, Tourism, Infrastructure; and Environment and Natural Resources), Natural Resources Canada; as well as the Dehcho First Nations Royalties Program.

SECURITY DEPOSIT SUMMARY of DISCUSSION:

JMRFN is asking the Security Deposit of \$25,138.13 be waived in its entirety.

1. There has been no environmental damage from JMRFN and Patterson’s past LUP’s, from identical Scopes of Permit operations.
2. The Scope of Permit of a logging operation inherently has a very low probability of environmental damage, and the significance of any environmental damage is very low.
3. No security was required for JMRFN’s previous two successfully completed LUP’S to harvest timber, or for Patterson’s LUP’s.
4. ENR, Dehcho Region is not requesting a \$2500 Performance Deposit from JMRFN for its TCL on this LUP.
5. JMRFN is a First Nation trying to establish a sustainable economy from its sawmill, for a Community of less than 100 people.
6. There is significant previous, and ongoing, support provided by numerous parties; especially from GNWT. Any Security Deposit required by the MVLWB will have to be secured by GNWT.

B. REVIEW OF LUP TERMS AT ISSUE: (#4,6,7,15,16,34,47-49, 52, 65-71)

Term 4. The Permittee shall locate all lines, trails, and rights-of-way to be constructed parallel to any Watercourse, a minimum of 100 metres from the Ordinary High-Water Mark, except at crossings.

- Amend to Digaa’s Term 5 LUP MV2015W0018 below, or default to the AOP.
- The definition of “Watercourse” is very generic, and includes swamps and small creeks, which are commonly used as logging boundaries.
- This Term is in the same category as #34 and #65. Need to be more inclusive of ENR’s Regulatory requirements and their mandate for the TCL holder to comply with the AOP, and the Commercial Timber Harvesting Planning & Operations Guidelines and SOP’s, which includes a water body classification system and buffers.
- Digaa’s LUP MV2015W0018 Term # 5 recognized and validated ENR’s Commercial Timber Harvesting Planning & Operations Guidelines and SOP’s, water body classification system.

The Permittee shall locate all lines, trails, and right-of-ways to be constructed parallel to any Watercourse a minimum of:

PARALLEL
WATERCOURSE

- a) Lakes larger than 16 ha: 100m buffer.
- b) Lakes 1ha to 16 ha area: 30m buffer
- c) Ponds less than 1 ha in area: 10m buffer.
- d) Large permanent rivers: 100m buffer.
- e) Medium permanent rivers: 60m
- f) Small permanent rivers and streams: 10m buffer.

Terms 6 & 7 Mark Area. Prior to the commencement of the land-use operation, the Permittee shall mark each corner of the land-use area.

- Delete. Term 3 is sufficient.
- Not in LUP MV2014W0017 or LUP MV2015W0018.
- This is practically not possible.
- The AOP required by ENR will include the field located roads and boundaries.

Term 15. The Permittee shall maintain fire-fighting equipment at the site.

- Amend to Digaa LUP #14 MV2015W0018 that recognizes ENR's fire season.

Term 16. The Permittee shall Dogleg lines, trails and rights-of-way that approach Watercourses or public roads.

- Amend, add the qualifier of "new". Per Digaa MV2015W0018.
- Amend to allow for site level conditions per "unless otherwise authorized in writing by an Inspector". This would enable Term 16 to be consistent with WSCC legislation, which takes precedence over a Term intended with deterring legally hunted animals.
- These logging roads are approaching a Public road. Compliant "line-of-sight" distances and other safety requirements are required by WSCC Regs for traffic entering or exiting road junctions, road alignment, and creek crossings.
- Term 16 should be consistent with the fact that Road locations and crossings are within the mandate of ENR and its AOP process on a TCL.
- Term 16 should be consistent with Term 75, the Engagement Plan. It requires the AOP to be consulted with the JMRFN Band. The LUP Terms must be consistent with, not in conflict with, the Engagement Plan directions given to the AOP.

Term 34. The Permittee shall not remove vegetation or operate heavy equipment within 100 metres of the Ordinary High-Water Mark of any Watercourse.

- Delete or Amend to include ENR water classification system management practices, per Digaa's Term 5 LUP MV2015W0018 below. Or default to the AOP.
- This term is not in Patterson or Digaa LUP, and is redundant.
- The definition of "Watercourse" is very generic, and includes swamps and small creeks, which are commonly used as logging boundaries.
- This Term is in the same category as #4 and #65. 4, 34, & 65 should default to the AOP.
- See #65 below, regarding the use of heavy equipment to harvest trees.
- Digaa's LUP MV2015W0018 Term # 5 recognized and validated ENR's Commercial Timber Harvesting Planning & Operations Guidelines and SOP's, water body classification system.

[The Permittee shall locate all lines, trails, and right-of-ways to be constructed parallel to any Watercourse a minimum of:

PARALLEL
WATERCOURSE

- a) Lakes larger than 16 ha: 100m buffer.
- b) Lakes 1ha to 16 ha area: 30m buffer
- c) Ponds less than 1 ha in area: 10m buffer.
- d) Large permanent rivers: 100m buffer.
- e) Medium permanent rivers: 60m
- f) Small permanent rivers and streams: 10m buffer.

Terms 47 & 48 Archaeology Overview//Archaeology Impact Assessment:

- Delete AO and AIA both.
- The LUP MV2015W0017 has no such term. Nor did JMRFN's two previous LUP's to log.
- These Terms are not justified and are economically not feasible:
 - JMRFN's Consultation did not identify any concerns.
 - Previous 1970-1980's cutlines across the area did not find anything. Many of these cutlines are used actively by JMRFN trappers and nothing was noted by them.
 - Historic travel was in the sharply incised Jean Marie River valley itself, not on the upland areas where this LUP is located.
 - The Infrastructure LUP MV 2016E0006 covers an area 1 km off the JMR Rd centerline, and overlaps almost the entire JMRFN LUP.
 - MV2016E0006 AO and AIA and its road construction activities did not find any evidence along the JMR Access Rd within its LUP boundaries.
 - Previous harvesting of MV2002W0039, near the Jean Marie River itself; and on the JMR Access Rd, MV2003W0040, did not find any archaeological items.
 - The logging roads and landings in this LUP are bladed structures, not excavations and ditching like the JMR Access Rd was.

Term 49. Security Deposit: Delete and waive the deposit. See "A. Security Deposit Review", above.

Term 52. The Permittee shall set up all refueling points with Secondary Containment.

- Delete or Amend to be consistent with the Spill Contingency Plan.
- Per SCP, refueling is via portable tanks on vehicles, and it is to occur at various random points, on roads or landings only.
- There is no on-site stationary fuel supply and no secondary containment.

Term 65. The Permittee shall clear by hand all trees and brush a minimum distance of 100 metres from the top edge of all stream banks and top edge of slopes. Clearing Sensitive Area

- Delete.
- This term is not within either MV2014W0017 or MV2015W0018 to harvest timber.
- There is nothing "Sensitive" about the ground above the top edge of streams or slopes; especially when its frozen.
- Term 65 is inconsistent with ENR's AOP process, and the Commercial Timber Harvesting Planning & Operations Guidelines and SOP's.
- Logging boundaries are commonly delineated by waterbodies and slope breaks.
- On this LUP, the area within the cut blocks affected by this term is about 40-50% of the proposed cutblocks, due entirely to the proximity of slope breaks.

- The hand-felled areas will be skidded using heavy equipment; therefore what difference does the tree falling method make to protect the “Sensitive Areas”.
- This Term is self defeating to protect “Sensitive Areas” for reasons that will become clear below.
- The Feller buncher allows operational flexibility that hand falling does not:
 - It requires a “grapple skidder” to skid the trees to the landing.
 - The felled trees are placed in “bunches”, which can be located away from trees reserved from cutting, or a “Sensitive Area”, and to avoid damage from the skidder.
 - A safe worker environment for both the falling and skidding phases, because the operators are within the cab of the machine.
- Hand falling on the other hand, does not enhance managing a “Sensitive Area”; rather, it detracts from it, and it has significant Worker Safety issues:
 - Trees that are hand felled cannot be placed in bunches in a location away from trees reserved from cutting or a “Sensitive Area”.
 - Hand felled trees require a “line skidder”, that has a mainline winching cable, with smaller cables (“chokers”) to hook onto the logs. This machine requires that the operator gets out of the safety of his cab and manually hook/unhook the logs.
 - A line skidder requires more trips to obtain the same amount of felled trees.
 - This increases the amount of heavy equipment activity, the damage to trees that were desirable to retain, and the exposure of the worker to an incident. It does not enhance the management of a “Sensitive Area” at all, it detracts from it.
 - Hand falling is dangerous profession; statistics that are well documented. If a serious accident occurs, the time delay is a concern to get an injured person to a hospital (Nearest hospital is Ft Simpson 128 km away).
 - Hand falling requires training and certification (Safety Act//Occupational Health and Safety Regulations. Sec 18; Part 29 Logging and Mill Operations, Sec 427 (a, b, c, and d)).
- As stated in the Application, severe slope breaks (>35%) will have a 10 m Machine Free Zone for safety reasons. The trees that the feller buncher can reach from within the 10 m Machine Free Zone may be cut. These trees will be placed to ensure the skidder remains outside of the Machine Free Zone.

Terms 66-71 inclusive, Restoration of the Lands:

- These Terms all need to be amended to be consistent with the ENR mandate to both protect the forest from fire, and to reforest the logged areas in this TCL.
- The AOP was referenced in the LUP “Scope of Permit, items d and f”.
- These Terms all need to be amended to default to the AOP. They must be consistent with, not in conflict with, the Scope of Permit, the AOP, and the Commercial Timber Harvesting Planning & Operations Guidelines and SOP’s.
- These Terms need to be amended to be consistent with Term 75, the Engagement Plan. It requires the AOP to be consulted with the JMRFN Band. The LUP Terms must be consistent with, not in conflict with, the Engagement Plan directions given to the AOP.
- The Engagement Plan and AOP consultation includes the deactivation procedures for any roads. The Band may want some roads left open for their future firewood access, their Aboriginal entitled hunting opportunities, and trapline opportunities into new areas heretofore inaccessible.
- #69 comments. This is a timber harvesting operation of a renewable resource. Re-vegetation of logged areas is ENR’s mandate and is guided by the AOP. Roads and landings typically rely on natural regeneration of native trees and plants over time (that extends beyond the Expiry date of

the LUP). This process of natural regeneration of vegetation is consistent with Dept of Infrastructure practices along its highways and quarries.

CONCLUSION:

- JMRFN wishes the MVLWB to waive the Security Deposit (Term 49) requirement.
- JMRFN wishes the above identified Terms (#4,6,7,15,16,34,47-48, 52, 65-71) to be either deleted or amended. They should be consistent with, and not in conflict with, the Scope of Permit, WSCC legislation, and ENR's Regulatory requirements. Especially the requirement for the Timber Cutting Licence to have an Annual Operating Plan, that meets the Commercial Timber Harvesting Planning & Operations Guidelines and SOP's, which includes a Water Body Classification system and management practices.
- The Archaeology Terms 47 and 48 are not justifiable and need to be deleted.
- JMRFN wishes the Terms #16, and 66-71 be consistent with, not in conflict with, the Term 75 Engagement Plan's duty to consult the Annual Operating Plan, and to provide JMRFN the opportunity to give their direction to it.
- JMRFN wishes more project flexibility in the Terms, a subject that the LUP issuance document discussed as an objective of the Scope of Permit. This increased flexibility may be accomplished with more use of site level decisions with the clause "unless otherwise authorized in writing by an Inspector".

JMRFN is respectfully requesting that these changes be evaluated, and that the amendment to this LUP be exempted from screening.