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### Staff Report

<b>Applicant:</b> Jean Marie River First Nation	
<b>Location:</b> Jean Marie River, NT	<b>File Number:</b> MV2020W0002
<b>Dated Prepared:</b> November 23, 2020	<b>Date of Board Meeting:</b> November 26, 2020
<b>Subject:</b> Land Use Permit – Amendment Request – Board Update	

#### 1. Purpose

The purpose of this Report is to present the following to the Mackenzie Valley Land and Water Board (MVLWB/the Board):

- a) An update on an Amendment Request for Land Use Permit MV2020W0002 (Permit), submitted by Jean Marie River First Nation (JMRFN); and
- b) Late review comments from the Government of the Northwest Territories – Department of Lands (GNWT-Lands).

#### 2. Background

- August 7, 2020 – Issuance of Permit MV2020W0002;
- September 23, 2020 – Amendment Request received;
- October 2, 2020 – Amendment Request deemed complete and distributed for public review;
- October 22, 2020 – Due date for review comments; extended due date to October 23, 2020;
- October 23, 2020 – Review comments submitted;
- October 29, 2020 – Initial response deadline for review comments; extended to November 12, 2020;
- November 12, 2020 – Responses submitted;
- November 23, 2020 – Late submission from GNWT-Lands;
- **November 26, 2020 – Late Comments Request presented to the Board for decision; and**
- August 6, 2025 – Expiration of Permit MV2020W0002.

### **3. Discussion**

#### File History

The Board issued Land Use Permit MV2020W0002 to JMRFN on July 23, 2020, with the effective date of August 7, 2020<sup>1</sup>. The Permit allows for a woods operation (Project), approximately 17 kilometres from the community of Jean Marie River, including the following activities:

- Field planning for the purpose of locating roads, landing, and harvesting boundaries;
- Mobilization to and demobilization of logging and associated transportation equipment, exceeding 10 tonnes;
- Construction, maintenance, and deactivation of new all-season or winter roads and temporary log-storage areas (landings) in fulfillment of an Annual Operating Plan (AOP);
- Maintenance and deactivation of specific side roads and landings in accordance with Annual Operating Plan (AOP);
- Harvesting of timber with power saws and mechanical equipment exceeding 10 tonnes; and
- Disposal of debris in accordance with relevant direction(s) from the Government of the Northwest Territories – Environment and Natural Resources (ENR) and measure included in the Permittee’s AOP.

A Waste Management Plan, a Spill Contingency Plan, and an Engagement Plan were approved with the issuance of the Permit.

#### Amendment Request Description

JMRFN’s September 23, 2020 Amendment Request<sup>2</sup> for Permit MV2020W0002 identified 18 Conditions that it considers potentially problematic for its Project. JMRFN stated in its Request that “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 GNWT-ENR to harvest 5000 m3 of saw logs), and to achieve any economic development from our sawmill.” JMRFN is of the opinion that several of the Permit Conditions are inconsistent with its Timber Cutting Licence (TCL), pending Annual Operating Plan (AOP), and relevant requirements under the Territorial Forestry Management Regulations.

#### Engagement

JMRFN included an updated engagement record in support of its Amendment Request. According to the engagement record, JMRFN engaged the Government of the Northwest Territories – Department of Infrastructure (GNWT-INF), Jean Marie River First Nation (JMRFN), and Dehcho First Nation (DCFN), through written correspondence sent to these Parties on September 22, 2020.

#### Type of Area

This Project is on non-federal land.

#### Fees

No application fee is required for amendment requests.

### **4. Comment**

#### Inspection Reports

No Inspection Reports have been submitted to date for the Project as it has not yet commenced.

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<sup>1</sup> [MV2020W0002 – JMRFN – Decision Letter – Issuance Package – Aug 7, 2020.](#)

<sup>2</sup> [MV2020W0002 – JMRFN – Amendment Request – Sept 22, 2020.](#)

## GNWT Departmental Jurisdictions

JMRFN's eligibility<sup>3</sup> for Permit MV2020W0002 was established through a Timber Cutting Licence (TCL) from GNWT-ENR. Jurisdictionally, the GNWT-Lands Inspectors are responsible for enforcing the Permit issued by the Board, while the GNWT-ENR Forestry Inspectors are responsible for enforcing the Timber Cutting Licence (TCL) and pending Annual Operating Plan (AOP).

During the initial review process for the initial Permit Application, a GNWT-Lands Inspector had provided several comments and recommendations that the JMRFN responded to as being inconsistent with requirements contained in its Timber Cutting Licence and associated regulatory instruments. To ensure that the inconsistencies identified by JMRFN were fully considered during the review process for the Amendment Request, Board staff contacted GNWT-Lands and GNWT-ENR Forestry to encourage their full participation in this Amendment Request.

## **5. Public Review**

Board staff distributed JMRFN's Amendment Request on October 2, 2020 for public review with the due date for comments set for October 22, 2020. Board staff subsequently extended the due date for comments to October 23, 2020 following a request from GNWT-ENR. The due date for JMRFN's responses was subsequently extended from October 29, 2020 to November 12, 2020 following a request from JMRFN.

Prior to the October 23, 2020 extended deadline for comments, submissions for JMRFN's Amendment Request were received from the following Parties:

- GNWT – Lands (Dehcho Region);
- GNWT – Lands;
- GNWT – ENR; and
- Prince of Wales Northern Heritage Centre (PWNHC).

JMRFN provided its responses to comments on November 12, 2020. The Review Summary and Attachments (attached) present the concerns identified through this review.

## Main Issues Raised during the Review

- Reclamation security;
- Archaeological conditions;
- Condition amendments; and
- Conditions potentially conflicting with the Timber Cutting Licence; Commercial Timber Harvest Planning and Operations (SOP) Manual (SOP Manual); and pending Annual Operating Plan (AOP).

On November 23, 2020, staff received a late submission from GNWT-Lands (South Slave Region), intended to address conflicting evidence provided by GNWT-Lands (Dehcho Region) and GNWT-ENR.

## **6. Current Stage of the Regulatory Process**

Due to conflicting evidence provided by GNWT-Lands and GNWT-ENR and a subsequent late submission from GNWT-Lands for this Amendment Request, Board staff are bringing this update and the request to consider late comments to the Board's attention to seek direction.

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<sup>3</sup>[Timber Cutting Licence \(TCL\) # 005332](#)

## 7. Conclusion

Based on the submissions provided during the public review period, Board staff noted that GNWT-Lands (Dehcho Region) and GNWT-ENR had provided conflicting evidence, which Board staff felt would hamper the decision-making of the Board.

The late submission provided by GNWT-Lands (South Slave Region) could help to reconcile most of the conflicting evidence provided by GNWT-Lands (Dehcho Region) and GNWT-ENR; however, the Board would need to accept this late submission and consider providing JMRFN an opportunity to respond in order for it to be considered in this proceeding. If the Board chooses to not accept the late submission, the Board could direct staff to issue an Information Request (IR) to GNWT-ENR and GNWT-Lands, seeking clarification. This option would require more procedural time as the IR responses would be circulated for review by the parties to this proceeding. These two approaches can ensure that procedural fairness is maintained, and new information aimed at resolving conflicting evidence is considered.

## 8. Recommendation

Board staff put forward the following options for consideration and decision by the Board:

a) **The Board accepts the late review comments from GNWT-Lands and directs Board staff to provide JMRFN an opportunity to respond to the late comments.**

OR

b) **The Board does not accept the late comments from GNWT-Lands and instead directs Board staff to distribute an Information Request to the Government of the Northwest Territories to seek clarity on the conflicting evidence submitted by the different departments.**

OR

c) **The Board can decide upon another option.**

## 9. Attachments

- Amendment Request
  - [Amendment Request](#)
  - [Engagement Correspondence](#)
  - [Engagement Log](#)
- [Timber Cutting Licence](#)
- Review Summary and Attachments
- [MV2020W0002 -JMRFN Amendment Request - GNWT Lands \(South Slave Region\) Submission - Nov 23 20](#)

Respectfully submitted,



Sean Joseph,  
Regulatory Specialist