

7th Floor - 4922 48th Street
PO Box 2130, Yellowknife NT X1A 2P6

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

November 8, 2022

File: MV2022X0014

Victoria St. Jean
Kát'odeeche First Nation
Box 360
Hay River NT X0E 1G4

Sent by email

Dear Victoria St. Jean

Re: Kát'odeeche First Nation – Issuance Package – Land Use Permit MV2022X0014 – Miscellaneous, Hay River, NT

The Mackenzie Valley Land and Water Board (Board) met on October 27, 2022 and considered the Application Package from Kát'odeeche First Nation (KFN) for Land Use Permit (Permit) MV2022X0014 for the Phase II Environmental Assessment (Project) in accordance with the *Mackenzie Valley Resource Management Act* (MVRMA).

The Board has approved Land Use Permit MV2022X0014 (attached) for a term of five years, effective November 8, 2022 and expiring November 7, 2027. The Permit is supported by the Board's Reasons for Decision. These documents are posted to the Board's Public Registry.¹

Security Deposit

Security is not required because KFN is doing work on reserve land within their community boundaries and because the drilling activity will occur within pre-disturbed areas and will require limited space at each location.

¹ See MVLWB Online Registry www.mvlwb.com for MV2022X0014.

Submission Requirements

Please refer to Annex B of the Permit for a complete summary and timetable of submissions required for the Permit. The Board's decisions on submissions that were considered in conjunction with the Application Package are set out below.

Management Plans – Revisions Required

The Board requires that the following Plans be revised to include all changes detailed in the Reasons for Decision and submitted by the dates outlined in the following table. The revised Plans will be considered approved when the Permittee receives written confirmation of conformity. The Permittee may not commence Project activities until the Plans is/are approved.

Condition Number and Title	Title of Plan (Version)	Version and Submission Date
51, SUBMIT REVISED PLAN	Waste Management Plan (V1) ²	V1.1, November 30, 2022
51, SUBMIT REVISED PLAN	Spill Contingency Plan (V1) ³	V1.1, November 30, 2022
51, SUBMIT REVISED PLAN	Engagement Plan (V1) ⁴	V1.1, November 30, 2022

Inspectors

The Inspectors referred to in the Permit can be contacted at the following office:

Crown-Indigenous Relations and Northern Affairs
P.O. Box 1500
4923 – 52nd Street
Yellowknife NT X1A 2R3
Phone: 867-669-2442 or 867-669-2466
Fax: 867-669-2702

Permit Processes and Additional Information

Sections 5 and 6 of the Board's *Guide to the Land Use Permitting Process*⁵ (Guide) contain detailed information on permit enforcement and potential post-issuance processes, such as amendments to conditions, and assignment to another company. Please be familiar with these sections of the Guide and reach out to Board staff with any questions about Board processes related to the Permit.

² See MVLWB Online Registry for KFN Phase II Environmental Assessment – [Waste Management Plan](#) – Version 1 – Sept16_22.

³ See MVLWB] Online Registry for KFN Phase II Environmental Assessment – [Spill Contingency Plan](#) – Version 1 – Spet16_22.

⁴ See MVLWB Online Registry for KFN Phase II Environmental Assessment – [Engagement Plan](#) – Version 1 – Sept16_22.

⁵ See MVLWB Policies and Guidelines webpage for MVLWB [Guide to the Land Use Permitting Process](#).

Full cooperation of KFN is anticipated and appreciated. Please contact Andrea Cleland via [email](#) or at (867) 766-7472 with any questions or concerns regarding this letter.

Yours sincerely,

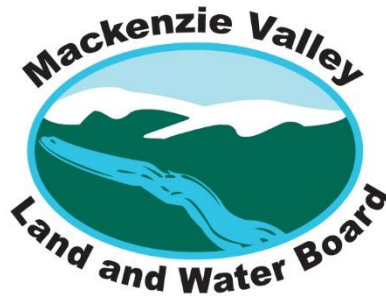


Mavis Cli-Michaud

Chair, Mackenzie Valley Land and Water Board

BCC'd to: Akaitcho Distribution List
Dehcho Distribution List
Marshall Pachal - Senior Associate, Environmental Scientist, Stantec
Lee Ann Malley – Senior Environmental Planner, Environmental Services, Stantec
Norman McCowan – Inspector, GNWT - Lands
Andrew Lirette – Inspector, GNWT - Lands
David Monroe, GNWT-Lands

Attached: Land Use Permit MV2022X0014
Reasons for Decision



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Kát'odeeche First Nation

Land Use Permit MV2022X0014

Pursuant to the *Mackenzie Valley Resource Management Act* and Mackenzie Valley Land Use Regulations, the Mackenzie Valley Land and Water Board grants this Land Use Permit to:

Kát'odeeche First Nation

(Permittee)

of Box 360 Hay River Northwest Territories X0E 1G4

(Mailing Address)

hereinafter called the Permittee, to proceed with the following land-use operation, subject to the annexed definitions and conditions contained therein:

Location:	Kát'odeeche First Nation (KFN) (Hay River Dene Reserve No.1)
Purpose:	Miscellaneous – Phase II Environmental Assessment
Type:	Type B
Effective Date:	November 8, 2022
Expiry Date:	November 7, 2027

A blue ink signature of Mavis Cli-Michaud.

Mavis Cli-Michaud, Chair
Mackenzie Valley Land and Water Board

A blue ink signature of Amanda Gauthier.

Amanda Gauthier, Witness

Conditions Annexed to and Forming Part of Land Use Permit # MV2022X0014

Part A: Scope of Permit

1. This Permit entitles the Permittee to conduct the following land-use operation:
 - a) Drilling of boreholes for soil sampling;
 - b) Installation, operation and monitoring of monitoring wells;
 - c) Use of vehicles, machines, and equipment; and
 - d) Reclamation and associated activities.
2. This Permit is issued subject to the conditions contained herein with respect to the use of land for the activities and area identified in Part A, item 1 of this Permit.
3. Compliance with the terms and conditions of this Permit does not excuse the Permittee from its obligation to comply with the requirements of any applicable Federal, Territorial, Deline, Tłıchǫ, or Municipal laws.

Part B: Definitions (defined terms are capitalized throughout the Permit)

Act - the *Mackenzie Valley Resource Management Act*.

Archaeological Impact Assessment - archaeological research as defined by the Prince of Wales Northern Heritage Centre *Guidelines for Developers for the Protection of Archaeological Sites in the Northwest Territories*.

Archaeological Overview - a study of archaeological sites as defined by the Prince of Wales Northern Heritage Centre *Guidelines for Developers for the Protection of Archaeological Sites in the Northwest Territories*.

Board - the Mackenzie Valley Land and Water Board established under Part 4 of the Act.

Borehole - a hole that is made in the surface of the ground by drilling or boring.

Closure and Reclamation - the process and activities that facilitate the return of areas affected by the Project to viable and, wherever practicable, self-sustaining ecosystems that are compatible with a healthy environment, human activities, and the surrounding environment.

Drilling Fluid - any liquid mixture of water, sediment, drilling muds, chemical additives or other wastes that are pumped down hole while drilling and are specifically related to drilling activity.

Drilling Waste - all materials or chemicals, solid or liquid, associated with drilling, including drill cuttings and Drilling Fluids.

Engagement Plan - a document, developed in accordance with the Board's *Engagement and Consultation Policy* and the *Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits*, that clearly describes how, when, and which engagement activities will occur with an affected party during the life of the project.

Flowing Artesian Well - a well in which water:

- a) Naturally rises above the ground surface or the top of any casing; and
- b) Flows naturally, either intermittently or continuously.

Fuel Storage Container - a container for the storage of petroleum or allied petroleum products with a capacity of less than 230 litres.

Fuel Storage Tank - a closed container for the storage of petroleum or allied petroleum products with a capacity of more than 230 litres.

Habitat - the area or type of site where a species or an individual of a species of wildlife naturally occurs or on which it depends, directly or indirectly, to carry out its life processes.

Inspector - an Inspector designated by the Minister under the Act.

Minister - the Minister of Indian Affairs and Northern Development Canada or the Minister of the Government of the Northwest Territories – Department of Lands, as the case may be.

Ordinary High-Water Mark - the usual or average level to which a body of water rises at its highest point and remains for sufficient time so as to change the characteristics of the land. In flowing waters (rivers, streams) this refers to the “active channel/bank-full level” which is often the 1:2 year flood flow return level. In inland lakes, wetlands, or marine environments, it refers to those parts of the Watercourse bed and banks that are frequently flooded by water so as to leave a mark on the land and where the natural vegetation changes from predominately aquatic vegetation to terrestrial vegetation (excepting water tolerant species). For reservoirs, this refers to normal high operating levels (full supply level).

Permittee - the holder of this permit.

Permafrost - ground (soil or rock) that remains at or below 0°C for at least two consecutive years.

Progressive Reclamation - Closure and Reclamation activities conducted during the operating phase of the project.

Spill Contingency Plan - a document, developed in accordance with Aboriginal Affairs and Northern Development Canada’s *Guidelines for Spill Contingency Planning* that describes the set of procedures to be implemented to minimize the effects of a spill.

Safety Data Sheet - a technical document, typically written by the manufacturer or supplier of a chemical, that provides information about the hazards associated with the product, advice about safe handling and storage, and emergency response procedures.

Toxic Material - any substance that enters or may enter the environment in a quantity or concentration or under conditions such that it:

- a) Has or may have an immediate or long-term harmful effect on the environment or its biological diversity;
- b) Constitutes or may constitute a danger to the environment on which life depends; or
- c) Constitutes or may constitute a danger in Canada to human life or health.

Waste - any garbage, debris, chemical, or Toxic Material to be used, stored, disposed of, or handled on land, and also as defined in section 51 of the Act.

Waste Management Plan - a document, developed in accordance with the Board's Guidelines for Developing a Waste Management Plan, that describes the methods of Waste management from Waste generation to final disposal.

Watercourse - a natural body of flowing or standing water or an area occupied by water during part of the year, and includes streams, springs, swamps and gulches but does not include groundwater.

Part C: Conditions Applying to All Activities (headings correspond to subsection 26(1) of the Mackenzie Valley Land Use Regulations)

Condition	Category
26(1)(a) Location and Area	
1. The Permittee shall only conduct this land-use operation on lands designated in the application.	LOCATION OF ACTIVITIES
2. Prior to the commencement of drilling, the Permittee shall submit the target areas and final drill hole locations on a 1:50,000-scale map with coordinates and map datum to the Board and an Inspector.	DRILL LOCATIONS
3. The Permittee shall not conduct a drilling operation or drill site within 100 metres of the Ordinary High Water Mark of any Watercourse except as described in the application, unless otherwise authorized in writing by an Inspector.	DRILLING SETBACK
26(1)(b) Time	
4. At least 48 hours prior to the initial commencement of the land-use operation, the Permittee's Field Supervisor shall notify the Board and contact an Inspector at (867) 669-2442.	INITIAL NOTIFICATION – CONTACT INSPECTOR IDENTIFY AGENT
5. At least 48 hours prior to commencement of the land-use operation, the Permittee shall provide the following information, in writing, to the Board and an Inspector: a) the name(s) of the person(s) in charge of the field operation; b) alternates; and c) all methods for contacting the above person(s).	IDENTIFY AGENT
6. At least ten days prior to the completion of the land-use operation, the Permittee shall advise an Inspector of: a) the plan for removal or storage of equipment and materials; b) when final cleanup and reclamation of the land used will be completed; and c) when the Final Plan will be submitted.	REPORTS BEFORE FINAL REMOVAL
26(1)(c) Type and Size of Equipment	
7. The Permittee shall only use equipment of a similar type, size, and number to that listed in the complete application.	USE APPROVED EQUIPMENT

26(1)(d) Methods and Techniques

- | | | |
|----|--|---|
| 8. | Prior to the expiry end of the land-use operation, the Permittee shall replace all excavated material, unless otherwise authorized in writing by an Inspector. | EXCAVATED
MATERIAL
TEST PITS |
|----|--|---|

26(1)(e) Type, Location, Capacity, and Operation of All Facilities

- | | | |
|----|---|----------------------------|
| 9. | The Permittee shall ensure that the land use area is kept clean at all times. | CLEAN WORK
AREA |
|----|---|----------------------------|

26(1)(f) Control or Prevention of Ponding of Water, Flooding, Erosion, Slides, and Subsidence of Land

- | | | |
|-----|--|--|
| 10. | The Permittee shall insulate the ground surface beneath all structures associated with this land-use operation to prevent:

a) any vegetation present from being removed;
b) the melting of Permafrost; and
c) the ground settling and/or eroding. | PERMAFROST
PROTECTION |
| 11. | The land-use operation shall not cause obstruction to any natural drainage. | NATURAL
DRAINAGE |
| 12. | The Permittee shall install and maintain suitable erosion control structures as the land-use operation progresses. | PROGRESSIVE
EROSION
CONTROL |
| 13. | The Permittee shall apply appropriate mitigation at the first sign of erosion. | REPAIR
EROSION |
| 14. | The Permittee shall, where flowing water from a Borehole is encountered:

a) plug the Borehole in such a manner as to permanently prevent any further outflow of water; and
b) immediately report the occurrence to the Board and an Inspector. | FLOWING
ARTESIAN WELL |
| 15. | The Permittee shall prepare the site in such a manner as to prevent rutting or gouging of the ground surface. | PREVENTION OF
RUTTING |
| 16. | The Permittee shall suspend overland travel of equipment or vehicles at the first sign of rutting or gouging. | SUSPEND
OVERLAND
TRAVEL |
| 17. | The Permittee shall not move any equipment or vehicles unless the ground surface is in a state capable of fully supporting the equipment or vehicles without rutting or gouging. | VEHICLE
MOVEMENT
FREEZE-UP |

26(1)(g) Use, Storage, Handling, and Ultimate Disposal of Any Chemical or Toxic Material

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| 18. | At least seven days prior to the use of any chemicals that were not identified in the complete application, the Safety Data Sheets must be provided to the Board and an Inspector. | CHEMICALS |
| 19. | When drilling within 100 metres of the Ordinary High Water Mark of any Watercourse, the Permittee shall contain all drill water and Drilling Waste in a closed circuit system for reuse, off-site disposal, or deposit into a land-based Sump or natural depression. | DRILLING NEAR WATER |
| 20. | The Permittee shall remove all Drilling Waste containing Toxic Material to an approved disposal facility. | DRILLING WASTE DISPOSAL |
| 21. | The Permittee shall not allow any Drilling Waste to spread to the surrounding lands or Watercourses. | DRILLING WASTE CONTAINMENT |
| 22. | The Permittee shall dispose of all Toxic Material as described in the approved Waste Management Plan. | WASTE CHEMICAL DISPOSAL |
| 23. | The Permittee shall dispose of all combustible Waste petroleum products by removal to an approved disposal facility. | WASTE PETROLEUM DISPOSAL |
| 24. | The Permittee shall provide written notification to the Board and Inspector a minimum of 10 days prior to the initial deposit of Waste, demonstrating that the licenced disposal facility has agreed to accept the Waste and has the capacity to receive the volumes of Waste requested. | NOTIFICATION OF SOLID WASTE DISPOSAL |

26(1)(h) Wildlife and Fish Habitat

- | | | |
|-----|---|-----------------------|
| 25. | The Permittee shall take all reasonable measures to prevent damage to wildlife and fish Habitat during this land-use operation. | HABITAT DAMAGE |
|-----|---|-----------------------|

26(1)(i) Storage, Handling, and Disposal of Refuse or Sewage

- | | | |
|-----|--|--------------------------|
| 26. | The Permittee shall dispose of all Waste as described in the Waste Management Plan , once approved, and shall annually review the plan and make any necessary revisions to reflect changes in operations, technology, chemicals, or fuels, or as directed by the Board. Revisions to the plan shall be submitted to the Board for approval. | WASTE MANAGEMENT |
| 27. | The Permittee shall keep all garbage and debris in a secure container until disposal. | GARBAGE CONTAINER |

26(1)(j) Protection of Historical, Archaeological, and Burial Sites

- | | | |
|-----|--|--|
| 28. | The Permittee shall not operate any vehicle or equipment within 150 metres of a known or suspected historical or archaeological site or burial ground. | ARCHAEOLOGICAL BUFFER |
| 29. | The Permittee shall not knowingly remove, disturb, or displace any archaeological specimen or site. | SITE DISTURBANCE |
| 30. | The Permittee shall, where a suspected archaeological or historical site, or burial ground is discovered:
a) immediately suspend operations on the site; and
b) notify the Board at (867) 669-0506 an Inspector at (867) 669-2442 and the Prince of Wales Northern Heritage Centre at 767-9347 ext. 71251 or ext. 71255. | SITE DISCOVERY AND NOTIFICATION |
| 31. | At least 60 days prior to any new land disturbance, including new drill sites, the Permittee shall conduct an Archaeological Overview to identify areas of high and low potential for archaeological and burial sites and shall submit a summary report to the Board and the Prince of Wales Northern Heritage Centre. | ARCHAEOLOGICAL OVERVIEW |
| 32. | Prior to disturbance in areas of high potential for archaeological or burial sites identified in the Archaeological Overview, the Permittee shall conduct an Archaeological Impact Assessment of the sites where disturbance is planned and shall submit a summary report to the Board and the Prince of Wales Northern Heritage Centre. | AIA – HIGH POTENTIAL |

26(1)(k) Objects and Places of Recreational, Scenic, and Ecological Value

Intentionally left blank.

26(1)(l) Security Deposit

- | | | |
|-----|--|---|
| 33. | All costs to remediate the area under this Permit are the responsibility of the Permittee. | RESPONSIBILITY FOR REMEDIATION COSTS |
|-----|--|---|

26(1)(m) Fuel Storage

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|-----|--|-------------------------|
| 34. | The Permittee shall:
a) examine all Fuel Storage Containers and Tank for leaks; and
b) repair all leaks immediately. | REPAIR LEAKS |
| 35. | The Permittee shall not allow petroleum products to spread to surrounding lands or Watercourses. | FUEL CONTAINMENT |

36.	The Permittee shall comply with the Spill Contingency Plan , once approved, and shall annually review the plan and make any necessary revisions to reflect changes in operations, technology, chemicals, or fuels, or as directed by the Board. Revisions to the plan shall be submitted to the Board for approval.	SPILL CONTINGENCY PLAN
37.	Prior to commencement of the land-use operation the Permittee shall ensure that spill-response equipment is in place to respond to any potential spills.	SPILL RESPONSE
38.	All equipment that may be parked for two hours or more, shall have a haz-mat/drip tray under it or be sufficiently diapered. Leaky equipment shall be repaired immediately.	DRIP TRAYS
39.	The Permittee shall clean up all leaks, spills, and contaminated material immediately	CLEAN UP SPILLS
40.	During the period of this Permit, if a spill occurs or is foreseeable, the Permittee shall: <ul style="list-style-type: none"> a) implement the approved Spill Contingency Plan; b) report it-immediately using the NU-NT Spill Report Form by one of the following methods: <ul style="list-style-type: none"> • Telephone: (867) 920-8130 • Fax: (867) 873-6924 • E-mail: spills@gov.nt.ca • <u>Online: Spill Reporting and Tracking Database</u> c) within 24 hours, notify the Board and an Inspector; and d) within 30 days of initially reporting the incident, submit a detailed report to the Board and an Inspector, including descriptions of causes, response actions, and any changes to procedures to prevent similar occurrences in the future. Any updates to this report shall be provided to the Board and an Inspector in writing as changes occur. 	REPORT SPILLS

26(1)(n) Methods and Techniques for Debris and Brush Disposal

41.	The Permittee shall not clear any vegetation.	NO CLEARING
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26(1)(o) Restoration of the Lands

42.	Prior to the end of the land-use operation, the Permittee shall complete all cleanup and restoration of the lands used.	FINAL CLEANUP AND RESTORATION
43.	Prior to the end of the land-use operation, the Permittee shall prepare the site in such a manner as to facilitate natural revegetation.	NATURAL VEGETATION

44.	The Permittee shall carry out Progressive Reclamation of disturbed areas as soon as it is practical to do so.	PROGRESSIVE RECLAMATION
 26(1)(p) Display of Permits and Permit Numbers		
45.	The Permittee shall keep a copy of this Permit on hand at all times during this land-use operation.	COPY OF PERMIT
 26(1)(q) Biological and Physical Protection of the Land		
46.	If nesting areas are encountered during the course of operations, the Permittee shall minimize all activity so as to not disturb them.	MIGRATORY BIRD NEST DISTURBANCE
47.	Prior to the commencement of the land-use operation, the Permittee shall submit a revised Waste Management Plan, Spill Contingency Plan and Engagement Plan <i>to the Board for approval.</i>	SUBMIT REVISED PLAN
48.	If any plan is not approved by the Board, the Permittee shall revise the plan according to the Board's direction and re-submit it to the Board for approval.	RESUBMIT PLAN
49.	The Permittee shall comply with the Engagement Plan , once approved, and shall annually review the plan and make any necessary revisions to reflect changes in operations or as directed by the Board. Revisions to the plan shall be submitted to the Board for approval.	ENGAGEMENT PLAN
50.	All revised plans submitted to the Board shall include a brief summary of the changes made to the plan.	SUMMARY OF CHANGES

Annex A: Concordance Table of Items Requiring Submission

Supplemental information to be submitted by Permittee as required through Land Use Permit Conditions.

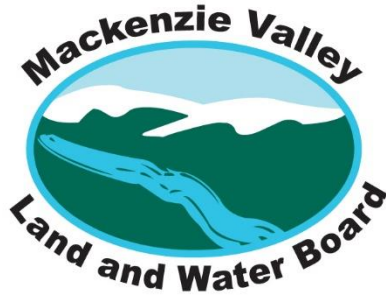
Disclaimer: If there are any discrepancies between this table and the body of the Permit, the Permit conditions prevail.

Permit Condition(s)	Report, Plan or Program Required	Due Date
49	Engagement Plan	- November 30, 2022
49	Waste Management Plan	- November 30, 2022
49	Spill Contingency Plan	- November 30, 2022
		-
		-
		-
		-
		-
		-
		-

Annex B: Revisions to Land Use Permit MV2022X0014

List of changes that have been made to the Land Use Permit since issuance.

Date	Location of change	What has changed



7th Floor - 4922 48th Street
PO Box 2130, Yellowknife NT X1A 2P6

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Reasons for Decision

Issued pursuant to paragraphs 22(2)(a) and 40(2)(c) of the Mackenzie Valley Land Use Regulations (MVLUR).

Land Use Permit Application	
File Number	MV2022X0014
Company	Kát'odeeche First Nation
Project	Phase II Environmental Assessment
Location	Yellowknife, NT
Activity	Miscellaneous
Date of Decision	October 27, 2022

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7.0 Conclusion14

On October 27, 2022, the Mackenzie Valley Land and Water Board (MVLWB or Board) met and considered the Application made by Kát’odeeche First Nation (KFN) (Applicant) to the Board on September 8, 2022 for Land Use Permit (Permit) MV2022X0014 for the Phase II Environmental Assessment (the Project) on the Hay River Dene Reserve No. 1. After reviewing the Application and the evidence gathered during the regulatory proceeding, the Board has made the following decisions:

- 1) To issue Land Use Permit MV2022X0014 for a term of 5 years;
- 2) To require revisions to Version 1 of the Engagement Plan which the Applicant must submit as Version 1.1 by November 30, 2022, for confirmation of conformity from Board staff;
- 3) To require revisions to Version 1 of the Waste Management Plan which the Applicant must submit as Version 1.1 by November 30, 2022, for confirmation of conformity from Board staff; and
- 4) To require revisions to Version 1 of the Spill Contingency Plan which the Applicant must submit as Version 1.1 by November 30, 2022, for confirmation of conformity from Board staff.

These Reasons for Decision set out the Board’s regulatory process for the Application and rationale for decisions regarding the Permit. A summary of the Application and the main issues identified during the proceeding is provided in sections [2.0](#) and [3.0](#) below, followed by an outline of the regulatory process for the Application in [section 4.0](#). [Section 5.0](#) describes how the applicable legislative requirements have been met. The Board’s decisions and supporting rationale regarding the Permit are set out in [section 6.0](#).

1.0 List of Defined Terms and Acronyms

Applicant/Permittee/KFN	Kát’odeeche First Nation
Application	The complete application package submitted by the Applicant for Land Use Permit MV2022X0014
CIRNAC	Crown-Indigenous Relations and Northern Affairs Canada
CRP	Closure and Reclamation Plan
Distribution List	The list of individuals and organizations to whom materials from this regulatory proceeding were circulated. ¹
GNWT	Government of the Northwest Territories
GNWT-ENR	Government of the Northwest Territories – Environment and Natural Resources
Inspector	An Inspector designated under subsection 84(1) of the Mackenzie Valley Resource Management Act
LWBs	Land and Water Boards of the Mackenzie Valley
MVLUR	Mackenzie Valley Land Use Regulations
MVLWB or Board	Mackenzie Valley Land and Water Board
MVRMA	Mackenzie Valley Resource Management Act
ORS	Online Review System (https://new.onlinereviewssystem.ca/reviews)
Party	As per the LWBs’ Rules of Procedures , an applicant, a person, or an organization participating in this regulatory process.

¹ To access the Distribution List, see the LWBs’ Online Review System for Kát’odeeche First Nation – [Phase II Environmental Assessment](#) – Sept16_22.

Permit	Land Use Permit MV2022X0014
Project	Phase II Environmental Assessment, the undertaking as described in Part A of the Permit.
Review Board	Mackenzie Valley Environmental Impact Review Board
SCP	Spill Contingency Plan
Standard Permit Conditions	LWBs' Standard Land Use Permit Conditions Template
WMP	Waste Management Plan

2.0 Summary of Application

On September 8, 2022 the Applicant submitted an application for a new Permit MV2022X0014 (the Application).² The Application is to conduct a Phase II Environmental Assessment within the Hay River Dene Reserve No. 1. The work is being undertaken to support the transfer of land administration and management from the Government of Canada to KFN. The Project will require an estimated 34 boreholes, 10 of which will be completed with monitoring well installations. The borehole and monitoring wells will be used to conduct soil sampling and groundwater monitoring and sampling. These activities are located within the Akaitcho Region and Dehcho Region.

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

- 1) The Permit Application as submitted by the Applicant for the Project;
- 2) The evidence and submissions received by the Board from the Applicant in relation to the Permit; and
- 3) The comments and recommendations, evidence, and submissions received by the Board from Parties during this regulatory proceeding.

3.0 Main Comments Raised During the Regulatory Proceeding

Comments raised during the regulatory proceeding were related to relatively minor points of clarification including cross-reference corrections, minor wording modifications, and typographical corrections.

4.0 Regulatory Process

On September 8, 2022, the Applicant submitted the Application, which was deemed complete and circulated to the Distribution List for public review on the Online Review System (ORS).³

As part of the public review, Board staff requested comments and recommendations to assist with the Board’s preliminary screening determination. To assist the Board in making its decision on the Permit, Board staff also circulated a draft Permit for review with the Application to allow all Parties the opportunity to comment on the specific wording of the draft conditions.

² See MVLWB Online Registry for Phase II Environmental Assessment – [Permit Application](#) – Sept16_22\
³ See MVLWB Online Review System for [KFN Phase II Environmental Assessment](#) – Sept16_22.

By October 6, 2022, the Board received comments and recommendations regarding the Application and the draft Permit from the following Parties: Crown Indigenous relation and Northern Affairs Canada (CIRNAC) – Yellowknife, CIRNAC – Inspectors, and the Government of the Northwest Territories – Environment and Natural Resources – Environmental assessment and Monitoring. On October 13, 2022, the Applicant responded to the Parties’ comments and recommendations.⁴

On October 27, 2022, the Board met and made its preliminary screening determination for the Project.⁵

On October 27, 2022, the Board met to make decisions regarding the Application. These decisions and related reasons are described in sections [5.0](#) and [6.0](#) below.

5.0 Legislative Requirements Related to Permit Issuance

The Project is subject to the [MVRMA](#) and the [MVLUR](#). As per the [MVLUR](#), the proposed use of land for the Project requires a permit. Accordingly, the Board has jurisdiction to issue the Permit as per subsection 59(1) and section 102 of the [MVRMA](#).

In conducting its regulatory process for the Application (as described in sections [3.0](#) and [4.0](#) above), the Board has ensured that section 62 of the [MVRMA](#) and all applicable legislative requirements have been satisfied 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 the regulatory proceeding, as per section 60.1 of the [MVRMA](#). The consideration of information provided to the Board is discussed in detail below and in section [6.0](#).

5.1 Consultation, Engagement, and Public Notice

As per paragraph 60.1(a) of the [MVRMA](#), in exercising its authority, the Board must consider the importance of conservation to the well-being and way of life of Indigenous peoples of Canada, 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, including impacts on rights under section 35, are understood and carefully considered before decisions are made with respect to the issuance of permits and licences.

The Board’s requirements for engagement are set out in the LWBs’ [Engagement and Consultation Policy](#) and [Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits](#). The Policy and Guidelines were 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

⁴ See MVLWB Online Review System for KFN Phase II Environmental Assessment - [Review Comment Summary Table](#) – Oct13_22.

⁵ See MVLWB Online Registry for KFN Phase II Environmental Assessment - [Preliminary Screening Determination and RFD](#) – Oct27_22.

articulated. KFN engaged with the Town of Hay River on August 26, 2022, no concerns were raised. In accordance with the Policy and Guidelines, the Applicant's engagement efforts and proposed procedures are detailed in the Engagement Record and Plan (Version 1),⁶ submitted with the Application. The Board has approved the Applicant's Engagement Plan (Version 1) with revisions required, 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 Engagement Plan, once approved, 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 Dehcho Region the appropriate organizations, governments, First Nations, and Indigenous organizations were included in the Distribution List.⁷ The Distribution List was used throughout this proceeding to circulate submissions, information, and updates relevant to the proceeding; the List was updated if needed, and (if requested) individuals with specific interests in the Project were added. More information about the proceeding for the Application is provided above in [section 4.0](#).

In accordance with sections 63 and 64 of the [MVRMA](#), the Board is satisfied that notice of and access to copies of the Application were provided, and that a reasonable amount of time was given to communities, First Nations, and the public to participate in this proceeding and make submissions to the Board.

5.2 Eligibility for Land Use Permit

As per section 18 of the MVLUR, eligibility must be determined before the Board can issue a permit. The Applicant provided confirmation of access rights included in the Application Package to demonstrate eligibility under paragraph 18(b) of the [MVLUR](#). No issues were raised regarding eligibility during this proceeding. Based on the supporting information provided, the Board concludes that the eligibility requirements under section 18 of the MVLUR have been satisfied.

5.3 Land Use Plan Conformity

As per section 61 of the [MVRMA](#), where an approved Land Use Plan applies, the Board must confirm conformity with the Land Use Plan before issuing a permit or licence.

No approved Land Use Plans apply in the Project area.

5.4 Land Use Fees

The Project is located wholly inside of federally administered area. The application included the application fee of \$150.00.

⁶ See MVLWB Online Registry for Phase II Environmental Assessment – [Engagement Record and Log V1](#) – Oct17_22.

⁷ To access the Distribution List, see the LWBs' Online Review System for [Kát'odeeche First Nation – KFN Phase II Environmental Assessment](#) – Sept16_22.

5.5 Time Limit

As per section 22 of the [MVLUR](#), the Board is required to make its decision on a permit within 42 days of receiving a complete application.

5.6 Environmental Review (Part 5 of the MVRMA)

5.6.1 Preliminary Screening

On October 27, 2022, the Board met and has reviewed all the evidence received during the regulatory process with respect to the Preliminary Screening of the proposed Project. Based on the evidence, it is the Board's opinion that the proposed Project will not have a significant adverse impact on the environment or be a cause of public concern as set out in paragraph 125(1)(a) of the MVRMA. The Board has therefore decided not to refer the proposed Project to Environmental Assessment.⁸

In accordance with section 125 of the [MVRMA](#), the Board notified the Review Board of its preliminary screening determination,⁹ and in the ten days following the Board's preliminary screening determination notification to the Review Board, the Board did not receive notice of referral to environmental assessment (EA). Subsequently, the Board proceeded with issuing the Permit.

The Board is satisfied that the requirements of Part 5 of the [MVRMA](#) have been met for the Project.

6.0 Decision – Land Use Permit MV2022X0014

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 MV2022X0014 should be issued, subject to the scope, definitions, conditions, and term contained therein. The Board's determinations and reasons for this decision are set out below.

The Permit has been developed to address the Board's statutory responsibilities, to protect the receiving environment, and to address issues within the Board's jurisdiction that were identified and investigated during this regulatory proceeding.

In developing the Permit, the Board considered the LWBs' [Standard Land Use Permit Conditions Template](#) (Standard Permit Conditions) and included a number of these standard conditions that are relevant to the Project. As noted in [section 4.0](#), Board staff circulated a draft Permit for review to allow Parties to provide specific input to the Board on possible conditions, and the Board considered these review comments and recommendations in making its determination on the Permit conditions.

The Standard Permit Conditions have been established by the LWBs based on information from LWB policies and guidelines, other applicable guidelines and best practices, meetings with Inspectors, input

⁸ See MVLWB Online Registry for Kát'odeeche First Nation – [Preliminary Screening Determination and RFD](#) – Oct27_22.

⁹ See MVLWB Online Registry for Kát'odeeche First Nation – [Notice of Preliminary Screening Determination](#) – Oct27_22.

from LWB staff, and feedback from a public review. Each standard condition has been evaluated against the following characteristics of an ideal condition:

- 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).

The Standard Permit Conditions include general rationale for each standard condition, and as such, the language of any standard condition included in the Permit is only discussed in detail in the following sections of these Reasons for Decision when it specifically relates to concerns or recommendations raised during the regulatory proceeding. The Board's reasons for developing and including project-specific conditions, including discussion of any concerns and recommendations raised regarding these conditions, are detailed in the relevant sections below.

6.1 Term of Permit

The Applicant has applied for a term of 2 years for the Permit. Subsection 26(5) of the [MVLUR](#) allows for a Permit term of not more than five years. The project will take approximately 7 days to complete the drilling, one year of monitoring and then decommissioning of the wells. The Board understands that sometimes issues arise, and a project may be delayed. After reviewing the submissions made during this regulatory proceeding, the Board has determined an appropriate term for the Permit is 5 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, as contemplated in the Application, throughout the life of the Permit.

Based on the activities described in the Permit Application and on the scope outlined in the Standard Permit Conditions, Board staff included a draft scope in the draft Permit that was circulated for public review. The Board did not receive any comments or recommendations regarding the draft scope during the proceeding, so the Board accepted it as the scope of the Permit.

6.3 Part B: Definitions

The Board defined certain terms in the Permit to ensure a common understanding of the conditions, to avoid future differences in interpretation of the Permit, to reflect Project-specific evidence, and to support consistency across licences and permits issued by the LWBs. For the most part, the Board selected applicable definitions relevant to the Project from the Standard Permit Conditions.

6.4 Part C: Conditions Applying to All Activities

The subheadings below correspond to the headings in the conditions section of the Permit, as outlined in subsection 26(1) of the [MVLUR](#).

26(1)(a) Location and Area

The conditions included in this section are all consistent with the LWBs' Standard Permit Conditions.

26(1)(b) Time

CIRNAC – Inspector recommended that Condition 6 – REPORTS BEFORE FINAL REMOVAL be removed as the duration of project is short (7 days for installation) and this is not applicable to the Project.

The Board kept this condition as the monitoring wells will be monitored for one year after installation and then the project is anticipated to be decommissioned.

The remaining conditions included in this section are all consistent with the LWBs' Standard Permit Conditions.

26(1)(c) Type and Size of Equipment

The conditions included in this section are all consistent with the LWBs' Standard Permit Conditions.

26(1)(d) Methods and Techniques

The conditions included in this section are all consistent with the LWBs' Standard Permit Conditions.

26(1)(e) Type, Location, Operation of All Facilities

The conditions included in this section are all consistent with the LWBs' Standard Permit Conditions.

26(1)(f) Control or Prevention of Ponding of Water, Flooding, Erosion, Slides, and Subsidence of Land

The conditions included in this section are all consistent with the LWBs' Standard Permit Conditions.

26(1)(g) Use, Storage, Handling, and Ultimate Disposal of Any Chemical or Toxic Material

The conditions included in this section are all consistent with the LWBs' Standard Permit Conditions.

26(1)(h) Wildlife and Fish Habitat

The [MVLUR](#) includes provisions related to the protection of wildlife habitat; however, requirements for Wildlife Management and Monitoring Plans (WMMPs) are under the jurisdiction of the GNWT through the *Wildlife Act*. Accordingly, all applicants are directed to contact the GNWT-ENR to determine whether a WMMP, which details mitigations to reduce or eliminate impacts to applicable wildlife and wildlife

habitat, is required for the project and should be submitted to the Board with a permit and/or licence application.

The Permit does not include a requirement for a WMMP.

The Board included the HABITAT DAMAGE condition in the Permit, which requires the Permittee to prevent damage to wildlife and fish habitat. This is a condition from the Board's Standard Permit Conditions and is intended to ensure the Permittee conducts their land-use operation in such a way as to minimize disturbance to wildlife habitat.

26(1)(i) Storage, Handling, and Disposal of Refuse or Sewage

The conditions included in this section are all consistent with the LWBs' Standard Permit Conditions.

WASTE MANAGEMENT PLAN – SUBMIT REVISED PLAN

All applicants must submit detailed waste management information, identifying all types of waste that will be produced by the project (including quantity and quality) and describing the disposal methods that are proposed for each type of waste. For most applicants, this will be in the form of a Waste Management Plan, developed in accordance with the LWBs' [Guidelines for Developing a Waste Management Plan](#), and licences and permits will include standard conditions regarding compliance with the Plan, as approved by the Board. The Guidelines can be applied to a wide range of projects and are 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 a project.

As required, the Permittee included a Waste Management Plan in the Application.¹⁰ The Board considered this Plan as part of the Application Package, and its decision on the Plan is set out below.

During the review, CIRNAC – Yellowknife and the CIRNAC – Inspector recommended KFN edit the Waste Management Plan to reflect the applicable federal authority and update the contact information as the project is located on federally administered land. The current plan references the GNWT inspector and the GNWT authority as the main contact.

During the review, CIRNAC – Yellowknife requested that KFN update their Waste Management Plan to provide clarification on where they will store the soil bags and purge water containers while waiting for analytical results as well as clarification on the disposal methods for the soil and purge water.

¹⁰ See MVLWB Online Registry for Kátł'odeeche First Nation – [Waste Management Plan V1](#) – Oct17_22.

The Board requires that the Permittee revise the Waste Management Plan and submit Version 1.1, by November 30, 2022 to reflect updates as agreed to during this regulatory proceeding, to reflect the Project activities, to meet the applicable guidelines, and to include the following:

- Revision to include the applicable Federal authority and inspectors;
- provide clarification on storage of soil bags and purge water containers while waiting on analytical results; and
- provide additional clarification on the disposal methods for soil and purge water.

The Plan will be considered approved when the Permittee receives written confirmation of conformity from Board staff. A public review will typically not be required to confirm conformity; however, if the revised Plan includes additional information beyond what has been requested above, a public review may be required before it can be considered by the Board. To ensure that no waste is produced before appropriate waste management practices are in place, the Permittee may not commence Project activities until conformity is confirmed.

26(1)(j) Protection of Historical, Archaeological, and Burial Sites

The conditions included in this section are all consistent with the LWBs' Standard Permit Conditions.

26(1)(k) Objects and Places of Recreational, Scenic, and Ecological Value

This section was intentionally left blank, because the Board did not require conditions in this section to satisfy its mandate and did not receive any recommendations related to this section during the review of the draft Permit.

26(1)(l) Security Deposit

This section sets out the Permittee's responsibility for all costs associated with remediation of the Project area and establishes the amount of security that must be posted and maintained by the Permittee. The conditions included in this section are all consistent with the LWBs' Standard Permit Conditions.

The Board did not include security requirements in the Permit because the Applicant is conducting work on reserve land within the boundaries of their community and is doing work on previously disturbed land and will require limited space in each location. The RESPONSIBILITY FOR REMEDIATION COSTS condition establishes the Permittee's responsibility for all costs to remediate the Permit area, so the Board is satisfied that the Permittee will be accountable for carrying out closure and reclamation even though a security deposit is not required.

26(1)(m) Fuel Storage

The conditions included in this section are all consistent with the LWBs' Standard Permit Conditions.

SPILL CONTINGENCY PLAN – SUBMIT REVISED PLAN

All applicants must describe spill contingency planning. For most applicants, this will be in the form of a Spill Contingency Plan, developed in accordance with the INAC [Guidelines for Spill Contingency Planning](#), and licences and permits will include standard conditions regarding compliance with the Plan, as approved by the Board. The Plan is intended to ensure that an action plan 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.

As required, the Permittee included a Spill Contingency Plan in the Application.¹¹ The Board considered the Plan as part of the Application Package, and its decision on the Plan is set out below.

During the review, CIRNAC – Yellowknife and the CIRNAC – Inspector recommended KFN edit the Spill Contingency Plan to reflect the applicable federal authority and update the contact information as the project is located on federally administered land. The current plan references the GNWT inspector and the GNWT authority as the main contact.

The Board requires that the Permittee revise the Plan and submit Version 1.1, by November 30, 2022 to reflect updates as agreed to during this regulatory proceeding, to reflect the Project activities, to meet the applicable guidelines, and to include the applicable Federal authority and inspectors.

The Plan will be considered approved when the Permittee receives written confirmation of conformity from Board staff. A public review will typically not be required to confirm conformity; however, if the revised Plan includes additional information beyond what has been requested above, a public review may be required before it can be considered by the Board. To ensure that no spills occur before appropriate spill response procedures and equipment are in place, the Permittee may not commence Project activities until conformity is confirmed.

26(1)(n) Methods and Techniques for Debris and Brush Disposal

The conditions included in this section are all consistent with the LWBs' Standard Permit Conditions.

26(1)(o) Restoration of the Lands

The conditions included in this section are all consistent with the LWBs' Standard Permit Conditions.

CLOSURE AND RECLAMATION PLAN

All applicants must describe closure and reclamation planning. For most applicants, this will be in the form of a Closure and Reclamation Plan (CRP) and licences and permits will include standard conditions regarding compliance with the Plan, as approved by the Board.

¹¹ See MVLWB Online Registry for Kát'odeeche First Nation – [Spill Contingency Plan V1](#) – Oct17_22.

Due to the small scale of the Project, in lieu of submitting a stand-alone CRP, the Permittee described the proposed closure and reclamation activities in the Application Form. In this case, the Board considered this information equivalent to a CRP.

26(1)(p) Display of Permits and Permit Numbers

The conditions included in this section are all consistent with the LWBs' Standard Permit Conditions.

26(1)(q) Biological and Physical Protection of the Land

The conditions included in this section are all consistent with the LWBs' Standard Permit Conditions.

ENGAGEMENT PLAN – SUBMIT REVISED PLAN

The Board assesses engagement adequacy through the LWBs' [Engagement and Consultation Policy](#) and [Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits](#), and 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.

In accordance with the Policy and Guidelines, the Applicant included an Engagement Record and Plan in the Application,¹² and these documents were distributed for public review with the Application. The Board considered the Plan as part of the Application Package.

During the review, CIRNAC – Yellowknife and the CIRNAC – Inspector recommended KFN edit the Engagement Plan to reflect the applicable federal authority and update the contact information as the project is located on federally administered land. The current plan references the GNWT inspector and the GNWT authority as the main contact.

The Board requires that the Permittee revise the Engagement Plan and submit Version 1.1, by November 30, 2022, to reflect updates as agreed to during this regulatory proceeding, to reflect the Project activities, to meet the applicable guidelines, and to include the applicable Federal authority and inspectors.

The Plan will be considered approved when the Permittee receives written confirmation of conformity from Board staff. A public review will typically not be required to confirm conformity; however, if the revised Plan includes additional information beyond what has been requested above, a public review may be required before it can be considered by the Board. The Permittee may not commence Project activities until conformity is confirmed.

¹² See MVLWB Online Registry for Phase II Environmental Assessment – [Engagement Plan and Log V1](#) – Oct17_22.

6.5 Annex A: Table of Submissions

Annex A of the Permit contains a table that summarizes the submissions required by the Permit conditions.

6.6 Annex B: Table of Revision History

Annex B of the Permit contains a table which identifies updates and tracks changes made to the Permit. This table is currently blank because this is a new permit, but it will be updated throughout the life of the Permit.

7.0 Conclusion

Subject to the scope, definitions, conditions, and term set out in the Permit, and for the reasons expressed herein, the MVLWB is of the opinion that the activities and land use associated with the Project can be completed by Kát’odeeche First Nation while providing for the conservation, development, and utilization of waters in a manner that will provide the optimum benefit for all Canadians and in particular for the residents of the Mackenzie Valley.

Land Use Permit MV2022X0014 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 Kát’odeeche First Nation’s use of the land as authorized by the Permit.

SIGNATURE



**Mavis Cli-Michaud, Chair
Mackenzie Valley Land and Water Board**

November 8, 2022

Date