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April 19, 2023

File: W202L8-0001

Mark Cliffe-Phillips  
Mackenzie Valley Review Board  
200 Scotia Centre  
Box 938, 5102-50th Avenue  
Yellowknife NT X1A 2N7

Sent by email

Dear Mark Cliffe-Phillips,

**Re: Government of Northwest Territories – Department of Infrastructure (GNWT-INF) - Tłı̄chq̄ All Season Road – Notice of Preliminary Screening Determination – Amendment Application for Water Licence – Water Use – Tłı̄chq̄ All Season Road, NT**

The Wek'èezhì Land and Water Board (Board) met on April 19, 2023 and considered the Application Package from Government of Northwest Territories – Department of Infrastructure (GNWT-INF) for Water Licence (Licence) W202L8-0001 for the Tłı̄chq̄ All Season Road in accordance with the *Mackenzie Valley Resource Management Act* (MVRMA).

The Board conducted a preliminary screening based on the public record for the proceeding. Based on the evidence provided, the Board is satisfied the screening has been completed according to section 125 of the MVRMA and has decided **not to refer** the changes to the Project to environmental assessment. The Board's Preliminary Screening Determination and Reasons for Decision, as required by section 121 of the MVRMA, is attached.

If the Board does not receive notice of referral to environmental assessment **by April 29, 2023**, it will continue with the regulatory proceeding.

W2020L8-0001 – GNWT-INF – TASR – Water Use

The Board and staff look forward to continued communications throughout the pause period. Please contact Ryan Fequet via [email](#) or at (867) 765-4589 with any questions or concerns regarding this letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mason Mantla', written in a cursive style.

Mason Mantla  
Chair, Wek'èezhìi Land and Water Board

BCC'd to:     TASR Distribution List  
                  Ziaur Rahman, GNWT-INF  
                  Dr. Benjamin Bey, GNWT-INF

Attached:     Preliminary Screening Determination and Reasons for Decision



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## Preliminary Screening Determination and Reasons for Decision

Water Licence Application	
<b>File Number</b>	W2020L8-0001
<b>Company</b>	Government of Northwest Territories – Department of Infrastructure (GNWT-INF)
<b>Project</b>	Tłıchq All Season Road
<b>Location</b>	Tłıchq All Season Road, NT
<b>Activity</b>	Miscellaneous – Road Maintenance and Operations
<b>Date of Decision</b>	April 19, 2023

### 1.0 Decision

In accordance with subsection 124(1) of the *Mackenzie Valley Resource Management Act* (MVRMA), the Wek'èezhì Land and Water Board (WLWB or Board) met on April 19, 2023 to make a preliminary screening determination on the amendment Application from Government of Northwest Territories – Department of Infrastructure (GNWT-INF) (Applicant) for Water Licence W2020L8-0001 (Licence)<sup>1</sup> for the Tłıchq All Season Road (TASR) (Project).<sup>2</sup>

The Board has determined that some Project activities and areas are exempt from preliminary screening, because they were previously screened or underwent an Environmental Assessment (EA). The Applicant has proposed a new Project activity; however, the Board has decided not to refer the new Project activity

<sup>1</sup> See WLWB Online Registry ([www.wlwb.ca](http://www.wlwb.ca)) for [GNWT-INF - TASR - WL Amendment Application - Water Use - Mar 29 23](#).

<sup>2</sup> The Project is the Tłıchq All Season Road, which is the proposed development, where “development” is defined in Part 5 of the MVRMA as: “any undertaking, or any part or extension of an undertaking, that is carried out on land or water and includes an acquisition of lands pursuant to the *Historic Sites and Monuments Act* and measures carried out by a department or agency of government leading to the establishment of a park subject to the *Canada National Parks Act* or the establishment of a park under a territorial law.”

to the Mackenzie Valley Environmental Impact Review Board (the Review Board) for Environmental Assessment because, based on the evidence, it is the Board's opinion that the proposed changes to the Project will not have a significant adverse impact on the environment or be a cause of public concern.

The Board's determination, including reasons for its decision, are detailed in sections [3.0](#) and [4.0](#).

## **2.0 Background**

The Tłı̄ch̄q All Season Road is a 97-kilometre (km) long dual-lane gravel highway running from km 196 on Highway 3 near Behchok̄, to Whatì that opened to the public on November 30, 2021. On March 29, 2023, the GNWT-INF submitted an Application to amend its Licence to allow for an increase in the daily water withdrawal rate from 299 m<sup>3</sup> to 900 m<sup>3</sup> for the purpose of dust suppression during the summer months (i.e., June to August). The Licence previously allowed for withdrawal of 900 m<sup>3</sup>/day of water during construction activities until August 30, 2022, followed by a reduction to 299 m<sup>3</sup>/day until the expiry of the Licence (i.e., May 29, 2026). During the summer of 2022, the GNWT-INF determined that more than 299 m<sup>3</sup>/day would be required for the application of calcium chloride for dust suppression purposes until the expiry of the Licence. In the Application, the GNWT-INF stated that the increased water use would be necessary for 5 to 10 days between June and August.

The GNWT-INF submitted an Engagement Log with its Application that outlines the pre-submission engagement completed prior to submission to the Board. The Engagement Log indicates that engagement with Indigenous and non-Indigenous Governments and Organizations took place from January to March 2023. The Engagement Log describes that, at minimum, an email was sent to all Affected Parties seeking feedback on the Amendment, and if no response was received, follow-up emails were sent. High-level concerns and/or feedback received were noted in the Engagement Log and additional information was provided in attached emails. Of the Parties that responded, most had no concerns. According to the log and attached emails, the Tłı̄ch̄q Government (TG), the Government of the Northwest Territories Department of Environment and Natural Resources (GNWT-ENR), and Acho Dene Koe First Nation had questions on the Amendment. The questions were related to the water sources, including available capacities and whether new sources were needed, as well as whether changes to Management Plans would be required. GNWT-INF included the email responses to Parties' questions with the Application.

In the cover letter with the Application, the GNWT-INF requested an exemption from preliminary screening. GNWT-INF indicated that it believes the application is exempt because this request will not have any additional anticipated environmental impacts and therefore the previous approved mitigations under the Licence will continue to be applied.

The Application includes a proposed change to the Project. Under Part 1, Schedule 1, section 2.1 of the Exemption List Regulations to the MVRMA, project areas and activities that have already been subject to Part 5 of the MVRMA are exempt from preliminary screening. The new Project activity requires screening by the Board in accordance with subsection 124(1) of the MVRMA.

In accordance with paragraph 125(1)(a) of the MVRMA, the Board must conduct a preliminary screening of the proposed changes to the Project to determine and report to the Review Board whether, in its opinion, the proposed changes to the Project might have a significant adverse impact on the environment, or might be a cause of public concern. The details of the Board's analysis are set out in section [3.0](#) below.

## **2.1 Scope of Screening:**

### Previously Screened Areas and Activities:

This section of the Boards' Reasons for Decision does not describe all previously screened areas and activities for the TASR Project. This discussion is limited to the relevant Project areas and activities as described in the Application for water use.

The environmental effects of the TASR project were first assessed through an Environmental Assessment (EA) by the Mackenzie Valley Review Board (Review Board).<sup>3</sup> The Review Board concluded that the Project is likely to have significant adverse impacts on the environment, and required the GNWT-INF to implement several measures to mitigate impacts. Measures within the jurisdiction of the WLWB were reflected in conditions in the Type B Water Licence (W2016L8-0001) issued in May of 2019.<sup>4</sup>

In 2020, GNWT-INF applied for a Type A Water Licence to increase its water use from 299 m<sup>3</sup>/day to 900 m<sup>3</sup>/day for the purposes of construction activities. This Water Licence would replace the Type B Water Licence. No new Water Sources were included as part of the Application; the increased water use was proposed for between the date of issuance until August 31, 2022. The Board conducted a preliminary screening of the Application and determined that the proposed increased water use would not have a significant adverse impact on the environment or be a cause of public concern.<sup>5</sup>

### New Activities:

Under the current application, GNWT-INF has again proposed to increase its daily allowable water usage. The increased water usage is necessary to support the application of calcium chloride for dust suppression purposes. While GNWT-INF was previously Licenced to withdrawal 900 m<sup>3</sup>/day, the duration of the current Application is different from the previous request. Previously, the increased water use was Licenced from November 2020 to August 2022 for construction activities. In the current Application, GNWT-INF is requesting the increased water use until the expiry of the Licence (i.e., 2026). GNWT-INF has indicated that four Water Sources will be used for the dust suppression activities. These Water Sources are already included in the Licence. No additional changes to the Project have been proposed by GNWT-INF.

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<sup>3</sup> See Review Board Online Registry ([www.reviewboard.ca](http://www.reviewboard.ca)) for [Final TASR REA - Mar 29 2018 \(reviewboard.ca\)](#)

<sup>4</sup> See WLWB Online Registry for [W2016L8-0001 - TASR - Water Licence - May 30 19.pdf \(mvlwb.ca\)](#)

<sup>5</sup> See WLWB Online Registry for [W2020L8-0001 - TASR - WL PS Determination Notification and RFD - Sep 24 20.pdf \(mvlwb.ca\)](#)

## **2.2 Public Record and Regulatory Proceeding**

To assist the Board in its preliminary screening determination for the Project, the Board distributed the Application for public review on March 31, 2023, inviting reviewers to provide comments and recommendations on the Application and the preliminary screening (e.g., on impacts and mitigation measures) using the Online Review System (ORS). Comments were due April 13, 2023, with responses from the Applicant due April 14, 2023. The Board received comments and recommendations from the Tłıchq Government (TG), and the GNWT Department of Environment and Climate Change (GNWT-ECC);<sup>6</sup> Board staff also submitted comments and questions for the purposes of clarification.<sup>7</sup> Fisheries and Oceans Canada (DFO), the Wek'èezhì Renewable Resources Board (WRRB), and Environmental and Climate Change Canada (ECCC) indicated that they had no recommendations at this time.

Since there were no requests to extend the reviewer comment deadline, the Board is satisfied that a reasonable period of notice was given to affected communities and First Nations, as required by subsection 63(2) of the MVRMA.

The Board is also satisfied that notice of the Application was provided to the Tłıchq Government and that a reasonable period of time was provided for the Tłıchq Government to make representations to the Board in accordance with section 63 of the MVRMA.

## **3.0 Potential Impacts and Proposed Mitigations**

Table 1 below summarizes:

- the potential impacts of the proposed changes to the Project;
- the concerns that were identified during the regulatory proceeding thus far and how the Applicant addressed those concerns;
- the proposed and potential mitigations for the potential impacts; and
- the Board's analysis of the potential impacts and proposed mitigations.

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<sup>6</sup> Previously Department of Environment and Natural Resources (ENR).

<sup>7</sup> See the Online Review System (<https://new.onlinereviewssystem.ca/>) for [GNWT-INF - TASR - WL Amendment - Water Use - Public Review - Apr 14 23](#).

**Table 1: Potential Impacts and Proposed Mitigations for the Proposed Change to the Project**

Potential Impact	Activity	Proposed Mitigations <i>Description of measures to reduce potential impacts, including consideration of cumulative impacts and climate change.</i>	Board Analysis and Determination
Water flow or level changes.	Increased daily rate of water withdrawal from the following Water Sources: Duport River, James River, LaMarte River (i.e., Whatideè), and Peanut Lake.	<ul style="list-style-type: none"> <li>• The Applicant noted the following in its Application               <ul style="list-style-type: none"> <li>○ The water sources are constrained by conditions in the Licence, i.e., not permitted to withdraw greater than 10% of instantaneous flow from a river or stream (Part C, Condition 6) or 10% of available volume of a lake (Part C, Condition 4);</li> <li>○ GNWT-INF indicated that based on the discharge rates of Duport, James, and LaMarte (also known as Whatideè) Rivers, only a small portion of the available flow (i.e., 10% of the instantaneous flow) would be withdrawn.</li> <li>○ The increased limit for water withdrawal until the expiry date of the license will only occur during a 5 to 10 day period in the summer;</li> <li>○ GNWT-INF indicated that the full 900 m<sup>3</sup> would not be withdrawn from one source in one day;</li> <li>○ GNWT-INF proposed to measure the instantaneous flow of Duport and James River every 3-5 years or as requested by GNWT-ENR Waters Officer.</li> </ul> </li> <li>• The Applicant described the following mitigations and considerations in response to Review Comments:               <ul style="list-style-type: none"> <li>○ TG recommended that GNWT-INF engage with the Tłıchq Government prior to use of the Whatideè (i.e., LaMarte River) because of the Tłıchq Government’s concerns with the long-term use of larger volumes of water from Whatideè, especially for low water years (TG comment 3). Tłıchq Government also proposed wording for the Licence condition to limit the amount of water to be withdrawn from Whatideè to 2,000 m<sup>3</sup> over the time required</li> </ul> </li> </ul>	<p>The current Licence states that the Licensee is not permitted to withdraw greater than 10% of instantaneous flow for rivers and streams or greater than 10% of available volume for a lake. These conditions aim to protect the Water Sources during low flow in rivers and streams, or when water levels are low in lakes. GNWT-INF has not requested these conditions be removed from the Licence and the Board can carry these conditions over to the Amended Licence.</p> <p>GNWT-INF has not requested any new water sources be added to the Licence, and therefore the geographical area of the Project remains the same as under the previous Licence.</p> <p>The frequency and duration of the increased water use is over a short period of time in the summer months for dust suppression. GNWT-INF also indicated that the daily allotted volume of water will not be withdrawn from just one source. Given the short duration and the fact that the full 900 m<sup>3</sup> will not be withdrawn from one source per day, the probability is low that the water flow/levels will be irreversibly impacted from the increased</p>

		<p>for the dust suppression event in the summer months (TG comment 4). GNWT-INF responded that based on the abundance of water in the LaMarte River, even without additional restrictions, the volume of water would be miniscule compared to the amount of flow available (response to comment 3). GNWT-INF did state however that setting the 2,000 m<sup>3</sup> withdrawal limit for the LaMarte River for the dust suppression event would not likely impact dust suppression operations (response to comment 4).</p> <ul style="list-style-type: none"> <li>○ GNWT-ECC and Tłıchq Government recommended that the updated Licence condition for water use be specific to dust suppression for the increased daily withdrawal (GNWT-ECC comment 1; TG comment 4). GNWT-INF responded that it would not object to the wording provided by the GNWT-ECC (response to GNWT-ECC comment 1).</li> <li>○ GNWT-INF indicated that it was not opposed to a restriction to the duration of the dust suppression events, but requested for operational purposes that the limit be 14 days incase more than 10 days is needed (response to WLWB staff comment 1).</li> </ul> <ul style="list-style-type: none"> <li>• The current Licence includes conditions that can mitigate the identified potential impacts: <ul style="list-style-type: none"> <li>○ Part C, Condition 4 requires that the Licensee shall not withdraw greater than 10% of the available Water volume of any Water Source;</li> <li>○ Part C, Condition 6 requires that the Licensee shall not withdraw greater than 10% of instantaneous flow from any of the authorized rivers and streams.</li> <li>○ Part C, Condition 8 requires that the Licensee shall submit hydraulic assessments to the Inspector, DFO, and the Board prior to commencement of water withdrawal from the authorized rivers and streams.</li> <li>○ Part C, Condition 9 requires that the Licensee submit maximum water volumes with supporting documentation to the Inspector,</li> </ul> </li> </ul>	<p>daily water withdrawal.</p> <p>Given the increased water withdrawal is for dust suppression purposes only, the Board could limit the increased use of water to only dust suppression activities in the amended Licence, as recommended by Tłıchq Government and GNWT-ECC. The Board could also limit the duration of the dust suppression activities in the amended Licence.</p> <p>To mitigate any potential impacts to the Whatıdeè, Tłıchq Government recommended that GNWT-INF limit the amount of water to be withdrawn from Whatıdeè to 2,000 m<sup>3</sup> over the time required for the dust suppression event in the summer months. GNWT-INF agreed the limitation should not impact dust suppression operations. The Board could apply this total volume limit to the Water Licence condition as proposed by Tłıchq Government.</p> <p>Based on the described mitigations and options available to the Board, it is the Board's opinion that the proposed change will not have a significant adverse impact on the environment and will not be a cause of public concern.</p>
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		<p>DFO, and the Board prior to commencement of water withdrawal from the authorized lakes.</p> <ul style="list-style-type: none"><li>• The Board has a standard licence condition that is typically used to mitigate the identified potential impacts. The standard condition is:<sup>8</sup><ul style="list-style-type: none"><li>○ Water Source and Maximum Volume.</li></ul></li></ul>	
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<sup>8</sup> See the WLWB Policies and Resources webpage to access the LWB [Standard Water Licence Conditions Template](#).

<p>Impingement and entrainment of fish into water intake.</p>	<p>Withdrawing water from the Water Sources.</p>	<ul style="list-style-type: none"> <li>• The Applicant proposed the following mitigations in the Application <ul style="list-style-type: none"> <li>○ DFO approved fish screens will be used.</li> </ul> </li> <li>• The Board has standard licence conditions that are typically used to mitigate the identified potential impacts. The standard conditions are:<sup>9</sup> <ul style="list-style-type: none"> <li>○ Water Intake Screen</li> <li>○ Water Intake Location - Authorization</li> </ul> </li> </ul>	<p>In the engagement log with the Application, GNWT-INF indicated that it uses fish screens on all intake hoses to prevent impingement/entrainment of fish in the hose. The Board could add the standard licence condition to the Licence that requires the Licensee to construct and maintain the Water Intake(s) with a screen designed to prevent impingement or entrainment of fish (Water Intake Screen).</p> <p>The current Licence requires the Licensee to obtain written authorization from an Inspector for the location of the Water intake in a fish-bearing Watercourse (Part C, Condition 7). The Board can carry over this condition to the Amended Licence.</p> <p>Based on the described mitigations and options available to the Board, it is the Board’s opinion that the proposed change will not have a significant adverse impact on the environment and will not be a cause of public concern.</p>
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<sup>9</sup> See the WLWB Policies and Resources webpage to access the LWB [Standard Water Licence Conditions Template](#).

### 3.1 Consideration of Potential Impacts

Based on the potential impacts and proposed mitigations identified above in Table 1, the Board considered whether the change to the Project might have a significant adverse impact on the environment. In general, impacts of the change to the Project on the environment can be mitigated through the use of licence conditions of two general types:

1. conditions in the existing Licence, including requirements for management and monitoring plans, with revisions where necessary; and
2. new or unique conditions that may be needed to mitigate potential impacts of the changes to the Project that may not be addressed by the conditions in the existing Licence, and which may be from the Board's standard conditions list or established by the Board as per the LWB [Standard Process for Creating New Conditions](#).

These conditions may include requirements for management and monitoring plans that provide detailed information regarding the implementation of mitigation measures and the evaluation of their effectiveness. The conditions will be discussed in further detail by all Parties through the regulatory proceeding and will be finalized by the Board following completion of the regulatory proceeding.

### 3.2 Consideration of Public Concern

In addition to considering the potential impacts of the change to the Project, the Board considered whether the change to the Project might be a cause of public concern.

Based on the evidence provided during the regulatory proceeding thus far, the Board did not identify any comments or issues that indicate that the Project is a cause of public concern.

### 4.0 Conclusion

The Board and the Mackenzie Valley Environmental Impact Review Board (the Review Board) have previously completed a preliminary screening and Environmental Assessment of the Project,<sup>10</sup> however, the Application includes a proposed change to the Project. Accordingly, the Board has determined that Project activities that have already been subject to Part 5 of the MVRMA are exempt from preliminary screening under Part 1, Schedule 1, section 2.1 of the Exemption List Regulations to the MVRMA. The Board has conducted a preliminary screening of the proposed change to the Project.

The Board has reviewed all the evidence received during the regulatory process with respect to the Preliminary Screening of the proposed change to the Project. Based on the evidence, it is the Board's opinion that the proposed change to the 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

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<sup>10</sup> See WLWB Online Registry for [W2020L8-0001 - TASR - WL PS Determination Notification and RFD - Sep 24 20.pdf](#), and Review Board Online Registry for [Final TASR REA - Mar 29 2018 \(reviewboard.ca\)](#).  
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has therefore decided not to refer the proposed change to the Project to Environmental Assessment and will resume the regulatory proceeding.



April 19, 2023

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**Mason Mantla, Chair**  
**Wek'èezhìi Land and Water Board**

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**Date**