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Reasons for Decision

Issued pursuant to subsection 26(2) and paragraph 40(2)(c) of the Mackenzie Valley Land Use Regulations (MVLUR).

| Land Use Permit Type A Amendment Application | |
|--|--|
| File Number | W2021Q0011 |
| Company | Northwest Territories Power Corporation (NTPC) |
| Project | Snare Hydroelectric Facility |
| Location | Snare River, NT |
| Activity | Power |
| Date of Decision | February 29, 2024 |

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On February 29, 2024, the Wek'èezhìi Land and Water Board (WLWB or Board) met and considered the Type A Permit Amendment Request (the Application) made by Northwest Territories Power Corporation (NTPC) (the Applicant) to the Board on January 8, 2024 for Land Use Permit (Permit) W2021Q0011 for the Snare Hydroelectric Facility (the Project) in the Snare River. After reviewing the Application and the evidence gathered during the regulatory proceeding, the Board has decided to amend Land Use Permit W2021Q0011.

These Reasons for Decision set out the Board's regulatory process for the Application and rationale for decisions regarding the amended Permit. A summary of the Application is provided in section 2.0 followed by an outline of the regulatory process for the Application in section 3.0. Section 4.0 describes how the applicable legislative requirements have been met. The Board's decisions and supporting rationale are set out in section 5.0.

1.0 List of Defined Terms and Abbreviations

| | |
|----------------------------|--|
| Applicant/Permittee | Northwest Territories Power Corporation (NTPC) |
| Application | The complete amendment request submitted by the Applicant for Land Use Permit W2021Q0011 |
| Distribution List | The list of individuals and organizations to whom materials from the regulatory proceeding were circulated. ¹ |
| ECCC | Environment and Climate Change Canada |
| GNWT | Government of the Northwest Territories |
| 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 |
| MVRMA | Mackenzie Valley Resource Management Act |
| Minister | Minister of the Government of the Northwest Territories – Environment and Climate Change |
| ORS | Online Review System (www.new.onlinereviewsystem.ca) |
| Party | As per the LWB Rules of Procedure , an applicant, a person, or an organization participating in this regulatory process. |
| Permit | Land Use Permit W2021Q0011 |
| Project | Snare Hydroelectric Facility, the undertaking as described in Part A of the Permit. |
| Review Board | Mackenzie Valley Environmental Impact Review Board |
| Standard Permit Conditions | LWB Standard Land Use Permit Conditions Template |
| TG | Tłı̄chq̄ Government |
| WLWB or Board | Wek'èezhìi Land and Water Board |

¹ To access the Distribution List, see the LWBs' Online Review System for [Snare Hydroelectric Facility - Land Use Permit - Amendment Request - Jan 18 24](#).

2.0 Summary of the Application

On January 8, 2024, the Applicant submitted a request to amend Permit W2021Q0011 (the Application).² The Application is to amend Condition 34 (ARCHAEOLOGICAL BUFFER) which required the following: “The Permittee shall not operate any vehicle or equipment within 150 metres of a known or suspected historical or archaeological site or burial ground, except site KhPm-1. With regard to KhPm-1 the Permittee shall not operate any vehicle or equipment within 100 metres”. During the proceeding for the Permit application, Prince of Wales Northern Heritage Centre Archaeology Program identified a suspected historical/archaeological site (known as KhPm-1), but the exact location was not identified until after issuance. In the current Application, NTPC confirmed that the 100-metre buffer around KhPm-1 includes the Snare Forks Spillway and an access road. NTPC proposed to amend Condition 34 to ensure it can maintain the Snare Forks Spillway and access road while protecting previously undisturbed areas within the 100 m buffer of KhPm-1. A portion of an undisturbed area identified as a peninsula is also included in the 100 m buffer, which NTPC has indicated should be fully avoided.³

The Project activities are located within the Wek’èezhìi Resource Management Area.

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

- 1) The 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 proposed amendment; and
- 3) The comments and recommendations, evidence, and submissions received by the Board from Parties during the regulatory proceeding.

3.0 Regulatory Process

On January 8, 2024, the Applicant submitted the Application, which was deemed complete on January 18, 2024.⁴ The Application was then circulated to the Distribution List on January 18, 2024 for public review on the Online Review System (ORS).⁵

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

By February 8, 2024, the Board received comments and recommendations regarding the Application and the draft Permit from the following Parties: Tłı̨chq̓ Government; Government of the Northwest Territories

² See WLWB Online Registry for [Snare Hydro - Type A Land Use Permit Amendment Application - Jan 8 24](#).

³ Ibid.

⁴ See WLWB Online Registry for [Snare Hydro - Type A Land Use Permit Amendment Application - Jan 8 24](#).

⁵ See WLWB Online Review System for [Snare Hydroelectric Facility - Land Use Permit - Amendment Request - Jan 18 24](#).

Department of Environment and Climate Change (GNWT-ECC); and Prince of Wales Northern Heritage Centre (PWNHC), GNWT Department of Education, Culture and Employment (GNWT-ECE). On February 16, 2024, the Applicant responded to the Parties' comments and recommendations.⁶

On February 29, 2024, the Board met and made its preliminary screening determination for the proposed changes to the Project.⁷ Following this determination, the Board made its decisions regarding the Application. These decisions and related reasons are described in sections [4.0](#) and [5.0](#) below.

4.0 Legislative Requirements Related to Permit Issuance

This Project is subject to the [MVRMA](#) and the [MVLUR](#). The Board has jurisdiction to amend the Permit as per subsection 59(1) and section 102 of the [MVRMA](#).

In conducting its regulatory process for the Application (as described in section [3.0](#) 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 [5.0](#).

4.1 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 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 LWB [Engagement and Consultation Policy](#) and [Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits](#).⁸ 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 are clearly articulated. In accordance with the Policy and Guidelines, the Applicant's engagement efforts with respect to the Application are detailed in the Engagement Record submitted with the Application.⁹ The Applicant

⁶ Ibid.

⁷ See WLWB Online Registry for [NTPC – Permit – Preliminary Screening Determination – Feb 29 24](#).

⁸ See WLWB Policies and Guidelines webpage to access the LWB [Engagement and Consultation Policy](#) and [Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits](#).

⁹ See WLWB Online Registry for [Snare Hydro - Type A Land Use Permit Amendment Application - Engagement Log- Jan 8 24](#).

also has an approved Engagement Plan¹⁰ in place under the Permit and did not propose changes to the Plan. The Applicant must continue engagement efforts as outlined in the approved Plan.

The Application was posted to the Board's Public Registry and distributed through the ORS. As the Project is located in the Wek'èezhì Resource Management Area, the appropriate organizations, governments, First Nations, and Indigenous organizations were included in the Distribution List.¹¹ The Distribution List was used throughout this proceeding to circulate submissions, information, and updates relevant to the proceeding. More information about the proceeding for the Application is provided above in [section 3.0](#).

In accordance with sections 63 and 64 of the [MVRMA](#), the Board is satisfied that notice of and access to copies of the Application was 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.

4.2 Eligibility for Land Use Permit

Eligibility for the Permit in accordance with section 18 of the [MVLUR](#) has already been demonstrated as described in the Board's December 21, 2021 Reasons for Decision.¹² Under this amendment Application, the Applicant did not propose any new activities for the scope of the Permit nor did the Applicant propose any new Project areas for the scope.

No issues were raised regarding eligibility during this proceeding.

Based on this information, the Board concludes that the eligibility requirements under section 18 of the MVLUR have been satisfied.

4.3 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 an amended permit.

The *Tłjchq Wenek'e: Tłjchq Land Use Plan*¹³ applies in the Project area. During the Public Review of the Permit application in 2021, the Tłjchq Government provided written confirmation that the Project met the requirements of the Land Use Plan after an exemption for NTPC to use the Snare Rapids Silt Pit was approved by the Chief Executive Council.¹⁴

¹⁰ See WLWB Online Registry for [NTPC - Permit - Engagement Plan - Version 3.0 - Nov 13 21](#).

¹¹ To access the Distribution List, see the LWBs' Online Review System for [NTPC – Snare Hydroelectric Facility – Land Use Permit – Amendment Request – Feb 15 24](#).

¹² See WLWB Online Registry for [NTPC - Permit - Reasons for Decision - Jan 4 22](#).

¹³ See WLWB Acts and Regulations webpage to access the [Tłjchq Wenek'e: Tłjchq Land Use Plan](#).

¹⁴ See WLWB Online Registry for [NTPC - Permit - Reasons for Decision - Jan 4 22](#).

Based on the submission made during the regulatory proceeding and given that there were no new project activities or new areas proposed with the Application, the Board has confirmed that the changes to the Project conform with the *Tłı̄chq̄ Wenek'e: Tłı̄chq̄ Land Use Plan*.

4.4 Land Use Fees

The Project is located wholly outside of federal areas, so no land-use fees apply.

4.5 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.

4.6 Environmental Review (Part 5 of the MVRMA)

4.6.1 Preliminary Screening

The Project has been previously subject to Part 5 of the MVRMA as outlined in previous Preliminary Screening Determinations dated March 1, 2001,¹⁵ February 4, 2008,¹⁶ February 23, 2009,¹⁷ July 12, 2018,¹⁸ and December 21, 2021.¹⁹

On February 29, 2024, the Board met and decided that the Project is exempt from preliminary screening under Part 1, Schedule 1, section 2.1 of the Exemption List Regulation to the MVRMA.²⁰

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

5.0 Decision – Land Use Permit W2021Q0011

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 the amended Permit W2021Q0011 should be issued, subject to the scope, defined terms, conditions, and term contained therein. The Board's determinations and reasons for this decision are set out below.

The amended Permit condition 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 the regulatory proceeding.

¹⁵ See WLWB Online Registry for [MV2000F0058 - NTPC - Preliminary Screening - Mar 1 01](#)

¹⁶ See WLWB Online Registry for [MV2003F0029-Fax letter regarding LUP Amendment - Preliminary screening- Feb 4 08](#)

¹⁷ See WLWB Online Registry for [W2008F0017 - NTPC - Land Use Permit - Preliminary Screening - Feb 23 09](#)

¹⁸ See WLWB Online Registry for [W2018Q0003 - NTPC - LUP Application - Borrow Pit - Preliminary Screening - July 12 18](#)

¹⁹ See WLWB Online Registry for [NTPC - Permit - Preliminary Screening Determination and RFD - Dec 21 21](#)

²⁰ See WLWB Online Registry for [NTPC – Permit – Preliminary Screening Determination – Feb 29 24](#).

In amending the Permit, the Board kept the Permit format and layout largely unchanged. Where applicable, the Board considered the LWB [Standard Land Use Permit Conditions Template](#) (Standard Permit Conditions)²¹ in amending the existing condition to reflect the change to the Project. As noted in [section 3.0](#) above, Board staff circulated a draft amended Permit for review to allow Parties to provide specific input to the Board on the possible amendment and update to the condition, and the Board considered these review comments and recommendations in making its determination on the amended Permit condition. Conditions that were not changed are not discussed in these Reasons.

5.1 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](#). The changes to the Project are within the existing scope of the Permit, and in accordance with the limitations of subsection 26(2) of the MVLUR, the Board did not make any changes to this section of the Permit.

5.2 Part B: Definitions

The Permit includes defined terms 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. The Board maintained all of the definitions in the Permit.

5.3 Part C: Conditions Applying to All Activities

The LWB [Waste and Wastewater Management Policy](#) applies to the Permit, and the objectives of the Policy are protection of water quality in the receiving environment, waste prevention/minimization, and minimization of the amount of waste disposed to the receiving environment.²² The Permit does not authorize any deposit of waste to water; however, in accordance with the Policy and these objectives, the Permit includes many conditions that are, directly or indirectly, intended to meet the objectives of the Policy. The Board is satisfied that the conditions set out in the amended Permit are consistent with the Policy and compliance with these conditions will ensure that waste will be minimized, managed, and disposed of in a manner that will be protective of the receiving environment. These conditions and detailed rationale are described in the sections below.

Only the condition that has been revised is discussed in these Reasons. The subheading below corresponds to the heading in the conditions section of the Permit, as outlined in subsection 26(1) of the [MVLUR](#). In accordance with subsection 26(2) of the MVLUR, the Board only amended the Permit condition to reflect the amendment proposed in the Application.

²² See WLWB Policies and Guidelines webpage to access the LWB [Waste and Wastewater Management Policy](#).

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

The ARCHAEOLOGICAL BUFFER condition (condition 34) was updated as per the draft permit distributed for public review. Condition 34 of the Permit was updated to allow the permittee to operate vehicles and equipment within previously disturbed areas within 100 m of a known historical site referred to as KhPm-1. KhPm-1 was identified during the Permit Application proceeding; however, the precise location was only confirmed after the Permit was issued. The 100 m buffer around KhPm-1 covers an area that includes the Snare Forks Spillway and access road, which have been previously disturbed since 1975 when the Snare Forks Facility was built. NTPC requires access to the previously disturbed areas within the 100 m buffer. Through engagement with Parties, it was recommended that the peninsula area, which is partly included within the 100 m buffer, be fully restricted from use given this area is mainly undisturbed. The peninsula is pictured in red hatching on Figure 1 included in the Amendment Application.²³

PWNHC GNWT-ECE submitted a comment in support of the condition as proposed in the draft Permit (PWNHC GNWT-ECE comment 1). The Tłı̨chǫ Government commented that it supported the proposed amendment (comment 1). The Applicant also commented that it supported the proposed draft condition. No other comments and/or recommendations were received from Parties, and therefore Condition 34 was updated as requested in the Application.

6.0 Conclusion

Subject to the scope, definitions, conditions, and term set out in the amended Permit, and for the reasons expressed herein, the WLWB is of the opinion that the activities and land use associated with the Project can be completed by Northwest Territories Power Corporation 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 W2021Q0011 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 Northwest Territories Power Corporation’s use of the land as authorized by the Permit.

SIGNATURE



Mason Mantla, Chair
Wek’èezhìi Land and Water Board

February 29, 2024

Date

²³ [Snare Hydro - Type A Land Use Permit Amendment Application - Jan 8, 24](#)