

# Mackenzie Valley Land and Water Board

## Rules of Procedure Including Public Hearings

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# Mackenzie Valley Land and Water Board Rules of Procedure Including Public Hearings

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**Note: These Rules do not yet include any provisions to cover the Board’s compensation jurisdiction**

## INTRODUCTION AND PURPOSE

The Mackenzie Valley Land and Water Board (Board), has made these Rules of Procedure for the conduct of its proceedings and hearings under the *Mackenzie Valley Resource Management Act (MVRMA)*.

These Rules will ensure that Board proceedings meet the requirements of fairness. The Rules are also intended to ensure that Board hearings are efficient, focussed and meet the needs of all parties.

The Board has approved these Rules and may amend them from time to time as required.

## DEFINITIONS

**Act** means the *Mackenzie Valley Resource Management Act* S.C. 1998, c. 25 (MVRMA);

**applicant** means a person who has filed an application with the Board;

**application** means any application for a land use permit or water licence submitted in accordance with the *MVRMA*, the *Mackenzie Valley Land Use Regulations (MVLUR)* or the *Northwest Territories Waters Act (NWTWA)* or its regulations;

**Board** means the Mackenzie Valley Land and Water Board;

**Chairperson** means the Chairperson of the Board, the Chairperson of a regional panel of the Board or the person designated to act in a proceeding during the absence or incapacity of the Chairperson;

**document** includes anything in printed form, telecommunication or electronic transmission capable of being reduced to a printed format, and video or audio tapes;

**elder** means any person recognized as an elder in accordance with local culture, customs and traditions or someone recognized for their experience in aboriginal culture, customs and knowledge;

**first nation** means the Gwich'in First Nation, the Sahtu First Nation or bodies representing other Dene or Metis of the North Slave, South Slave or Deh Cho region of the Mackenzie Valley;

**hearing** includes a hearing on an application, the hearing of a motion, a written hearing, or a public hearing;

**information request** means a written request for information or particulars directed by the Board to a party in a proceeding or, from one party to another;

- intervener** means a person who has filed the information required by Rule 43 and who has been granted intervener status by the Board under Rule 45 of these Rules;
- licensee** means a person who has been issued and holds a current water licence under the *NWTWA*;
- motion** means a request by a party for a ruling or an order in a proceeding and includes a motion of the Board;
- MVLUR** means the *Mackenzie Valley Land Use Regulations*, P.C. 1998-1493, August 26, 1998;
- NWTWA** means the *Northwest Territories Waters Act* S.C. 1992, c.39;
- party** means a person, organization or department of government that is an applicant, a licensee, a permittee, an intervener or an affected first nation that is participating in a Board proceeding;
- permittee** means a person who has been issued and holds a current land use permit under the *MVLUR*;
- proceeding** means the process by which the Board determines the disposition of an application for a water licence or a land use permit, or the amendment, assignment, suspension or cancellation of a water licence or land use permit, and includes a proceeding initiated by the Board;
- public notice** means an announcement by newspaper, radio, community poster or other public means, made according to such reasonable terms as are set out by the Board.

## **PART ONE: GENERAL PROVISIONS**

### **Authority**

1. The Mackenzie Valley Land and Water Board makes these Rules pursuant to section 30 of the *Mackenzie Valley Resource Management Act* and section 21 of the *Northwest Territories Waters Act*.

### **Citation**

2. These Rules may be cited as the Mackenzie Valley Land and Water Board Rules of Procedure.

## Interpretation of the Rules

3. These Rules will be interpreted liberally to achieve the most fair and efficient determination of every matter before the Board.

## Application of the Rules

4. These Rules apply to all proceedings of the Board.
5. Where any matter of procedure is not provided for by these Rules, the Board may, at any time, issue a direction on procedure to deal with the matter.
6. The Board may, by its own motion, or an application by a party in any proceeding, dispense with, vary or supplement these Rules.
7. Where there is a conflict between the Rules and a specific direction given by the Board on procedure, the direction on procedure prevails over the Rules.
8. To address the requirements of fairness the Board may, upon notice to the parties to a proceeding, shorten or extend the time fixed by these Rules for any action.

## Non-Compliance with the Rules

9. Where a party to a proceeding has not complied with these Rules or a direction on procedure or an order issued by the Board, the Board may:
  - a) adjourn the proceeding until satisfied that the requirement has been complied with; or
  - b) take such other steps as it considers just and reasonable.
10. In case of a conflict between these Rules and a provision of the Gwich'in, Sahtu or Tlicho Comprehensive Land Claim Agreements, the *MVRMA*, the *NWTWA* or the regulations made under those statutes, the land claims and legislation shall be binding to the extent of the conflict.

## Forms

11. The Board may specify that any document or communication must be submitted to the Board in a particular form and such forms will from time to time be appended to these Rules of Procedure.

## **Technical Objections**

12. No Board proceeding is invalid because of an objection based only on a technical irregularity or a defect in form.

## **Communication with the Board**

13. Except during a public hearing, communication related to all Board proceedings must be addressed to the Executive Director of the Board or to the person designated by the Executive Director.
14. Any correspondence, including the filing of materials in a proceeding, may be sent by facsimile to the Board. If a document is sent by facsimile to the Board an original copy must also be subsequently forwarded to the Board.
15. Unless the Board has directed otherwise, any matter to be dealt with during a proceeding shall be dealt with in writing.
16. Electronic mail will not be considered communication with the Board for purposes of a proceeding unless specifically authorized by the Board.

## **Evidence**

17. The Board is not bound by the technical rules of evidence. In conducting its proceedings, the Board may accept information that would not normally be admissible under the strict rules of evidence.
18. The Board has the powers, rights and privileges of a Superior Court with respect to the attendance and examination of witnesses and the production and inspection of documents.
19. Any witness having technical, or traditional knowledge, who is retained by the Board to give evidence, shall provide a summary of his/her background, including qualifications and/or experience for the public record.
20. Any witness who will give opinion evidence in a proceeding or hearing before the Board may be required by the Board to file a statement of their qualifications on the public record before their evidence is considered.

## **Interlocutory Motions and Decisions Requested From the Board**

21. The Board may make any decisions required during a proceeding or a hearing.

22. Any issue that arises in the course of a proceeding that requires a decision or ruling from the Board shall be brought to the Board's attention by way of a written motion. The motion shall include a clear, concise statement of the relevant facts, an indication of the decision or ruling being sought from the Board and the reasons why the decision or ruling should be granted.
23. All motions shall be filed with the Executive Director. The Executive Director shall ensure that a copy of the motion is provided to the parties to a proceeding no later than seven (7) days before the Board plans to consider the motion in order to allow the parties to respond.
24. A party wishing to respond to a motion shall provide a written response and supporting documents to the Executive Director no later than four (4) days before the motion is scheduled to be heard by the Board. The Executive Director shall ensure that all parties are provided with any responses provided to the Board at least two (2) business days before the Board considers the motion.
25. The Board may, in its discretion, vary any time period prescribed for the filing and hearing of a motion or a response. When such a matter arises during the course of a hearing, the Board may deal with it in any way that is consistent with the requirements of fairness.
26. A motion may be heard by the Board with some members or parties participating via teleconference.

### **Service of Documents on Parties**

27. A party intending to rely on a document or evidence in a proceeding, including a public hearing, shall file the document with the Board within the time specified by the Board and circulate the document to the other parties.
28. Failure to disclose a document in accordance with these Rules may result in the Board ruling that it is inadmissible in the proceeding or the public hearing.
29. Upon request of the Board, a party may have to provide proof to the Board that documents were served on the other parties to a proceeding or a public hearing.

### **The Registers**

30. The Board will maintain a Water Register for water licences and a Public Register for land use permits. All documents filed in a Board proceeding will be filed on the appropriate register. These documents will constitute the public record for the proceeding.

31. The Water Register and the Public Register are located at the Board office. Documents filed in either register are available for viewing by the public.

### **Other Forms of Testimony**

32. The Board may accept and enter into the public record the testimony of a witness made by an affidavit, statutory declaration or verified audio or video tape recording. A witness whose testimony is presented by a sworn written statement or verified recording shall be available for questioning as may be required.
33. Testimony in Board proceedings can also be presented by using audio visual or video format or by teleconference.

### **Traditional Knowledge**

34. The Board will encourage the provision of and will consider any first nation's traditional knowledge, including oral history, submitted during its proceedings.
35. The Board may make appropriate arrangements to secure information from or to hear the testimony of elders or the holders of local or traditional knowledge at any time during its proceedings.

## **PART TWO: PROVISIONS THAT APPLY TO LAND USE PERMIT AND WATER LICENCE PROCEEDINGS**

### **Commencement of Proceedings**

36. A Board proceeding commences once the Board deems that an application for a water licence or a land use permit is complete.
37. The Board may request additional information from an applicant before it deems an application for a water licence or a land use permit to be complete.

### **Notification by Board of Proceedings**

38. Public notice of a completed application shall be provided by the Board in an approved form which shall specify the deadline for notices of intention to intervene.

39. Once a proceeding is commenced, the Board will provide a copy of the application to appropriate federal and territorial departments and agencies and any land owners affected by the application.
40. Once a proceeding is commenced the Board will give written notice of an application to any affected communities and first nations.

### **Interventions in Proceedings**

41. A person, organization, department, agency, affected land owner, community or first nation wanting to make representations to the Board in a proceeding must file a notice of intention to intervene in the proceeding, in the appropriate form, on or before the deadline specified in the public notice.
42. The information provided by a party wishing to intervene must include, where applicable:
  - a) a description of the intervener's interest or concern;
  - b) a clear statement of the intervener's position listing the issues that they intend to address;
  - c) an indication of whether the intervener intends to appear at a hearing (if any) and make representations, or rely on written submissions only;
  - d) the intervener's name, address and telephone and fax numbers and e-mail address (if applicable); and
  - e) confirmation that a copy of the intervention form has been provided to the applicant.
43. The Board will make a decision on an application for intervener status in a timely fashion.
44. The Board may grant intervener status to a party, may request additional information or clarification from any party seeking intervener status and may direct parties with similar interests to present a joint intervention.
45. Interveners must provide a copy of any documents filed with the Board to the other parties to a proceeding unless the Board makes other arrangements.

### **Information Requests**

46. The Board may issue an Information Request to any party at any stage of any proceeding.

47. The Board may, in its discretion, allow a party to a proceeding to issue an Information Request to another party, subject to directions on timing and procedure issued by the Board. Copies of all Information Requests exchanged among the parties shall be filed with the Board.
48. A party that receives an Information Request during a proceeding shall respond within the time specified by the Board.
49. A party's response to an Information Request shall be submitted to the Board and circulated to the other parties in the proceeding.
50. Any disputes over the appropriateness of an Information Request shall be decided by the Board.

### **Submissions of Parties**

51. Once the Information Request stage of a proceeding is complete or at the time specified by the Board if no Information Requests are authorized, the parties to the proceeding may make written submissions to the Board about the application.
52. A party to a proceeding must provide a copy of its submissions, and any other information specified by the Board, to each of the other parties.
53. If the documents filed by a party exceed fifty (50) pages, the Board may require the filing of up to thirty (30) copies of that material and/or an electronic copy.

### **Written Response to Parties' Submissions**

54. An applicant may, in accordance with the directions of the Board, submit a written reply to any or all of the other parties' submissions.
55. The reply must be provided to the Board and the other parties to the proceeding within the time specified and in the number of copies determined by the Board.

### **Amendment of an Application**

56. An applicant may amend an application with leave of or under direction of the Board.
57. The Board may, in its sole discretion, determine that a proposed amendment represents a significant change to a water licence or land use application and, in such instances, may require that a new application be filed.
58. Where no public hearing has been scheduled and the applicant makes a minor amendment to an application, the amendment must be submitted to the Board at

- least 14 days before the Board meeting at which the application is scheduled to be discussed.
59. An amended application submitted under Rule 58 will be circulated to the parties for comments. The comments must be received by the Board at least 7 days before the Board meeting.
  60. Where a public hearing has been scheduled the applicant may make a minor amendment to the application no later than 30 days before the hearing date.
  61. An amended application submitted under Rule 60 will be circulated to the parties for comments. The comments must be received by the Board no later than 21 days before the hearing.
  62. The applicant must submit its reply to the parties' comments no later than 14 days before the public hearing date.

### **Amendment of Written Submissions in a Board Proceeding**

63. Where the Board allows an applicant to amend its application, the Board may also allow the other parties to amend all or part of their written submissions on such terms and conditions, as the Board deems appropriate.

### **The Public Record and Privacy Matters**

64. The public record in a proceeding is opened when the Board determines that an application is complete and commences the proceeding. The record is closed at the time set by the Board in its direction on procedure or when the Board's decision is rendered.
65. No information will be accepted for the Board's consideration in a proceeding after the public record has been closed, unless a motion to reopen the record has been made and approved by the Board.
66. The Board may seek clarification of any evidence on the public record from any party to a proceeding without causing the record to be re-opened. Copies of information provided in response to a Board request for clarification shall be circulated to the parties.
67. All relevant information received by the Board from the time the public record is opened until the closing of the record will be considered in the Board's decision.
68. Unless a motion to protect the confidentiality of information is filed with and approved by the Board, all information will be placed on the public record.

69. The Board will notify parties to a proceeding of any motion for the filing of confidential information and will deal with any issues that arise as required.

### **Site Visits**

70. The Board may schedule a site visit at any time during a proceeding and shall give notice to the parties in the proceeding of any proposed site visit.

## **PART THREE: CONDUCT OF PROCEEDINGS INVOLVING HEARINGS**

### **Types of Hearings Conducted by the Board**

71. Under s. 24(1) of the *MVRMA* the Board may decide to hold a hearing to better carry out any of its land or water management functions.
72. The Board may hold water licence hearings under s.21 of the *NWTWA*.
73. The Board may hold a consolidated hearing to consider an application for a water licence and an application for a land use permit associated with the same development.

### **Conduct of a Hearing**

74. Subject to the *MVRMA*, these Rules, the *NWTWA* and the requirements of fairness, the Chairperson of the Board or of a Regional Panel of the Board will direct and control the conduct of every hearing.
75. All Type A water licence and consolidated hearings will be public hearings unless otherwise ordered by the Board.
76. The Board may during any of its proceedings conduct a hearing where all submissions are in writing.
77. To the extent consistent with its duty of procedural fairness, the Board will emphasize flexibility and informality in its proceedings.

### **Call for a Hearing**

78. The Board may direct that a public hearing be held as part of a land use permit application or a Type B water licence application.

79. Subject to the *NWTWA*, a public hearing is mandatory for a Type A water licence application.

### **Public Notice of a Hearing**

80. Where the Board is to hold a hearing, public notice of the hearing will be given in an approved form in accordance with these Rules and the governing legislation.
81. The Board will provide public notice of a hearing under Rule 80 at least 60 days before the hearing date.
82. All parties to a proceeding who intend to participate in a hearing shall notify the Executive Director and the applicant of their intentions within the time period specified in the public notice.
83. The Board may also use other methods to notify the public of a hearing, having regard to the nature, location, and size of the project and the affected communities, land owners and first nations.

### **Interventions in Hearings**

84. A person, organization, department, agency, affected land owner, community or first nation wanting to make representations to the Board in a hearing, and not already registered as an intervener in the proceeding, must file a notice of intention to intervene in the hearing, in the manner set out in Rules 41 and 42 above.
85. The Board will make a decision on an application to intervene in a hearing in a timely fashion and may exercise the authorities set out in Rule 44.
86. Interveners in hearings are subject to Rules 45 and 52.

### **Pre-hearing Conferences**

87. In any proceeding involving a public hearing the Board may direct that the parties participate in a pre-hearing conference for the following purposes:
- a) To clarify and where possible narrow the issues;
  - b) To explore possible admissions of facts, the proof of facts or the use of any public documents;
  - c) To review the procedure to be followed at the hearing; and

- d) To identify the need for additional information, and to determine responsibilities for the production of this information.
- 88. After a pre-hearing conference, the Board may provide any direction necessary to achieve a fair and efficient hearing.
- 89. The Chairperson may designate a Board member to act as a mediator in order to resolve any issues among the parties before a hearing. A Board member so designated shall not take part in the hearing of the application.

### **Formulation of Issues**

- 90. The Board will decide which issues it will consider at a hearing and will notify the parties of such a decision.

### **Locations of Public Hearings**

- 91. The Board will determine the time and place at which a public hearing will be held. In so doing, the Board will consider which community is most convenient to the parties and close to the location of the project in question. In making this determination, the Board will also consider any needs that the parties bring to the Board's attention.
- 92. The Board may decide to hold a public hearing in one community or in a number of communities in the Mackenzie Valley and may determine the issues to be addressed in each community.

### **Order of Events at a Public Hearing**

- 93. The order of events at a public hearing, unless the Chairperson directs otherwise, will be as follows:
  - a) Opening prayer
  - b) Opening remarks by the Chairperson
  - c) Introduction of Board Members and staff
  - d) Introduction of Board technical consultants
  - e) Introduction of persons representing the applicant
  - f) Introduction of persons representing other parties
  - g) Acknowledgment of written submissions
  - h) Preliminary and procedural matters (if any)

- i) Opening statements by the parties (applicant first)
- j) Applicant's presentation
- k) Questions of applicant by participants in the hearing
- l) Presentations by each Registered party (in the order determined by the Board)
- m) Questions of each registered party
- n) Presentation or comments from public pursuant to Rule 94
- o) Reply by the applicant
- p) Closing statements
  - (i) Registered parties (in the order determined by the Board)
  - (ii) The applicant (last)
- q) Closing remarks by the Chairperson
- r) Adjournment of the Hearing.

### **Participation in a Hearing by the Public**

94. Any person or organization who does not wish to intervene in a public hearing but who wishes to make their views known to the Board may:
- a) provide their views, in writing, to the Board and the applicant in advance of the hearing; or
  - b) make an oral presentation during that portion of the hearing that has been set aside by the Board to hear the views of the public.

### **Time Limits and Questioning**

95. The Board may set time limits for oral submissions and questions by any or all parties and participants at a public hearing.
96. All parties and members of the public making presentations at a public hearing are subject to questioning by the other parties and the Board.

### **Hearing Language, Translation & Interpretation**

97. Every public hearing will be conducted in one of the official languages of Canada.
98. The Board will arrange for interpretation and translation services in any language(s) deemed necessary by the Board.

## Transcript

99. The transcript of a public hearing may be prepared by the Board.
100. If the Board provides a transcript of a public hearing, the transcript will be placed on the public record after the hearing.

## Adjournments

101. Any party may apply for an adjournment of a hearing. Such an application shall be made by way of motion and if made in advance of the hearing, it shall be filed and served in accordance with these Rules.
102. The Board may adjourn a proceeding:
  - a) Where it requests further information, particulars or documents, and these cannot be obtained in time for a Board meeting, or for a public hearing;
  - b) Where an application is amended and the Board determines that the amendment would likely cause a significant change to an intervention; or
  - c) Where for any reason the Board deems it necessary.

## PART FOUR: PROVISIONS SPECIFIC TO LAND USE PERMITS

### Form of Proceedings

103. Notwithstanding anything else in these Rules, a Board proceeding, related to either a Type A or B land use permit, will be conducted as a hearing in written form unless the Board orders otherwise.
104. The Board will hold a public hearing on the issue of whether to suspend or cancel a land use permit.
105. In accordance with Rule 78, the Board may exercise its discretion under section 24 of the *MVRMA* to hold a public hearing on a land use permit application. If it does so, it will publish notice of the hearing as set out in these Rules.
106. If the Board orders a public hearing to address a land use application it will issue a direction on procedure to the parties including time limits in the proceeding.

## **PART FIVE: CONSOLIDATED HEARINGS AND HEARINGS COMMENCED BY THE BOARD**

### **Consolidated Hearings**

- 107.** The Board may hold a public hearing to consider applications for land use permits and water licences concurrently. The Rules applicable to water licensing proceedings shall apply to such hearings.

### **Hearings Commenced by the Board Without an Application**

- 108.** The Board may, on its own initiative, or upon application by the licensee and consistent with the requirements of fairness, amend, suspend or cancel a water licence.
- 109.** The Board shall hold a public hearing when considering the suspension or cancellation of a water licence.
- 110.** The Board may on its own initiative, or upon application by a permittee and consistent with the requirements of fairness, amend, suspend or cancel a land use permit.
- 111.** The Board shall hold a public hearing when considering the suspension or cancellation of a land use permit.