

# MVLWB

## Perspectives on Regulatory Improvement in the Mackenzie Valley

May 18, 2011



**Mackenzie Valley Land and Water Board**

MVLWB



*“Sharing responsibility—working together to make the best decisions for the land, water, and people.”*

## Executive Summary

The *Mackenzie Valley Resource Management Act* (MVRMA or the Act) has been in force for just over 12 years, and in that time different parties have identified various weaknesses. In 2008, the federal government initiated a review of the regulatory system with the intention of “reducing its complexity” and in 2010 launched an *Action Plan to Improve Northern Regulatory Regimes* (the Action Plan) in response to *The Road to Improvement - The Review of the Regulatory Systems Across the North* (the McCrank Report). In our role as Land and Water Boards (LWBs or Boards) of the Mackenzie Valley, we are interested in providing our perspectives to the federal government. Pursuant to subsection 106.1(2) of the MVRMA, we have prepared this response to the federal regulatory improvement initiative.

We maintain that the regulatory process in the Mackenzie Valley itself is not complex; it is indeed different from regulatory regimes familiar to those working in the provinces. Born from negotiated comprehensive land claim agreements, the system is different by design. As such, we feel that the land use permit and water licence system in the Mackenzie Valley is not broken; rather, the system that is meant to support it is incomplete. Predictability, clarity, and understanding are the outcomes of complete and mature finalized systems, thus completing the system is paramount to its success.

Since 2008, we have invested considerable effort towards addressing issues within our jurisdiction through the creation of the section 106 Standard Procedures and Consistency Working Groups (WGs). Working with industry and other stakeholders, the WGs are improving regulatory clarity and consistency in the Mackenzie Valley. Though the work is not complete, we have built a foundation for improvement. We have acknowledged the concerns expressed by industry and other affected parties, and they are being addressed through this process. In addition, we are currently addressing governance and capacity issues by implementing new ways of working together but in a context that protects the spirit and intent of land claim agreements and the authorities in those agreements respecting regional land and water management.

With respect to issues that lie outside the Boards’ jurisdiction, a number of foundational pieces or system gaps/weaknesses must be addressed in order to finish the system. Some of these issues are: completion of unsettled land claims, with a focus on supporting land use planning and completing surface rights legislation; federal Crown consultation policy that works in the context of the MVRMA; full implementation of the Cumulative Impact Monitoring Program (CIMP); clarification of jurisdiction and implementation of authorities for wildlife and air quality; overall administration of the MVRMA—with respect to both intent and action; and amendments to legislation, including harmonization of land use permits and water licences, adequate timelines for processing land use permits, and inspection and enforcement.

We are now at a stage of the regulatory improvement initiative at which engagement with the federal government is critical. We believe that effective engagement with the federal government will benefit all stakeholders. From the experience and knowledge gained over the past years and the progress that we have made since 2008 on standard procedures and consistency, the LWBs of the Mackenzie Valley offer the following document as input on regulatory improvement.

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## 1.0 Introduction

On August 4, 2010, Mr. Willard Hagen, Chair of the Mackenzie Valley Land and Water Board (MVLWB), wrote to the Minister of Indian Affairs and Northern Development, the Hon. Chuck Strahl, to confirm our support for, and interest in, assisting the Department in improving the regulatory system in the NWT (see Appendix A). Mr. Hagen noted that, pursuant to subsection 106.1(2) of the *Mackenzie Valley Resource Management Act* (MVRMA), he had the responsibility to make recommendations to the Minister concerning amendments to the MVRMA and the *NWT Waters Act* (NWTWA), or the making or amending of any instrument under these acts, as it pertains to land use permitting and water licensing. Mr. Hagen also notified the Minister of his intent, as Chair of the MVLWB, to contribute to the federal regulatory improvement initiative by providing focused policy and technical advice to Indian and Northern Affairs Canada (INAC) officials on options to improve the regulatory process.

Subsequently, we initiated a review of background reports and audits, assessed current concerns, and took stock of the progress that we have made in addressing identified deficiencies in the regulatory system of the Mackenzie Valley. Board members directed the Executive Directors of the Gwich'in Land and Water Board, Sahtu Land and Water Board, Wek'eezhii Land and Water Board, and the Mackenzie Valley Land and Water Board to prioritize areas for additional improvement. This report provides a summary of these findings.

## 2.0 Background

Canada's North has recently come into the international spotlight due to its resource potential, sovereignty concerns, climate change, and its evolving political systems. A vision for the North has become one of Canada's most important policy agendas. With this greater focus on Canada's North, there has also been an increased and often negative attention on its regulatory regime, particularly as it pertains to its ability to support and promote resource development.

The 2005 *Report of the Auditor General on Development of Non-Renewable Resources in the Northwest Territories* stated that INAC was not adequately fulfilling its responsibilities for managing non-renewable resource development in the Northwest Territories. The 2005 environmental audit conducted pursuant to Part 6 of the MVRMA provided recommendations for improvement of the implementation of the MVRMA but noted that, overall, the MVRMA was achieving its intended purpose. In May 2008, an INAC-commissioned report by Mr. Neil McCrank was released. The report, *The Road to Improvement - The Review of the Regulatory Systems Across the North* (the McCrank Report), included recommendations that he felt could provide for improved regulatory systems. In May 2010 Minister Chuck Strahl, in response to the McCrank Report, announced the *Action Plan to Improve Northern Regulatory Regimes* (the Action Plan). The Action Plan is intended to "ensure that Northern regulatory regimes are more effective, predictable and provide greater certainty to industry, Northerners and all Canadians".

The Action Plan contains three key elements:

- Legislative changes to improve northern regulatory processes to reduce overlap and duplication;
- Enhanced environmental stewardship; and
- A strong voice for Aboriginal peoples.

### 3.0 The MVRMA: Different by Design

The regulatory regime in the NWT, compared to those in Canada’s provinces, is new, and its genesis is very different from most of the regulatory regimes in southern Canada. In sharp contrast to the provinces, the regulatory regimes<sup>1</sup> in the NWT came about as a direct result of the negotiation of comprehensive land claim agreements. The MVRMA also applies in the regions of the Northwest Territories where the Dehcho First Nations, Akaitcho First Nations, and the NWT Métis Nation continue to negotiate their rights and interests.



Figure 1. Map of the jurisdiction of the Land and Water Boards of the Mackenzie Valley.

<sup>1</sup> There are two regulatory regimes: one is established pursuant to the Inuvialuit Final Agreement and the other is established pursuant to the Gwich'in, Sahtu and Tlicho final agreements and entrenched in the *Mackenzie Valley Resource Management Act*. The latter is the focus of this report.

The settlement of comprehensive land claim agreements was designed to create certainty and clarity for Aboriginal groups, governments, residents, and those wishing to carry out developments on lands within the Mackenzie Valley. These agreements establish co-management authorities, whose roles—while operating as independent administrative tribunals—can effectively ensure the participation of all levels of government, residents, and those wishing to develop projects in the North.

The objectives of the Boards are to provide for the conservation, development, and utilization of land and water resources in a manner that will provide the optimum benefit generally for all Canadians and in particular for residents of each respective management area and residents of the Mackenzie Valley (see section 101.1 of the MVRMA).

The practical implications of this unique and relatively recent history are several: the Mackenzie Valley regulatory regime is effectively a “negotiated” regime, making the “spirit and intent” of the land claims a fundamental underpinning of the system. It is different than other regulatory regimes in Canada, and it is different by design. This is understood and respected by the Land and Water Boards in the conduct of their duties, but because of this fundamental difference, not as well understood or fully appreciated by all parties.

### 3.1 Who are the Land and Water Boards of the Mackenzie Valley?

Fundamental to the Mackenzie Valley regulatory regime, as stated in the MVRMA, is that the system is “to provide for an integrated and coordinated system of land and water management in the Mackenzie Valley”. The authority and scope of the Land and Water Boards, established through Parts 3 and 4 of the MVRMA<sup>2</sup> form only a small part of the integrated system.

As the Mackenzie Valley Land and Water Board (MVLWB) and the Regional Panels, we have the power to regulate the use of land and water, including the issuance of land use permits and water licences within our respective jurisdictions. Regional Panels of the MVLWB continue to regulate land and water uses and deposits of waste for activities wholly within their respective management areas. The MVLWB exercises similar powers for activities that are to take place or are likely to have an impact in more than one management area or that are to take place wholly outside any management area. Hereafter in this report, ‘Boards’ refers to us as a collectivity: the Gwich’in Land and Water Board, the Sahtu Land and Water Board, the Wek’èezhìi Land and Water Board, and the MVLWB.

Since 2005, the Boards have begun to ground our work in the concepts of “integration and coordination” and have been working together through mechanisms such as the NWT Board Forum and our Standard Procedures and Consistency Working Groups. Our work is directed towards ensuring our processes become more effective, predictable and certain (from the perspective of process). The objective is to ensure regulatory consistency while taking into account regional perspectives, concerns, and issues.

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2 Part 3 of the MVRMA establishes regional land and water boards with the power to regulate the use of land and waters and the deposit of waste, including the issuance of land use permits and water licences, so as to provide for the conservation, development and utilization of land and water resources in a manner that will provide the optimum benefit to the residents of the management area and of the Mackenzie Valley and to all Canadians. Part 4 of the Act establishes the Mackenzie Valley Land and Water Board (MVLWB). Regional Land and Water Boards have been established in the Gwich’in, Sahtu and Wek’èezhìi management areas and now form Regional Panels of the MVLWB.

### 3.2 Our Role in the Integrated System of Land and Water Management.

The mandate of our Boards is largely restricted to the regulatory process of issuing land use permits and water licences. The environmental management regime established in the land claims settlements and entrenched in the MVRMA places the decisions we make in a broader context of integrated resource management or environmental stewardship. Following the comprehensive study of the Diavik Diamonds Project in 1999, the Federal Ministers of the Department of Indian Affairs and Northern Development and Environment Canada initiated a process to develop the NWT Cumulative Effects Assessment and Management Strategy and Framework (CEAMF), now referred to as the Environmental Stewardship Framework (ESF).

## NWT Environmental Stewardship Framework



Figure 2: NT Environmental Stewardship Framework, INAC

The ESF aims to ensure all aspects of the resource management system in the NWT—particularly those under land claims—are implemented and are contributing towards the overall goal of responsible economic development within a sound environmental management framework.

Land use plans are intended to set a context for environmental screenings, assessments, and reviews; the outcome of these processes, combined with knowledge gained through the implementation of the Cumulative Impact Monitoring Program (CIMP), and informed by periodic environmental audits, sets the stage for Land and Water Board regulatory decisions. Periodic reviews of land use plans are similarly informed by the results of the CIMP, project-specific monitoring, and the environmental audit; and so the cycle continues.

While the implementation of the MVRMA is clearly unfinished business, the Act defines a consistent and progressive regulatory system throughout the Mackenzie Valley. Given the patchwork of land ownership and governance systems and a number of foundational gaps in the system (both broadly and in terms of the implementation of the MVRMA which we address in section 4.2 of this report), it is not surprising that there have been challenges within the jurisdiction of the Boards. However, we firmly believe that to suggest the regulatory regime is failing in the Mackenzie Valley misses a key point: the system is not broken; rather, it is incomplete.

Progress with respect to full implementation of land claim components that make up the ESF has been slow to date. The only approved land use plan in the Mackenzie Valley is the Gwich'in Land Use Plan. The CIMP has only just received adequate funding. The absence of these and other "foundational" pieces of the overall environmental management system, as well as related processes and programs, requires the Boards to make decisions in a context that is still developing and incomplete.

## 4.0 MVLWB Perspectives on Regulatory Improvement

As noted earlier, in 2010 the federal government initiated its *Action Plan to Improve Northern Regulatory Regimes* to "ensure that northern regulatory regimes are more effective, predictable and provide greater certainty to industry, Northerners and all Canadians". In the NWT, this initiative is focused primarily on amendments to the MVRMA.

Concerns that we have identified regarding regulatory improvement cover a broad spectrum but can be assigned to one of two categories:

- Issues that fall within the Boards' jurisdiction; and
- Those issues that, while relevant to our operations, fall outside our jurisdiction.

The former are being addressed directly by the Boards ourselves, largely through the efforts of the section 106 Working Groups and a focus on improving our internal coordination. Most concerns will be addressed through policy development and implementation, changes in procedure, and the adoption of appropriate operational guidelines. Our efforts are described below in section 4.1. However, some solutions may require changes to legislation; these changes may be minor, e.g., to clarify intent, or major in order to fill significant gaps or to address required systemic changes. Our legislative and policy recommendations are outlined in section 4.2.

### 4.1 Issues that Fall Within the Boards' Jurisdiction

The Boards were established with the goal of integration and coordination. Each of the preambles to the land and water chapters of the three land claim agreements settled in the Mackenzie Valley state that:

- (a) An integrated system of land and water management should apply to the Mackenzie Valley; and
- (b) The regulation of land and water in the management areas and in adjacent areas should be co-ordinated.

The Boards have long recognized the need for improvements to the overall Mackenzie Valley regulatory regime, both within and outside our jurisdiction, to ensure an integrated and coordinated approach to land and water management. We also understand that the challenges which exist in areas outside our jurisdiction make our operations much more difficult.

While consistency and coordination among Boards is important, the Regional Panels reflect the spirit and intent of the land claim agreements. Some differences have developed because the Regional Panels (and the Mackenzie Valley Land and Water Board) were formed at different times between 1998 and 2005. We are young institutions, and as Neil McCrank states, “It is not surprising that many of the regulatory bodies have not established a reasonably complete set of rules and guidelines. This is something that comes with maturity”.

With respect to processes that could be improved within our jurisdiction, we have not only identified the issues but have taken concrete steps to resolve them. These efforts are described below.

#### 4.1.1 Standard Procedures and Consistency Working Groups

Section 106 of the MVRMA states that the MVLWB “May issue directions on general policy matters concerning the use of land or waters or the deposit of waste that, in the Board’s opinion, require consistent application throughout the Mackenzie Valley”. Section 106 provides the underlying mandate for the Standard Procedures and Consistency Working Groups (WGs) which have been collectively charged with reviewing existing policies and procedures and where necessary, developing new policies, guidelines, and standards, documenting them, and presenting them to the MVLWB for review and approval.

There are six working groups—each comprised of staff from the Regional Panels and the MVLWB and each with an intended purpose and set of priority objectives. These are summarized below:

- 1. Public Engagement and Board Consultation:** The purpose of WG1 is to research and identify the role of the Boards with regard to public engagement and its consultation processes under the MVRMA. In cooperation and coordination with various agencies and communities, the working group is nearing completion of a draft public engagement and Board consultation policy and public engagement guideline document for the Mackenzie Valley. These documents are expected to be distributed for public review shortly. This initiative will, in part, help to address recommendation #2 from the McCrank Report.<sup>3</sup>
- 2. Plan Review Process and Guidelines Working Group:** The purpose of WG2 is to achieve greater certainty, clarity and consistency with respect to the submission and review of common management plans required by water licences and land use permits. To achieve this, the working group is preparing various management plan guidelines, including guidelines for aquatic effects management plans, closure and reclamation plans, and waste management plans. The Boards recently approved *Guidelines for Developing a Waste Management Plan*, which was released at the end of March 2011.

WG2 is also working in partnership with the INAC Regional Office on drafting new closure and reclamation guidelines and after review of INAC’s *Spill Contingency Guidelines (2007)*, the MVLWB officially adopted these guidelines in September 2009.

<sup>3</sup> Recommendation #2 of the McCrank Report is: The federal government should give the highest priority to developing and implementing a policy that will clarify its own role, the role of proponents and the role of the regulatory boards, in relation to responding to the requirement for Aboriginal consultation and accommodation.

**3. Water/Effluent Quality Guidelines Working Group:** The purpose of WG3 is to develop an approach for creating clear and consistent policy and procedures for deriving water/effluent quality criteria for water licences. The Board recently approved the WG3 *Water and Effluent Quality Management Policy*, which it released at the end of March 2011. The WG is now preparing guidelines to ensure consistent implementation of the policy. This initiative will, in part, help to address recommendation #10 of the McCrank Report.<sup>4</sup>

**4. Terms and Conditions Working Group:** The purpose of WG4 is to develop standard terms and conditions that will be used by the four Boards to write water licences and land use permits. The WG will also prepare procedures for writing new terms and conditions. These efforts will result in water licences and land use permits that are consistent for all projects in the Mackenzie Valley and will streamline the process for developing licenses and permits for the Boards, proponents, and reviewers. This initiative will, in part, help to address recommendation #12 of the McCrank Report<sup>5</sup>. Clarification of the Boards' jurisdiction will assist in the success of WG4's products.

**5. Data Resource Sharing and Standards Working Group:** The purpose of WG5 is to develop clear and consistent standards and procedures for the collection, access, and sharing of data resources between the Boards and clients.

**6. Application Processes Working Group:** A large portion of the Boards' day-to-day duties revolves around the application process for water licences and land use permits. WG6 is developing consistent practices for many application-related issues and preparing guidelines for the application process. The guidelines will be used by the four Boards and will ensure that applicants and reviewers have the tools they need to smoothly navigate the application process.

The Board has set the following priorities for completion in 2011–2012:

- Draft policy and guidelines on public engagement and Board consultation (WG1);
- Standardized list of terms and conditions (WG4);
- Guidance documents for land use permit and water licence applications (WG6); and,
- Standard MVLWB policy and guideline implementation, monitoring and evaluation frameworks.

4 Recommendation #10 of the McCrank Report is: The federal government should, as a priority, in consultation with the Boards under the *Mackenzie Valley Resource Management Act*, develop standards for water and effluent and the Minister should direct the boards to use those standards.

5 Recommendation #12 of the McCrank Report is: The federal government and appropriate regulatory bodies should develop an understanding (MOU) concerning the issue of implementation and enforcement of recommended accepted conditions.

#### 4.1.2 Strategic Management of Resources

In the spring of 2010, the MVLWB created the Policy, Planning, and Communications (PPC) Department. The role and purpose of the PPC Department is to:

- Carry out a governance review of the Full Board of the MVLWB to determine more effective means of delivering standard and consistent corporate services (completed in December of 2010);
- Ensure the Full Board of the MVLWB is actively participating in the review of external initiatives impacting the Board's core functions; and,
- Deliver policy, planning, and communications services to the full Board of the MVLWB.

As a result of the governance review, the Full Board of the MVLWB has decided to focus its efforts on two key areas for 2011–2012:

- 1. New Governance Structures:** In December 2010, the Full Board of the MVLWB made a decision to provide increased responsibilities to the Chairs and Executive Directors of the Boards so they could achieve strategic results with respect to Working Group operations and corporate service delivery (e.g. shared communications, policy, planning, technical, IT, and data management). This has resulted in the approval of the Chairs and Executive Directors Committees, which will on behalf of the MVLWB Full Board, ensure the strategic objectives of the Full Board of the MVLWB are carried forward, as well as manage the day-to-day work required to meet these targets.
- 2. Shared Services:** A key component of ensuring standard and consistent procedures and decisions are made, and that our clients are aware of these initiatives, is the timely delivery of high quality corporate services, including communications, training, policy and planning, technical, and IT support. The Boards recognize that these corporate services cannot be housed within each organization, and that, due to capacity and funding constraints, these services need to be shared amongst the Regional Boards. Currently the Full Board is evaluating a number of models for the formal delivery of shared services.

The objectives of this initiative are to:

- Maximize the operational effectiveness of various corporate sectors;
- Optimize the use of collective resources;
- Increase efficiency;
- Ensure consistent policies and process (e.g. human and financial);
- Maximize retention of corporate knowledge; and
- Enhance Board governance.

In summary, the need for clarity, consistency, and certainty of regulatory processes is recognized by all parties. Through the section 106 Working Groups and internal governance review initiatives, we feel we are making good progress on issues within our jurisdiction.

## 4.2 Issues That Fall Outside the Boards' Jurisdiction

From the Boards' perspective, there are no basic or fundamental gaps in the land and water regulatory system within our jurisdiction that are not being addressed through our Working Group initiative. Issues which fall outside of our jurisdiction have been raised generally with the Auditor appointed to carry out the independent environmental audit subject to Part 6 of the MVRMA, both in 2005 and 2010.

The following list summarizes areas of the current regulatory system where we see gaps, or ineffective mechanisms that are directly relevant to our operations. The majority of these issues were also identified in the McCrank Report. Responsibility for dealing with these gaps and ineffective mechanisms lies with the federal government, and particularly INAC. They include:

- Completion of unsettled land claims, including land use plans and surface rights legislation (McCrank recommendations #1, #14)<sup>6</sup>;
- Federal Crown consultation policy that works in the context of the MVRMA (McCrank recommendation #2)<sup>7</sup>;
- Full implementation of the Cumulative Impact Monitoring Program (McCrank recommendation #5)<sup>8</sup>;
- Clarification of jurisdiction and implementation of authorities for wildlife and air quality (McCrank recommendation #4)<sup>9</sup>;
- Administration of the MVRMA—with respect to both intent and action (McCrank recommendations #7, #15, #16)<sup>10</sup>; and
- Amendments to legislation, including inspection and enforcement, harmonization of land use permits and water licences, and adequate timelines for processing land use permits (McCrank recommendations #6, #9, #12, #15)<sup>11</sup>.

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- 6 Recommendation #1 of the McCrank Report is a priority should be given to completing the Land Use Plans in all areas, and obtaining their approval from the federal government. Recommendation #14 is the federal government should consider some legislative solution to resolve the current difficulty of surface access to land.
- 7 Recommendation #2 of the McCrank Report is the federal government should give the highest priority to developing and implementing a policy that will clarify its own role, the role of proponents and the role of the regulatory boards, in relation to responding to the requirement for Aboriginal consultation and accommodation.
- 8 Recommendation #5 of the McCrank Report is the federal government should commit to the NWT Cumulative Impact Monitoring Program (CIMP) and commit funds for that purpose.
- 9 Recommendation #4 of the McCrank Report is the federal government should identify the gaps in existing legislation and regulations that should be filled in order to protect all elements of the natural environment, to the extent required by the principles of sustainable development, and give priority to the development of the necessary statutes and regulations in order to progressively eliminate the need for ad hoc environmental agreements on a project-by-project basis.
- 10 Recommendation #7 of the McCrank Report is the federal government should ensure that each regulatory body has a structured plan for: a) orientation, b) training and c) continuing education for each new member that is appointed. Recommendation #15 is the Office of the Minister of INAC should establish a process that would anticipate board appointments and ensure that the appointments are timely. Recommendation #16 is the federal Minister should clarify some issues involving the regulatory boards or the regulatory process by exercising his/her authority under the MVRMA.
- 11 Recommendation #6 of the McCrank Report is the federal government should initiate a review of its current practices for requiring financial security for mining operations in the North, with a view to establishing these requirements in a more orderly fashion and to eliminate duplication. Recommendation #9 is the federal government and the appropriate regulatory authorities should develop performance measures that result in effective timelines from the receipt of the application to disposition. This may involve different timelines, depending on the scope and complexity of the application. Recommendation #12 is the federal government and the appropriate regulatory bodies should develop an understanding (MOU) concerning the issue of implementation and enforcement of recommended and accepted conditions. Recommendation #15 is the Office of the Minister of INAC should establish a process that would anticipate board appointments and ensure that the appointments are timely.

#### 4.2.1 Settlement of Land Claims including land use planning and surface rights legislation

Of utmost importance is the conclusion and implementation of land claim agreements with the Dehcho, Akaitcho, NWT Métis Nation, and other groups that have claims in the North. Until these are complete and regulatory bodies established for those regions, the work of the MVLWB will continue to be challenging. Currently, in those areas that do not have settled land claims, applications are likely to be caught up in land claim issues. We need to work towards a process that puts a system in place to sort out treaty and land claim issues before applications are filed.

A key component for regulators under the land claim agreements is approved land use plans, which are legally binding and must be followed by all parties, including regulators. Follow up mechanisms, including sufficient resources for meaningful implementation (e.g. additional inspections), will be required as additional land use plans are approved. The absence of approved land use plans for a large portion of the Mackenzie Valley impedes the effectiveness of the Boards' processes and those of other agencies. Approved plans that reflect the vision of the residents will provide clear conformity requirements and define roles and responsibilities, thus clarifying the respective processes. We note that the introduction of surface rights legislation in the NWT is a key component of the federal Action Plan. This will also assist in land management and access issues.

#### 4.2.2 Federal Consultation Policy that works in the context of the MVRMA

The law with respect to "the duty to consult" is quickly changing, with particular implications for administrative tribunals such as the Land and Water Boards. This issue has been particularly challenging in the regions where rights and interests of the Akaitcho, Dehcho, and Métis people have not been fully defined through land claims, and where the ad hoc section 103 Panel of the MVLWB and often the Wek'èezhìi Land and Water Board has jurisdiction. Further, the free entry system which allows mineral prospectors free entry to Crown land to stake their claims prior to consulting with local Aboriginal groups, has created conflicts. The lack of clear policy, both federal and negotiated, in this area seriously complicates the work of the Boards. The Boards have reviewed the March 2011 *Aboriginal Consultation and Accommodation Updated Guidelines for Federal Officials to Fulfil the Duty to Consult*, and we recognize there is still a need for a policy that works in the context of the MVRMA and works for First Nations for all stages of development. As noted earlier, the Public Engagement and Consultation Working Group is drafting a policy and guideline on public engagement and consultation to: (a) better define the Boards' expectations with respect to the engagement requirements of industry and affected communities, and (b) to clarify the scope of the duty which the Board has to run its consultation process under the MVRMA.

In addition, there is a need for additional human and financial resources from the Crown, both for the federal agencies charged with the duty to consult—to effectively carry out the Crown's consultation obligations—and for impacted communities to ensure they can respond adequately to industry engagement and Crown consultation.

#### 4.2.3 Part 6 - Cumulative Impact Monitoring Program (CIMP)

We continue to be concerned with the delay in implementation of this program. The Boards require actual data and protocols in order to benefit from it. While the development and implementation of the CIMP is a federal responsibility, WG5 (Data Resource Sharing and Standards Working Group) and WG3 (Water/Effluent Quality Guidelines Working Group) have much to contribute to the success of the monitoring program. Related to this is the need for effective information management systems to collate and disseminate cumulative effects data.

#### 4.2.4 Clarification of Jurisdiction and Implementation of Authorities for Wildlife, Air Quality, and Socio-Economics.

The Boards have received numerous requests from Aboriginal groups and government departments, specifically the Department of Environment and Natural Resources, GNWT and Environment Canada to include terms and conditions in water licences and land use permits that relate to air quality, wildlife, and socio-economic matters. While we have recognized that these are very important concerns and need to be addressed, the Boards jurisdiction is limited in these areas. Further, the Board has been informed by INAC Inspectors that a number of these terms and conditions cannot be enforced. The Boards simply do not have the capacity to respond to this policy gap, nor should we, until legislative changes are brought about or new roles and responsibilities are defined.

Environment Canada, the GNWT, and INAC do have jurisdiction in these areas. It is the view of the Boards that a review of those departments' mandates and efforts be made to ensure a regulatory framework is in place to address these gaps.

We recognize that the Northern Projects Management Office (NMPO) should be able to address this concern, at least in part, and recommend that—through legislative reform—mechanisms be put in place to ensure that measures will be implemented by other Responsible Authorities that fall outside our jurisdiction.

#### 4.2.5 Administration

There are a number of “administrative” areas where increased federal leadership is required. These are identified below.

- **Board funding:** There remains an ongoing requirement for adequate, timely, predictable funding for core operations. Required funding for the MVLWB's core and section 106 budgets do not reflect the growing work load of the Boards. For example, in the 2010–2011 fiscal year, the MVLWB received a 30 percent cut to its budget, while applications for mining and oil and gas activity increased. Further provision for access to incremental funding, on an as-required and as-demonstrated basis, for projects and programs that result from forced growth, unanticipated projects and other non-core activities is required.
- **Intervener funding:** As many parties have put forth over many years since the establishment of the MVRMA, there is a need for intervener funding to enable affected communities and broader public participation in project reviews. This is clearly a federal responsibility. As was raised under our discussion of Crown consultation policy, there is also a need for funding to enable Aboriginal organizations to effectively participate in project reviews as it relates to their section 35 rights and interests and for increased funding to enable government agencies to effectively support Board reviews in this context, including the provision of expert legal, policy, scientific, and technical advice. Additionally, there is a need for financial, institutional, and human resource capacity for Aboriginal organizations to ensure that among other things Traditional Knowledge is effectively incorporated into decision-making processes.
- **Board appointments:** There is a need for timely Board appointments, and consideration should be given to increasing the length of terms to enhance the Boards effectiveness and increase the retention of corporate knowledge and capacity.

#### 4.2.6 Amendments to Legislation

The Boards have gained valuable operational experience and insight with respect to the strengths and weaknesses of the MVRMA, *Northwest Territories Waters Act* (NWTWA), Northwest Territories Waters Regulations (NWTWR), and Mackenzie Valley Land Use Regulations (MVLUR). We have collated a list of proposed amendments related to our roles and responsibilities which, if implemented, would strengthen the regulatory system significantly (see Tables 1 to 4 attached as Appendix B).

Of note is our recommendation to harmonize the legislative requirements for processing land use permits and water licences. Currently the MVLUR, NWTWA, and NWTWR spell out different sets of rules for these instruments. For example, there are timelines for processing land use permits but not for water licences. Also, the MVRMA sets the stage for renewals of land use permits, but they are not provided for in the MVLUR. The MVRMA sets up a system for integrated land and water management, but its supporting pieces of legislation need to be amended to ensure the harmonization of instruments for regulating land and water.

Further, timelines for type A and type B land use permits need to increase to ensure that: a) there is sufficient time to split the preliminary screening decision from the issuance decision so other regulatory authorities can refer a project if a Land and Water Board decides not to; and b) the Boards are able to fulfill our consultation obligations under section 3 of the MVRMA. For example, the 42- and 15-day timelines for type A and type B land use permits, respectively, are not sufficient to meet timelines in the Akaitcho, Dehcho, or South Slave Métis Tribal Council Interim Measures Agreements. We recognize that as Boards, we can invoke paragraph 22(2)(b) of the MVLURs to address these issues; however, specifying these short timelines in the legislation promotes a false expectation for stakeholders.

We also recommend that we be provided with the authority for inspection and enforcement of our own permits and licences. INAC is currently responsible for inspection and enforcement, which creates a disconnect between the Boards and the Inspectors. Better relationships would be formed if these functions were under one roof—the Land and Water Boards’.

## 5.0 Conclusion

As outlined in this report, we have made considerable investment towards coordination and consistency and are committed to continue this work. We also recognize the northern regulatory regime is evolving and that the ongoing work we are engaged in and committed to, as well as the work being carried out by INAC and others on the Action Plan, will lead to positive changes in the system. We support the approach that “we are in this together”, and that we can best improve the NWT regulatory system by working together. This report is intended as a step in that direction.

In order to make this positive change, however, we believe that, collectively, we need to carry on with the vision that has been established in the comprehensive land claim agreements—the creation of an integrated system of land and water management. As such, we suggest again that the regulatory system in the Mackenzie Valley as it pertains to the jurisdiction of the Boards is not broken; rather, it is unfinished and still being implemented. Of utmost importance is that the federal government address the “foundational” gaps that have already been brought forward in many other forums (e.g. the Auditor General of Canada, the Part 6 Audit under the MVRMA, and the McCrank Report). These tasks are crucial if the system is to be completed.

The key issues that are within our jurisdiction, when resolved, will provide the desired regulatory process clarity, predictability, and consistency. We are working on those issues, largely through the section 106 Working Groups, but also outside the Working Groups and with other boards, and have identified process and timelines to complete this work in a timely way. We are committed to meeting the timelines set out in this document in order to deliver policies, guidelines, and standards that will address the identified issues. With additional resources, we could address other outstanding issues and could accelerate our work.

Lastly, we believe that if northern regulatory improvement is to be a success, there needs to be full engagement with the groups that will be impacted. All regulatory agencies, as well as Aboriginal governments, must be provided with the opportunity to participate effectively in the federal follow up to the McCrank Report, including the development of the Action Plan and implementation of changes to the MVRMA and other aspects of the NWT legislative framework affecting the regulatory process.

## Appendix A: Letter to Minister Strahl, August 2010

August 4, 2010  
The Honourable Chuck Strahl  
Minister of Indian Affairs and Northern Development  
Terrasses de la Chaudière  
10 Wellington Street  
Gatineau, PQ K1A 0H4

Dear Minister Strahl:

### **Re: Mackenzie Valley Land and Water Board Initiatives and the Action Plan to Improve the Northern Regulatory Regime**

In June, the Chairs of the NWT Board Forum wrote to you to express their support and their interest in assisting your Department to bring improvement to the regulatory system in the NWT through the proposed Action Plan to Improve Northern Regulatory Regimes (the Action Plan), released this past May.

As Chair of the Mackenzie Valley Land and Water Board (MVLWB), and also pursuant to section 106(1)(2) of the Mackenzie Valley Resources Management Act (MVRMA), I am responsible to make recommendations to you with respect to the amendment of the MVRMA and the NWT Waters Act or the making or amendment of any instrument under these Acts, as it pertains to land and water permitting and licensing. As the land and water regulatory component of the MVRMA has become a key focus in this improvement initiative I am writing to you today to discuss two items: (1) Land and Water Board initiatives under section 106 of the MVRMA; and, (2) a land and water board Action Plan preparedness initiative.

### **Land and Water Board Initiatives under s.106 of the MVRMA**

The implementation of the MVRMA is an ongoing process. As new boards are established, there is a need to coordinate policies and procedures. I would like to take this opportunity to highlight a land and water board initiative which the Chairs initiated in 2008, pursuant to section 106 of the MVRMA, and have been working on diligently since.

In March 2008, the MVLWB, the Gwich'in Land and Water Board (GLWB), the Sahtu Land and Water Board (SLWB) and the Wek'èezhii Land and Water Board (WLWB) established the Standard Procedures and Consistency Working Groups. The purpose of these working groups is to review existing procedures and guidelines that will ensure regulatory consistency while taking into account regional concerns and issues, in order to support the spirit and intent of land claim agreements. These groups cover issues including: (1) public engagement and consultation; (2) plan review process and guidelines; (3) water/effluent quality guidelines; (4) terms and conditions; (5) data resource sharing and standards; and, (6) application processes.

These are areas that industry, review agencies and Aboriginal organizations have identified as priority areas for better consistency and coordination.

To date, the working groups have met a number of key milestones, including a draft water and effluent quality policy, draft guidelines for waste management, draft guidelines for closure and reclamation plans and the adoption of the guidelines for INAC Spill Contingency Planning. Draft policy and guidelines for standard terms

and conditions, public engagement and consultation, and applications for land use permits and water licences are expected within the next year. We are in the process of initiating consultation on these draft policies and guidelines. Thus far, we have been receiving positive feedback from industry, review agencies and Aboriginal organizations on the progress and products under this initiative.

I cannot stress enough how critical this initiative is to your Action Plan and to creating increased regulatory certainty in the Mackenzie Valley. I don't believe we've had enough opportunity to sit down with your officials and share the good work that is happening here. We would be pleased to do that as the Action Plan initiative unfolds. I have attached some background information about our Standard Procedures and Consistency Working Group initiative.

**Land and Water Board Action Plan preparedness initiative.**

In order to ensure I can meet my responsibilities under paragraph 106(1)(2) of the MVRMA and in the context of the Action Plan, my staff at the MVLWB have initiated an Action Plan preparedness initiative – to be complete by this November – that will allow us to provide focussed technical and policy advice to your officials on a suite of changes, including the system itself and policy options we feel will improve the regulatory process.

In order to ensure that we can identify the key areas for review under the Action Plan, I would like to request that your officials provide us with further detail on what is being contemplated. To date we have only been provided with a big picture of the review framework through a presentation provided by your officials at the NWT Board Forum. Any further detail that you can provide in the way or review frameworks, including timelines, proposed legislative amendments and policy options will assist my staff in preparing recommendations for your consideration.

I look forward to hearing from you and your officials with respect to this information request.

Sincerely,



Willard Hagen  
Chair, MVLWB

Copied to: NWT Board Forum Members



<p><i>Jurisdiction - land</i></p>	<p>59</p>	<p>(1) A board has jurisdiction in respect of all uses of land in its management area for which a permit is required under this Part and may, in accordance with the regulations, issue, amend, renew, suspend and cancel permits and authorizations for the use of land, and approve the assignments of permits.</p>	<p>Terminology and regulatory processes for increasing the terms of water licences and land use permits are different in the MVRMA, Mackenzie Valley Land Use Regulations (MVLUR), and the <i>Northwest Territories Waters Act</i> (NWTWA). For example, land use permits can be renewed according to the MVRMA, but renewals are not mentioned in the MVLUR. The MVLUR only provide for an extension, which is requested by the Permittee. If approved by the Board, the term can be extended for an additional period not exceeding two years. Because renewals are provided for in the MVRMA, but not the MVLUR, the Boards have interpreted that a land use permit can be renewed. A renewal is a new application for a development that has already met Part 5 of the MVRMA. It can be issued for a period of up to five years and extended up to a maximum of two years as with any other land use permit application. On the other hand, terms for water licences can be increased through amendments to terms or renewals. Extensions are not available for water licences. Terminology and processes need to be clarified as they have created confusion.</p>	<p>Terminology and regulatory processes for increasing the terms of land use permits and water licences need to be clarified.</p>
<p><i>Ministerial approval of type A licences</i></p>	<p>81</p>	<p>(1) A board may not issue a type A licence referred to in the Northwest Territories Waters Act without the approval of the federal Minister.</p>	<p>This section should be amended to confirm that Ministerial approval is required, not only for issuance, but also for renewal, amendment, and cancellation of type A water licences (as agreed upon by the Joint Examination Project p. 19 of the report).</p>	<p>The LWBs recommend that section 81 be amended to include amendments, renewals and cancellations of type A water licences.</p>



<p><i>Environmental Assessment</i></p>	<p>126</p>		<p>A Section needs to be added which allows for the regulatory process to bypass the preliminary screening for major projects that are certain to require an environmental assessment or review. Currently applicants are required to submit a “complete” application to the LWBs prior to a preliminary screening being conducted or by being referred under sections 126(2) or (3). Applicants may spend more time and money completing an application at this phase of the regulatory process, which may be amended significantly once in the environmental assessment (EA) or environmental impact review (EIR) process. There is also undue stress on the regulators and reviewers who need to review applications at this phase of the process, which can possibly be bypassed.</p>	<p>Addition of a section referring to the mandatory environmental assessment or environmental impact review for major projects without the requirement for the submission of a complete application to the LWBs. New regulations listing activities that bypass the preliminary screening process and trigger this mandatory EA/EIR (e.g. letter of intent) should be made.</p>
<p><i>Distribution of decision</i></p>	<p>130</p>	<p>(4) The federal Minister shall distribute a decision made under this section to the Review Board and to every first nation, local government, regulatory authority and department and agency of the federal or territorial government affected by this decision.</p>	<p>The distribution of this decision needs to be made in a timely and orderly fashion. In some cases, the LWBs have received the decision late.</p>	<p>The LWBs recommend that this subsection be amended so that the LWBs receive the decision first (change the order in the subsection to indicate this), and that the decision is distributed in a timely and expeditious manner.</p>

**Table 2. The Land and Water Boards' recommended amendments to the NWTWA.**

SUB-HEADING	SECTION	SUBSECTION	PARAGRAPH	COMMENTS	SUGGESTED CHANGE/ MODIFICATIONS TO THE ACT
<i>Exemption Tlicho Communities</i>	9	(1) Sections 8 and 9 do not apply in respect of a use of waters or a deposit of waste in a Tlicho Community, if the local government of that community has enacted a bylaw providing that a licence is not required for that type of use or deposit.		Does this exemption allow a Tlicho Community to exempt itself from requiring a water licence for municipal water use and waste disposal?	Clarification is required about whether or not a Tlicho Community can exempt itself from requiring a water licence for municipal water use and disposal of waste.
<i>Refund of security</i>	17	(5) Where the Minister is satisfied that	(a) an appurtenant undertaking has been permanently closed or permanently abandoned.	There are no processes in place to close a water licence. Currently, the process in this section does not provide clarity on how the Minister is satisfied that an appurtenant undertaking has been permanently closed or permanently abandoned prior to returning the security. A process must be outlined within legislation, which provides licensees, the Board, and the Minister with a clear process.	A similar legislative framework for closing land use permits should be applied to water licences (i.e. final plan to the Board, then a final inspection, then a letter of clearance from the Board to Proponent). The Boards should be the organization responsible for approval of final plans, as they are the organization who approves closure and reclamation plans. A letter of clearance should be given after final inspection from the Inspector.

<i>Renewal, Amendment and Cancellation of Licences</i>	18			The difference between a renewal without changes to conditions and an amendment to term is not clear.	The LWBs recommend that this section be amended to clarify the difference between a renewal (without changes to the conditions of the licence) and an amendment to the term.
<i>Authorization of assignment of licence</i>	19	2) The Board shall authorize the assignment of a licence if it is satisfied that	a) the sale or other disposition of any right, title or interest of the licensee in the appurtenant undertaking at the time, in the manner and on the terms and conditions agreed to by the licensee, and	The legislative framework for assigning water licences should be similar to that set up for land use permits (section 38 of the MVLUR), in particular the requirements for posting of security prior to authorization of any assignment.	The LWBs recommend that this subsection be amended so that it is similar to section 38 of the MVLUR.
<i>Public Register</i>	25	(2) The register maintained pursuant to this section shall be open to inspection, during normal business hours of the Board, by any person on payment of a fee, if any, prescribed by the regulations made under subparagraph 33(1)(k)(iii).		The fees on accessing copies to the registry can limit some members of the public from access to public registry materials.	Removal of “on payment of a fee” should be removed. This recommendation should also be applied to subsection 25(3).
<i>Principal Offences</i>	40	(1) Any person who (a) contravenes subsection 8(1) or section 9, (b) fails to comply with subsection 8(3), or (c) contravenes or fails to comply with a direction given by an inspector under subsection 37(1)		Fine amounts seem insufficient for large infractions, particularly for type A licences (e.g. large mines or oil and gas development)	Fine amounts need to be re-evaluated.

**Table 3. The Land and Water Boards' recommended amendments to the NWTWR.**

SUB-HEADING	SECTION	SUBSECTION	PARAGRAPH	COMMENTS	SUGGESTED CHANGE/ MODIFICATIONS TO THE ACT
<i>Interpretation</i>	2	"undertaking" means an undertaking in respect of which water is to be used or waste is to be deposited, of a type set out in Schedule II		The definition of undertaking needs clarification with respect to how security is calculated and collected.	The definition of undertaking should be reviewed to clarify whether or not it includes the entire undertaking or just the water-related components of the undertaking.
<i>Water use or waste deposit without a licence</i>	5	(1) A person may use water and deposit waste without a licence if the proposed use or deposit	(c) satisfies the criteria set out (in subparagraphs (i) through to and including (v).)	The criteria set out in Schedules IV to VIII need to be reviewed to reflect current practices (e.g. drill waste for oil and gas exploration).	The LWBs recommend that the Schedules be reviewed and updated to reflect best practices.
<i>Applications for Licences</i>	6	(1) An application for a licence or for the amendment or renewal of a licence shall be the form set out in Schedule III and shall contain the information identified therein and be accompanied by a deposit equal to any water use fee that would be payable under subsection 9(1) in respect of the first year of the licence that is being applied for.		Application form currently limits the amount of information provided to the Board on application for a water licence.	The Water Licence application in Schedule III needs to be reviewed and revised. A section should be added which allows the LWBs to require additional information for specific undertakings in another form than those prescribed in Schedule 3 (e.g. Mining Questionnaires).

<p><i>Application Fees</i></p>	<p>7</p>	<p>The fee payable on the submission of an application for a licence or for the amendment, renewal, cancellation or assignment of a licence or of an application under section 31 of the Act is \$30.</p>		<p>Fee is minimal and administratively onerous on the LWBs and INAC.</p>	<p>It is recommended that the fee be raised to a more appropriate value or removed.</p>
<p><i>Water Use Fees</i></p>	<p>9</p>	<p>(1) Subject to subsections (4) and (5), the fee payable by a licensee for the right to the use of water, (is) calculated on an annual basis. (Further details in paragraphs (a), (b), (c).)</p>		<p>Water use fee calculations need to be clarified, particularly for industrial, mining and milling and miscellaneous undertakings. There are different interpretations (e.g. a daily rate is the rate charged or an annual rate is charged which can make a substantial difference).</p>	<p>The LWBs recommend that this section needs to be amended to clarify how water use fees are to be calculated.</p>
<p><i>Applications for Assignment</i></p>	<p>10</p>	<p>(1) An application for authorization for the assignment of a licence pursuant to subsection 19(2) of the Act shall be submitted to the Board, accompanied by the fee set out in section 7, not less than 45 days before the date on which the applicant proposes to assign the licence.</p> <p>(2) An application referred to in subsection (1) shall be signed by the assignor and the assignee and shall include the name and address of the assignee.</p>		<p>The process for assigning land use permits and water licences should be similar (e.g. information required, timelines).</p>	<p>The LWBs recommend that this section be amended so that assignments for land use permits and water licences can be harmonized.</p>

Security	12	2) In fixing an amount of security pursuant to subsection (1), the Board may have regard to	a) the ability of the applicant, licensee or prospective assignee to pay the costs referred to in that subsection;	Costs for security should be consistently applied to all licensees. If a licensee is unable to pay for the security, do they have the ability to do the operations applied for, including closure and reclamation?	This sub-section should be removed.
		(3) Security referred to in subsection (1) shall be in the form (as specified in paragraphs (a) to (e)).		INAC staff has indicated to the LWBs that there is a preference for specific payment formats for security, with which the current options defined in this section might conflict.	The formats referred to in this section need to be reviewed and updated with appropriate formats acceptable to the Minister.
Schedule II	Classification of Undertakings	1. Industrial Undertaking		Currently mineral exploration is not included under industrial undertaking in Item 1 and does not fit the definitions under Item II for Mining and Milling undertaking.	Mineral exploration should be classified under either 'Industrial Undertaking' or 'Mining and Milling'.

**Table 4. The Land and Water Boards' recommended amendments to the MVLUR.**

SECTION	SUBSECTION	PARAGRAPH	SUBPARAGRAPH	COMMENTS	SUGGESTED CHANGE/ MODIFICATIONS TO THE REGULATIONS
4	No person shall, without a Type A permit, carry on any activity that involves	(b) on land within or outside the boundaries of a local government	(iv) the use of a stationary power-driven machine, other than a power saw for hydraulic prospecting, moving earth or clearing land.	This paragraph needs to be clarified.	The LWBs recommend that section 4 be amended. A comma could be placed after power saw.
16	(3) The Board may, on written request, issue an authorization under subsection (2) for a period of up to one year.			It is not clear whether a limited number of storage authorizations can be granted.	The LWBs recommend that subsection 16(3) be amended to clarify whether a limited number of authorizations can be granted.
18	A person is eligible for a permit who	(b) in any other case,	(i) has a right to occupy the land and who contracts to have the land-use operation carried out, or  (ii) is the person who is to carry out the operation.	The "or" in paragraph 18(b)(ii) makes subparagraph 18(b)(ii) a catch-all.	The LWBs recommend that the section be changed to read as follows:  "A person is eligible for a permit who...  (b) In any other case has a right to occupy the land and:  i) contracts to have the land-use operation carried out; or  ii) is the person who is to carry out the operation.
19	2) An application for a permit shall be in the form, and provide the information, set out in Schedule 2.			Schedule 2 should be updated. For example, it should be indicated that the \$150.00 fee includes the first two hectares. Secondly, clarification is required that the assignment fee is for assignments only. Many applicants pay this fee unnecessarily.	The LWBs recommend that Schedule 2 be updated to clarify fees, in particular the assignment and application fees. Fees should be reviewed and increased to reflect current land use values. Administration of all fees payable to the Receiver General of Canada should be administered by INAC.

<p>22</p>	<p>(1) The Board shall, within 10 days after receipt of an application for a Type A permit,</p> <p>(2) Subject to sections 23.1 and 24, if the Board does not return an application under paragraph (1) (a), it shall, within 42 days after receipt of the application,</p>	<p>(b) notify the applicant in writing of the date of receipt of the application and of the fact that the Board will take, subject to sections 23.1 and 24, one of the measures referred to in subsection (2) within 42 days after its receipt.</p>	<p>Firstly, it should be 42 days after deeming the application in accordance with these Regulations, not within 42 days after its receipt. Secondly, the timeline should be increased from 42 days to 60 days in order to: provide more time for communities to review applications, particularly communities that are isolated; and to separate the Preliminary Screening decision from the issuance decision. Currently, in order to meet legislated timelines, these decisions usually happen at the same time, which means other agencies that have referral powers (section 126 of the MVRMA) do not have the opportunity to refer a project to environmental assessment once a permit has been issued. In response to the 2005 Audit, MVEIRB made a recommendation to revise the MVLUR to allow additional time for observance of section 126. The Board's legislated and Ministerial policy required consultation obligations cannot be met within the current timelines.</p>	<p>The LWBs recommend that paragraph 22(1)(b) and subsection 22(2) be amended to increase the timeframe from 42 days to 60 days. The LWBs also recommend that these sections be amended so these timelines start once the application is deemed complete in accordance with the Regulations, and not after its receipt.</p>
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23	The Board shall, on receipt of an application for a Type B or Type C permit,	(b) in any other case, subject to sections 23.1 and 24, within 15 days after receipt of the application,		The timelines to process a type B land use permit should be the same as recommended for a type A land use permit (see above).	The LWBs recommend that the timeframe for type B land use permits should be increased from 15 days to 60 days.
26	<p>(3) Where the Board receives a request from a permittee pursuant to subsection (2), it shall notify the permittee of its decision, and of the reasons therefore, within 10 days after receipt of the request.</p> <p>(5) Subject to subsection (6), every permit shall set out the term for which it is valid, which term shall be based on the estimated dates of commencement and completion set out by the permittee in the permit application, but the term of a permit shall not exceed five years.</p>			<p>Ten days is insufficient to process amendments. More time is required to complete public consultation and a preliminary screening. Further, as with water licences (section 18 of the NWTWA), the LWBs should be able to amend permits based on their own motion if the amendment appears to be in the public interest.</p> <p>The term should not only be based on dates provided by the Permittee, but the LWBs should also have discretion to set dates.</p>	<p>The LWBs recommend this subsection be amended to: increase the timeframe from 10 days to 60 days, and to allow the LWBs to amend a permit based on their own motion if the amendment appears to be in the public interest.</p> <p>Change wording to read: "...be based on the estimated dates of commencement and completion set out by the permittee in the permit application, or for a term set by the Board, but the term of a permit shall not exceed five years."</p>

29	(4) The Board shall reject any final plan that is not in compliance with this section and section 30.			Subsection 4 states that the LWBs must reject a final plan submitted after 60 days, even if it has met all the information requirements. The LWBs suggest that subsection 1 be amended so it only refers to the timeline requirements and a new sub-section be created that refers to the information requirements to be submitted within the final plan. Sub-section 4 should be amended to reference non-compliance of the sub-section referring to the information requirements only and not to the timelines.	The LWBs recommend that subsection 29(1) be amended to separate the timeline requirements from the information requirements. The LWBs agree with the timelines as currently required; however, the LWBs should have the discretion to accept late plans because many final plans are submitted late. This would require an amendment to subsection 29(3).
	(2) A final plan submitted pursuant to subsection (1) shall be	(a) certified by the permittee, or by an agent of the permittee, as to the accuracy of	(i) locations, distances and areas, and		Reference should be given to providing GPS locations and map datum.
		(b) drawn from and accompanied by positive prints of vertical aerial photographs, aerial photomosaics or a legal survey showing the lands on which the land-use operation was conducted.		This section refers to outdated technologies (positive prints of vertical aerial photographs and aerial photomosaics).	This section refers to outdated technologies (positive prints of vertical aerial photographs and aerial photomosaics). Reference should be made to satellite imagery or other updated technology.

32	1) The Board may require security to be posted in an amount not exceeding the aggregate of the costs of	(a) abandonment of the land-use operation;		Use the currently accepted term of 'closure' rather than 'abandonment'.	Change 'abandonment' to 'closure'.
		(b) restoration of the site of the land-use operation; and			Change restoration to reclamation.
		(c) any measures that may be necessary after the abandonment of the land-use operation.		Use the currently accepted term of closure rather than abandonment.	Change abandonment to closure.
	(4) Posted security shall be in the form of	(a) a promissory note or letter of credit guaranteed by a chartered bank and payable to the Receiver General;		It has been indicated by INAC regional staff that certain formats of payment are the preferred method of payment of any required security, which might conflict with this section of the regulations.	This section needs to be reviewed by INAC staff at the regional office to determine the appropriate formats acceptable by the Minister.
38	(2) An application for approval of an assignment of a permit shall be forwarded to the Board at least 10 days prior to the proposed effective date of the assignment and shall include	(a) the permit number of the assignor;		This timeline needs to be reconsidered. If the boards can amend an LUP with the assignment request as per subsection 38(1), then more time is required (at least 42 days). Further the <i>Preliminary Screening Requirement Regulations</i> should clarify that an amendment would require a preliminary screening.	The LWBs recommend that the submission timeline for an assignment application be increased to accommodate the additional time required to process accompanying amendments; or, sub-section 1 should be amended to not reference amendments of conditions (except references to the new permit holders company name). Once a permit has been assigned the new applicant can apply for an amendment as the applicant under the timelines for amendments. This would expedite the assignment process of permits not requiring amendments to conditions.

38	(3) The Board shall not authorize an assignment of a permit until any required security has been posted by the assignee in accordance with subsection 32(4).			This subsection is redundant, as section 32(3) states: Where the Board requires that a security deposit be posted, the permittee shall not begin the land-use operation until the security has been deposited with the federal Minister. Further this section triggers unnecessary work for the LWBs. For example, the LWBs need to meet to determine the security amount (if it needs to change), and then again to approve the assignment once the security has been posted. If this section is removed, the Board can determine the security when it approves the assignment. The assignee would not be able to start work until they posted security as per section 32(3).	This section should be deleted because it is redundant.
40	(1) The Board shall keep a register in the form of	a) a land-use ledger, listing each application received by the Board; and			
	(2) Each file referred to in subsection (1) shall contain	(d) all correspondence and documents submitted to the Board in respect of compliance with the conditions of any permit issued in respect of the application.		Currently, this paragraph only references incoming documents. Outgoing board correspondence and documents should also be included.	Remove "submitted to the Board".
	(3) Every person who requests from the Board a copy of a document contained in the register referred to in subsection (1) shall pay the applicable fee set out in Schedule 1.			Cost for copies of documents from the public registry may limit access to information for certain members of the general public.	Remove fees for copies of documents and maps.
Schedule 2					Application form requires review and amendment.

*The Mackenzie Valley Land and Water Board*

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