



September 2, 2020

Mr. Serge Beaudoin
Assistant Deputy Minister
CIRNAC, Northern Affairs
15 Eddy Street, 10th Floor
Gatineau, Quebec K1A 0H4
By email to: serge.beaudoin@canada.ca

Dear Mr. Beaudoin,

We are writing to you to at the suggestion of the Land and Water Boards (“**LWBs**”) of the Mackenzie Valley to discuss an urgent issue facing the mineral industry regarding extension of land use permits issued under the *Mackenzie Valley Resource Management Act*. The issue is particularly acute in the COVID crisis.

As described in the attached letter from the LWBs, a statutory interpretation issue has arisen regarding extension of a land use permit under the *Mackenzie Valley Land Use Regulations* (MVLUR). Section 26(6) of the MVLUR state that a permit may be extended for “a period not exceeding two years”, but the regulation is silent on how many times a permit may be extended. This is in contrast to the *Territorial Land Use Regulations* under the *Territorial Lands Act*, which expressly state at s. 31(6) that a permit may be extended only once. The logical conclusion is that had the federal drafters intended to limit the amount of times a permit may be extended under the MVLUR they would have said so, but they did not so intend.

The Board has implied that the Chamber’s interpretation is reasonable, but that the Chamber and the Board would benefit from guidance of CIRNAC on this issue. Accordingly, we request a letter from CIRNAC to the Board supporting the reasonable interpretation that a land use permit under the MVLUR may be extended more than once. With that general guidance in place, the Chamber believes that the LWBs will have the statutory interpretation tools they need to evaluate each land use permit extension application on its own merits.

We would note that in addition to being wholly defensible from a legal standpoint, adopting the Chamber’s interpretation would be an appropriate way for CIRNAC and the Boards to demonstrate the message they have been giving the industry over the past year, that you are actively looking for ways to be more accommodating of industry’s needs in ways that do not require legislative change.

As you are aware, across the country many in the mineral industry, particularly smaller developers and exploration companies, have been struggling to maintain their companies and their programs due to pandemic circumstances far beyond their control. Governments across the

country are being proactive in trying to moderate the hardships the industry is facing because of the COVID-19 pandemic.

The situation is the same in the NWT, where many land use permit holders under the MVLUR have been severely affected by the pandemic. Many have been forced to suspend or curtail operations that were planned at the time permit applications were made. And the issue is not limited to the mineral industry—we understand from the LWBs that up to 43 land use permits across many sectors (governments, municipalities, Indigenous communities, construction, energy, and other land users) would be adversely affected by a restrictive and narrow interpretation of the MVLUR that allows for only one extension to occur.

In addition to the individual reasons that a permittee might provide on any given extension application, the Chamber offers the following general reasons as to why it may be in the best interests of the residents of the NWT—whose best interests must by statute be central to any Board decision—to grant a permit extension in these unprecedented times:

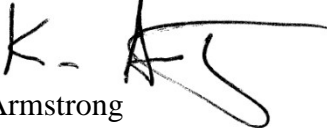
- The UN Secretary General warns that the “The current coronavirus outbreak is the biggest challenge for the world since World War Two”.
- According to World Bank forecasts, the global economy will shrink by 5.2% this year and represent the deepest recession since the Second World War, with the largest fraction of economies experiencing declines in per capita output since 1870.
- Canada’s budget deficit is now forecast to hit C\$343.2 billion, the largest shortfall since the Second World War, amid record emergency aid spending in response to COVID-19.

These are significant headwinds for an already embattled industry. Providing a legally correct and flexible approach to permit extensions is one way that CIRNAC and the LWBs can help the industry, the NWT, and Canada to rejuvenate the economy responsibly and to highlight regulatory leadership.

The Chamber respectfully asks that CIRNAC send timely correspondence to the LWBs that land use permits may be extended more than once, as per the MVLUR.

Yours sincerely,

NWT & NUNAVUT CHAMBER OF MINES


Ken Armstrong
President

Attachment: August 27, 2020 Letter from Mackenzie Valley Land and Water Boards RE:
COVID-19 Impacts and Request for Deferrals or Extensions - Regulatory Conditions

c.c.: Hon. Dan Vandal, Federal Minister of Northern Affairs

Mark Hopkins, Director General, CIRNAC - Natural Resources & Environment Branch
Matthew Spence, Regional Director General, CIRNAC
Hon. Michael McLeod, Member of Parliament for the Northwest Territories
NWT Senator Margaret Dawn Anderson
Ms. Paula Isaak, President of Canadian Northern Development Agency
Hon. Shane Thompson, NWT Minister for Industry, Tourism & Investment
Pamela Strand, Deputy Minister, GNWT – Industry, Tourism & Investment
Mavis Cli-Michaud, Chair, Mackenzie Valley Land and Water Board
Joseph Mackenzie, Chair, Wek'èezhìi Land and Water Board
Elizabeth Wright, Chair, Gwich'in Land and Water Board
Larry Wallace, Chair, Sahtu Land and Water Board
Lisa McDonald, President, PDAC
Pierre Gratton, President, The Mining Association of Canada

August 27, 2020

Ken Armstrong
President
NWT and Nunavut Chamber of Mines
#4, 5120 – 49th Street,
Yellowknife, NT X1A 1P8

Sent via email

Dear Ken Armstrong,

RE: COVID-19 Impacts and Request for Deferrals or Extensions - Regulatory Conditions

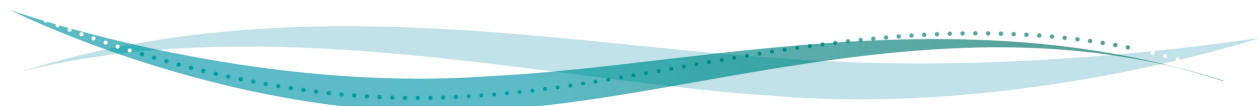
Thank you for your letter of August 24, 2020 in which the NWT and Nunavut Chamber of Mines (Chamber) provides additional information about the difficulties affecting smaller developers and exploration companies in the mining industry in the NWT as a result of the COVID-19 pandemic. To expand on our August 10 response to the Chamber, the Land and Water Boards of the Mackenzie Valley (LWBs) are bound by the legislative framework in which they operate, but where that framework provides procedural flexibility, or the LWBs exercise discretion in meeting their decision-making responsibilities, we can accommodate requests from the mining industry, and other permittees and licensees, for relief on deadlines, within the limits of our authority and the requirement for procedural fairness.

In this context, our staff and representatives of members of the Chamber have recently been exchanging views about a particular issue related to the extension of a land use permit's term under subsections 26(5) and (6) of the Mackenzie Valley Land Use Regulations (MVLUR). As you know, these regulations were promulgated by the Government of Canada under the *Mackenzie Valley Resource Management Act* in 2000. The previous regulations in place in the Mackenzie Valley, and the current Territorial Land Use Regulations, include a slightly different formulation of the words for the provision about extensions of land use permits (ss. 26(6) in the MVLUR).

The interpretation of subsection 26(6) applied by the LWBs for over 20 years has been that the total term possible for a land use permit under the MVLUR is seven (7) years. This is consistent with the limited permit terms set out in both similar and previous land use regulations, but we do admit these other authorities are explicit about the total length of a permit term while the MVLUR are not.

Until the exchanges referred to above, there had been no questions raised about the LWBs' interpretation of ss. 26(6) over the last 20 years. There is no judicial guidance available on the interpretation of this specific MVLUR subsection and the LWBs have not had cause themselves to rule on the question of multiple extensions to the term of a land use permit.

While it might be possible to initiate a process for securing a binding interpretation of the meaning of ss. 26(6), it is clear that such a process would take time and financial resources. In the absence of a ready mechanism to generate an answer to this statutory interpretation question, the LWBs suggest that the



Land and Water Boards of the Mackenzie Valley

Chamber and the LWBs would benefit from guidance from the department of Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC).

The MVLUR are federal legislation and as such it would be more appropriate to seek federal input on this matter. While the LWBs will follow-up with CIRNAC about this, we suggest the Chamber doing the same might result in a more timely response.

Sincerely,

Mavis Cli-Michaud
Chair
Mackenzie Valley Land and Water Board

Joseph Mackenzie
Chair
Wek'èezhii Land and Water Board

Larry Wallace
Chair
Sahtu Land and Water Board

Elizabeth Wright
Chair
Gwich'in Land and Water Board

Copied to: Hon. Shane Thompson, NWT Minister for Environment & Natural Resources, Lands and Industry, Tourism & Investment
Hon. Dan Vandal, Federal Minister of Northern Affairs
Hon. Michael McLeod, Member of Parliament for the Northwest Territories
Senator Margaret Dawn Anderson
Ms. Paula Isaak, President of Canadian Northern Development Agency
Pamela Strand, Deputy Minister, GNWT – Industry, Tourism & Investment
Serge Beaudoin, Assistant Deputy Minister – Northern Affairs, CIRNAC
Matthew Spence, Regional Director General, CIRNAC
Tom Hoefer, Executive Director, NWT and Nunavut Chamber of Mines

