



# MACKENZIE VALLEY LAND AND WATER BOARD

## Rules of Procedure Including Public Hearings

\_\_\_\_\_, 2018

DRAFT

**TABLE OF CONTENTS**

**INTRODUCTION AND PURPOSE..... 4**

**PART ONE: DEFINITIONS AND GENERAL PROVISIONS ..... 4**

Authority ..... 6

Citation ..... 6

Interpretation ..... 6

Application of the Rules ..... 6

Compliance with the Rules ..... 7

Forms..... 7

**PART TWO: CONDUCT OF BOARD PROCEEDINGS..... 7**

Commencement of a Proceeding ..... 7

Notification by Board of a Proceeding ..... 7

Participation in a Board Proceeding ..... 7

Decisions Requested from the Board during a Proceeding ..... 8

Communication with the Board ..... 9

The Public Record in a Proceeding ..... 9

Traditional Knowledge ..... 9

Special Rules about Evidence ..... 10

Filing of Documents and Disclosure ..... 10

Late Filing of Evidence ..... 10

Evidence Protected by Law, Private and Proprietary Matters ..... 11

Information Requests ..... 11

Revision to an Application ..... 11

Written Closing Argument ..... 12

Site Visits ..... 12

Water Compensation Claims..... 12

**PART THREE: CONDUCT OF PROCEEDINGS INVOLVING PUBLIC HEARINGS..... 13**

<b>Public Hearings Ordered by the Board .....</b>	<b>13</b>
<b>Notice of a Public Hearing .....</b>	<b>13</b>
<b>Participation by Interveners .....</b>	<b>13</b>
<b>Participation by Parties .....</b>	<b>14</b>
<b>Participation by Members of the Public .....</b>	<b>14</b>
<b>Pre-Hearing Conferences .....</b>	<b>14</b>
<b>Interventions .....</b>	<b>14</b>
<b>Response to Interventions .....</b>	<b>15</b>
<b>Formulation of Issues .....</b>	<b>15</b>
<b>Locations of Public Hearings .....</b>	<b>15</b>
<b>Conduct of a Public Hearing .....</b>	<b>15</b>
<b>Time Limits and Questioning .....</b>	<b>15</b>
<b>Public Hearing Language and Provision of Interpreters .....</b>	<b>15</b>
<b>Transcript .....</b>	<b>15</b>
<b>Adjournments .....</b>	<b>16</b>

## INTRODUCTION AND PURPOSE

These Rules are intended to ensure that Board Proceedings meet the requirements of fairness. The Rules are also intended to ensure that Public Hearings are efficient, focussed, and meet the needs of Parties and members of the public.

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

## PART ONE: DEFINITIONS AND GENERAL PROVISIONS

### Definitions

Aboriginal Organization	means an organization representing a first nation (as defined in section 2 of the MVRMA), Metis or Inuit organizations, the Tłı̄cho First Nation, the Tłı̄cho Government, or the Délı̄nę Got'ine Government;
Applicant	means a person who has filed an Application with the Board;
Application	means any Application for or in relation to a land use permit or water licence submitted in accordance with the MVRMA, the WA, or their regulations and includes a request for Intervener status, a Board ruling, a plan approval, or any step required to advance a Board Proceeding, but not a Claim for water compensation;
Board	means the Mackenzie Valley Land and Water Board or a regional panel thereof and includes a Public Hearing panel;
Chairperson	means the Chairperson of the Board, the Chairperson of a regional panel of the Board, or the person designated to act as Chairperson of a Public Hearing panel, and includes a person acting during the absence or incapacity of a Chairperson;
Claim	means a written claim for water compensation by a Claimant;
Claimant	means a person making a Claim for water compensation under the MVRMA, the WA, or a Land Claim Agreement;
Community Public Hearing	means an informal Public Hearing held at a venue chosen by the Board in accordance with a Directive issued by the Board;
Direction on the Rules	means a Direction issued by the Board at any time in a Proceeding to supplement, vary or dispense with one or more of these Rules;
Directive	means a mandatory instruction or order, including a work plan, issued by the Board under these Rules to set out or clarify process and ensure the efficiency of a Proceeding;

Document	includes anything in printed form, or a telecommunication or electronic transmission capable of being reduced to a printed format by means of any device, and includes photographs, graphs, charts, maps, plans, books of account, and video or audio tapes or files;
Document Submission Standards	means the Board's March 2012 Document Submission Standards as amended from time to time;
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 or knowledge about the land;
Formal Public Hearing	means a Public Hearing ordered under Rules 83 to 85;
Information Request	means a written request for information or particulars directed by the Board to a Party in a Proceeding, or issued from one Party to another, subject to Rules 63 to 67;
Intervener	means a Party, person, or organization that has filed an Application to intervene in a Public Hearing, including the information required by the Board, and that has been granted Intervener status by the Board under Rule 91;
Intervention	means a written submission by an Intervener, including a Traditional Knowledge study, provided to the Board for a Public Hearing and which includes evidence intended to assist with Board decision-making in a Proceeding;
Licensee	means a person who has been issued and holds a water licence under the MVRMA or the WA;
MVLUR	means the <i>Mackenzie Valley Land Use Regulations</i> , SOR/98-429;
MVRMA	means the <i>Mackenzie Valley Resource Management Act</i> S.C. 1998, c. 25;
Notice	means public notice in a Proceeding given in a manner required by law and as deemed appropriate by the Board;
ORS	means the online review system operated by the Board in the conduct of its Proceedings;
Party	means an Applicant, a person, organization or an Intervener participating in a Board Proceeding subject to these Rules;

Permittee	means a person who has been issued and holds a land use permit under the MVLUR;
Proceeding	includes any process or component of a process through which the Board determines the disposition of an Application or a water compensation claim;
Public Hearing	means an oral hearing in a venue chosen by the Board and includes a Community Public Hearing or a Formal Public Hearing;
Request for Ruling	means a written request by a Party for a ruling by the Board under Rules 21 to 29;
Rules	means these Rules of Procedure;
WA	means the <i>Waters Act</i> , S.N.W.T 2014, c.18; and
Written Proceeding	means a Proceeding completed without a Public Hearing.

### **Authority**

- 1 The Mackenzie Valley Land and Water Board makes these Rules pursuant to section 30 of the MVRMA.

### **Citation**

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

### **Interpretation**

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

### **Application of the Rules**

- 4 To the extent consistent with its duty of procedural fairness, the Board shall emphasize flexibility and informality in all its Proceedings.
- 5 No Board Proceeding is invalid because of an objection based only on a technical irregularity or a defect in a form or document submitted.
- 6 These Rules apply to all Proceedings of the Board unless otherwise determined by the Board.
- 7 Where any question about procedure is not addressed by these Rules, or the Board in its discretion decides that certainty of process or fairness requires it, the Board may issue a Directive to deal with the matter.

- 8 The Board may, by its own motion, or on a Request for Ruling by a Party under Rule 21, supplement, vary or dispense with these Rules by way of a Direction on the Rules.
- 9 Where there is a conflict between these Rules and a specific Direction on the Rules issued by the Board, the Direction on the Rules prevails over the Rules.
- 10 To address the requirements of fairness the Board may, upon Notice to the Parties to a Proceeding, shorten or extend any time period fixed by these Rules.

### **Compliance with the Rules**

- 11 Where a Party to a Proceeding has not complied with these Rules, a Direction on the Rules, or a Directive issued by the Board, the Board may:
  - a) adjourn the Proceeding until satisfied that the requirement has been complied with;
  - b) withdraw that Party's status in the Proceeding; or
  - c) take such other steps as it considers just and reasonable.

### **Forms**

- 12 The Document Submission Standards approved by the Board set out the format and content for any document or communication that must be submitted to the Board in accordance with these Rules. This includes forms for an Application for Intervenor status and a Request for Ruling.

## **PART TWO: CONDUCT OF BOARD PROCEEDINGS**

### **Commencement of a Proceeding**

- 13 A Board Proceeding commences once the Board receives a complete Application for a water licence or a land use permit, or upon receipt of a submission or request in relation to an existing licence or permit. Proceedings initiated by the Board commence upon public Notice of that Board decision.
- 14 The Board may request additional information from an Applicant or a Party before it deems an Application to be complete.

### **Notification by Board of a Proceeding**

- 15 The Board shall provide Notice of a complete Application, as required by law, and shall specify the deadline for making a Claim for water compensation in licensing Proceedings.

### **Participation in a Board Proceeding**

- 16 Any person, Aboriginal Organization, department or agency of government, affected landowner, community or member of the public may, by consenting to be bound by these Rules, become a Party and participate in a Board Proceeding.

- 17 Only a Party may submit Information Requests or a Request for a Ruling, participate in technical sessions, and participate fully in a Board Proceeding.
- 18 Where a Public Hearing is held as part of a Proceeding, only the Applicant or a Party with Intervener status may submit an Information Request or a Request for a Ruling.
- 19 A Party wishing to participate by teleconference or other electronic means of communication in a Proceeding must seek permission to do so from the Executive Director or designated person at least three days in advance of the step in the Proceeding where such communication is required.

### **Decisions Requested from the Board during a Proceeding**

- 20 The Board may make a Ruling on any legal or procedural matter required to ensure fairness and progress during a Proceeding.
- 21 Any issue raised by a Party in the course of a Proceeding that requires a Ruling from the Board shall be addressed by way of a written Request for Ruling.
- 22 The Request shall be in the form required by Rule 12 and shall include a clear, concise statement of the issue, the relevant facts, an explanation of the Ruling being sought, the reasons why the decision or Ruling should be granted by the Board and any authorities being relied on by the Party requesting the Ruling.
- 23 A Request for Ruling made under Rule 21 shall be addressed to the Chairperson and filed with the Executive Director, who shall ensure its circulation to the Parties.
- 24 The Chairperson shall, after consultation with the Executive Director, issue a Directive setting out a timeline for the consideration of a Request for Ruling, including time for the participation of the Parties.
- 25 A Party wishing to respond to a Request for Ruling shall file a written response and any supporting documents with the Executive Director within the timeline set out in the Directive issued under Rule 24. The Executive Director shall ensure that all participating Parties are provided with such responses before the Board considers the Request.
- 26 The Party that filed the Request for Ruling shall be given the opportunity to reply to the responses of other Parties.
- 27 A Request for Ruling will be dealt with as a Written Proceeding unless the Board, in its discretion, decides the matter is better addressed through a Public Hearing.
- 28 When a Request for Ruling arises during the course of a Public Hearing, the Board may deal with it in any way that is consistent with the requirements of fairness.
- 29 The Board may dismiss a Request for Ruling which, in its view, is frivolous, vexatious, or an abuse of process. Reasons for such a decision will be provided to Parties participating in the Request for Ruling process.



## **Communication with the Board**

- 30 Any person or organization may communicate with the Board in a Proceeding via the ORS or otherwise, as provided by these Rules or the Board.
- 31 The Board reserves the right to remove any material posted on the ORS which, in its sole discretion, it determines to be irrelevant, offensive, vexatious or not in accordance with the law or Board standards.
- 32 The Board shall notify and provide reasons to Parties to a Proceeding if posted comments or documents have been removed from the ORS under Rule 31.
- 33 Except during a Public Hearing or when using the ORS, communication related to all Board Proceedings must be in writing and addressed to the Executive Director, or to the person designated by the Executive Director.
- 34 Electronic mail is acceptable for purposes of communicating with the Board in a Proceeding.

## **The Public Record in a Proceeding**

- 35 The public record in a Proceeding is opened when the Board determines that an Application or submission is complete, or when Notice of a Proceeding is issued.
- 36 Information, evidence, and documents received by the Board via the ORS, or in other ways specified by the Board, will be placed on the public record for a Proceeding.
- 37 The Board shall set out deadlines for the submission of evidence at various stages of a Proceeding in a Directive.
- 38 No new evidence will be accepted for the Board's consideration in a Proceeding after a deadline set out in a Directive.
- 39 The public record will be closed at the time specified by the Board in a Directive, unless a Request for Ruling to re-open the record has been made under Rule 21 and is approved by the Board.
- 40 The Board may seek clarification of any evidence or submission on the public record without causing the public record to be re-opened. Copies of information provided in response to a Board request for clarification shall become part of the public record.
- 41 All relevant information placed on the public record for the Proceeding, including information obtained under Rule 40, will be considered in the Board's decision.

## **Traditional Knowledge**

- 42 The Board will encourage the provision of and shall consider any Traditional Knowledge, including oral history, submitted during its Proceedings.
- 43 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 a Proceeding.

## **Special Rules about Evidence**

- 44 All information provided to the Board in a Proceeding is public unless specific arrangements are made under Rules 60 to 62 to ensure its confidentiality or its protection.
- 45 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 or in a Court of law.
- 46 The Board may secure evidence or argument from the Parties to a Proceeding using teleconferences or other means of communication.
- 47 The Board may, during the course of a Proceeding, including a Public Hearing, require that some matters be addressed by way of written submissions.
- 48 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.
- 49 Any witness having Traditional Knowledge, whether retained by the Board or by any other Party to give evidence in a Proceeding, may be required by the Board to provide a written summary of their background and experience for the public record before their evidence is accepted.
- 50 Any witness who will give technical, expert, or opinion evidence in a Proceeding before the Board, including a Public Hearing, may be required by the Board to file a statement of their qualifications on the public record before their evidence is accepted. Any Party relying on the evidence of such a witness shall make them available for questioning in the Proceeding.

## **Filing of Documents and Disclosure**

- 51 Any Party filing documents or communicating with the Board or another Party has the onus to ensure and, if necessary, prove that the documents or communication have been received by the Board and the other Party.
- 52 A Party intending to rely on a document or evidence in a Proceeding shall file the evidence along with any supporting materials or documents with the Board within the time specified by the Board.
- 53 Failure to disclose evidence or file a document as required under these Rules may result in the Board ruling that it is inadmissible in the Proceeding.

## **Late Filing of Evidence**

- 54 Consideration of evidence received after a Board deadline shall be at the discretion of the Board. Late evidence will generally not be accepted by the Board or considered in making a decision in a Proceeding and, therefore, will not become part of the public record. A notation will be placed on the public record to indicate receipt of late evidence.

- 55 A Party that cannot provide evidence within the time specified by the Board must submit a written request to the Executive Director for an extension prior to the relevant deadline.
- 56 An extension request must include the facts and a rationale supporting the request.
- 57 If the Board grants an extension, timelines in the Proceeding will be adjusted accordingly for all Parties and Notice of the change will be provided.
- 58 Evidence provided in accordance with an approved extension request will be entered onto the public record of the Proceeding.
- 59 In order to ensure fairness and efficiency in its Proceedings, the Board may designate staff to manage extension requests. For greater certainty, a request under Rule 55 is not a Request for Ruling.

### **Evidence Protected by Law, Private and Proprietary Matters**

- 60 The Board is bound by the laws that protect personal and private information. Any Party seeking to file information protected by law in a Proceeding must file a Request for Ruling to secure the Board's permission before filing the evidence.
- 61 Any Party seeking to protect confidential, proprietary or sensitive information in a Proceeding must submit a Request for Ruling under Rule 21 to have such information protected.
- 62 Where the Board approves a Request for Ruling to protect the information described in Rules 60 and 61, it will issue a Directive setting out the arrangements for receiving the evidence.

### **Information Requests**

- 63 The Board may issue an Information Request to any Party at any stage of any Proceeding.
- 64 A Party may issue an Information Request to another Party, in accordance with a Directive from the Board. All Information Requests shall be filed with the Board.
- 65 A Party that receives an Information Request shall respond within the time specified by the Board Directive.
- 66 All responses to Information Requests shall be provided to the questioner and the Board.
- 67 If there are any disputes over the appropriateness of an Information Request or a response, a Party shall submit a Request for Ruling to the Board under Rule 21.

### **Revision to an Application**

- 68 At the request of the Applicant, the Board may, in its discretion, permit a revision to an Application.

- 69 A revised Application submitted under Rule 68 shall be circulated to the Parties for comments. The comments must be received at the time specified by the Board in its Directive.
- 70 The Applicant may reply to Parties' comments made under Rule 69 as directed by the Board.
- 71 The Board may, in its sole discretion, determine that a proposed revision represents a significant change to an Application, and in such instances, may require that a new Application be filed.
- 72 Where the Board allows an Applicant to revise its Application, the Board may also allow the other Parties to amend all or part of their written submissions on such conditions as the Board deems appropriate and sets out in a Directive.

### **Written Closing Argument**

- 73 The Board may, once all the evidence is received in a Proceeding, make appropriate arrangements to secure written closing arguments from the Parties and a closing reply argument from the Applicant.

### **Site Visits**

- 74 The Board may schedule a site visit at any time during a Proceeding and shall give Notice to the Parties of any proposed site visit.

### **Water Compensation Claims**

- 75 Any person making a Claim for compensation from an Applicant or a Licensee under the MVRMA, the WA, or a Land Claim Agreement, must do so within the time frame set out in the Notice given under Rule 15.
- 76 A Claim must be in accordance with the legislation.
- 77 The Board will issue a Directive to set out the procedure for the disposition of a Claim for compensation.
- 78 At the request of a Claimant, the Board may, in its discretion, permit a revision to a Claim.
- 79 A revised Claim under Rule 78 shall be circulated to the Parties for comments. The comments must be received at the time specified by the Board in its Directive.
- 80 The Claimant may reply to Parties' comments made under Rule 79 as directed by the Board.
- 81 The Board may, in its sole discretion, determine that a proposed revision represents a significant change to a Claim, and in such instances, may require that a new Claim be filed.
- 82 Where the Board allows a Claimant to revise its Claim, the Board may also allow the other Parties to amend all or part of their written submissions on such conditions as the Board deems appropriate and sets out in a Directive.

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

### **Public Hearings Ordered by the Board**

- 83 The Board may be required by legislation, or may decide on its own motion, to hold a Public Hearing to better carry out any of its land or water management responsibilities.
- 84 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 proposal.
- 85 The Board may direct that a Public Hearing be conducted as a Formal Public Hearing, as a Community Public Hearing, or both, and will issue a Directive accordingly.
- 86 Before conducting a Public Hearing, the Board shall give Notice of the Public Hearing and issue a Directive, which includes a work plan and an agenda, for the Public Hearing(s).

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

- 87 When the Board orders a Public Hearing, Notice of the Hearing shall be given in an approved form in accordance with these Rules, legislation, and the requirements of fairness.
- 88 The Board may use other methods to notify the public of a Public Hearing, having regard to the nature, location, and size of a development, and the affected communities, land owners and Aboriginal Organizations.

### **Participation by Interveners**

- 89 Any person, Aboriginal Organization, department or agency of government, affected landowner, community, member of the public, or Party can apply for Intervener status in a Public Hearing by submitting an Application for Intervenor status under Rule 12 by the deadline specified in the Directive issued under Rule 86.
- 90 The Board may request additional information or clarification from any person or organization seeking Intervener status, or may direct persons or organizations with similar interests to make a joint Intervention at a Public Hearing.
- 91 The Board will make a decision on an Application for Intervener status in a timely fashion.
- 92 Applicants granted Intervener status may file an Intervention in accordance with the Directive issued under Rule 86.
- 93 Only the Applicant or an Intervener may submit an Information Request or Request for Ruling (including a request to adjourn a Public Hearing), present an Intervention at a Public Hearing, and participate fully in a Public Hearing, including filing written closing argument.

### **Participation by Parties**

- 94 A Party that does not wish to apply for Intervener status and file an Intervention but wishes to ask questions at the Public Hearing and file written closing argument must make a written request to do so before the deadline for Interventions specified in the Directive issued by the Board under Rule 86.
- 95 A Party that is not an Intervener cannot file technical evidence, submit an Information Request, or submit a Request for Ruling during the Public Hearing phase of a Proceeding.

### **Participation by Members of the Public**

- 96 A member of the public may:
- a) provide their views in writing to the Board in advance of the Public Hearing prior to the deadline for interventions; or
  - b) make an oral presentation during that portion of the Public Hearing that has been set aside by the Board to hear the views of the public.
- 97 A member of the public cannot submit an Intervention, Information Request or a Request for Ruling.
- 98 The Chairperson may allow such questions or responses to the written or oral comments of members of the public as fairness requires.

### **Pre-Hearing Conferences**

- 99 In any Proceeding involving a Public Hearing, the Board may hold a Pre-Hearing Conference for the following purposes:
- a) to clarify, and where possible narrow, the issues to be addressed in the Public Hearing;
  - 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 Public Hearing;
  - d) to identify the need for additional information, and to determine responsibilities for the submission of this information; or
  - e) any other reason which will ensure the fair and orderly completion of a Proceeding.

### **Interventions**

- 100 Interventions shall be submitted to the Board at the time set out in the Directive issued under Rule 86.
- 101 No new evidence can be submitted by Interveners after the deadline for Interventions has passed, unless a Request for Ruling is submitted under Rule 21 and approved by the Board.

## **Response to Interventions**

- 102 An Applicant may, in accordance with the Board's Directive issued under Rule 86, respond to any or all of the other interventions before the Public Hearing.

## **Formulation of Issues**

- 103 The Board may limit the issues it will consider at a Public Hearing and will notify the Parties of such a decision and set out its reasons.

## **Locations of Public Hearings**

- 104 The Board, in its sole discretion, shall determine the time and place at which a Public Hearing will be held. In so doing, the Board shall consider the requirements of fairness, including which community is most convenient to the Parties and close to the location of the development in question. In making this determination, the Board will consider cost as well as any special requirements brought to the Board's attention by the Parties.
- 105 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 which issues will be addressed in each community.

## **Conduct of a Public Hearing**

- 106 Subject to legislation, these Rules and the requirements of fairness, the Chairperson of the Board or of a Regional Panel of the Board will control the conduct of the Public Hearing.

## **Time Limits and Questioning**

- 107 The Board may set time limits for presentations, questions and oral submissions for a Public Hearing.
- 108 The Applicant and Interveners at a Public Hearing are subject to questioning by the Parties participating in the hearing, the other Interveners and the Board.

## **Public Hearing Language and Provision of Interpreters**

- 109 The Board may arrange for interpretation services for Public Hearings in those language(s) it deems necessary.

## **Transcript**

- 110 A transcript of a Public Hearing may be prepared by the Board.
- 111 If the Board provides a transcript of a Public Hearing, the transcript will be placed on the public record in a timely manner.

**Adjournments**

- 112 An Applicant or an Intervener must submit a Request for Ruling under Rule 21 to apply for an adjournment of a Public Hearing.
- 113 The Board may adjourn a Proceeding:
- a) where it requests further information, particulars or documents, and these cannot be provided in time for the Public Hearing;
  - b) where an Application or Claim is revised and the Board determines that the revision would constitute a significant change; or
  - c) where for any reason the Board deems it necessary or fair.