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January 14, 2021

File: W2020L8-0002

Mark Cliffe-Phillips
Mackenzie Valley Review Board
200 Scotia Centre
Box 938, 5102-50th Avenue
Yellowknife, NT X1A 2N7

Sent by email

Dear Mark Cliffe-Phillips,

Re: The Government of the Northwest Territories Department of Infrastructure – Notice of Preliminary Screening Determination – Application for Water Licence – NWT Hwy 3 Repair Works, Behchokò, NT

The Wek'èezhii Land and Water Board (Board) met on January 14, 2021 and considered the Application from the Government of the Northwest Territories Department of Infrastructure (GNWT-INF) for Water Licence (Licence) W2020L8-0002 for the NWT Hwy 3 Repair Works Maintenance Project (Project) in accordance with the *Mackenzie Valley Resource Management Act* (MVRMA).

The Board conducted a preliminary screening based on the public record for the proceeding. Based on the evidence provided, the Board is satisfied the screening has been completed according to section 125 of the MVRMA and has decided **not to refer** the project to environmental assessment. The Board's reasons for decision, as required by section 121 of the MVRMA, are attached.

If the Board does not receive notice of referral to environmental assessment, it can proceed with issuance of Licence W2020L8-0002 on **Monday, January 25, 2021**.

The Board and staff look forward to continued communications throughout the pause period. Please contact Ryan Fequet at (867) 765-4589 with any questions or concerns regarding this letter.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Joe Mackenzie".

Joe Mackenzie
Wek'èezhii Land and Water Board, Chair

Copied to: Alexis Campbell, GNWT-INF
Blind Copied to: Wek'èezhii Distribution List

Attached: Preliminary Screening Reasons for Decision



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Reasons for Decision

Reference/File Number:	W2020L8-0002 (Type "B" Water Licence)
Applicant:	Government of the Northwest Territories Department of Infrastructure (GNWT-INF)
Subject:	Preliminary Screening Determination - NWT Highway 3 Repair Works Type B Water Licence Application

Decision from the Wek'èezhìi Land and Water Board Meeting of January 14, 2021

1.0 Decision

The Wek'èezhìi Land and Water Board (WLWB or the Board) met on January 14, 2021 and considered the Government of the Northwest Territories Department of Infrastructure's (GNWT-INF) Application for a Type B Water Licence (W2020L8-0002).¹ The Board conducted a preliminary screening of this Application according to subsection 124(1) of the Mackenzie Valley Resource Management Act (MVRMA), based on GNWT-INF's application package and the public review. Based on the evidence provided, it is the Board's view that the proposed development is not likely to have a significant adverse impact on air, water or renewable resources or might be a cause of public concern and therefore, has decided not to refer the Project to Environmental Assessment, as set out in paragraph 125(2)(a) of the MVRMA.

2.0 Background

The WLWB received a Water Licence Application from the GNWT-INF on September 29, 2020. The purpose of the Application is to undertake repair and maintenance works from kilometer 240-243; the work will include the construction of embankments, replace a culvert at location 62° 47'01.25" N and 115° 58'24.09" W, and placement of fill into ponded wet areas from km 240 to 243 to bring the road grade to

¹ See WLWB (www.wlwb.ca) Online Registry for [GNWT-INF - NWT Hwy 3 Repair Works - Water Licence Application - Sep 29 20](#)

design height. The Project is located within the local community boundaries of Behchokò, between Edzo and Behchokò, NT.²

The Application and draft Licence were distributed for public review on October 5, 2020,³ along with the previous Preliminary Screening.⁴ Parties were invited to provide comments and recommendations using the Online Review System (ORS) by November 2, 2020. In its cover letter, GNWT-INF indicated its view that the Application should be exempt from Preliminary Screening because “As the Water Licence works fall under the scope of MV2017X0008 it is believed to be exempted from preliminary screening”. In the Item for Review, Parties were encouraged to provide comments and recommendations (e.g., on impacts and mitigation measures) to assist with the completion of the preliminary screening. The Department of Fisheries and Oceans Canada (DFO) indicated that they had no concerns about the proposed work. The Government of the Northwest Territories Department of Environment and Natural Resources Environmental Assessment and Monitoring (GNWT-ENR-EAM), the Tłı̄çhò Government, and the Wek’èezhìi Renewable Resources Board (WRRB) indicated they had no comments or recommendations at the time. WLWB staff provided questions. GNWT-INF submitted its responses by the deadline of November 16, 2020. Reviewer recommendations and the Proponent responses are available on the WLWB Online Registry.⁵

During the public review, GNWT-INF confirmed that it would be installing a culvert as part of the proposed project (see response to Board staff comment 5). GNWT-INF’s application did not indicate that a culvert would be installed during this operation; thus, this information was not circulated during the public review. Rule #61 of the Mackenzie Valley Land and Water Boards’ Rules of Procedures states that the Board may issue an Information Request (IR) to any Party at any stage of any Proceeding. On November 26, 2020,⁶ the WLWB submitted an IR to the GNWT-INF requesting that GNWT-INF confirm: the size and location of the culvert; whether the culvert would be new or will be replacing an existing culvert; and to describe all potential impacts and mitigations associated with placing or replacing the culvert or to provide rationale if there are no additional impacts or mitigations necessary. GNWT-INF responded to the IR by the deadline of December 10, 2020.⁷ On December 11, 2020, an email was sent to the Wek’èezhìi Distribution List providing Parties an opportunity to submit comments, if any, on the GNWT-INF’s IR response. No comments and/or recommendations were received from Parties by the deadline of December 22, 2020.

Since no concerns regarding timelines were received during the public review and no requests to extend the reviewer comment deadline were received, the Board is satisfied that a reasonable period of notice was given to affected communities and First Nations, as required by subsection 63(2) of the MVRMA. The

² See WLWB Online Registry for [GNWT-INF - NWT Hwy 3 Repair Works - Water Licence Application - Figures and Maps - Sep 29 20](#)

³ See WLWB Online Registry for [GNWT-INF - NWT Hwy 3 Repair Works - Draft Water Licence - Type B - Oct 5 20](#)

⁴ See WLWB Online Registry for [MV2017X0008 - GNWT-INF - Preliminary Screening Notification to Review Board - Aug 9 19](#)

⁵ See WLWB Online Registry for [GNWT-INF - NWT Hwy 3 Repair Works - Review Summary and Attachments - Nov 16 20](#)

⁶ See WLWB Online Registry for [GNWT-INF - NWT Hwy 3 Repair Works - Information Request - Nov 26 20](#)

⁷ See WLWB Online Registry for [GNWT-INF - NWT Hwy 3 Repair Works - GNWT-INF Response to WLWB IR - Dec 10 20](#)

Board is also satisfied that the Tłı̨chǫ Government has been consulted in accordance with section 63 of the MVRMA.

3.0 Reasons for Decision

3.1 Preliminary Screening Exemption

GNWT-INF identified in its cover letter that the Project falls under the scope of Land Use Permit MV2017X0008 and that it believes the Application to be exempt from preliminary screening. Pursuant to Schedule 1 (section 2), Part 1, paragraph 2(b) of the *Exemption List Regulations*, developments exempt from preliminary screenings include the following:

A development, or a part thereof, for which renewal or a permit, licence or authorization is requested that (a) has not been modified; and (b) has fulfilled the requirements of the environmental assessment established by the MVRMA, the Canadian Environmental Assessment Act or the Environmental Assessment Review Process Guidelines Order.

The Board identified that the preliminary screening previously done for Permit MV2017X0008 did not appear to include all activities and associated potential impacts described in the current Application. The Board thus completed a preliminary screening in review of this Application in accordance with subsection 124(1) of the MVRMA (see Sections 3.2, 3.3, and 3.4 of these Reasons for Decision).

3.2 Potential Impacts and Proposed Mitigations

During the public review, reviewers were encouraged to provide comments and recommendations (e.g., on impacts and mitigation measures) to assist with the Board’s preliminary screening determination. Questions and responses received during the public review regarding potential impacts from the proposed Project are discussed in Table 1, along with the Board’s analysis of the potential impacts.

Table 1: Summary of Potential Impacts of the proposed Application and proposed Mitigations

Potential Impacts	Activity	Discussion of Concerns/Impacts and Proposed Mitigations
Potential Impacts to water quality and aquatic habitat	Maintenance/repair work near stream crossings	<ul style="list-style-type: none"> • Concerns: <ul style="list-style-type: none"> ○ Identified during the public review: During the public review, WLWB staff noted that Part J, condition 2 of the Draft Licence states that “The Licensee shall not enter open water with Heavy Equipment at any time” and requested that if GNWT-INF does plan to use Heavy Equipment to describe what measures will be used to mitigate potential impacts (WLWB staff comment 3). ○ During the public review, WLWB staff asked GNWT-INF to confirm whether the material to be used for infill will be

		<p>from a source that is clean and free from contaminants prior to use (WLWB staff comment 4).</p> <ul style="list-style-type: none"> • Mitigations: <ul style="list-style-type: none"> ○ In its response, GNWT-INF stated that while it will use Heavy Equipment, the Heavy Equipment will not enter into the Watercourse. The Draft Licence also included a condition prohibiting Heavy Equipment to enter open water at any time and GNWT has responded that this reflects its plan. The Board notes that this condition can be included in the Licence to help mitigate potential impacts. ○ GNWT-INF responded that the blast rock material to be used will be from approved quarry sites (i.e., Km 246.2 on Highway 3 and/or Km 5.0 - Rae Access Road). These are approved quarry sites from the Department of Lands and free of any contaminants. The Draft Licence also includes a condition requiring all material to be used to be clean and free of contaminants and from a source that has been authorized in writing by an Inspector. The Board notes that this condition can be included in the Licence to help mitigate potential impacts. • Board Analysis and Determination: <ul style="list-style-type: none"> ○ Based on the mitigations described above, the Board does not believe these activities associated with the Project might have a significant adverse impact on air, water, or renewable resources, or might be a cause of public concern.
<p>Potential impacts to water quality and aquatic habitat</p>	<p>Maintenance/repair work near stream crossings</p>	<ul style="list-style-type: none"> • Concerns: <ul style="list-style-type: none"> ○ Identified during the Public Review: During the public review, WLWB staff requested GNWT-INF confirm whether it plans to install culverts as part of its proposed Project (WLWB staff comment 5). GNWT responded that the contractor will be installing a culvert. The location of the culvert will be in a dry location and that there is no running

		<p>water at the location, and there will be no infill placed into the water.</p> <ul style="list-style-type: none">○ On November 26, 2020, the WLWB sent an Information Request (IR) to GNWT-INF, requesting that GNWT-INF confirm the size and location of the culvert, whether the culvert will be new or replacing an existing culvert, and to describe all potential impacts and mitigations.○ On December 10, 2020, GNWT-INF responded that the culvert will be 0.8 meters in diameter and 34 meters in length and the approximate location of the culvert will be located at 62°47'01.25" N and 115°58'24.09" W and this will be replacing an existing culvert; GNWT-INF's mitigations are provided below. <ul style="list-style-type: none">● Mitigations:<ul style="list-style-type: none">○ GNWT-INF stated that there will be no anticipated impacts associated with this culvert replacement. GNWT-INF stated in the letter that this is a drainage culvert and that the culvert will mostly see water during freshet times. GNWT-INF also stated in the letter that a silt fence will be installed during the culvert installation to prevent any potential sediment release and that the Erosion and Sediment Control Manual will be followed.○ The Draft Licence also included a condition prohibiting Heavy Equipment to enter open water at any time. The Board notes that this condition can be included in the Licence to help mitigate potential impacts.● Board Analysis and Determination:<ul style="list-style-type: none">○ Based on the mitigations described above, the Board does not believe these activities associated with the Project might have a significant adverse impact on air, water, or renewable resources, or might be a cause of public concern.
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<p>Potential Impacts and Mitigation of Placing Infill</p>	<p>Maintenance/repair in-water works</p>	<ul style="list-style-type: none"> • Concerns: <ul style="list-style-type: none"> ○ Identified during the public review: During the public review, WLWB staff asked GNWT-INF to describe potential impacts, if any, of placing infill into the water and to describe the measures that will be used to mitigate any potential impacts (WLWB staff comment 1). • Mitigations: <ul style="list-style-type: none"> ○ GNWT-INF responded that the planned work is part of the Department’s routine maintenance to bring the road to its original grade to improve the safety of the commuters. GNWT-INF believes that there will be no impacts to the water or environment due to this fill. Silt curtains and silt fences will be installed around the area before placing infill to prevent any potential erosion or sediment from entering the waterbody. ○ The Draft Licence also includes conditions that relate to minimizing erosion by implementing suitable erosion control measures and compliance with environmental considerations and mitigation measures provided in GNWT-INF’s Erosion and Sediment Control Manual. The Board notes that these conditions can be included in the Licence to help mitigate potential impacts. • Board Analysis and Determination: <ul style="list-style-type: none"> ○ Based on the mitigations described above, the Board does not believe these activities associated with the Project might have a significant adverse impact on air, water, or renewable resources, or might be a cause of public concern.
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3.3 Public Concern

In addition to determining if the development is likely to have a significant adverse impact on air, water or renewable resources, the Board must also consider whether the proposed development might be a cause of public concern. Although public concern may be less clearly defined than the questions related

to significant adverse impacts on air, water or renewable resources, it is the Board's responsibility to evaluate public concern as a potential trigger for an Environmental Assessment.

The Board notes that no reviewers voiced public concern in review of the Application. In addition, in reviewing the comments provided during the public review, the Board did not identify any comments or issues that indicate a possible cause for public concern.

3.4 Conclusion

The Board has reviewed all the evidence received from GNWT-INF and reviewers with respect to the preliminary screening of the Water Licence Application for the NWT Highway 3 Repair Work Project. Based on the mitigations, lack of public concern noted during the review process, and no comments from reviewers that this Project should be referred to the Review Board, the Board is of the opinion that the proposed development is not likely to have a significant adverse impact on air, water or renewable resources or might be a cause of public concern.

Signed the 14th day of January 2021, on behalf of the Wek'èezhìi Land and Water Board



Witness



Joe Mackenzie
Chair, Wek'èezhìi Land and Water Board