

Comments from the Mackenzie Valley Land and Water Board on the Draft Deh Cho Land Use Plan

April 11, 2005

The Mackenzie Valley Land and Water Board supports the development of a Land Use Plan for the Deh Cho region. When the plan is finalized and when the Board is directed by the Minister to adopt the plan, it will do so.

Our main concern with the Draft Land Use Plan is with the Description of Terms. Many of the “terms” are actually prescriptive requirements for regulatory authorities such as us. I am unsure of the authority of a Land Use Plan to outline such requirements when there are already regulatory instruments which provide direction on these areas. It will be necessary to clarify the authority of the Land Use Plan to make determinations about how regulatory authorities conduct certain aspects of their work.

With regards to specific details of the Draft Plan, our Regulatory Officer, Adrian Paradis, has examined the document carefully and has provided the following comments:

General

Overall the plan is highly conservative with 73% of the land tied up in Special Management or Conservation areas. As the intent of a land use plan under section 41 (2) of the *MVRMA* is to “provide for the conservation, development and use of land, water and other resources in a settlement area”, this plan may limit development within the Deh Cho

The plan predicts only 16 wells (> 10 mmcf/day) will be developed over the next twenty years south of 61° 30' within the Deh Cho. Paramount, once the EA goes through, will have 49 wells that can be applied for in Cameron Hills. Not all of these will producer oil or gas; however, if only ¼ are successful, this will exceed the predications within the Land Use Plan.

Transboundary Land Use

Where transboundary land use issues exist or may exist, how does the land use plan intend to incorporate these? If the transboundary land use is a non-conforming use, how will this be dealt with?

Definitions:

Development: “means any undertaking requiring a land use permit (LUP) or water license (WL).” Given the concern over river seismic and other developments in the Deh Cho, the Committee may want to expand its

definition of development to include all authorizations (i.e. Fisheries Authorizations, NEB, & RWED). The Board did not screen either of the two river seismic surveys in the Deh Cho.

No Net Loss: a definition would be useful.

Table 7. Description of Terms

Water Monitoring / Management: The plan requests that the Board manage all activities upstream or near community intakes to Canadian Drinking Water Standards. This limits the Board to typically poorer standards. The CCME Freshwater Aquatic Guidelines are usually more stringent than drinking water standards in the ambient environment.

Salvage Logging: “Developers will notify and provide opportunities for local forestry operations or communities to salvage wood for local needs.” This should be on a case-by-case basis. In operations that utilize avoidance cutting or similar methods that deliberately leave a small corridor the salvaging of wood may require a larger disturbance to access a fallen log and remove it.

This requirement may lead to some frustration between developers / communities and authorities over what is a reasonable attempt to harvest the resource and provide opportunities to the communities.

Revegetation: Requires developers to use native species in reclamation and revegetation work. However, given the lack of commercially available seed this may not be feasible.

Digital Post Operation Mapping: Requires developers of larger operations (i.e. wellsite, roads, seismic) to provide shape files, digital air photo's and/or satellite imagery within 30 days of construction.

It would be more useful for developer to provide shape file during the application process and update the Board and committee post construction to any changes to the approved disturbance. (I.e. Inspectors order to avoid beaver dam). For example, it would be more useful the following summer where the vegetation is in bloom and the impacts can be better assessed.

Table 8. Cumulative Impacts Indicators and Thresholds

Corridor: in the cumulative effects report a corridor was 3.0m but in the draft, it was defines as 1.5m. Why was this done?

The definition includes natural and anthropogenic features that are “some what uniform in linearity and are greater than 1.5 m. It is a very limiting definition as a stream with banks great than 1.5 m is considered in the Total Corridor Density measurement.

Disturbance: “a natural or human action that affects physical, chemical or biological conditions.”

The definition includes natural and anthropogenic sources. While both may be a disturbance to the present conditions separate definitions for each should be included in the plan.

Habitat Activity: the definition should include resource extraction; the current definition does not clearly identify this.

Lowest Observed Effect Level (LOEL): definition taken from Ecotoxicology field. How does the committee recommend that this be measured and quantified within the Land Use Plan?

Riparian Clearings: the current definition only includes 15m from a waterbody. It should be 100m as cited in the MVRMA Reg’s section 6(b) “excavate land within 100m of a watercourse.”

If this definition does not work for the committee, suggested definitions include:

The transitional zone or area between a body of water and the adjacent upland identified by soil characteristics and distinctive vegetation that requires an excess of water. It includes wetlands and those portions of floodplains that support riparian vegetation.

(Personal communication with Bruce Hanna, DFO, March 29, 2005)

From DFO Working Near Water Handbook.

Riparian Vegetation: The plant community immediately surrounding the land/water interface of a waterbody.

Fisheries Sensitive Zone (FSZ): An area which comprises the watercourse as well as associated riparian areas. Includes in-stream aquatic habitats, as well as the out-of-stream habitat features such as side channels and wetlands.

Reference: Cott, P.A. and J.P. Moore. 2003. Working near Water, Considerations for Fish and Fish Habitat. Reference and Workshop Manual. Northwest Territories Department of Fisheries and Oceans - Western Arctic Area. Inuvik, Northwest Territories. 92 pp+Appendices.

Specialized Habitat Features (SHF): Requires the developer to establish a 250 m setback from SHF's. On existing trails, seismic lines, etc. there should be a mechanism for a developer to maintain the existing trail when a SHF has been identified.

On new cuts the proponent should ensure that no SHF exists as part of the LUP application. This may be hard for some applications; however, during construction, site monitors from the communities may help in developing the trails, seismic lines, etc to avoid such features.

Table 9. Seasonal Restrictions

Restricts work to January and February. The rest of the time the proponent must show that their work will have no adverse impacts to wildlife before work may proceed. This may be very difficult to do.