



Alternatives North

September 27, 2024

Robert Hawkins, MLA Yellowknife Centre
Chair
Standing Committee on Economic Development and Environment
Legislative Assembly of the Northwest Territories
Box 1320
Yellowknife NT X1A 2L9

by e-mail: Robert.Hawkins@ntassembly.ca

Re: Regulatory Review

Mr. Hawkins:

We understand that the Standing Committee on Economic Development and Environment (SCEDE) is undertaking a review of the regulatory framework for land and water use permitting under the *Mackenzie Valley Resources Management Act* (MVRMA), and its operational effectiveness. We understand the Committee intends to prepare a report on the findings that will recommend targeted actions and interventions the GNWT can take to improve the administration and effectiveness of the regulatory framework.

We would like to submit comments and recommendations on a number of areas including the scope of your review, efficiency and effectiveness, responses to comments made by others, and the Committee review process itself.

Background on Alternatives North

Alternatives North was formed in 1992 by a group of individuals with a strong belief in social and environmental justice. Over time the group has been involved in the creation and critique of budgets by public governments, making submissions on Bills, participating in environmental assessments (the Mackenzie Gas Project and Giant Mine Remediation projects in particular), and much more.

Alternatives North is based in Yellowknife and has no office or staff but consists of a committed group of individuals with a variety of experiences and backgrounds including professional expertise on environmental management. We have participated in public hearings, environmental audits and environmental policy development.

Scope of the SCEDE Review

While we appreciate Committee's concerns and its limited scope in this review, the *Mackenzie Valley Resource Management Act* provides for an integrated and comprehensive environmental management system. Land and water regulation is but one component of the overall system. Other parts of the system include land use planning, environmental assessment and environmental audits. The audits assess ecosystem health how the overall system is working. There are other complementary systems in place as well, including land and water management now largely with GNWT. GNWT's responsibilities now include inspection and enforcement of land and water authorizations.

Our observation is that Committee needs to recognize this context and that some of the ways to bring greater efficiency and effectiveness involve these other management components and complementary systems. **We recommend that GNWT find ways to complete legally-binding regional land use plans outside the Gwich'in and Sahtu Settlement areas, including completion and approval of the Dehcho Land Use Plan which is now over 20 years in process. There is also a need for regional land use planning in the Tlicho and Akaitcho areas.** If we had proper land use plans there would be greater certainty over where and when development and other activities can take place and under what terms and conditions.

We also recommend that GNWT find ways to complete outstanding land rights agreements with Indigenous governments as there has been little visible progress over the last ten years. This will help ensure greater certainty for all.

Effectiveness

Although SCEDE has stated that it wants to consider the "operational effectiveness" of the land and water regulatory framework, it is not clear what is meant by this term. Effectiveness for whom and about what?

We believe that any assessment regarding effectiveness needs to be referenced back to the *MVRMA* purpose, principles and objectives as found in the relevant sections summarized below:

- s. 9.1 "enable residents of the Mackenzie Valley to participate in the management of its resources for the benefit of the residents and of other Canadians";
- s. 35 "The purpose of land use planning is to protect and promote the social, cultural and economic well-being of residents and communities in the settlement area, having regard to the interests of all Canadians" and "special attention shall be devoted to the rights of the Gwich'in and Sahtu First Nations under their agreements, to protecting and promoting their social, cultural and economic well-being and to the lands used by them for wildlife harvesting and other resource

uses; and land use planning must involve the participation of the first nation and of residents and communities in the settlement area.”

- s. 101.1 (1) “The objectives of the [Mackenzie Valley Land and Water Board] 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 the Mackenzie Valley.”
- s. 114 “The purpose of this Part [5 Mackenzie Valley Environmental Impact Review Board] is to establish a process comprising a preliminary screening, an environmental assessment and an environmental impact review in relation to proposals for developments, and
 - (a) to establish the Review Board as the main instrument in the Mackenzie Valley for the environmental assessment and environmental impact review of developments;
 - (b) to ensure that the impact on the environment of proposed developments receives careful consideration before actions are taken in connection with them; and
 - (c) to ensure that the concerns of aboriginal people and the general public are taken into account in that process.”
- s. 115 “Guiding principles [for the Mackenzie Valley Environmental Impact Review Board]
 - (1) The process established by this Part shall be carried out in a timely and expeditious manner and shall have regard to
 - (a) the protection of the environment from the significant adverse impacts of proposed developments;
 - (b) the protection of the social, cultural and economic well-being of residents and communities in the Mackenzie Valley; and
 - (c) the importance of conservation to the well-being and way of life of the aboriginal peoples of Canada to whom section 35 of the Constitution Act, 1982 applies and who use an area of the Mackenzie Valley.”

Clearly the *MVRMA* is about establishing a co-management system to wisely use, conserve and protect the environment while requiring Indigenous government and public participation. Any assessment of its operational effectiveness therefore needs to consider these two significant matters—protection of the environment and Indigenous and public participation.

If SCEDE is interested in effectiveness of the *MVRMA*, especially land and water regulation, it is necessary to investigate the inspection and enforcement system by which the environment is to be protected, and compliance with terms and conditions is verified. There is virtually no public reporting other than individual inspection reports that appear to be posted to the public registries of the Land and Water Boards. There is no overall system reporting the number of staff, the number of inspections, or documenting any unacceptable compliance, orders issued, any enforcement actions

taken and more. There are provisions (s. 56) for this public reporting in the not yet in ce *Public Land Act*. We recommend that that **GNWT voluntarily begin such public reporting now on inspection and enforcement of land and water authorizations.**

Work also should be done to determine whether the water use and other fees generated through the *MVRMA* and its regulations cover the administrative costs associated with processing applications, inspections and enforcement. Fees should be set at a level (and regularly reviewed) to support these activities and avoid public subsidies to developers. We note that there are already provisions in the *MVRMA* for cost recovery (s. 79.4 for land and water permitting s. 142.01 for environmental assessments) but they require regulations and do not appear to have been implemented. **We recommend that SCEDE study and report on whether the fees associated with the land and water regulatory system cover administrative costs, including inspections and enforcement and addressing the issue of cost recovery.**

Another measure of the effectiveness of land and water regulation is the Environmental Audit carried out pursuant to Part 6 of the *MVRMA*. While the audits are beyond the scope of our submission, it is our understanding that many of the recommendations of past audits have yet to be implemented so that an integrated, comprehensive and fully-funded environmental management regime for the Mackenzie Valley is ensured.

On the issue of Indigenous and public participation in the co-management system in the Mackenzie Valley, we will confine our submission to public participation although we support many of the comments made by the Land and Water Boards on the [Interim Resource Management Assistance Program](#). The [Northern Participant Funding Program](#) at this point only covers environmental assessments and not proceedings in the land and water regulatory system. Alternatives North participated in a one-day workshop this past summer on this program and it is clearly still in its infancy with no clear guidelines or ways to obtain or allocate funding, especially for non-governmental organizations or members of the public.

Leaving aside the issue of capacity (dealt with below), we note that several of the initiatives underway by the co-management bodies, including the Mackenzie Valley Operational Dialogue, have not included invitations to NGOs. GNWT departments also have not included NGOs in many of their regulatory and legislative initiatives. This has been the subject of [previous letters](#), [submissions](#) and reports by previous Standing Committees (most notably, the [SCEDE report on Bill 74 Forest Act](#)). **We recommend that SCEDE promote the need for improved public participation in all environmental management based on the recommendations from these previous submissions and reports.**

Efficiency

We endorse the concepts around efficiency as presented to the Land and Water Boards in their presentation to SCEDE on July 19, 2024. We offer some comments on the following topics as raised by the Boards:

Education

We share the views of the Land and Water Boards that there has been abundant and helpful guidelines, bulletins and reference materials to assist applicants in understanding how our co-management system works. There has been mixed messaging from GNWT, however, regarding its position and attitude towards co-management and the *MVRMA*. Some messaging is very critical of the land and water regulatory system and not consistent with the overall approach of supporting reconciliation and the implementation of UNDRIP and open government. **GNWT needs to become more consistent and fulsome in its messaging and support for co-management and the integrated resource management system established through the *MVRMA*.** The same is needed from the mining industry itself as discussed further below.

Capacity

We note that NGOs in the NWT, despite having very limited capacity, have made substantial and significant contributions to environmental management and public policy. More easily accessible participant funding to support participation in land and water regulation reviews would be helpful in promoting capacity-building, as noted above. Workshops, plain language materials and resources would also help promote improved public participation which is a cornerstone of the *MVRMA*.

The issue of capacity has also been problematic for public governments, restricting their ability and capacity to participate in co-management activities, including the implementation of the *MVRMA* and various new authorities under the devolution agreement. GNWT public engagement during legislative and regulatory development needs to improve and departments need to have the resources to do this work earlier in the process.

GNWT departments and the public service need to be able to participate more freely and provide their professional expertise during environmental assessment, and land and water regulation. This was highlighted by the Review Board during its assessment of the Tlicho All Season Road and through a [Lessons Learned study](#) commissioned by the Department of Lands. Departments and GNWT experts also need to be freed from the political and Cabinet constraints in the current [Project Assessment Policy](#).

Where GNWT does not have the internal expertise, sufficient resources need to be secured for outside expertise. This will be especially important with pending closure of Diavik diamond mine and the hydrocarbon facilities at Norman Wells to ensure there are no public liabilities and that the best possible closure and remediation takes place.

Duplication

It is our view that there is little duplication or uncoordinated activities within the co-management system that has evolved in the Mackenzie Valley over the last few decades. There is always room for improvement, and identifying those opportunities is the function of the Environmental Audit. Some of the complementary environmental management systems are not consistent or based on the principles of co-management, transparency and accountability. In particular, we note that land administration by GNWT is evolving but the legislation and regulations have not been fully developed or implemented (i.e., the *Public Land Act*). It was encouraging to hear the Land and Water Boards say that the Department of Environment and Climate Change has moved to using the on-line review system for its regulation and review of wildlife monitoring and management plans. **We recommend that GNWT continue to move towards using on-line review systems, public registries and other transparency tools as have been adopted by co-management bodies.**

Legislative/Regulatory Change

Public engagement by GNWT has typically been left to the end of legislative and regulatory development processes, which has not been helpful. As noted above and in previous submissions and reports, **GNWT needs to become an advocate for public participation in environmental management, including land and water regulation.** This can be done by ensuring departments have adequate resources and appropriate political direction when they undertake legislative and regulatory development or changes.

NGOs often have valuable information and perspectives to contribute, including outside expertise, but are too often excluded. Alternatives North, in particular, has a strong track record of making cogent submissions on resource management bills, often in collaboration with other NGOs. In fact our interventions have resulted in amendments that have strengthened transparency and accountability. The co-management bodies can also make more of an effort to be inclusive by inviting NGOs to participate in the Mackenzie Valley Operational Dialogue and similar initiatives.

Response to Comments Made by the NWT and Nunavut Chamber of Mines

Alternatives North supports mining in the NWT as long as there is:

- a fair return to public and Indigenous governments for the extraction of mineral resources;
- the production takes place with appropriate controls that protect ecological integrity; and
- there is a net positive contribution to sustainability.

In reviewing the presentation by the NWT and Nunavut Chamber of Mines, we were not surprised to see several unfounded complaints about the land and water regulatory system. It's sadly the norm. We are of the view that this negative approach has become

a self-fulfilling prophecy that scares away investment from the NWT. Most of the advanced exploration projects in the NWT have been through environmental assessments and have been fully permitted. Those that do not proceed into production fail to do so because of external factors including commodity prices and financing. These deposits are not currently economic, find themselves in that situation due to the use of new technology or techniques and simply cannot attract financing.

Regulatory uncertainty is not the problem given our integrated and comprehensive co-management system. We note that the co-management bodies generally collaborate well, and have provided numerous guides, bulletins and other interpretive and educational materials. We have all the elements of certainty (other than the need for land use planning and settlement of outstanding Indigenous land rights) for appropriate resource development. In the absence of sound resource management there is no certainty. Just look at the case of the Ring of Fire which is so much closer to markets yet can't move forward because of Ontario's uncoordinated and disjointed resource management system.

The Chamber even attempted to link the decline in exploration in the NWT to regulatory uncertainty using the "evidence" of specious and unscientific Fraser Institute so-called surveys. To succeed, the mining industry has to get on board with co-management and start to promote it as the legitimate and necessary way to do business in the north.

While we acknowledge there are some areas where further regulatory clarity can be brought to bear, the Chamber of Mines isn't addressing them. Instead, it continues to call for the NWT to go backward, calling for deregulation of a lot of exploration work, a course that has been the source of much public concern and a lot of debris and contaminated sites left on the land.

We also note the recent [letter from Burgundy Diamonds](#) threatening to close its operation unless there are significant regulatory concessions. Alternatives North rejects such concessions. Rolling back environmental protections that are part of our co-management system and constitutionally protected land rights agreements with Indigenous governments is simply not on in 2024.

Class B water licences do not require or very rarely, if ever, result in public hearings. The level of scrutiny is exponentially lower. NWT water use fees are ridiculously low. Why should industrial users not pay for the use of public resources, even for building ice bridges or drilling? If our water use rates were higher, these funds could be used to cover regulatory costs including inspections, enforcement and co-management administration.

We do share some concerns expressed by the Chamber of Mines regarding the lack of transparency and accountability regarding public land administrations (i.e., land leases and other dispositions) as discussed above. Surface leases, which are privately negotiated documents between developers and GNWT, remain secret despite the fact

that they are made by a public government which should be accountable for its management of public resources.

The secrecy around surface leases makes comprehensive and integrated closure and reclamation planning difficult at best. There already was a surface lease given for mining operations at Prairie Creek by the federal government, with such an inadequate security cap that does not cover current liabilities at the site from previous operations (Prairie Creek almost went into production in the early 1980s). How to transition that lease into a modern lease where there are existing unsecured liabilities at the site would be a difficult task. **MLAs should ensure that the new Prairie Creek surface lease covers all liabilities at the site and that those become the responsibility of the current owner and not taxpayers.** For further advice and recommendations about preventing more public environmental liabilities and contaminated sites, please refer to [SCEDE Report on the Prevention and Management of Contaminated Sites](#).

New rules for financial security, reclamation requirements, land leases and more are being developed behind closed doors and there has been no public engagement for over two years despite departmental promises. **SCEDE should hold a public hearing on the lack of communications and public engagement on the development of regulations under the *Public Land Act*.**

SCEDE Review Process

We note that the Legislative Assembly and Standing Committee website has been reworked and is now available on-line. However, there is very little easily accessible information on this ongoing SCEDE Regulatory Review. We are aware of at least three presentations that have been made to SCEDE as part of this review but these are not listed or linked in any way to the SCEDE webpage. Some of the presentation materials are available in the agendas and noted in the records of proceeding but not all are there. It is true that SCEDE meetings are generally broadcast but no links or even a list matters discussed is provided on the Committee webpage.

If there have been any written submissions, they are not documented or found on the SCEDE webpage. **We recommend that all relevant presentations, submissions and Committee documents be made publicly available on the SCEDE webpage in an easily identifiable, timely and accessible fashion. This is important in terms of procedural fairness and accountability as others may wish to see this information and respond to it.**

Please provide a list of the written submissions with links to the actual documents and links to the broadcasts. This should be done for all Committee initiatives to properly document and encourage public engagement.

We would be pleased to answer any questions or provide further information. We look forward to and request a copy of Committee's report on the above matters.

Sincerely,

A handwritten signature in black ink that reads "Kevin O'Reilly". The signature is written in a cursive style with a large, prominent "K" and "R".

Kevin O'Reilly
For Alternatives North

cc. Committee Clerk Committees@ntassembly.ca