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FILE NUMBER: SEE BELOW

Date: December 8, 2009
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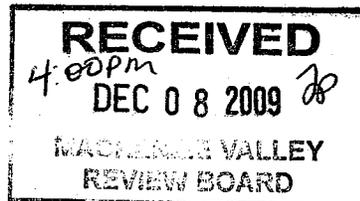
Re:
 Reason's for Decision
 Paramount Resources' 5 New Land Use Permits and
 Water Licenses'
 MV2009A0033 / MV2009L1-0016
 MV2009A0034 / MV2009L1-0017
 MV2009A0035 / MV2009L1-0018
 MV2009A0036 / MV2009L1-0019
 MV2009A0037 / MV2009L1-0020

- Enclosures
- As requested
- For your information
- For your comment
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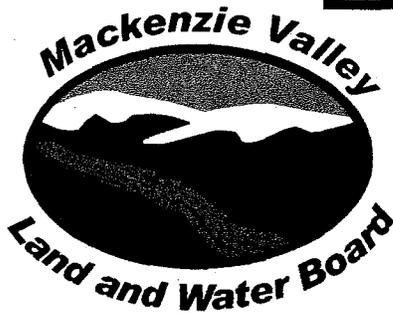
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Reasons for Decision

Reference/File Numbers:	MV2009A0033 / MV2009L1-0016 MV2009A0034 / MV2009L1-0017 MV2009A0035 / MV2009L1-0018 MV2009A0036 / MV2009L1-0019 MV2009A0037 / MV2009L1-0020
Applicant:	Paramount Resources Ltd.
Project:	Oil and Gas Exploration, Cameron Hills, NT

Decision from Mackenzie Valley Land and Water Board (the Board) Panel Meeting of

November 9, 2009

Reasons for Decision

The Mackenzie Valley Land and Water Board (MVLWB or the Board) is required by section 121 of the *Mackenzie Valley Resource Management Act* (MVRMA) to issue reasons for decision for all decisions made under Part 5 of the MVRMA and, under section 26 of the *Northwest Territories Waters Act* (NWTWA), to issue reasons for decision for all decisions on water licences. In this case, given the nature of the issues raised in this proceeding in relation to proposals for both land and water use by Paramount Resources Ltd. (Paramount), the Board has also included reasons for its land use permit decisions in this document.

These reasons for decision are issued to satisfy these requirements in relation to all five new land use permits and the five new water licences issued to Paramount. During the regulatory process, Board staff and reviewers considered all these applications in concert. The well sites applied for will involve similar if not identical activities and the scope of the work at each site is also similar. Finally, the affected sites are close together in an area with the same type of environment and relative geographic location. Moreover, the comments received from reviewers were, for the most part, combined and not

specific to each location. The terms and conditions imposed by the Board for the permits and licences are thus similar if not identical for each location. As a result, individual reasons for decision for each permit and licence are not, in the Board's view, required.

Background and Regulatory History

Adequacy of consultation

In May 2003, the MVLWB referred Paramount's proposed Cameron Hills development to the Mackenzie Valley Environmental Impact Review Board (MVEIRB) for environmental assessment. When the MVEIRB initiated this environmental assessment, it expanded the scope of development to include Paramount's activities in relation to all 48 additional wells proposed for the company's Cameron Hills significant discovery licence (SDL) area.

In June 2004, the MVEIRB forwarded their Report of Environmental Assessment and Reasons for Decisions on the Paramount Resources Limited Cameron Hills Extension Project EA03-005 (EA03-005) to the federal Minister for approval. The expanded development addressed in the EA included the drilling of up to 48 new wells and the construction of associated tie-ins to the existing pipeline over the next ten years on the Cameron Hills SDL area. EA03-005 was approved by the federal Minister on July 5, 2005.

Since 2000, when Part 4 of the MVRMA came in to force, the Ka'a'Gee Tu First Nation (KTFN) has consistently expressed concerns to the MVLWB regarding Paramount's development activities in their traditional areas in the Cameron Hills. These concerns include the KTFN's right to be consulted and their view that they have not been accommodated meaningfully. The KTFN have also expressed concern regarding environmental impacts from oil and gas development within the Cameron Hills area.

In August 2005, the KTFN filed an application for judicial review in the federal court relating to EA03-005, seeking a series of remedies, including the quashing of the federal Minister's decision to approve the EA and orders declaring that the Minister's EA decision was unconstitutional because Canada had not met its duty to consult and accommodate the KTFN. The relief requested in the KTFN application included an order staying the Minister's decisions and restraining Paramount from proceeding with their Cameron Hills expansion activities.

In July 2007, Justice Blanchard of the federal court, having found that the consult to modify process undertaken by the federal Minister in relation to EA03-005 did not satisfy the Crown's duty to consult, ordered that "the parties are to engage in a process of meaningful consultation with the view of taking into consideration the concerns of KTFN and if necessary, accommodate those concerns". Justice Blanchard also, in a separate action number T-1996-05,

quashed a land use permit issued to Paramount by the MVLWB in order to allow for consultation to occur. From July 2007 until the permits and licences which are the subject of these reasons were issued, the MVLWB has not issued any authorizations to Paramount for their Cameron Hills SDL area.

In August 2009, Paramount submitted new land use permit and water licence applications (listed above) for five proposed well sites. The applications were initially determined to be incomplete based on the need for a final report on the court-ordered consultation. The Board needed evidence of the completion of the consultation as well as other technical information for the applications to be determined to be complete.

Board staff requested confirmation from Indian and Northern Affairs Canada (INAC) that the consultation had been completed. INAC provided the Board with a letter and report, dated August 25, 2009, stating that the Crown had concluded its consultation with the KTFN in accordance with the decision of Justice Blanchard. INAC provided a description of the results of the consultation process and reasons for its decision to conclude the consultations with the KTFN. INAC set out its position in the letter that the Crown had satisfied its duty to consult.

In September 2009, Board staff received all additional technical information required from Paramount and determined that the applications were complete. The applications were then distributed to reviewers for comment in accordance with the Board's normal regulatory process.

Counsel to the KTFN, Mandell Pinder, indicated to the Board that they would make submissions in response to the August 25th INAC letter which stated that the Crown's duty to consult had been fulfilled. On September 18, 2009, Mandell Pinder submitted this response. In Mandell Pinder's submission, they state that the Crown has not fulfilled its duty to consult. Further, KTFN requested that the Board suspend its review of the captioned land use and water licence applications. Their counsel also provided a copy of a notice of appearance filed with the Federal Court on September 4, 2009 seeking judicial review of the INAC consultation decision.

The September 4, 2009 Notice of Appearance, *Chief Chicot vs. The Attorney General of Canada and Paramount Resources Ltd.* is yet another application for judicial review alleging that the Crown did not comply with Canada's legal and constitutional duty to consult with and appropriately accommodate the KTFN in relation to Paramount's activities in the Cameron Hills. It is the result of the dispute between INAC (as the representative of the Crown) and KTFN over the termination of the consultation process ordered by Justice Blanchard.

The Board distributed Mandell Pinder's September 18th letter to Paramount and INAC. The Board requested comments on this KTFN submission including the suspension request. The Board also asked INAC and Paramount for feedback on how they see the regulatory process continuing in light of the KTFN request.

Comments were received from INAC and Paramount. INAC indicated that any decision to suspend the processing of the applications was the responsibility of the Board. Paramount's counsel, Macleod Dixon, LLP (Macleod Dixon) requested that the Board continue with the processing of the land use permit and water licence applications.

Mandell Pinder was provided an opportunity to address these responses. In their reply they stated that "the MVLWB's obligation as a statutory tribunal, is to now consider and weigh those submissions in the course of making its determinations" and that the MVLWB cannot "give controlling weight to the position and views expressed by one party".

This Mandell Pinder argument relied on two cases which the KTFN felt were relevant to the questions raised in the proceeding about the adequacy of consultation. The more relevant of these cases is the decision of the British Columbia Court of Appeal in *Carrier Sekani Tribal Council v. B.C. (Utilities Commission)*, 2009 BCCA 67 (Carrier Sekani).

Given these legal submissions, it was determined that INAC and Paramount should be allowed to comment on the law as presented by Mandell Pinder.

Macleod Dixon made submissions on behalf of Paramount and addressed the Carrier Sekani decision. They argued that the legislation that governs the MVLWB is different from the statutes governing the B.C. Utilities Commission. Macleod Dixon also quoted Mr. Justice Donald in Carrier Sekani where he observed that "the duty is to discuss, **not necessarily to agree** or to make compromises. It is to be open to accommodation, **if necessary**" (our emphasis).

Macleod Dixon also took this opportunity to restate Paramount's position that the Board should deny any request to suspend the processing of the applications.

The INAC submission stated:

During the present consultative process, should the Crown become aware of information respecting potential adverse impacts to potential or established Treaty and Aboriginal rights that cannot be addressed within the current context, it may be obliged to consult further and accommodate if appropriate. INAC is unaware of any new information or concerns respecting potential adverse impacts from any affected Aboriginal group that was not already considered

by the Mackenzie Valley Environmental Impact Review Board in its Report of Environmental Assessment.

INAC also addressed a September 30, 2009 letter from the Katlodeeche First Nation (KFN) and indicated that First Nation had participated fully in the environmental assessment process and, that if KFN has new concerns, they can be presented.

Mandell Pinder was provided a final opportunity to respond on KTFN's behalf to the INAC and Paramount responses. Mandell Pinder raised the question of the Board's role in ensuring that the duty to consult is fulfilled. They suggested that the Board, as an independent, quasi-judicial tribunal, is required to determine adequacy of the Crown's duty to consult before it can approve the Paramount licences and permits. Mandell Pinder also submitted, relying on the Carrier Sekani decision that the Board is similarly situated to the B.C. Utilities Commission and that the reasoning in Carrier Sekani applies. They concluded that the "Board is required to consider, and adjudicate upon, the sufficiency of Crown consultation in relation to Paramount's activities".

The Board's Decision

There were several issues raised in the course of the Board's review of the paramount applications. They are addressed below.

Determination of type of water licence required

Comments received from INAC, Government of the Northwest Territories – Environment and Natural Resources Ltd. (ENR) and Environment Canada suggest that the type B water licences applied for by Paramount do not allow for production to occur at the well sites for which the licences and permits were requested.

Under Schedule VI of the *Northwest Territories Water Regulations* (the Regulations), production of oil and gas requires a type A water licence. It is not, in the Board's view, all that clear from the Regulations what distinguishes exploration from production or when an exploration well becomes a production well.

Historically, Paramount has applied for type B water licences for its Cameron Hills field. Discussions have been held between INAC and Paramount regarding the potential to convert all of the existing type B water licences into one single type A licence which would be more consistent with the *Northwest Territories Water Regulations*.

Board staff requested clarification from Paramount on the scope of activities as outlined in their applications for water licences. Paramount stated that the scope of the project includes well site construction, drilling, completion, and tie

in. On the basis of this information, it is the Board's view that the applications filed are for exploration only. The scope of the licences has been restricted accordingly. Production from the five well sites will require a type A licence. Paramount should take steps to secure the necessary licence to accommodate its production activities as required.

Exemption from preliminary screening

As per the Exemption List Regulations, and the Regulations Amending the Exemption List Regulations, these land use permit and water licence applications are exempt from preliminary screening. These well sites were included under the Cameron Hills Extension Project, which underwent environmental assessment (EA03-005) in 2004. The scope of the proposed applications is consistent with what was assessed under EA03-005.

Section 2 of Schedule 1 of the Regulations Amending the Exemption List Regulations states that:

2. A development, or a part thereof, for which a permit, licence or authorization is requested that:
 - (a) was part of a development that fulfilled the requirements of the environmental assessment process established by the *Mackenzie Valley Resource Management Act*; and
 - (b) has not been modified since the development referred to in paragraph a) fulfilled the requirements of the environmental assessment process as established by the *Mackenzie Valley Resource Management Act*.

It is the Board's conclusion that the developments applied for by Paramount have already been subjected to an environmental assessment and that the requirements of Part 5 of the MVRMA have been met; therefore, these applications are exempt and no preliminary screening is required.

The Consultation issue

Before addressing the requirements of the *Northwest Territories Waters Act* (NWTWA) and Regulations, the *Mackenzie Valley Land Use Regulations* (MVLUR) and the measures resulting from the Minister's approval of EA03-005, as they relate to the permits and licences the Board had to consider the question of whether the Board is responsible for determining the adequacy of consultation. That analysis is set out below.

Analysis

The MVLWB is a tribunal established by the MVRMA which has statutory authority over water licencing and land use permitting in the Mackenzie Valley. The Board's authorities are set out in statute and regulation, specifically, the

MVRMA, the NWTWA and Regulations, and the MVLUR. Parts 1, 3 and 4 of the MVRMA establish the MVLWB as an independent co-management tribunal. The Board is bound by the rules of fairness and must give reasons for its water licensing decisions. The Board is also a preliminary screener and plays a role in the environmental impact assessment decision-making process set out in Part 5 of the MVRMA.

The Board deals with competing interests in all of its proceedings. Government agencies, First Nations, non-governmental organizations of various types and proponents of mining, oil and gas, and other developments make representations to the MVLWB about the appropriateness of issuing licences or permits and their scope as well as the nature and type of conditions which are appropriate in each instance.

The Board's objectives in terms of land and water management are set out in section 101.1 of the MVRMA. Its purposes in the conduct of preliminary screenings are found in section 114 of the MVRMA. The MVLWB, as a creation of statute, is intended to be independent and impartial.

The issue raised in this proceeding questions the Board's role in determining the adequacy of Crown consultation.

No party in the proceeding suggested that the Board was responsible for the conduct of consultation and in the Board's view it is not.

Mandell Pinder's position is that the Crown's duty of consultation and accommodation is not complete and that the KTFN has outstanding concerns which have yet to be addressed. Mandell Pinder also argues that although the Board is not required to conduct Crown consultation, it should not simply rely on INAC's position that the duty to consult has been fulfilled. Mandell Pinder relied on *Carrier Sekani* in which the Court of Appeal determined that the B.C. Utilities Commission (BCUC) has the responsibility, as a tribunal exercising quasi-judicial powers to consider and adjudicate on the adequacy of Crown consultation before granting regulatory approvals. While relevant, this case is not binding on the Board in the NWT.¹ It does, however, have persuasive value.

Paramount's position is that the Board should not assume the responsibility of determining the adequacy of consultation and that the Board should issue the land use permits and water licences based on the INAC assertion that the duty to consult has been met. Paramount made additional submissions urging the Board to distinguish the case law presented by Mandell Pinder. Paramount argued that the *Carrier Sekani* case does not apply to the MVLWB as the MVRMA does not contain the same provisions for exclusive jurisdiction as the *Utilities Commission Act* of British Columbia does.

¹ The Board is aware that the Supreme Court of Canada has now granted leave to appeal in respect of this case.

INAC's position was that it should be up to the Board to decide how to proceed with the regulatory process and the concerns identified by the KTFN. INAC indicated that if new evidence were to be presented to them which would require further consultation that they would consult further and provide accommodation, if necessary. INAC points out, and the Board accepts, that the KTFN has provided no new evidence indicating that additional consultation is required at this time.

KTFN counsel advise that, in their view, the Crown's consultation in response to the order of Justice Blanchard of the federal court has been inadequate. The Board is aware that KTFN has sought additional intervention by the courts by challenging the INAC decision to terminate the consultation process. Aside from the August 25th report on the consultation process — which is the basis for the INAC assertion that the consultation was adequate and has been completed — the Board has no evidence about the consultation process conducted between July 2007 and 2009 or its results.

KTFN did not submit any evidence, only argument. The EA03-005 consultation process itself was confidential. The Board was not privy to it. The three parties arguing the consultation issue in this proceeding were all directly involved in the consultation process and with the exception of the INAC report they have not provided any material evidence to assist the Board to address the question of the adequacy of consultation.

As INAC advised in its submission, however, Justice Blanchard's decision indicated that the Honour of the Crown had been upheld through the process of EA03-005 until INAC decided to exclude KTFN from the consult to modify process undertaken before the Minister approved the Report of EA. From that the Board determined that the consultation process (whatever its contents) was intended to address only that part of the EA and regulatory process.

The Board has no evidence of any new infringement of KTFN rights and no evidence except that submitted by INAC about the consultation process and the accommodation achieved in response to the Federal Court's order. INAC has committed to further consultation and accommodation if evidence emerges that the shows that the permits and licences for which Paramount has applied are causing problems.

It is, in the Board's view and consistent with its Rules of Procedure, KTFN's responsibility to provide evidence sufficient to satisfy the Board that a problem exists and that effects on its rights from the Paramount operations which will require mitigation. The only evidence before the Board is that the consultation process has been satisfactorily completed. The Board is further comforted by INAC's commitment to address any new issues if they arise. Considering all the above, the Board is of the view that it does not have to address the adequacy of consultation because there is no evidence of a problem with the process completed by INAC, Paramount, and the KTFN.

In closing on this issue, the Board notes that it is not prepared to deal with issues of aboriginal and constitutional law. It is a co-management tribunal assembled to address the management of land and water as set out in s.101.1 of the MVRMA.

Reasons for the Water Licence Decisions

Terms and conditions for the water licences

The MVLWB reviewed the MVEIRB report of Environmental Assessment and the recommended measures and developer commitments contained therein to determine which measures and commitments fall within the mandate of the MVLWB and could be integrated into the terms and conditions of these water licences. The Responsible Ministers approved 17 recommended measures in the MVEIRB Report of EA, and the MVLWB determined that eight recommended measures were within the Board's jurisdiction. The following recommendations have been incorporated into the terms and conditions of the Water Licenses:

- Recommended Measure 1 requires that regulatory authorities include in their authorizations those items that Paramount has committed to during the EA. The 134 commitments are outlined in Appendix A of the EA Report. The MVLWB has incorporated the commitments, where applicable, into the terms and condition of the water licenses.
- Recommended Measure 8 requires Paramount to modify its spill reporting procedures to notify potentially affected communities in the event of spill. Part G of the water licenses includes this measure.
- Recommended Measure 10 requires Paramount to maintain pre-in-stream water flow during pipeline installation and crossings. Part F of the water licences includes this measure.
- Recommended Measure 13 required that the Department of Environment and Natural Resources provide, to the Board, thresholds for development within Ecodistricts 250 and 251. In the interim, the average linear disturbance target of 1.8 km/km² has been set as a boreal caribou disturbance threshold within Ecodistricts 250 and 251 (Cameron Hills). Part B of the water licence terms and conditions includes a requirement for Paramount to include information on disturbance to boreal caribou habitat in the Water License Annual Report.
- The MVLWB conducted a detailed analysis of the developer commitments listed in Appendix A of the MVEIRB report of Environmental Assessment to determine which commitments fall within the mandate of the MVLWB.

Developer commitments have been incorporated into the terms and conditions of the Water License where appropriate.

The conditions set forth in the amended licences have been imposed in order to address the Board's statutory responsibilities and those concerns which arose during this regulatory process. These reasons address the more significant of those concerns.

Part B: General Conditions

The general conditions assist in the appropriate administration of the licences, including keeping the Board informed of activities on site through a requirement for annual reporting.

Part C: Conditions Applying to Water Use

The licences authorize the Proponent to obtain water from water sources identified in the accepted application of a quantity which cannot exceed 300 cubic metres per day. Part C, item 4 requires the Licensee to adhere to the mitigative measures for use of water sources as described in the Developers Assessment Report (DAR) for EA03-005 on pages 74–75.

Part D: Conditions Applying to Waste Disposal

The Board has included conditions for waste disposal relating to the disposal of drilling waste and sewage. The Licensee must dispose of all drilling waste and sewage as specified in the conditions under Part D to prevent any contamination of water bodies and surrounding lands.

Part E: Conditions Applying to Modifications

The conditions applying to modifications are included to allow for small-scale changes in the structures of the proposed undertakings. As per the definition of 'Modification' under Part A of each licence, a modification does not include an expansion nor does it allow for an alteration of the purpose or function of the work conducted. It should, therefore, be noted that the Board is not in any way authorizing any amendments to the requirements of the licences by virtue of the inclusion of this section. Any such requests for amendments must be undertaken pursuant to the terms of the NWTWA.

Part F: Conditions Applying to Watercourse Crossings

The Board has imposed conditions requiring the Licensee to construct water crossings using specific methods, materials, and techniques. These conditions are intended to minimize impacts to the aquatic environment and to ensure that watercourse crossings are restored to a pre-disturbance state.

Part G: Conditions Applying to Contingency Planning

The Board has imposed conditions requiring the Licensee to undertake ongoing contingency planning in order to make the Licensee and the Board aware of the uncertainties that may arise during the operations. The Licensee is to provide plans that detail how effects resulting from unexpected situations will be mitigated. It should be noted that the Board requires the Licensee to review the Spill Contingency Plan and modify it as necessary to reflect changes in operation, technology, and staffing.

Part H: Conditions Applying to Abandonment and Restoration

Paragraph 15(e) of the NWTWA authorizes the Board to include, in a licence, conditions relating to any future closing or abandonment any facilities associated with this undertaking. Accordingly, the Applicant must submit an Abandonment and Reclamation Plan that specifically addresses the requirements under Part H of the Water Licences.

Requirements of Section 14 of the NWTWA

Existing licences

With respect to subparagraph 14(4)(a) of the NWTWA, the Board is satisfied that granting the licences to the Licensee would not adversely affect, in a significant way, any existing Licensee, providing the conditions of the licences are met. There are no Licensees with precedence.

Financial responsibility of the Applicant

The Board must satisfy itself of the financial responsibility of the Applicant under paragraph 14(4)(d) of the MVRMA before it can issue the licences. In this case, the Board is satisfied that Paramount Resources Ltd. is capable of meeting the obligations set out in the MVRMA and the Licences.

There is no issue, in the Board's view, concerning the capacity of the Applicant to meet any, or all, financial obligations that arise from this undertaking.

Requirements of Subsection 15(2) of the NWTWA

The Board is convinced that adherence to the strict terms and conditions it has imposed on the Applicant in the License will ensure that any potential adverse effects which might arise as a result of the issuance of the licences are minimized.

Reasons for the Land Use Permit Decisions

Terms and conditions for the land use permits

The MVLWB reviewed the MVEIRB Report of Environmental Assessment and the recommended measures and developer commitments contained therein to determine which measures and commitments fall within the mandate of the MVLWB and could be integrated into the terms and conditions of the land use permits. The Responsible Ministers included 17 recommended measures in the MVEIRB Report of Environmental Assessment, and the MVLWB determined that 8 recommended measures were within the Board's jurisdiction. The following measures have been incorporated into the terms and conditions of the land use permits:

- Recommended Measure 1 requires that regulatory authorities include in their authorizations those items that Paramount has committed to during the EA. The 134 commitments are outlined in Appendix A of the EA Report. The MVLWB has incorporated the commitments, where applicable, into the terms and conditions of the land use permits.
- Recommended Measure 12, as modified by the Responsible Ministers, requires the establishment of a boreal caribou working group that shall be led by the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall provide to the Board thresholds for development within Ecodistricts 250 and 251. In the interim, the average linear disturbance target of 1.8 km per km² as a boreal caribou disturbance threshold shall be included for all land use permits within Ecodistricts 250 and 251 (Cameron Hills) as per Recommended Measure 13 (as modified). Land use permit conditions limit Paramount to a linear disturbance threshold of 1.8 km per km².
- Recommended Measure 14 requires that 50 percent of all proposed and planned developments within the Cameron Hills Significant Discovery License area occur in locations previously disturbed. Land use permit conditions incorporate this recommended measure.
- Recommended Measure 17 requires that KTFN be notified directly if any heritage resources are suspected or encountered during Paramount's activities. Land use permit conditions incorporate this recommended measure.

The MVLWB conducted a detailed analysis of the developer commitments listed in Appendix A of the MVEIRB report of Environmental Assessment to determine which commitments fall within the mandate of the MVLWB. Developer commitments have been incorporated into the terms and conditions of the Land Use Permits where appropriate. The permits have been issued under separate covers.

Conclusion

Based on the evidence presented by all interested parties, the Board gave consideration to the matter of adequacy of consultation based on the Justice Blanchard decision. The Board decided that there was no evidence which would warrant a review of the consultation process. This leaves for another day a ruling on the question of whether the Board actually has either the jurisdiction or the legal responsibility to conduct such a review.

With regard to the type of water licence required, the Board has issued the licences as type Bs as the wells are exploratory in nature. The type B licence is issued for the drilling of a well site. If the wells are successful and Paramount would like to commence production on the well, it will require a type A water licence, as per the Northwest Territories Water Regulations, prior to proceeding.

Decision

The MVLWB has decided to issue the land use permits and water licences subject to the terms and conditions set out therein. The licences and permits have been issued under separate cover.

The licences and permits contain the terms and conditions that the Board feels are appropriate to protect the environment, conserve water resources and to provide the appropriate safeguards in respect of Paramount's use of land, water, and the deposit of wastes.

Mackenzie Valley Land and Water Board
Preliminary Screening Organization



Chair

Dec. 8/09
Date

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