

Arctic Development
Library

***Mackenzie Valley Resource Management Act
Type of Study: Acts/legislation/regulations
Land Claims Information, Dene/metis
Catalogue Number: 10-3-4***

10-3-4

INFORMATION ON THE PROPOSED
*MACKENZIE VALLEY RESOURCE
MANAGEMENT ACT*

PREPARED BY:

DEPARTMENT OF INDIAN AFFAIRS
AND NORTHERN DEVELOPMENT

DECEMBER 1993

THE NEW LEGISLATION

Introduction

The Mackenzie Valley¹ is at the threshold of change. Land claim settlements are rewriting the way government manages resources and have introduced a new era of partnerships that will take us into the twenty-first century.

As a result of claims settlements, new **resource** management bodies are replacing current systems. The new public boards must be coordinated with existing processes to ensure effective resource management. Management, regulation, environmental stewardship and co-management responsibilities must be balanced and brought together to provide an era of certainty to those who wish to make use of the land and its resources. **These** must be delivered in a way that will benefit our partners, **local** and regional interests, as well as northern and national interests.

The Gwich'in, and soon the Sahtu Dene and Métis, are embarking on a new path which includes responsibility to manage their land consistent with their traditions and the right to participate in its regulation. The land claim agreements recognize certain basic principles and establish processes and mandates. The implementation plans that give them substance are now underway.

This is a partnership between governments and Aboriginal groups that will play an important role as we move forward with legislation to give effect to land claims. A system of resource management will be established by legislation, and refined through policy and procedures developed with participants. Such a system will recognize the roles of the boards, of governments, and of public and private interests. It will be a system that uses partnerships to the fullest extent.

¹The Mackenzie Valley, in the context of this information package, does not include the Western Arctic (Inuvialuit Settlement) Region.

HISTORICAL NOTES

In 1973, the Minister of the Department of Indian Affairs and Northern Development (DIAND) announced that the government was prepared to negotiate comprehensive land claim agreements with Aboriginal groups where their traditional and continuing interest in the land could be established.

In 1981, negotiations began with the Dene and Métis aimed at reaching a single settlement covering the whole Mackenzie Valley. In April 1990, negotiators for all the parties initialed the final agreement, indicating that they recommended it for ratification. However, four months later, a joint Dene/Métis assembly called for renegotiation of some fundamental elements of the initialed agreement. Neither the Mackenzie Delta Tribal Council nor the representatives of the Sahtu supported this decision.

Canada would not agree to renegotiate the initialed agreement. It discontinued the Dene/Métis claim negotiations. Then, prompted by the request of both the Mackenzie Delta Tribal Council (the Gwich'in) and the Sahtu Tribal Council for regional claim settlements, Canada agreed to negotiate settlements on the basis of the 1990 Dene/Metis agreement with any of the five regional claimant groups that make such a request. Negotiations with the Gwich'in began in November 1990, and with the Sahtu region in October 1991. The Gwich'in settlement agreement came into effect by legislation on December 1992. An agreement was signed with the Sahtu Dene and Métis in September 1993 which will be enacted through legislation as soon as possible.

Settlement of these land claims provides certainty to the use and ownership of land. The Gwich'in Agreement defined rights, legal title to specific areas of land and provide financial compensation and other benefits. Similarly, the Sahtu Dene and Métis Agreement will define certain rights, title to lands and provide financial compensation and benefits when the land claim agreement comes into effect.

During negotiation of Dene/Metis claims on a regional basis, concern remained that it was necessary to have a coordinated and consistent process for land and water regulation throughout the Mackenzie Valley. The government negotiated the regional claims on the condition that the April 1990 Dene/Métis agreement be used as the basis for the regional agreements, satisfying this concern.

The land and water use principles of the 1990 agreement were: a coordinated system of land and water management for the Mackenzie Valley; **coordination** of land and water regulation between the settlement area and adjacent lands; and the retention in public government of ultimate jurisdiction for land and water regulation. The claimant groups' desire for effective participation in the regulation of land and water use, and industry's need for certainty, will both be met through the joint resource management boards. The boards will be responsible for planning land and water use, environmental impact assessment and review of development proposals, regulating land and water use, and settling disputes about access to use the owner's surface lands.

Specific activities to be undertaken by the parties (federal and territorial governments and the claimant group) are described in an implementation plan for each land claim settlement. Under the Gwich'in implementation plan, DIAND is responsible for the preparation of legislation under which the land and water management process will function. Existing legislation will also be amended to ensure it is compatible with the new system. This must be accomplished within two years of settlement legislation. The **Gwich'in** legislation was enacted December **22, 1992**.

The Mackenzie Valley Resource Management Act and the Surface Rights Act are based on the provisions of the Gwich'in Comprehensive Land Claim Agreement. Representatives of DIAND, the Government of the Northwest Territories (**GNWT**) and the Gwich'in Tribal Council (**GTC**) have met on several occasions, often **with Sahtu representatives in attendance, to develop the proposed legislative approach to this resource management regime. The regime must be established by December 22, 1994.**

LEGISLATION SCHEDULE

<u>CLAIM/ACT</u>	<u>AGREEMENT</u>	<u>BECAME LAW</u>	<u>TO BECOME LAW</u> "
Gwich'in Claim		December/92	
Sahtu Claim	September/93		as soon as possible
Mackenzie Valley Resource Management Act			by December/94
Mackenzie Valley Surface Rights Act			by Summer/94

WHAT IS THE MACKENZIE VALLEY RESOURCE MANAGEMENT ACT?

It is proposed legislation to implement the resource management requirements of regional land claim settlements by establishing new structures to regulate the use of land and water in the Mackenzie Valley.

WHY IS NEW RESOURCE MANAGEMENT BEING PROPOSED NOW?

The land claim recently settled for the Gwich'in settlement area, and the claim soon to be completed for the **Sahtu** area call for a new system of public boards which will have responsibilities for land use planning, environmental assessment and review, and the regulation of land and water use. The new system will more fully involve the claimants and provide for better public participation.

HOW DOES IT AFFECT ME AS A MEMBER OF THE PUBLIC?

The land and water regulatory process will provide a greater opportunity for the public to participate in decision-making related to the use of the land and water resources. Not only will people from the Mackenzie Valley sit on the new public boards, there will be an opportunity for more input from the public through hearings.

IS THIS NEW SYSTEM GOING TO AFFECT ME IF I LIVE OUTSIDE THE GWICH'IN AND SAHTU SETTLEMENT AREAS?

Yes. The land claims agreements, although regional in **scope**, provide for the creation of a coordinated system of resource management for the whole **Mackenzie Valley**. **Some of the new boards are for the settlement area only, but some also apply to the entire Mackenzie Valley.**

WHAT PUBLIC BOARDS ARE TO BE ESTABLISHED?

Within the Gwich'in settlement area, there will be a:

Land Use Planning Board to develop a settlement area land use plan to guide the use of land and water; and a

Land and Water Board to issue land use permits and water licences, as well as to serve as the entry point for development proposals. It will replace the NWT Water Board and the regulatory activities of NAP (Northern Affairs program of DIAND) in the Gwich'in area. Environmental factors in the use of land and water will be considered by the board.

Note: When two or more regional land claims are settled, there will be a need for a Mackenzie Valley Land and Water Board to promote coordination and consistency in the regional permitting and licensing process. It will deal with projects with impacts that cross settlement areas. Each settlement area Land and Water Board will then become a permanent Panel of the larger board to deal with projects solely within its region.

With jurisdiction over the entire Mackenzie Valley (excluding the Western Arctic Region) there will be an Environmental Impact Review Board to carry out the environmental assessment and review of all development proposals. The legislation will contain provisions for the eventual establishment of a Mackenzie Valley Land and Water Board.

A Mackenzie Valley Surface Rights Board will be established under separate legislation to resolve disputes about access to private lands for such things as exploration and extraction of minerals and other land access disputes.

Settlement legislation for each regional land claim agreement will establish a Renewable Resources Board and community-level Renewable Resources Councils, which will be actively involved in decisions on managing and harvesting wildlife and forest resources.

WHEN DO THE BOARDS COME INTO EFFECT?

Settlement Area Boards:

<u>Gwich'in</u>	<u>Date</u>	<u>Sahtu</u>	<u>Date</u>
Renewable Resources	shortly	Renewable Resources	at settlement legislation
Land and Water	late 1994	Land and Water	possibly late 1994
Land Use Planning	late 1994	Land Use Planning	possibly late 1994

Mackenzie Valley Boards:

<u>Board</u>	<u>Date</u>
Surface Rights	late 1994
Environmental Impact and Review	late 1994
Land and Water Board	possibly 1995 (after Sahtu claim is legislated)

PUBLIC GOVERNMENT BOARDS: A COORDINATED PROCESS

The Mackenzie Valley Resource Management Act implements Chapter 24 of the Gwich'in Agreement and provides for a coordinated resource management system throughout the Mackenzie Valley. The Act will establish public boards to regulate land and water uses in the Gwich'in settlement area and provide for additional settlement area boards as other regional land claims are settled.

These boards will serve the interests of landowners, developers and the public alike. Aboriginal and non-aboriginal people will be represented on the boards to participate in advisory and decision-making roles.

Boards with jurisdiction throughout the Mackenzie Valley (Environmental Impact Review Board, Surface Rights Board) will be located in Yellowknife, while settlement area boards (Land Use Planning Board, Land and Water Board) will be located in the appropriate settlement areas. The entry point for land or water use applications, by a person or company wanting to undertake any development (an "applicant"), will be the Land and Water Board in the settlement area where the permit or licence is required.

If it is unclear whether a proposed use of land or water conforms with the approved settlement area land use plan, the Land Use Planning Board makes that determination. If the project does not conform, the applicant may request that the board consider an exception to the land use plan if permissible under the approved plan. Also, the applicant may apply for an amendment to the plan. Any amendment to the plan, as is the case with the plan itself, is subject to the approvals of the governments and the settlement area Tribal Council.

On its own initiative, or in response to concerns expressed by the public or the other boards, the Mackenzie Valley Environmental Impact Review Board will assess a development proposal to determine if it may adversely impact on the environment. The Board may recommend terms and conditions to the Minister that would prevent environmental impact or, alternatively, decide that the proposal undergo a detailed environmental review. This public review could be conducted by a panel of the board, or jointly with a panel of the Federal Environmental Assessment and Review Office (FEARO). A panel recommends to the Minister appropriate terms and conditions for project approval.

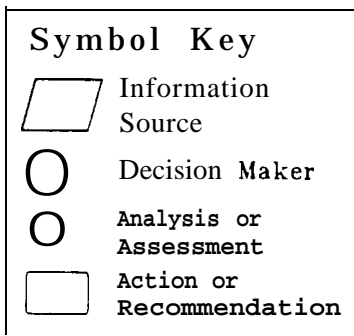
The Land and Water Board will issue permits and licences for land and water uses within its settlement area. As a coordination centre for its settlement area, the Board must ensure that the **other resource management boards, affected communities**, Aboriginal organizations and governments, are notified about applications and have an opportunity to raise concerns. The Land and Water Board will review applications to determine whether or not a proposed use of land or water clearly conforms with the approved settlement area land use plan, or is clearly exempt from the environmental impact assessment process. The Board may also be delegated certain preliminary screening **functions** by the Mackenzie Valley Environmental Impact Review **Board**. The Land and Water Board cannot issue a permit or a licence until it is satisfied that all concerns have been addressed.

In an area of the Mackenzie Valley where there is no Land and Water Board, an applicant will continue to deal with NAP or the NWT Water Board until such time as a Mackenzie Valley Land and Water Board is established. It is the responsibility of all applicants to also deal with the landowner.

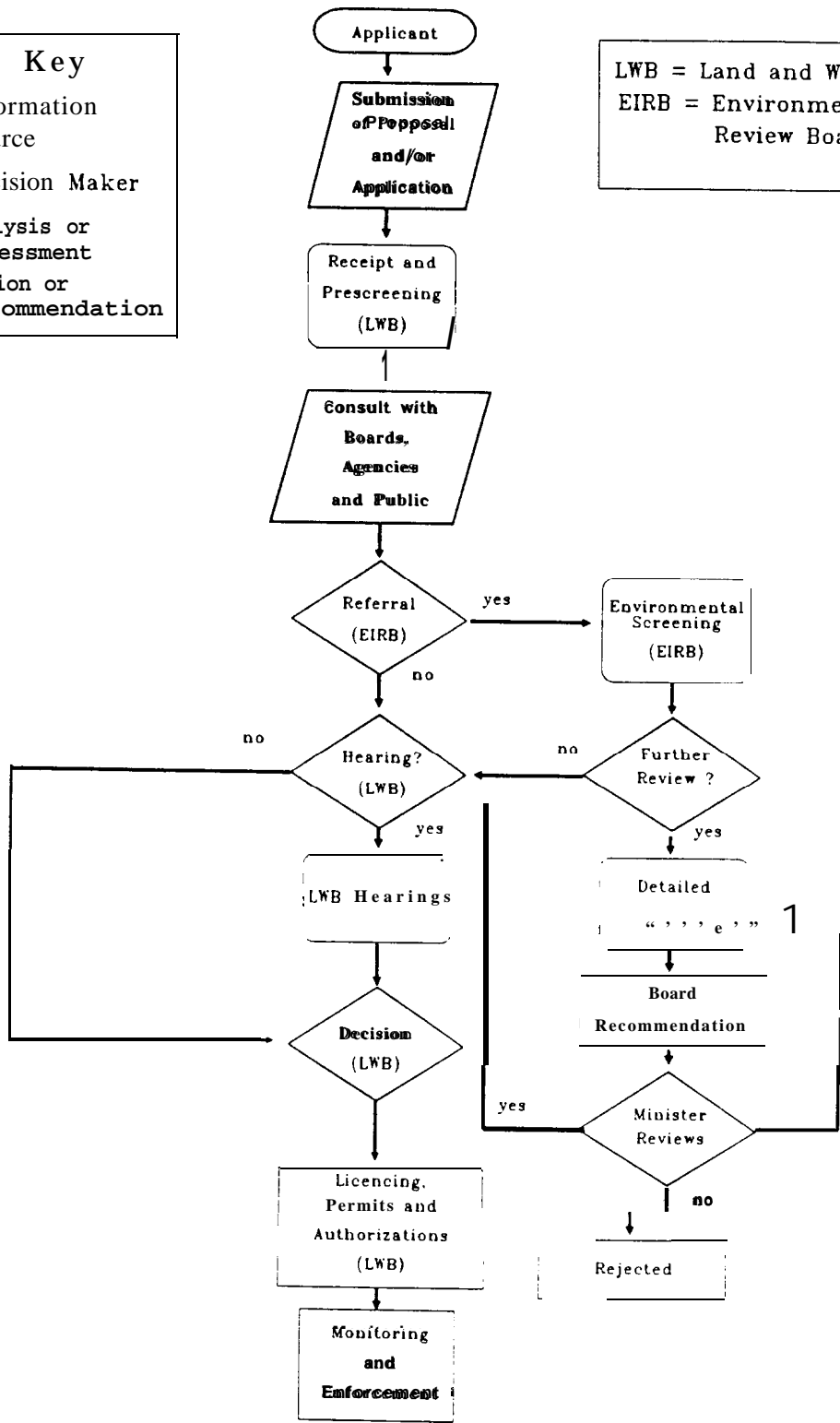
When an applicant, who is a mineral rights holder, is unable to get consent from the landowner for access to the minerals, resolution of the dispute may be sought through the Mackenzie Valley Surface Rights Board. The board will also deal with disputes related to access across settlement lands.

A flow chart follows outlining the "Land and Water Regulatory Process" for an applicant.

Land and Water
Regulatory Process



LWB = Land and Water Board
EIRB = Environmental Impact Review Board



GWICH'IN LAND AND WATER BOARD

MAIN FEATURES OF THE BOARD:

- ◆ regulates land and water uses on all lands within the settlement area including Crown lands, settlement lands and other privately-owned lands;
- ◆ holds public hearings when necessary;
- ◆ administers land use regulations, similar to the Territorial Land Use Regulations, which will apply to **all** uses of land in the **Gwich'in** settlement area; and
- ◆ administers the Northwest Territories Waters Act, with minor modifications, which will apply to uses of water within the settlement area.

COMPOSITION:

The Gwich'in Land and Water Board will be made up of five members, with two members being nominated by the Gwich'in Tribal Council, two members nominated by government, plus a chairperson. All members will be appointed by the Minister of DIAND for up to three years. As public officials they must follow certain codes of conduct in order to maintain membership. They will be supported by a small technical and administrative staff. The **Gwich'in Land and Water Board** is scheduled to start operating from **an** office within the **Gwich'in** settlement area in late **1994**.

MANDATE:

The Gwich'in Land and Water Board (**LWB**) will issue **land** use permits, water **licences**, and any other authorizations required for all licensable uses of land and water in the settlement area. The Board will apply Land Use Regulations made under the Mackenzie Valley Resource Management Act. The Regulations are similar to the Territorial Land Use Regulations, but have been adapted to be consistent with the **Gwich'in Agreement**. The Board will assume the powers of the Northwest Territories Water Board for the settlement area; and the Northwest Territories Waters Act will apply to **water** use within the **Gwich'in** settlement area, with minor modifications. All rights, titles and interests in land or water which existed at the date of the Gwich'in settlement legislation will continue, but any significant changes in the operation/activity will require the approval of the LWB.

Upon receiving an application for a land use permit or a water licence, the Board will ensure that: (1) where the use of settlement land or private land is necessary, the landowner's consent or an order of the Surface Rights Board is obtained, or, where Crown lands are to be used, the Crown's consent is obtained; (2) the proposed use of land or water is consistent with the approved land use plan; (3) there are no adverse implications for wildlife and wildlife habitat; and (4) notice of the application is given to the public, affected communities and to the Gwich'in. In addition, the Board will determine if the proposed use is normally exempt from the environmental impact assessment process, and, if not, it will pass the application to the Environmental Impact Review Board for assessment. Other preliminary screening functions may be delegated by the Mackenzie Valley Environmental Impact Review Board to the LWB for convenience. When the Land and Water Board is satisfied that all concerns have been addressed, it will issue a land use permit or a water licence. A permit or licence will contain all terms and conditions that incorporate the Minister-approved recommendations of the Mackenzie Valley Environmental Impact Review Board.

OBJECTIVES:

The objective of the Gwich'in Land and Water Board is to provide for the conservation, development and use of land and water in the settlement area so that the benefits from these resources are appropriately realized for present and future residents of the settlement area, the Mackenzie Valley, and for all Canadians.

GWICH'IN LAND USE PLANNING BOARD

MAIN FEATURES OF THE BOARD:

- ◆ sets planning goals and priorities for government and industry;
- ◆ applies to Crown lands, settlement lands and other privately-owned lands;
- ◆ employs a community-based public consultation process;
- ◆ may hold public hearings on draft plan and amendments;
- ◆ recommends the settlement area land use plan and proposed amendments for the approval of governments and the Gwich'in Tribal Council; and
- ◆ accepts applications for amendments or exceptions to the approved plan.

COMPOSITION:

The Board will have five members: two members nominated by each of the Gwich'in Tribal Council government, and a chairperson. The members will be appointed by the Minister of DIAND for up to three years. They must **follow certain** codes of conduct in order to maintain membership. They will be supported by a small staff which will include a land use planner(s) to conduct planning and community liaison workers for the public involvement. The **Gwich'in** Land Use Planning Board is scheduled to **start operating from an office located in the Gwich'in settlement area in late 1994.**

MANDATE:

The Gwich'in Land Use Planning **Board** is responsible for **all land and water use** planning in the settlement area except within the communities. While it normally would take up to four **years** to produce **an** approved land use plan, the Board will benefit from the work of the Interim Land Use Planning Board which **has already been set up by passage** of the Gwich'in settlement legislation.

The Board and staff will hold public meetings in communities and consult with government, industry and various independent or special interest groups. Once it is completed and a final land use plan is drafted, the Board will recommend the plan to the Minister of DIAND and to the GNWT Minister of Renewable Resources for approval. The Gwich'in Tribal Council, the territorial Executive Council and the federal Cabinet must all approve the plan, with respect to their jurisdictions, before the plan can be implemented.

The Board will have the major responsibility to monitor compliance with the approved plan. Once implemented, the Land and Water Board and other applicable authorities with jurisdiction in the settlement area are bound to conduct their operations according to it. The Board is also responsible for proposing amendments to the land use plan and conducting periodic reviews of it.

OBJECTIVES:

The Gwich'in Land Use Planning Board legislation sets out the structure and processes required to develop and implement a **successful land use plan** for the settlement area. Planning must protect and promote the well-being of the residents and communities, and must especially take into account the lands of the Gwich'in and their social, environmental, cultural and economic future. Resource management decisions will take conservation, development and utilization of the land, resources and water in the settlement area into consideration.

MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD**MAIN FEATURES OF THE BOARD:**

- ◆ **assess** development proposals anywhere in the Mackenzie Valley to determine if the proposals will have a significant adverse impact on the environment or cause significant public concern;
- ◆ may exempt certain development proposals or classes of proposals from the review process on the basis of an established exemption list;
- ◆ may assess development proposals, which would otherwise be exempt, because of their cumulative effects;
- ◆ recommend terms and conditions to the Minister to prevent a development proposal from having a significant adverse impact on the environment or being the cause of significant public concern; and
- ◆ may conduct a public review where a development proposal is likely to have significant adverse impact on the environment and/or is the cause of significant public concern.

COMPOSITION:

The Board will have a maximum of ten members, with equal membership from nominees of Aboriginal groups and government, plus a chairperson. Following consultation with the appropriate Aboriginal organizations, the Minister will appoint board members. No less than one member of the Board will be a Gwich'in Tribal Council nominee. To hold their positions, Board members will be required to follow certain codes of conduct for public office. A small staff will provide technical and administrative support to the Board. The head office of the Board will be located in Yellowknife, scheduled to begin operations by late 1994.

MANDATE:

The Board will ensure all development proposals in the Mackenzie Valley, excluding the Western Arctic Region, including those relating to Crown lands and Gwich'in lands, undergo an environmental impact assessment and review process to determine if they have a significant adverse impact on the environment or cause significant public concern. A development proposal will not be authorized to proceed until the Board's review is complete and recommendations have been accepted by the Minister. The process will be similar to that currently carried out under the Federal Environmental Assessment and Review Process Guidelines Order and will meet the requirements of the new Canadian Environmental Assessment Act. Preliminary screening of a proposal may be delegated to the settlement area Land and Water Board to determine if the proposal should be assessed by the Environmental Impact Review Board.

OBJECTIVES:

The Board will conduct environmental impact assessments and reviews of all development proposals in the Mackenzie Valley. It will ensure that any impacts on the environment, and any means to **reduce these impacts, are carefully considered before the necessary approvals are granted.**

MACKENZIE VALLEY SURFACE RIGHTS BOARD
(to be created under separate legislation)

MAIN FEATURES OF THE BOARD:

- ◆ this Board will apply to the Mackenzie Valley including the Western Arctic Region, with the exception of Inuvait 7(1) and 7(1)b lands;
- ◆ jurisdiction to resolve disputes over access to settlement or other private lands, and to third party occupied Crown lands;
- ◆ issue "right of entry" orders which specify entry fees;
- ◆ determine compensation to be paid by a developer for access to someone else's lands using factors which include: market value of land; any loss of use; impact on fish and wildlife harvesting; damage; nuisance; and any cultural value of settlement lands;
- ◆ may reconsider any of its orders, upon application, if it is satisfied that there has been a change in facts or circumstances relating to the order;
- ◆ ensures entry rights upon land, which existed prior to the coming into effect of a regional land claim agreement, continue; and
- ◆ decisions of the Board can be reviewed by the Supreme Court of the NWT on questions of law and jurisdiction.

COMPOSITION:

The Board will have an even number of members, no more than 10, all of whom must be residents of the Northwest Territories. When dealing with settlement lands, the Board will act through a panel of its members, and at least one member of this panel must be a resident of the settlement area where the activity is to take place. The Board is scheduled to start operating toward the latter part of 1994.

MANDATE:

If a landowner or occupant refuses a rights holder (an "operator") access to use the owner's land, the operator will have the right to apply to the Mackenzie Valley Surface Rights Board for a "right of entry" order. The time and **costs** of a hearing can be avoided if the parties can agree on access to, and compensation for the use of, the lands. The **landowner/occupant** may wish to give consent for the operator entering lands, provided interim compensation is paid prior to giving consent. **When such an arrangement cannot be made, the Board will arrange an early hearing date.** If the operator's application to the Board is for **an** order permitting both right of entry and compensation, the Board will set an early hearing date to hear the question of entry only. If right of entry is ordered, the Board may award partial compensation at that time, and shall, within 30 days, hold a hearing to address all outstanding matters.

OBJECTIVE:

The objective of the Board is to mediate and resolve disputes regarding access to private lands between land owners and those **persons (operators) who are not owners but have resource rights to the subsurface or a surface access right.**
