



DEHCHO FIRST NATIONS

Box 89, Fort Simpson, N.W.T. X0E 0N0
Tel: (867) 695-2355/2610 Fax: (867) 695-2038
E-mail: dcfn@dehcho.org



Sent via email

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Mackenzie Valley Land and Water Board
PO Box 2130, Yellowknife, NT, X1A 2P6
Attn: Julian Morse and Jen Potten

RE: Closing Arguments on North American Tungsten Corporation Ltd's (NATCL) Water License Renewal

Dehcho First Nations (DFN) participated in the Mackenzie Valley Land and Water Board's (MVLWB) review of NATCL's Water License (WL) Renewal throughout the application process including the information requests and the technical sessions. DFN decided early on that the primary focus within the process would be protecting the water quality of the Flat River and surrounding receiving environment including the Nahanni watershed. The Nahanni Region exists within the homeland of the Dehcho and Aboriginal use of the park area continues to this day. The Nahanni Watershed holds immense spiritual, cultural, ecological and subsistence importance for Dehcho communities.

Part of the Water License Renewal process includes an Aquatic Effects Monitoring Program (AEMP) and an Interim Closure and Reclamation Plan (ICRP). DFN will continue to participate fully in the AEMP and ICRP processes and looks forward to providing comments in the future. Given that Cantung is scheduled to enter into 'Care and Maintenance' in October and will possibly have a new owner in 2015; DFN wants to clarify our position on the AEMP and ICRP.

- 1.) Ensure the mine is undertaking sufficient and appropriate studies to prepare a comprehensive closure and reclamation plan. NATCL has committed to several studies that will inform the ICRP including the Geochemical Risk Assessment and an updated Ecological Risk Assessment for the Flat River Tailings. DFN expects that these will be completed in a timely matter and any additional studies required will be addressed within the ICRP process.
- 2.) Ensure that the AEMP process has a robust and scientific approach that addresses the environmental impacts of the Cantung minesite on the aquatic environment within the Flat River. DFN expects that there will be meaningful incorporation of the TK study into the AEMP

and continued engagement with the working group and member communities on the development of the AEMP.

In addition, DFN has the following comments to add to NATCL's Draft Water License Renewal.

1. Water License Term

NATCL is seeking a 10-year water license term from the MVLWB.

DFN's Recommendation

DFN has consulted our affected member communities and they made it clear they would like the Water License Term to remain at five years. It is the view of DFN and our member communities that a five-year term maintains consistency with past water licenses issued to the proponent, and to-date no compelling evidence has been offered to alter this timeframe. Furthermore, a five-year term enables legislative changes and industry best practices to be reflected in renewed licenses. A five-year term provides a process that enables best practices and adaptive management to best occur. For these reasons, DFN and our member communities would like to have the water license term remain at five years.

2. Engagement Plan

The Engagement plan is a forward-looking document that details times and approaches to engagement with the appropriate affected party over the life of the project. DFN recommends that the Engagement Plan should reflect the scope, scale, and context of the project.

DFN believes that an Engagement Plan developed by NATCL, Nahæâ Dehé Dene Band, Liidlli Kue First Nation and DFN will lead to more clarity on communication between the proponent and First Nation governments.

NATCL has requested a timeline of 90 days following the issuance of this License to complete an Engagement Plan. This will allow for initial engagement under new ownership with the Dehcho region and to appropriately complete the document.

DFN's Recommendation

DFN supports NDDB's recommendation that a draft work plan for the engagement plan be required within thirty days of the water license issuance and a 90-day timeline for submission of the final engagement plan. DFN also supports NDDB's approach that the development of the engagement plan involved a collaborative and step-wise process in which work plans are shared and modified according

to feedback. After in-person meetings in affected communities, at minimum two-draft engagement plans should be reviewed by all parties through subsequent meetings.

3. WL Part C: Conditions Applying to Security Requirements

GNWT#3

Part C, Clause 4 states: "If the amount of the security deposit is revised by the Board as described under Part C, Item 3, the licensee shall post the revised amount with the Minister within ninety (90) days of the Board giving notice of the revised amount."

As noted in the June 12, 2015 letter from the Minister of ENR to the Board approving the Dry Stack Amendment to the Cantung Licence, the Licence cannot place a requirement on the Minister of Environment and Natural Resources to accept a form of security within a specified timeframe. The Minister will take the necessary time required to ensure that any form of security provided under a Water License is in an acceptable form and with appropriate conditions, as per the authority provided under the Waters Act and associated regulations.

DFN's position on the security deposit

DFN is concerned about the ability of NATCL to pay for the full closure and reclamation of mine.

DFN endorses the concept of pollution prevention and recognizes the "polluter-pays principle" under which operators have the responsibility for environmental performance and for stewardship of minerals and metals. DFN believes that there should be no potential for unfunded reclamation liabilities.

4. EQCs

Given that fluoride in the Flat River is largely driven by natural sources; DFN agrees with GNWT's and NATCL's recommendation to change the EQC parameter for fluoride.

DFN's Recommendation

DFN supports GNWT's recommendation to incorporate an EQC of 1.03 mg/L for fluoride based on site-specific criteria (Mcperson, C., D. Lee, P. Chapman. 2014. Development of a fluoride chronic effects benchmark for aquatic life in freshwater. Environ Toxicol Chem 33:2621-2627).

However, DFN recommends that there will be a process (that includes DFN, LKFN and NDDB) to determine the EQC value for nickel.

5. Management Plans and Monitoring Programs

As stated by NDDDB, *There is a list of management plans and monitoring programs required by the proponent. For many of these, deadline dates have passed but are still referenced in the license.*

DFN's Recommendation

DFN agrees with both NDDDB and NATCL that their needs to be clarity from the Board which monitoring programs and management plans are outstanding and which have been completed.

6. The following is stated in the Draft Water License Renewal:

Part G.39. The Licensee shall direct effluent from the Wastewater Treatment Facilities, which does not meet the effluent quality criteria, specified in Part G, item 38 back to the Tailings Containment Area.

Part G.40. The Licensee shall submit to the Board and an Inspector, the Water quality data from samples collected from Surveillance Network Program station 4-43 [Wastewater Treatment Facility] as follows:
a) No later than five (5) days prior to commencing the initial Discharge of effluent to Stinky Pond; and,
b) Following a sampling event that exceeds the EQC specified Part G, item 38, prior to resuming Discharge to Stinky Pond.

Part G.41. The Licensee shall obtain written authorization from an Inspector prior to commencing the initial Discharge from the Wastewater Treatment Facilities to Stinky Pond or resuming Discharge following a non-compliant sampling event referred to in Part G, item 40.

NATCL has stated that they have concerns regarding the implementation and practicality these sections. NATCL has also stated that most metals are related to TSS. Therefore if TSS is low the metals levels should also be within compliance limits. NATCL would like to revise this condition for a non-compliance of laboratory-tested results such as metals and nutrients so that it is practicable and implementable.

NATCL's Suggested revisions:

G.39. The Licensee shall direct effluent from the Wastewater Treatment Facilities which does not meet the effluent quality criteria **for inline measurements of parameters** specified in Part G, item 38 back to the Tailings Containment Area.

G.40. The Licensee shall submit to the Board and an Inspector, the Water quality data from samples collected from Surveillance Network Program station 4-43 [Wastewater Treatment Facility] as follows:

a) No later than five (5) days prior to commencing the initial Discharge of effluent to Stinky Pond or **following a mine shutdown**; and,

b) Following a sampling event that exceeds the EQC specified Part G, item 38, **including subsequent sampling results, the investigation and mitigation applied, and discussion of the action level and response framework.**

G.41. The Licensee shall obtain written authorization from an Inspector prior to commencing the initial Discharge from the Wastewater Treatment Facilities to Stinky Pond or resuming Discharge following a non-compliant sampling event referred to in Part G, item 39.

DFN's Recommendation:

At this point, DFN agrees with the original provisions written in the draft Water License. DFN recommends that NATCL use the inline measurements of parameters (i.e. TSS) to direct effluent from the Wastewater Treatment Facility (WWTF) back to the Tailings Containment Area as a precautionary measure to prevent elevated EQCs. However, in the case that the inline measurements are not an effective proxy for elevated EQCs, NATCL should be directing effluent from the WWTF to the Tailings Containment Area until the problem is resolved.

If the Board has concerns regarding the implementation and practicality of sections G.39 to G.41; DFN recommends that there are further discussions regarding the wording of these sections. DFN has questions regarding the evidence that TSS is as a proxy elevated EQCs and what measures will be implemented if TSS is not an effective proxy for EQCs.

Summary of Recommendations:

- 1.) DFN recommends a 5-year Water License Term.
- 2.) DFN recommends that an Engagement Plan is submitted 60 days after the WL Renewal is issued.
- 3.) DFN supports GNWT's recommendation to adopt an EQC of 1.03 mg/L for fluoride and DFN recommends that the Board provide a process to guide the change of EQC for nickel.
- 4.) DFN recommends clarity from the Board which monitoring programs and management plans are outstanding and which have been completed.
- 5.) DFN recommends that the Board retain the original provisions written in the draft Water License for sections G.39 to G.41.

As DFN is a regional organization, we support any letters or comments from Dehcho member communities, particularly Nahæ Dehé Dene Band (NDDDB) and Liidlli Kue First Nation (LKFN), regarding NATCL's Water License Renewal.

Thank you for the opportunity to submit this closing argument. We hope that it aids the Board in your deliberations. If you have any questions regarding DFN's closing statement, please contact Dahti Tsetso at 867-695-2355 or dahti_tsetso@dehcho.org.

Mahsi cho,



Dahti Tsetso
Resource Management Coordinator
Dehcho First Nations
Dahti_Tsetso@dehcho.org