

## Review Comment Table

<b>Board:</b>	MVLWB
<b>Review Item:</b>	Canadian Zinc Corporation - Mining and Milling, Prairie Creek Mine - Renewal Applications - DRAFT Work Plan (MV2020D0007 and MV2020L2-0003)
<b>File(s):</b>	<a href="#">MV2020D0007</a> <a href="#">MV2020L2-0003</a>
<b>Proponent:</b>	CanZinc Corporation
<b>Document(s):</b>	<a href="#">Draft Work Plan</a> (262 KB)
<b>Item For Review Distributed On:</b>	June 26 at 15:06 <a href="#">Distribution List</a>
<b>Reviewer Comments Due By:</b>	July 3, 2020
<b>Proponent Responses Due By:</b>	July 3, 2020
<b>Item Description:</b>	<p>A draft work plan has been developed by Board staff for the <a href="#">applications</a> submitted by Canadian Zinc Corporation (CZN) for the renewal of its Type A mining and milling Water Licence (Licence) MV2020L2-0003 and Land Use Permit (Permit) MV2020D0007.</p> <p>The majority of reviewers have indicated that a Technical Session would not be necessary at this time. Therefore, the draft work plan reflects a timeline without Technical Sessions. However, a Technical Workshop has been included in the timeline to address any technical concerns. The Technical Workshop is scheduled for the dates of <b>July 13-14, 2020</b>.</p> <p>The GNWT has formally announced that <a href="#">Phase 2 of Emerging Wisely</a> came into effect on June 12, 2020 , which allows for indoor gatherings of 25 or less. As such, Board staff are looking at possibility of holding an in-person meeting, for those in Yellowknife, coupled with a video/teleconference, for those unable to participate in person. As the situation associated with COVID-19 can rapidly change, Board staff will continue to monitor the guidance provided by the GNWT up to this meeting date and will communicate any changes to participants as needed. The agenda is expected to be released a week prior to the Technical Workshop. At this time, Board staff are hoping that the meeting will occur only in the <b>mornings</b> of the proposed dates, so as to limit participation fatigue associated with video conferencing. The timetable associated with this proposal will be provided in the agenda.</p>

<b>Contact Information:</b>	<p>At this time, Board staff are requesting your comments on the draft work plan by <b>July 3, 2020</b>. Included in your overall comments should be the following items:</p> <ol style="list-style-type: none"> <li>1. A list of participants from your organization</li> <li>2. Each participants' preferred method of connection a). teleconference, b). online video conference (e.g. zoom), and/or c).in-person</li> <li>3. Email address and telephone number of <b>one</b> representative from your organization that can be used to communicate in the event of technological issues or a disruption to the technical workshop</li> <li>4. Outstanding review comments on the Applications that your organization would like to include as Technical Workshop topics on the Agenda.</li> </ol> <p>Once Board staff have an idea of numbers, confirmation will be sent to those who have expressed interest in participating in person to ensure the total does not exceed the maximum set by the GNWT.</p> <p><b>Comments on the draft work plan should be submitted by email to Jacqueline Ho at <a href="mailto:jho@mvlwb.com">jho@mvlwb.com</a>.</b></p>
	<p>Andy Wheeler 867.766.7467          Jacqueline Ho 867-766-7455          Kim Murray (867) 766-7458</p>

## Comment Summary

CanZinc Corporation: David Harpley				
ID	Topic	Reviewer Comment/Recommendation	Proponent Response	Board Staff Response
1	Technical Merits of Process	<p><b>Comment</b> In our May 2020 application, CZN requested a renewal water licence for a 3-year term to replace MC2008L2-0002 and a replacement of land use permit MV2008D0014 for a 5-year term with no changes to conditions in either authorization. We did not request changes because our intension is to maintain mining authorizations while we finalize and apply for plans for an expanded</p>		

		<p>project. The limited number of comments received on the application package related to engagement and downstream conditions. Since the Board already ruled on engagement, only the comments on downstream conditions appear to be relevant to future process considerations. Downstream conditions relate to the regulation of effluent discharge. CZN is not proposing any changes to project water management at this point, and we assume that the Board is not going to revisit decisions made previously. Therefore, there does not appear to be any point in further technical arguments to inform decisions on the content of draft and final permits.</p> <p><b>Recommendation</b> Reconsider the steps in, and timeline of, the Work Plan.</p>		
2	Length of Process	<p><b>Comment</b> We understand that the Board encourages proponents to apply for Type A water licences well in advance. In this case, CZN has requested permit renewals with no changes to conditions. The Work Plan indicates that 10 months will be required to arrive at a Board decision. This seems inordinately long for what should be a straight-forward process that should not require many steps.</p> <p><b>Recommendation</b> Reconsider the steps in, and timeline of, the Work Plan.</p>		

3	Licence extension	<p><b>Comment</b> Although CZN requested a renewal water licence for a 3-year term to replace MC2008L2-0002, we would be equally happy if the Board decided to extend the existing authorization for a similar amount of time.</p> <p>Judging by comments on the application, there appears to be little interest in a process to obtain new permits with no changes to conditions other than updates. There are also the practical and safety considerations to weigh related to COVID-19 in terms of conducting such a process. We understand that a land use permit that has already been extended by two years cannot be extended further, but that a water licence can be extended, should the Board so decide, to a term up to 25 years. We assume that if the licence term were to be extended, the resulting process for only LUP renewal might be simpler and quicker.</p> <p><b>Recommendation</b> We respectfully ask the Board to consider whether it might be appropriate for the term of MV2008L2-0002 to be extended and for the conditions therein to be updated 'on the Board's own motion'.</p>		
4	Technical Workshop participants	<p><b>Comment</b> CZN - David Harpley, possibly Don MacDonald, Scott Fulton Possibly John Wilcockson, Hatfield</p> <p><b>Recommendation</b> None</p>		

5	Technical Workshop connection method	<b>Comment</b> Video conference for all <b>Recommendation</b> None		
6	Technical Workshop representative	<b>Comment</b> David.Harpley@norzinc.com, 604 594 3855 <b>Recommendation</b> None		

**GNWT - Lands: Darren Campbell**

<b>ID</b>	<b>Topic</b>	<b>Reviewer Comment/Recommendation</b>	<b>Proponent Response</b>	<b>Board Staff Response</b>
1	Topic: Workplan	<b>Comment</b> Comment: The Board has requested comments on a draft workplan for the CZN Type A water licence process. As well, the Board has requested information on the following items: 1. A list of participants from your organization 2. Each participants' preferred method of connection a). teleconference, b). online video conference (e.g. zoom), and/or c).in-person 3. Email address and telephone number of one representative from your organization that can be used to communicate in the event of technological issues or a disruption to the technical workshop 4. Outstanding review comments on the Applications that your organization would like to include as Technical Workshop topics on the Agenda. The ORS also notes that the technical workshop is scheduled for July 13-14 and the agenda is expected to be released a week prior to the workshop. As discussed with Board staff during a call with		

	<p>CZN on June 24th, the GNWT would require additional information on the scope of the technical workshop prior to determining the appropriate staff to attend. To be clear, the Board has indicated that initial concerns they have heard from parties may be related to engagement issues as opposed to technical matters. This would have implications on the specific staff that GNWT would need in attendance. As such, GNWT cannot provide final responses regarding Questions 1-3 until after an agenda has been finalized. GNWT would most likely attend via online video conference. Regarding Question 4, GNWT has no outstanding comments that require additional discussion at a technical workshop and therefore have no agenda items to request. To clarify the GNWT's comments regarding ID 5 on the ORS, there was a typo identified by CZN with the absence of the word "not." The interpretation of GNWT's comment 5 should be that CZN and the GNWT agree with maintaining the condition to require the submission of the Closure and Reclamation Plan six months prior to extracting of the waste rock, as recommended.</p> <p><b>Recommendation</b> Recommendation: N/A</p>		
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**Racher Consulting: Kathy Racher**

ID	Topic	Reviewer Comment/Recommendation	Proponent Response	Board Staff Response
1	Joint submission of LãÑÑDLII KUÂ'EÂ' FIRST NATION (LKFN) and NAHA DEHÃ% DENE BAND (NDDB)	<p><b>Comment</b> Note the KRacher Consulting is submitting these comments on behalf of the LKFN and the NDDB.</p> <p><b>Recommendation</b> None</p>		
2	Overall comments on the Board's proposed process	<p><b>Comment</b> In its May 2020 application, NorZinc requested a renewal of water licence MV2008L2-0002 for a 3-year term and a replacement of land use permit MV2008D0014 for a 5-year term with no changes to conditions in either authorization. Our understanding is that NorZinc did not request changes in its May 2020 application because it only intends to keep the mining authorizations valid while they complete their plans for expanding the throughput of ore at the mine. Despite this, the year-long renewal process laid out in the Board's draft workplan implies that the Board is considering making changes to the licence and permit. If NorZinc was not planning to change the mine plan and submit an amendment application next year for the same permit and licence, then the proposed</p>		

	<p>workplan would make sense. However, since NorZinc is still gathering the information that will be needed to consider the mine expansion amendment, the current renewal process could only consider changes to the authorizations based on the original mine plan (i.e., as presented in 2014 water licensing process). While we acknowledge that updates to the authorizations will be needed prior to mine construction and operation, it seems like a waste of time and resources to consider changes based on an outdated mine plan this year only to have to repeat the entire process again in 2021/22 for a new mine plan. For these reasons, we want to reiterate our position from our June 11, 2020 comments to the MVLWB, namely that we do not believe that technical sessions and a public hearing are necessary prior to approving the current application. Despite our point of view, we are now concerned that we will be compelled to use our limited resources to participate in the Board's proposed process since the outcome has such a direct effect on our communities.</p> <p><b>Recommendation</b> We can see how a technical workshop might help some parties gain a better understanding of NorZinc's plans and any implications of the</p>		
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		<p>current renewal application. As noted above, however, it is premature to consider changing the conditions of the authorizations as part of this renewal process; therefore, we recommend that the Board consider limiting the process steps after the technical workshop so that we and other parties can save our resources for meaningful participation in the future amendment process for the mine.</p>		
3	<p>Answers to Board-specific questions re Technical Workshop attendance</p>	<p><b>Comment 1.</b> A list of participants from your organization a) Kathy Racher on behalf of NDDDB and LKFN b) Trieneke Gastmeier, LKFN 2. Each participants' preferred method of connection a). teleconference, b). online video conference (e.g. zoom), and/or c).in-person a) K. Racher preferences: Online video conference or in-person b) T. Gastmeier preferences: Online video conference 3. Email address and telephone number of one representative from your organization that can be used to communicate in the event of technological issues or a disruption to the technical workshop a) kracher40@gmail.com, 867-444-0914 4. Outstanding review comments on the Applications that your organization would like to include as Technical Workshop topics on the Agenda. a) For the reasons given in our previous</p>		

		comments, we do not have any specific topics to include on the agenda for the Technical Workshop. <b>Recommendation</b> N/A		
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# Acho Dene Koe First Nation

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July 6, 2020

Jacqueline Ho  
Mackenzie Valley Land and Water Board  
4922 48th Street  
Yellowknife, NT X1A 2P6

Andy Wheeler  
Mackenzie Valley Land and Water Board  
4922 48th Street  
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VIA MVLWB Online Review System

**Re: [CanZinc Corporation – DRAFT Work Plan – (MV2020D0007 and MV2020L2-0003)]**

Acho Dene Koe First Nation writes in response to the referral received via the Mackenzie Valley Land and Water Board's Online Review System on June 26, 2020.

Acho Dene Koe First Nation's (ADKFN) traditional territory and waters span three jurisdictions: British Columbia (BC), the Yukon Territory and the Northwest Territories (NWT).

Our main community is currently settled in Fort Liard, north of the BC-NWT border, but our members continue to use and occupy our Traditional Territory as a whole. Our members, for example, have cabins throughout our territory, and continue to maintain a small settlement at François Lake in northern BC. As our ancestors did, we hunt, trap, fish and gather for food, social, cultural and trading purposes throughout our Traditional Territory.

We adhered to Treaty 11, and as such, we have treaty-protected hunting rights. Additionally, we assert Aboriginal rights, including title, throughout our Traditional Territory.

Our rights, and our Traditional Territory, are affected by the proposed decision.

## **ADKFN's Treaty and Aboriginal Rights**

In 1922, our ancestors adhered to Treaty 11, and these rights are constitutionally protected pursuant to s. 35(1) of the *Constitution Act, 1982*. Among other things, Treaty 11 protects our right to pursue our usual vocations of hunting, trapping and fishing. When signing Treaty 11, our ancestors were assured that this liberty would not be taken away or curtailed. Any erosion of our ability to hunt, trap and fish would be a serious infringement of our Treaty rights.

The courts have cast serious doubt on whether Treaty 11 extinguished Aboriginal title to the land. In *Re: Paulette's Application*, the trial judge found that “notwithstanding the language of the two treaties there is sufficient doubt on the facts that aboriginal title was extinguished.”<sup>1</sup>

More recently, the Federal Court recognized that the Federal Government’s failure to set aside reserves for Smbaa K’e First Nation was a fundamental breach of Treaty 11, and Smbaa K’e continued to have a strong *prima facie* case for Aboriginal title, which elevated the Crown’s duty to consult with them.<sup>2</sup> Accordingly, in our view, our Aboriginal rights, including Aboriginal title, have never been ceded, abandoned or extinguished in any part of our Territory.

Aboriginal rights, which include title, are constitutionally protected legal rights, pursuant to s. 35(1) of the *Constitution Act, 1982*. Aboriginal rights include a priority use rights to resources (e.g. fish, wildlife, trees, traditional medicines and foods). Aboriginal title confers on the rights-holding group the exclusive right to decide how the land is used and the right to benefit from those uses, subject to the restriction that the uses must be consistent with the group nature of the interest and the enjoyment of the land by future generations.<sup>3</sup>

ADKFN holds constitutionally protected Treaty rights, and assert strong Aboriginal rights within our Traditional Territory, and take seriously any infringement of our rights.

### **Crown’s Duty to Consult**

Where the Crown has “knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it”, the Crown has a duty to consult with the First Nation (*Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511 at para. 35).

ADKFN currently uses, and has traditionally used, our Territory for fishing, hunting, trapping, and gathering. Development and resource exploitation have already significantly impacted and infringed our Treaty and Aboriginal rights and title past, and any new developments will infringe our rights in a compounding manner. An infringement cannot be justified, without meaningful consultation and accommodation, which may include compensation.

Acho Dene Koe First Nation expects and intends to enter full meaningful consultation with government prior to any decision that has the potential to infringe our Treaty or Aboriginal rights. The importance of protection our Treaty and Aboriginal rights, and of preserving natural resources, cannot be overstated.

### **Referral Response**

#### *Background*

The Mackenzie Valley Land and Water Board (MVLWB) has developed a draft work plan for Canadian Zinc Corporation’s (CanZinc’s) application to renew its Type A mining and milling Water Licence (MV2020D0007) and Land Use Permit (MV2020L2-0003). The objective of this work plan is to outline how the MVWLB intends to compile input through the review process, ensure sufficient information is gathered to complete the permitting and licensing processes, and facilitate a thorough, inclusive, and timely permit and licence review process. Included in

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<sup>1</sup> *Re: Paulette's Application*, [1973] 6 W.W.R. 97 (N.W.T.) [*Re: Paulette's Application*].

<sup>2</sup> *Smbaa K'e Dene First Nation v. Duncan*, 2012 FC 204.

<sup>3</sup> *R. v. Sparrow*, [1990] 1 S.C.R. 1075 and *Delgamuukw v. B.C.*, [1997] 3 S.C.R. 1010; *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44.

Table 1 (Regulatory process timeline) of the draft work plan is a 2-day technical workshop scheduled for July 13 and 14, 2020.

#### *ADKFN Response*

On June 9, 2020, ADKFN submitted comments on CanZinc's application to the MVLWB for the renewal of MV2020D0007 and MV2020L2-0003. Subsequently, on June 12, 2020, the MVLWB contacted ADKFN to seek input on whether a technical session would be necessary for the renewal of this land use permit and water licence. Upon reviewing the Proponent's responses to the concerns and issues raised by ADKFN, we do not believe CanZinc adequately responded to, or addressed, said concerns and issues and the potential impacts to ADKFN's Treaty and Aboriginal rights and interests. In consideration of this, **ADKFN strongly believes that a technical workshop is necessary for CanZinc's application to renew MV2020D0007 and MV2020L2-0003.** Given the serious concerns we raised regarding CanZinc's efforts to meaningfully engage and consult with ADKFN and work collaboratively with us to develop avoidance, mitigation and accommodation measures to address impacts to ADKFN's rights and interests, a deeper level of consultation is required. In the absence of a meaningful consultation and engagement process to date, it is imperative the Crown upholds its duty to consult and accommodate impacts to ADKFN on the proposed and ongoing activities that continue to impact our Treaty and Aboriginal rights and interests. The process to date has not effectively addressed ADKFN's concerns.

We understand that a technical workshop would allow ADKFN to bring forward technical comments previously made on CanZinc's application for the renewal of MV2020D0007 and MV2020L2-0003, and that new comments will not be eligible for discussion. We also understand that ADKFN will be formally consulted about comments made on the renewal application in relation to the Aquatic Effects Monitoring Program (AEMP) and Engagement Plan at a future date.

#### *ADKFN Participants*

The following representatives will be in attendance to support ADKFN's involvement in the technical workshop:

##### **Meghan Buckham**

Lands Manager (Contracted)  
Acho Dene Koe First Nation  
Lands and Resources Office  
lands@adkfirstnation.ca  
250-271-0795

##### **Andrew Bubar**

Water Resources Specialist  
Shared Value Solutions  
andrew.bubar@sharedvaluesolutions.com  
226-706-8888 (ext. 204)

ADKFN's participants preferred method of connection is online video conference. Should technical issues or disruption of the technical workshop occur, please communicate this to Meghan Buckham, Lands Manager for ADKFN.

#### *Requested Agenda Topics*

ADKFN believes the following technical comments were not adequately addressed by the responses provided by CanZinc and requests that these be included as specific agenda topics at the technical workshop:

1) **Effluent Discharge Quality.** ADKFN is very concerned with the risk of the discharge of metals in the effluent from the Prairie Creek mine and the consequent potential for bioaccumulation and biomagnification in fish and wildlife species. Metals such as mercury,

cadmium, lead and zinc are known to bioaccumulate in fish and wildlife species which may move or migrate from the immediate area around the mine site to areas within our traditional territory. This includes species which migrate and species with larger home ranges. We rely on these species to exercise our rights as well as for the health and livelihoods of our members. CanZinc must complete a Human Health and Ecological Risk Assessment for the Prairie Creek mine which includes migratory animals (e.g. waterfowl) and those with large home ranges.

2) **Water Quality Monitoring.** ADKFN is very concerned with the lack of water quality monitoring information as a part of the WL and LUP applications. A detailed water quality monitoring plan, including sampling locations, frequency, methods and analytes is essential for ADKFN to properly assess whether CanZinc is adequately monitoring impacts to water quality in Prairie Creek and the South Nahanni River. We strongly recommend that CanZinc provide their detailed operational surface water and groundwater quality and quantity monitoring plans to ADKFN. This must include all water quality monitoring sites upstream, downstream and within the project site, all stream gauge locations and all groundwater monitoring wells. Frequency of sampling and analysis for surface and groundwater sites should be monthly. Water quality monitoring at the point of discharge of the water treatment plant into Prairie creek should be sampled 3 times per week at the start of operations for at least 3 months.

3) **Water Storage Pond.** ADKFN is also very concerned with the fact that the Water Storage Pond (WSP) on site is used for both sewage water and wastewater from the mill. This has the potential for unanticipated biogeochemical interactions that may increase metal mobility. We strongly recommend a detailed monitoring and management plan specific to this concern to ensure that there are no unforeseen biogeochemical interactions in the WSP based on the various different wastewater sources that report to it.

4) **Mixing Zone Model.** CanZinc has not provided a mixing zone model to assess the distance downstream that metals concentrations will be elevated above Canadian Water Quality Guidelines. This is important for determining the extent to which the water in Prairie Creek will be impacted by the operation, as well as the exposure to fish in that section of the Prairie creek. ADKFN recommends CanZinc develop a mixing model for Prairie Creek and provide opportunity for ADKFN to comment on the model. This is important as many of the metals predicted to be elevated in the mine effluent are known to bioaccumulate in fish and thus pose a risk to the health and wellbeing of ADKFN members.

5) **Post-closure Monitoring.** In the Closure and Reclamation Plan Section 4.2.6 (Monitoring, Maintenance and Reporting Program) CanZinc has stated the intention to monitoring water quality for 13 years after closure of the mine. This is an unacceptably short period of monitoring post closure, and risks ADKFN being left with an environmental liability long after CanZinc has left. We strongly recommend that Can Zinc agree to continue to monitor for a minimum of 25 years after closure with agreement to continue sampling beyond this period as necessary if effluent has not achieved discharge criteria. Contact water must be treated prior to discharge into Prairie Creek or Harrison Creek as required during this time.

6) **Closure Contingency Program.** ADKFN also note that Closure and Reclamation Plan Section 4.2.7 (Contingency Program) is extremely brief and includes no specific risks to mitigate nor the contingency measures that CanZinc will carry out to manage those risks. ADKFN recommends that CanZinc provide a much more detailed contingency plan for any water quality related risk for operations and during closure.

If you have any questions concerning our response I would ask that you email our Lands Manager, Meghan Buckham at [lands@adkfirstnation.ca](mailto:lands@adkfirstnation.ca)

Thank you.

Yours truly,

**ACHO DENE KOE FIRST NATION**

Signed on behalf of Chief Eugene (Gene) Hope

*Boyd Clark*

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Boyd Clark

Advisor/Acting Band Manager

Cc. Chief Eugene Hope  
Hana Boye, Legal (Donovan & Co)  
Doug McArthur, Advisor (McArthur West Consulting)  
Barney Dohm, President & CEO (ADK Holdings Ltd)  
Meghan Buckham, Lands Manager (Consultant –Shared Value Solutions)  
Scott Mackay, Lands Director (Consultant – Shared Value Solutions)  
Council