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File: MV2023L2-0001

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Sent by e-mail

Re: Cantung Mine – Care and Maintenance – Water Licence Application – Information Request

On March 14, 2023, the Mackenzie Valley Land and Water (MVLWB/Board) staff received the Application for type B Water Licence (Licence) MV2023L2-0001¹ for Care and Maintenance activities at the Cantung Mine site from North American Tungsten Corporation Ltd. (NATCL). The Application was sent for public review on the Board's Online Review System on March 24, 2023.² Comments and recommendations on the Application were received on May 19, 2023, with responses from NATCL received on June 6, 2023.

¹ See the MVLWB Online Registry (www.mvlwb.com) for [MV2023L2-0001](#).

² See MVLWB Online Review System for [Cantung Care and Maintenance – Type B Renewal Licence and Type A Permit Applications – March 24, 2023](#).

In their comments regarding the Application, NATCL, Crown Indigenous Relations and Northern Affairs Canada (CIRNAC), and Government of the Northwest Territories – Department of Environment and Climate Change (GNWT-ECC) disagreed about the interpretation and effect of the legislation in respect of the type of Licence (see Appendix 1). It is noted that these three submissions present differences in opinions that clearly go to the MVLWB jurisdiction in this case.

In order to provide the Board with a clear foundation for a decision on this issue, Board staff have determined that additional information or argument is required.

These additional information requirements are set out in the numbered Information Request (IR) below, and in accordance with the Land and Water Board (LWB) [Rules of Procedure](#),³ the Board requests that NATCL, CIRNAC, and GNWT-ECC submit the information by **December 18, 2023**. If your organization needs more time to complete the response, please let Board staff know.

Information Request #3 (IR3)

Please provide your organization's views on questions (a) and (b) below. In your response, include:

- fully reasoned and thoroughly explained rationale based on the *Mackenzie Valley Resource Management Act* (MVRMA) and regulations (and other authorities as required); and
 - reference to any environmental, operational, or practical considerations; applicable case law; and precedent LWB decisions, as required.
- a) Does a LWB have the jurisdiction to issue a type B licence that would replace a type A licence in situations when the activities associated with an appurtenant undertaking only exceed type B licensing criteria under the regulations, and will no longer exceed type A licensing criteria?
- b) Based on your response to question (a), does the MVLWB have the jurisdiction to issue a type B licence to NATCL in response to its Application?

Depending on the responses we receive for this IR, the MVLWB may need to make a legal ruling on the interpretation of the legislation with respect to the application of the licensing criteria. If a legal ruling is required, the responses to this IR will be sent to a broader distribution list of reviewers in the Mackenzie Valley for review and comment because this issue will be of general interest to Indigenous Governments, land claim organizations, and other existing licensees. In this case, CIRNAC and GNWT-ECC will then have the opportunity to reply to comments received with any new information; NATCL will have the opportunity to have the last response before the MVLWB makes a legal ruling.

³ See the MVLWB Rules of Procedure page to access the LWB [Rules of Procedure](#). Rules 61 and 63.

Please contact Kathy Racher via [email](#) or at (867) 766-7457 with any questions or concerns regarding this letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Kathy Racher", is centered on a light blue rectangular background.

Kathy Racher
Executive Director

BCC'd to: Distribution List – All Users
 Ron Pankratz – CIRNAC
 Tim Morton – Inspector

Appendix 1: Review Comments and Proponent Responses for the Cantung Care and Maintenance Licence MV2023L2-0001 Application

No.	Topic	Reviewer Comment	Reviewer Recommendation	Proponent Response
GNWT-ENR - EAM (Environmental Assessment and Monitoring) - Environmental Regulatory Analyst				
2	Class of Water Licence	<p>GNWT-ECC notes that North American Tungsten Corporation Ltd. (NATC) has submitted a complete renewal application for a Type B water licence. NATC currently has a Type A water licence (MV2015L2-0003). GNWT-ECC understands the purpose of NATC seeking to switch to a Type B from a Type A is to conduct care and maintenance activities at the Cantung Mine site. In the application form, NATC has classified the type of undertaking as “Mining and Milling” under the Water Regulations. GNWT-ECC agrees that “mining and milling” is the appropriate classification of the care and maintenance and eventual final closure of the Cantung Mine site. However, GNWT-ECC does not agree that a mining and milling undertaking that holds a type A licence can downgrade its licence to a Type B licence prior to fulfilling the closure objectives .</p> <p>ECC would like to draw attention to the attached letter from GNWT sent to the Land and Water Boards of the Mackenzie Valley on September 14, 2018,⁴ in which GNWT provided its opinion on the classification of undertaking and licensing criteria or triggers. In this letter, GNWT stated the following on undertaking classification for closure:</p>	<p>GNWT-ECC recommends that the Board require NATC to withdraw its current application and submit an application for renewal of a Type A water licence.</p>	<p>NATC believes the undertaking is not the only deciding factor in deciding whether a type A or B water licence is required for an undertaking.</p> <p>NATC is applying for a Type B licence because it understands that it satisfies the criteria for a Type B licence in accordance with Schedule V of the Mackenzie Valley Federal Areas Waters Regulations. Or rather, that it does not meet the thresholds requiring a Type A licence as it is not: using water for milling at a rate of 100 or more tonnes of ore per day or use of water for production leaching; altering flow or storage by means of dams or dikes; depositing waste from milling at a rate of 100 tonnes or more of ore per day.</p> <p>Accordingly, NATC agrees that the class of licence is determined as per the Mackenzie Valley Federal Areas Waters Regulations.</p> <p>NATC sees no provision preventing a mining and milling undertaking that holds a Type A licence from</p>

⁴ See MVLWB Online Registry for [NATCL – Application – GNWT-ECC Comment 2 – Sept 14, 2018 Letter to LWBs Re Licensing Criteria – May 10 23](#).

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		<p>“Therefore, it is the GNWT’s position that once a class of licence is determined as per the Waters Regulations Schedules D through H, that undertaking includes closure. To this end, if a Type A water licence is triggered for an undertaking, the Board should consider closure as part of the scope of the undertaking. Further as per s.27(1), the Board has discretion in setting conditions relating to closure and reclamation including: the submission of Closure and Reclamation Plans, Progress Reports, Reclamation Completion Reports and Performance Assessments (see Guidelines for the Closure and Reclamation of Advanced Exploration and Mine Sites in the Northwest Territories, 2013).”</p> <p>As such, GNWT-ECC recommends that the Board require NATC to withdraw its current application and submit an application for renewal of a Type A water licence.</p>		<p>'downgrading' its licence to a Type B licence prior to fulfilling the closure objectives.</p> <p>NATC notes that both the Mackenzie Valley Federal Areas Waters Regulations (applicable to Cantung) and the Waters Regulations (referenced by GNWT ENR) are mute on aspects pertaining to satisfying closure objectives.</p> <p>NATC is requesting that the Board continue in a new Type B licence the closure-related conditions existing in the current Type A licence, as indicated in its draft waste licence submitted with the application. NATC sees nothing precluding the Board from considering closure in a Type B water licence in the same manner in which it does for a Type A licence as is evidenced by the myriad examples of Type B licences wherein a licensee is required to post security, provide advance notice of an intent to close and to fulfill its obligations under an approved Closure and Reclamation Plan.</p> <p>While the GNWT refers to the Waters Act (specifically as per s.27(1)) which does not apply on Federal Lands, NATC agrees that the Board has discretion pursuant to 72.04 (1) of the MVRMA and respectfully encourages it to interpret the legislation to allow for a correct application of the regulations, as outlined above, and continue the process NATC to obtain a Type B water</p>

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				<p>licence for care and maintenance activities associated with its Mining and Milling Undertaking.</p> <p>In relation to W2009L8-0003, the project did go from a Type A to a Type B water licence at the time of licence renewal. In its Reasons For Decision, the WLWB relied on the licence criteria in regulations to inform its decisions. It also considered that the project was a continuation of activities that were reviewed and approved in the past, that none of the activities proposed to occur under the new licence require a Type A water licence, and that water use and waste deposition are expected to be less than what is currently licensed. All of these apply in the case of NATC's current application.</p>
CIRNAC (Yellowknife) - Megan Larose				
1	Type A or Type B Licence	<p>In considering NATCL's application for a water licence, CIRNAC notes the following information:</p> <p>1. Schedule V of the MV Federal Areas Water Regulations outline the criteria for when a Type B (Column III) or Type A (Column IV) water licence is required for a mining and milling undertaking. Item 2(5) of Schedule V relates to the alteration of flow or storage by means of dams or dikes and states that a Type B Licence is required if:</p>	<p>CIRNAC-RLM recommends that NATCL withdraw the Type B water licence application and re-submit an application for a Type A water licence.</p>	<p>NATC agrees that the licencing criteria are outlined in Schedule V of the Mackenzie Valley Federal Areas Waters Regulations.</p> <p>NATC also agrees that it has dams on site that meet the definition of a dam as per the Dam Safety Guidelines and based on the definition included in the land and water board standard water licence conditions template. These dams impound tailings that are ephemerally wetted; the dams do not impound free water and are in fact largely dry since tailings deposition ceased. Further, the dams that are not</p>

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		<p>- Off-stream storage of a quantity of water greater than 2 500 m3 and less than 60 000 m3, or instream storage of a quantity of water less than 60 000 m3</p> <p>All other alterations or storage (by means of dams or dikes) requires a Type A licence.</p> <p>2. The land and water board standard water licence conditions template Version 2.1 (February 9, 2023) provides a list of defined terms for use when developing draft water licences. The definition for dam is: a structure that meets the definition of a Dam as per the Dam Safety Guidelines and is intended to contain, withhold, divert, or retain Water or Waste.</p> <p>3. The Canadian Dam Association (CDA) website provides the following definition for a dam on their website:</p> <ul style="list-style-type: none"> - A dam is a barrier constructed for the retention of water, water containing any other substance, fluid waste, or tailings, provided the barrier is capable of impounding at least 30,000 m3 of liquid and is at least 2.5 m high. Height is measured vertically to the top of the barrier - from the natural bed of the stream or watercourse at the downstream toe of the barrier, in the case of a barrier across a stream or watercourse; or 		<p>capped were designed to ensure that any water that occurs ephemerally necessarily drains out of the dams by exfiltration. The Cantung dams are not water-impounding structures.</p> <p>To support this, please refer to the Conceptual Site Model Table 7-4, which provides a summary of observed moisture contents in tailings samples from each TCA. TCAs 3, 4 and 5 have slightly lower average moisture content in tailings than TCAs 1 and 2, ranging from 3-36% moisture in TCA 3, 3-44% moisture in TCA 4 and 3-20% moisture in TCA 5. NATC appreciates that these moisture measurements are not directly comparable to a volumetric measurement, however these results are presented here to demonstrate that the TCAs are not saturated, and to further confirm NATC's perspective that the Cantung dams are not water-impounding structures.</p> <p>While the TCAs are dams that store tailings, NATC respectfully disagrees about the application of item 2(5) Schedule V of the Mackenzie Valley Federal Areas Waters Regulations; while this needs to be considered when determining licencing criteria, it does not apply as the Cantung dams are not water-impounding structures and so needs to be dismissed.</p>

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		<p>- from the lowest elevation at the outside limit of the barrier, in the case of a barrier that is not across a stream or watercourse.</p> <p>4. The Tailings Storage Facility - Operations Maintenance and Surveillance Manual (Section 1.3 Scope) submitted by NATCL indicates that the manual is intended to fulfill requirements associated with all authorizations as well as the Canadian Dam Safety Guidelines. The tailings containment area (TCA) are referred to as containment dams throughout the Operations Maintenance and Surveillance Manual and Tables 3 through Table 7 provide the details for each TCA, including the type of dam, the construction method, containment structure maximum height, and the capacity (volume). Tailings containment areas 1, 2 and 3 are described as side-hill impoundment dams and tailings containment areas 4 and 5 are described as Cross-valley impoundment dams. The maximum height and capacity of each tailings containment area is as follows:</p> <ul style="list-style-type: none"> - TCA 1: Height - 15m; Volume - 85,300m³ (capped and reclaimed) - TCA 2: Height - 13m; Volume - 61,000m³ (capped and reclaimed) - TCA 3: Height - 41m; Volume - 2,240,000m³ (uncapped) - TCA 4: Height - 31m ; Volume - 669,000m³ (uncapped) 		<p>NATC agrees that some of the TCAs remain operational as outlined in the TSF OMS Manual. However, these operations do not include a deposit of waste from milling at a rate of 100 tonnes or more of ore per day.</p> <p>NATC understands that while Item 2(5) is focused on a specific type of water use or deposit of waste, these licencing criteria apply to the scope of the current undertaking being licenced and the related activities, not those that occurred in the past. Accordingly, just because a deposit of waste from milling at a rate of 100 tonnes or more of ore per day occurred in the past under a previous authorization, the same criteria do not automatically apply to different activities.</p> <p>From time to time, ephemeral water has accumulated on the surface of TCA 5, up to approximately 15,000 m³. While NATC believes this is not free water that is impounded by the dams, if it were to be considered as such, it would still not meet the criteria in Schedule V of the Mackenzie Valley Federal Areas Waters Regulations requiring a Type A licence, being offshore storage of >60,000 m³ of water.</p> <p>Given this, NATC sees no need to withdraw its application and resubmit an application for a Type A water licence.</p>

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		<p>- TCA 5: Height - 26.7m; Volume - 556,400m³ (partially filled, uncapped)</p> <p>Based on the above information, the TCAs at the Cantung Mine Site appear to meet the definition of a dam as per the Dam Safety Guidelines and based on the definition included in the land and water board standard water licence conditions template. If the TCA are considered to be dams for the purpose of storage (e.g. tailings), then the criteria under Item 2(5) of Schedule V of the MV federal waters regulations as it relates to the alteration of flow or storage by means of dams or dikes must be considered. The total volume of tailings being stored by the TCAs exceed the criteria for water use and deposit of waste requiring a Type B licence but does fit within the criteria for a Type A licence "all other alterations or storage".</p> <p>The licensing criteria for mining and milling undertakings provided in Schedule V are not specific to a particular phase of the mining cycle, and Item 2(5) is focused on a specific type of water use or deposit of waste. CIRNAC-RLM is not aware of any constraints or limitations suggesting that the criteria should only be considered for a new development or at a particular time in the context of the life of a mine. It is acknowledged that NATCL is not proposing to construct a new TCA or deposit new mine tailings; however, the existing TCAs remain a central component of the mine</p>		<p>Please refer to the discussion provided in response to GNWT-ENR-EAM-2. NATC sees no need to withdraw its application and resubmit.</p>

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		<p>site infrastructure at Cantung. The operations maintenance and surveillance manual suggests that not only do the TCAs continue to function as dams to store (historical) tailings, all TCAs require regular inspection and monitoring in accordance with the Dam Safety Guidelines, TCA4 remains operational for the disposal of sewage effluent, storage of contaminated soil, and for contingency storage of groundwater during care and maintenance, and TCAs 3, 4, and 5 have not been capped/reclaimed.</p> <p>Considering the above information, CIRNAC-RLM is of the opinion that NATCL requires a Type A licence for care and maintenance activities, as per Item 2(5) of Schedule 5 of the MV Federal Waters Regulations given the presence of the TCA that will continue to be operational in some capacity during care and maintenance.</p>		