

Sent by Email

February 23, 2024

Mackenzie Valley Land and Water Board
7th Floor – 4922 48th Street
PO Box 2130
Yellowknife, NT X1A 2P6

Attention: Kathy Racher

Dear Ms. Racher,

Re: MV2023L2-0001 Response to Information Request Number Three

North American Tungsten Corporation Ltd. (“NATC”) is pleased to provide this response to Information Request number three (“IR#3”) issued by the Mackenzie Valley Land and Water Board (“MVLWB”) on November 20, 2023. IR#3 pertains to the legal authority of the MVLWB under the *Mackenzie Valley Resource Management Act* SC 1998, c 25 (“MVRMA”) to issue a type B water licence for an undertaking which has previously been issued a type A water licence. Enclosed with this response to IR#3 are the following documents:

1. NATC’s formal response to the two questions posed by the MVLWB in IR#3 (Appendix A); and
2. Supporting evidence in the form of a letter from NATC’s Engineer of Record (“EOR”) issued in response to aspects of MVLWB’s Question A posed in IR#3 (Appendix B).

Further, NATC would like to address a few other matters which it believes are relevant to its response but not applicable to the specific questions asked by the MVLWB, detailed below.

I. MVLWB’s legal advice and the competing interests of procedural fairness

NATC understands that the MVLWB has obtained a legal opinion (“Legal Opinion”) in connection with IR#3 and the MVLWB’s ability to issue a type B water licence to an undertaking which has previously been issued a type A water licence. If there are any facts or legal issues raised in the Legal Opinion that have not been disclosed by the MVLWB, NATC requests that those facts and legal issues be provided.

NATC acknowledges the importance of solicitor-client privilege and is not asking that the MVLWB’s Legal Opinion be directly disclosed to NATC.¹ However, this solicitor-client privilege does have limitations under these circumstances. In *Practice and Procedure Before Administrative Tribunals*, the authors comment on the decision of the Supreme Court of Canada on this issue in *Pritchard* and suggest

¹ *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 at para 31 (*Pritchard*).

that “where such new facts or issues are raised or appear in a legal opinion protected by solicitor-client privilege the agency likely does not have to disclose the opinion itself but it would have to disclose the facts or issues which are otherwise not known to the party.”² This is because the administrative agency “cannot hide behind the concept of solicitor-client privilege to refuse to disclose to a party facts or issues of which the party is not aware and which are material to the party’s ability to present his or her case fairly.”³

II. Restrictions on who is permitted to make submissions in connection with NATC’s water licence application

In IR#3, the MVLWB indicated that it may be required to make a legal ruling on the interpretation of the MVRMA and would send NATC’s response to IR#3 to a “broader distribution list of reviewers” if a legal ruling is required.

If the MVLWB must make a legal ruling, then the ruling should be dealt with as a “Request for Ruling” pursuant to rules 21 through 29 of the MVLWB’s Rules of Procedure (“Rules”).⁴ Under the Rules, the MVLWB seeks input from Parties to the Proceeding, not the public at large.⁵ Distribution of NATC’s response to IR#3 should be restricted to the Parties to the Proceeding.

This position is also supported by administrative law principles. The requirements of procedural fairness dictate that only those who are a party to a proceeding be able to make submissions on a legal question in a proceeding. Submissions on a legal question in a proceeding should be made by parties to a proceeding and not strangers to the licencing process.⁶ The common law rules of procedural fairness, as well as the Rules, require that only a Party can request an information request of another party or be issued an information request from the MVLWB. Therefore, NATC takes the position that only Parties to this proceeding should be invited to make submissions on any legal questions raised by the MVLWB. If the MVLWB must make a legal ruling, NATC encourages it to adhere to the principles of procedural fairness and its own Rules and not request input from parties outside of the proceeding.

² Lorne Sossin, *Practice and Procedure Before Administrative Tribunals* (Toronto: Thomson Reuters Canada, 2021) at §14:2.

³ Lorne Sossin, *Practice and Procedure Before Administrative Tribunals* (Toronto: Thomson Reuters Canada, 2021) at §14:2.

⁴ MVLWB Rules of Procedure, ss. 21-29.

⁵ MVLWB Rules of Procedure, s. 18. Note: Under the Rules, “Party” means an Applicant, a person, or organization participating in a Board Proceeding subject to these Rules.

⁶ *P. & S. Holdings Ltd. v. Canada*, 2017 FCA 41 at paras 39-40.

In closing, NATC looks forward to the opportunity to provide a final response ahead of any legal ruling the MVLWB may make in connection with IR#3.

Yours truly,

North American Tungsten Corporation Ltd.
by its Monitor, Alvarez & Marsal Canada Inc.
acting in its capacity as Monitor of NATC and not
in its personal capacity



Todd M. Martin
Senior Vice President

Encl.

Cc: MVLWB: K. Racher, A. Love
CIRNAC: J. Mackey, M. Yetman, S. Kennedy
A&M: S. Hamm, D. Bynski
Communities Working Group: Acho Dene Koe First Nation; Dehcho First Nations; Fort Simpson Métis Local 52; Kaska Dena Council; Liard First Nation; Lúidli Kúé First Nation; Nahzà Dehé Dene Band; Ross River Dena Council

Appendix A
North American Tungsten Corporation Ltd. Response to
Mackenzie Valley Land and Water Board
Information Request Number Three, Questions A and B

On November 20, 2023, the Mackenzie Valley Land and Water Board (“MVLWB”) issued Information Request number three (“IR #3”) to North American Tungsten Corporation Ltd. (“NATC”) in connection with NATC’s application number MV2023L2-0001 for a type B water licence (“Application”). Below is NATC’s response to the questions raised by the MVLWB in IR #3.

QUESTION A:

- a) **Does a Land and Water Board 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 licencing criteria under the regulations, and will no longer exceed type A licencing criteria?**

RESPONSE:

The MVLWB has the authority to issue a type B water licence to replace a type A water licence where the water use or deposit of waste in connection with an undertaking no longer meets the requirements for a type A water licence but still meets the requirements for a type B water licence. The statutory language of the *Mackenzie Valley Resource Management Act*⁷ (“MVRMA”) grants the MVLWB broad discretion to issue and renew water licences, but it also sets parameters specifying whether a water licence issued by the MVLWB should be type A or type B. Based on the modern principles of statutory interpretation, as well as previous decisions of the MVLWB and Yukon Water Board, the MVLWB has the jurisdiction to issue a type B water licence for a federal undertaking which has previously been issued a type A water licence.

III. Authority granted by the MVRMA

The MVRMA grants the MVLWB broad authority to issue both type A and type B water licences, and contains no restrictions preventing an undertaking from transitioning to a type B water licence after being issued a type A licence. Pursuant to s. 72.03 of the MVRMA, the MVLWB has broad discretion to issue licences to use water and deposit waste under section 72.03 of the MVRMA, and such licences must be issued in accordance with the criteria in any regulations made under paragraph 90.3(1)(c).⁸

⁷ *Mackenzie Valley Resource Management Act*, SC 1998, c 25.

⁸ *Mackenzie Valley Resource Management Act*, SC 1998, c 25, s 72.03.

NATC's Cantung site ("the "Site") is located within an area of federal jurisdiction in the Northwest Territories.⁹ As a result, the *Mackenzie Valley Federal Areas Waters Regulations*¹⁰ ("Federal Waters Regulations") apply which set out the licencing criteria referenced in paragraph 90.3(1)(c) that the MVLWB must adhere to when issuing licences. Section 8 of the *Federal Waters Regulations* states the following:

"Subject to subsection (2), a licence issued under subsection 72.03(1) of the Act shall be a type B licence for one or more uses of water or deposits of waste set out in column I of any of Schedules IV to VIII, if any one of those uses or deposits

- (a) meets a criterion set out in column III thereof; or
- (b) meets a criterion set out in column II thereof, but does not meet the requirements of paragraphs 5(1)(a) and (b)."¹¹

NATC's use of water at the Site meets the criteria set out in column III of Schedule V. The language of the *Federal Waters Regulations* is specific and states that a licence *shall* be a type B licence if the thresholds under column III of Schedule V are met. Consequently, when the MVLWB issues a water licence to NATC in connection with its application, the licence should be a Type B licence.

IV. Application of statutory interpretation principles to the MVRMA

Based on the principles of statutory interpretation, the MVRMA grants the MVLWB the authority to issue NATC a type B water licence to replace the existing type A water licence for the Site.

The modern principles of statutory interpretation requires consideration of the text, context and purpose of the legislation, and says that the words of a legislative text must be read in their ordinary sense harmoniously with the scheme and objects of the legislation and the intention of the legislature.¹²

The ordinary meaning rule is the starting point for statutory interpretation.¹³ As Ruth Sullivan in *The Construction of Statutes* states:¹⁴

"As understood and applied by modern courts the ordinary meaning rule consists of the following propositions:

⁹ Under the MVRMA, a federal area means "any lands under the administration and control of a minister of the Government of Canada and any land on which is situated a waste site for which the Management — as defined in the Northwest Territories Lands and Resources Devolution Agreement that was made on June 25, 2013 — is the responsibility of the Government of Canada." On November 18, 2015, the Cantung site was identified as a New Site Requiring Remediation pursuant to section 6.28 of the Devolution Agreement and is considered a federal area under the MVRMA.

¹⁰ *Mackenzie Valley Federal Areas Waters Regulations*, SOR/93-303.

¹¹ *Mackenzie Valley Federal Areas Waters Regulations*, SOR/93-303, s 8.

¹² *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para 21, 1998 CanLII 837.

¹³ Ruth Sullivan, *The Construction of Statutes*, 7th ed (Toronto: LexisNexis, 2022) at 28.

¹⁴ Ruth Sullivan, *The Construction of Statutes*, 7th ed (Toronto: LexisNexis, 2022) at 28-29.

1. It is presumed that the ordinary meaning of a legislative text is the meaning intended by the legislature. In the absence of a reason to reject it, the ordinary meaning prevails.
2. Even if the ordinary meaning is plain, courts must take into account the full range of relevant contextual considerations including purpose, related provisions in the same and other Acts, legislative drafting conventions, presumptions of legislative intent, absurdities to be avoided and the like.
3. In light of these considerations, the court may adopt an interpretation that modifies or departs from the ordinary meaning, provided the interpretation adopted is plausible and the reasons for adopting it are sufficient to justify the departure from ordinary meaning.

This formulation of the ordinary meaning rule is closely related to the modern principle. It emphasizes that interpretation properly begins with ordinary meaning — with reading words in their grammatical and ordinary sense — but does not stop there. Interpreters are obliged to consider the total context of the words to be interpreted in every case, no matter how plain those words may seem upon initial reading.”

NATC’s Application requests a replacement of its current type A water licence with a type B water licence to conduct care and maintenance activities at the Site. The MVRMA and *Federal Waters Regulations* are silent on the MVLWB’s procedure for issuing a type B water licence for an undertaking which has already been issued a type A water licence. It should be noted that the MVRMA and the *Federal Waters Regulations* are also silent on the procedure for issuing a type A water licence for an undertaking which has already been issued a type B water licence – and it is clear that a type A water licence would need to be issued in circumstances where those conditions were met.

The MVLWB is given broad jurisdiction in respect of all uses of land, waters or deposits of waste in the Mackenzie Valley for which a licence is required:

“102 (1) The Board has jurisdiction in respect of all uses of land in the Mackenzie Valley for which a permit is required under Part 3 and in respect of all uses of waters or deposits of waste in the Mackenzie Valley for which a licence is required under Part 3 or any territorial law, as the case may be, and for that purpose the Board has the powers and duties of a board established under Part 3, other than powers under sections 78, 79 and 79.2 to 80.1, as if a reference in that Part to a management area were a reference to the Mackenzie Valley, except that, with regard to subsection 61(2), the reference to management area continues to be a reference to Wekeezhii.”

[Emphasis added.]

Subsection 102(1) specifically states that the MVLWB has the “powers and duties of a board established under Part 3 [of the MVRMA].” Part 3 of the MVRMA outlines the statutory rules which govern the system of land and water management in federally regulated areas of the Mackenzie

Valley. Under Part 3, subsection 60(1) states that the MVLWB has jurisdiction over all uses of waters and waste deposits in a federal area within its management area for which a licence is required under Part 3 and may, in accordance with the regulations, issue, amend, renew and cancel licences, as well as approve licence assignment.

Subsection 72.03(1) of the Act provides that the Board may issue type A and type B water licences in accordance with the criteria set out in the *Federal Waters Regulations*:

“72.03 (1) Subject to this section, a board may issue, in accordance with the criteria set out in the regulations made under paragraph 90.3(1)(c), type A licences and type B licences permitting the applicant for the licence, ... to use waters or deposit waste, or both, in a federal area in connection with the operation of an appurtenant undertaking and in accordance with the conditions specified in the licence.”

[Emphasis added.]

Section 8 of the *Federal Waters Regulations* sets out the licensing criteria used to determine the type of licence issued:

“8 (1) Subject to subsection (2), a licence issued under subsection 72.03(1) of the Act shall be a type B licence for one or more uses of water or deposits of waste set out in column I of any of Schedules IV to VIII, if any one of those uses or deposits

(a) meets a criterion set out in column III thereof; or

(b) meets a criterion set out in column II thereof, but does not meet the requirements of paragraphs 5(1)(a) and (b).

(2) A licence issued under subsection 72.03(1) of the Act shall be a type A licence for one or more uses of water or deposits of waste set out in column I of any of Schedules IV to VIII, if any one of those uses or deposits meets a criterion set out in column IV thereof.”

[Emphasis added.]

NATC is applying for a type B licence because it satisfies the criteria for a type B water licence set out in Schedule V of the *Federal Waters Regulations*. The mandatory language of section 8 of the *Federal Waters Regulations* states that “if any one of those uses or deposits meets a criterion set out in column III”, then the licence issued by the MVLWB must be a type B licence. On the other hand, s. 8 requires that “if any one of those uses or deposits meets a criterion set out in column IV”, then the licence issued by the MVLWB must be a type A water licence. NATC has applied for a type B licence because it does not meet any of the criterion under column IV of Schedule V¹⁵. The words as they are commonly used support NATC’s position.

¹⁵Schedule V Item 2(5) Column IV is understood to pertain to “all other alterations or storage” of water, and does not apply to the storage of tailings. Given all other aspects of Item 2 pertain to indirect water use, and specifically Item 2(5) pertains to storage of water, standard interpretation would be that “other” is of the same kind and is limited to water.

The MVRMA also outlines the mandate and objectives of the MVLWB. Its objectives are as follows:

“101.1 (1) The objectives of the Board are to provide for the conservation, development and utilization of land and water resources in a manner that will provide the optimum benefit generally for all Canadians and in particular for residents of the Mackenzie Valley.”¹⁶

Applying the second proposition of statutory interpretation outlined by Sullivan, the fact that a type B licence is capable of fulfilling the objectives of the MVRMA is further support that the act should be interpreted in keeping with the ordinary meaning of the words, which permit the issuance of a type B licence with respect to a project that had a type A licence in the past. The MVLWB may incorporate conditions in a type B license, including with respect to “any future closing or abandonment of the appurtenant undertaking.”¹⁷ There is no reason that such conditions would be less effective if attached to a type B rather than a type A licences.

Using the modern principles of statutory interpretation, the ordinary meaning of the relevant language of the MVRMA permits the MVLWB to issue a type B water licence to a mining and milling undertaking that holds a type A licence prior to the fulfilment of closure objectives. Additionally, this meaning supports the underlying purposes of the MVRMA. Subsection 102(1) specifically provides the MVLWB the “powers and duties of a board established under Part 3 [of the MVRMA].” Part 3 of the MVRMA and the *Federal Waters Regulations* grant the MVLWB the jurisdiction, powers, and discretion to renew a type A water licence as a type B water licence where the column IV criteria for a type A water licence are no longer met but the proposed water use meets the criteria for a type B water licence.

V. *The Government of the Northwest Territories’ letter dated September 14, 2018 (the “GNWT Letter”)*

NATC takes the position that the GNWT Letter is not applicable to the Site. The Site is located in a federal area¹⁸, which means that the *Waters Act*, SNWT 2014, c 18 (the “*Waters Act*”) and accompanying *Waters Regulations*¹⁹ do not apply to the Site. Section 2(3) of the *Waters Act* states that the *Waters Act* “does not apply in respect of the use of waters or the deposit of waste in waters within a federal area in the Mackenzie Valley.”²⁰ The answers given by the Government of the Northwest Territories in the GNWT Letter reference and rely on the *Waters Act* and its regulations, not the MVRMA which applies to federal areas.

The GNWT Letter is also focused on the impacts resulting from the use of water and deposit of waste over the life of an undertaking. Setting aside that the GNWT Letter does not apply to the Site, the GNWT Letter does not align with the language of the MVRMA. The GNWT Letter focuses on the use of water over the duration of an undertaking (in this case a mining and milling undertaking) and focuses on previous uses of water and deposits of waste. This is not consistent with the language of the

¹⁶ *Mackenzie Valley Resource Management Act*, SC 1998, c 25, s 101.1(1).

¹⁷ *Mackenzie Valley Resource Management Act*, SC 1998, c 25, s 72.04(1)(e).

¹⁸ *Waters Act*, SNWT 2014, c 18, s 2(1); *Mackenzie Valley Resource Management Act*, SC 1998, c 25, s 51.

¹⁹ *Waters Regulations*, NWT Reg 019-2014.

²⁰ *Waters Act*, SNWT 2014, c 18, s 2(3).

MVRMA. The language in sections 72 and 72.01 of the MVRMA is forward looking and prohibits the present and future use of water or deposit of waste without a licence. The thresholds set out in Schedule V of the *Federal Waters Regulations* are for the future use of water and deposit of waste, not the historical use that has occurred in connection with an undertaking.

Finally, the GNWT Letter argues that the “*Waters Act* does not grant authority to the Board to change a class of licence, if a class of licence is required pursuant to the *Waters Regulations*.”²¹ Even applying this position to the MVRMA and *Federal Waters Regulations*, NATC is not asking the MVLWB to change the class of an existing licence. It is requesting a type B water licence, which is the type of licence required under the *Federal Waters Regulations* based on NATC’s expected use of water.

VI. Crown Indigenous Relations and Northern Affairs Canada (“CIRNAC”) interpretation of the MVRMA

In response to NATC’s Application, CIRNAC-RLM disagreed with NATC’s interpretation of the MVRMA and stated the following:

“CIRNAC-RLM is not aware of any constraints or limitations suggesting that the criteria [for a type of water licence under the MVRMA] should only be considered for a new development or at a particular time in the context of the life of a mine.”²²

CIRNAC-RLM’s position is not consistent with the language of the MVRMA. As set out above with respect to the GNWT Letter, the MVRMA and the *Federal Waters Regulations* are both forward-looking and prohibit current and future use of water or deposit of waste without a licence.²³

NATC previously met the requirements for a type A water licence in connection with the deposit of waste from milling at a rate of more than 100 tonnes per day.²⁴ However this deposit ceased in 2015 and is not planned to recommence. Accordingly, NATC meets the requirements under the MVRMA for a type B water licence as the legislation does not authorize the MVLWB to consider past use of water and deposit of waste when determining what type of water licence to require.

As discussed in Appendix B of this submission, the existing Tailings Storage Facilities dams are impounding drained tailings and not water with fluid tailings. Additionally, the off-stream storage of free water is not in excess of 60,000 m³ (commensurate with the threshold for a Type A water licence) as specified in the *Federal Waters Regulations*.

VII. Water Board Decisions

Supporting NATC’s position regarding the issuance of a type B licence, there are northern water board decisions, both in the NWT and in Yukon, where an appurtenant undertaking which has been issued a

²¹ GNWT Letter, September 14, 2018, at 4.

²² “Reviewer Comments and Proponent Responses”, June 6, 2023 at 80-81.

²³ *Mackenzie Valley Resource Management Act*, SC 1998, c 25, s 72, 72.01 and 72.03; *Mackenzie Valley Federal Areas Waters Regulations*, SOR/93-303, s 8.

²⁴ *Mackenzie Valley Federal Areas Waters Regulations*, SOR/93-303, Schedule V.

type A water licence can subsequently be issued a type B water licence prior to fulfilling all closure objectives. Two of these decisions are described below.

Colomac Mine

On February 23, 2010, the Wek'eezhii Land and Water Board issued type B water licence number W2009L8-0003 as a renewal of type A water licence number MV2004L8-0001²⁵ ("Colomac Decision"). Type A water licence MV2004L8-0001 was initially issued in 2005 to the Contaminants and Remediation Directorate of Indian and Northern Affairs Canada ("CARD") to use water and deposit waste in connection with the remediation of abandoned gold mining and milling operations at the Colomac Mine Site.

CARD applied for renewal of the licence in 2009 to complete the remediation work and requested issuance of a type B licence because the "scope of the remaining work and the level of water use and waste disposal activities"²⁶ were appropriate for a type B licence. The Wek'eezhii Land and Water Board issued CARD a type B water licence and gave the following reasons for issuing a type B water licence rather than another type A water licence:

"This water licence application is considered a Type B (rather than a Type A) for two reasons: (1) the project is a continuation of remediation activities that were reviewed and approved in the past; none of these activities require a Type A water licence, and (2) water use and waste deposition are expected to be less than what is currently licensed."²⁷

Although the Colomac Decision was issued for a miscellaneous undertaking, the circumstances were in many ways similar to those of NATC and the Site. The current type B water licence Application would, if approved, authorise the continuation of care and maintenance activities at the site which have been approved in the past, none of the activities will require a type A water licence, and the water use will be less than the threshold which requires a type A water licence. The fact that licence W2009L8-0003 was classified as a miscellaneous undertaking is irrelevant. It is entirely analogous as it dealt with the care, maintenance and remediation of an historical mine site.

Mount Nansen

The Mount Nansen Mine site is another example of an undertaking being issued a type A water licence followed by a type B water licence. BYG Natural Resources Inc ("BYG") was issued a type A water licence for a quartz mining undertaking by the Yukon Water Board²⁸ in March 1996 to use water and

²⁵ Wek'eezhii Land and Water Board, Reasons for Decision (18 February 2010) for type B water licence number W2009L8-0003 for the remediation of the Colomac Mine Site.

²⁶ Department of Indian Affairs and Northern Development, Contaminants & Remediation Directorate application (24 August 2009) for type B water licence number W2009L8-0003 at 1.

²⁷ Wek'eezhii Land and Water Board, Reasons for Decision (18 February 2010) for type B water licence number W2009L8-0003 for the remediation of the Colomac Mine Site at 3.

²⁸ While the decisions of the Yukon Water Board are not binding on the MVLWB, they are still useful and applicable to NATC's Application given the licencing schemes under the Yukon *Waters Act* and the MVRMA are very similar. Both acts have a type A and type B scheme and contain similar thresholds with respect to the issuance of water licences for mining.

deposit waste in connection with its gold and silver mining operations at the Mount Nansen site.²⁹ However, BYG abandoned the Mount Nansen site and declared bankruptcy in 1999. The Department of Indian Affairs and Northern Development (“DIAND”) subsequently took control of the Mount Nansen site and applied to the Yukon Water Board for a type B water licence to perform care and maintenance operations. DIAND was granted a type B water licence in September 1999 to perform care and maintenance activities prior to the remediation of the Mount Nansen site.³⁰

On August 19, 2021 following the Government of Canada’s sale of the Mount Nansen site, the Mount Nansen Remediation Limited Partnership was issued a type B water licence to store water, obtain water and to deposit waste in connection with the care and maintenance of the Mount Nansen site.³¹

While the Mount Nansen water licences were issued by the Yukon Water Board, they are still relevant to NATC’s current Application. The Yukon’s water licencing scheme set out in the *Waters Act*³² and accompanying *Waters Regulation*³³ is very similar to the scheme that the MVLWB operates within. The Mount Nansen site also shares several similarities with the Site. It was an operating mine which held a type A water licence and has since gone insolvent. Both sites are now in care and maintenance and will be remediated and closed in the coming years.

QUESTION B:

b) Based on your response to question (a), does the Mackenzie Valley Land and Water Board have the jurisdiction to issue a type B licence to NATC in response to its Application?

RESPONSE:

The MVLWB has the jurisdiction under the MVRMA to issue a type B water licence to NATC for the use of water for ongoing care and maintenance at the Site. The *Federal Waters Regulations* are clear that if a water licence to be issued by the MVLWB under subsection 72.03(1) of the MVRMA meets a criterion in column III of Schedule V but does not meet any of the criteria in column IV of Schedule V, then the licence should be issued as a type B water licence.³⁴

The planned use of water at the Site, as set out in NATC’s Application, does not meet any of the criteria set out in column IV of Schedule V and which would require the MVLWB to issue a type A water licence. The planned use of water by NATC at the Site does meet some of the criteria set out in column III of Schedule V. As a result, if the MVLWB is satisfied that NATC’s Application meets the other requirements of the MVRMA and issues a water licence to NATC, the water licence issued should be a type B water licence.

While the Government of the Northwest Territories has requested that the MVLWB follow the direction given in the GNWT Letter and require NATC to resubmit its Application as a type A water

²⁹ Yukon Water Board, licence number QZ94-004, issued to BYG Natural Resources Inc.

³⁰ Yukon Water Board, licence number QZ99-043, issued to the Department of Indian Affairs and Northern Development.

³¹ Yukon Water Board, licence number QZ19-055, issued to Mount Nansen Remediation Limited Partnership

³² *Waters Act*, SY 2003, c 19.

³³ *Waters Regulation*, YOIC 2003/58.

³⁴ *Mackenzie Valley Federal Areas Waters Regulations*, SOR /93-303, s 8.

licence application, the MVLWB is not required to comply with the recommendations of the GNWT Letter. The GNWT Letter references the *Waters Act* and accompanying *Waters Regulations*, both of which are territorial legislation. They are not applicable to the Site which is located in a federal area. While NATC recognizes that the MVLWB has discretion and may receive input from interested parties in the Mackenzie Valley, the MVLWB must still operate within the MVRMA and issue a type B water licence given that the proposed use of water will not meet any of the criteria set out in column IV of Schedule V of the *Federal Waters Regulations*.

Finally, there is precedent for the MVLWB to follow. The Colomac Decision was factually very similar to NATC's Application. CARD applied for a type B water licence because it no longer met any of the type A water licence criteria, but it still met the type B water licence criteria. The Wek'eezhii Land and Water Board issued a type B water licence for the same undertaking prior to remediation of the Colomac Mine site being complete. The MVLWB has jurisdiction to do the same with respect to NATC's use of water for care and maintenance activities at the Site.

Appendix B
Supporting Evidence in Response to
Mackenzie Valley Land and Water Board
Information Request Number Three, Question A



February 22, 2024

North American Tungsten Corporation Ltd.
c/o Alvarez & Marsal Canada ULC
925 West Georgia Street, Suite 902
Vancouver, BC V6C 2L2

ISSUED FOR USE
FILE: 704-ENW.WENW03039-07
Via Email: Marianna.Lee@alvarezandmarsal.com

Attention: Marianna Lee, CPA, CMA
Alvarez & Marsal Canada ULC

Subject: Engineer of Record Response to MVLWB Questions (MV2023L2-0001 IR#3)
Type B Licence Application, Cantung Mine, NT

1.0 INTRODUCTION

Alvarez & Marsal Canada Inc. (A&M), acting in their capacity as court-appointed monitor for North American Tungsten Corporation Ltd. (NATC), requested assistance from Tetra Tech Canada Inc. (Tetra Tech) in preparing a response to an information request received in the form of a letter dated November 20, 2023 from the Mackenzie Valley Land and Water (MVLWB/Board) regarding NATC's application for a Type B Water Licence (Licence) MV2023L2-00011 for continued Care and Maintenance activities at the Cantung Mine site. The Application was sent for public review on the Board's Online Review System on March 24, 2023. Comments and recommendations on the Application were received on May 19, 2023, with responses from NATC received on June 6, 2023 (Appendix B attached to the November 20, 2023, MVLWB/Board letter).

Tetra Tech, acting in the capacity of Engineer of Record (EOR) for the tailings containment areas (TCA) at the Cantung Mine, has compiled the following information to further support NATC's application for a Type B Water Licence and inform parties' understanding of applicable operational and practical considerations associated with the TCAs and the related applicable aspects of the legislation, being Item 2(5) of Schedule V of the Mackenzie Valley Federal Areas Waters Regulations. The EOR is the qualified Professional Engineer responsible for the design and performance of the TCAs, specifically whether the TCAs are dams and if so, whether the dams provide off-stream storage of water..

2.0 DISCUSSIONS

NATC submitted an application for a Type B water licence on March 13, 2023. NATC was operating under Type A water licence (MV2015L2-0006) which expired January 27, 2024. A water licence will be required for ongoing care and maintenance activities along with future closure activities at the Cantung Mine site. NATC has maintained the type of undertaking as "Mining and Milling" under Schedule V of the Mackenzie Valley Federal Areas Waters Regulations (MVFAWR), however the site has not been an active mine since 2016.

The dams are impounding drained tailings and not water with fluid tailings, nor the off-stream storage of free water in excess of 60,000m³ (commensurate with the threshold for a Type A water licence) as specified in the MVFAWR. The tailings dams are being managed per the Canadian Dam Association (CDA) *Dam Safety Guidelines* (2013) and *Application of Dam Safety Guidelines to Mining Dams* (2019).

According to the CDA (2013) the definition of a dam is:

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;

- (i) 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
- (ii) 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.

All of the TCA dams are constructed of local glaciofluvial and fluvial materials consisting of a mixture of silts, sands, and gravels, with occasional cobbles and boulders. By design, fine grained cores or lined bases that are typical required for water retention dams, are not present within the TCA dams as the purpose of these structures was to allow for the exfiltration and drainage of water allowing the settlement of the tailings. As per the design, the dams were constructed in stages to provide the necessary tailings containment capacity while the mine was active. Further construction details for each TCA have been presented in multiple historical reports (see reference list provided).

Based on information from historical design and construction reports for the TCAs, the containment dams were designed to drain. When tailings deposition stopped in 2016, the primary source of water temporarily held within the TCAs also stopped. Currently, the TCAs impound tailings that are ephemerally wetted (mostly through rainfall and snowmelt); the dams do not impound free water and the tailings themselves are largely dry. During the intermittent periods of future care and maintenance activities there will be some placement of treated sewage effluent. Further, the TCAs that are not capped are still functioning as designed by exfiltrating water that does present seasonally. The Cantung dams are not water-impounding structures, the tailings have drained with time, and there is limited or no ponding on the surface of each TCA.

Groundwater elevation readings from the groundwater monitoring wells throughout the site have confirmed that the groundwater table is below the bases of the TCAs, in the original ground. During the 2019 Geotechnical Investigation (Tetra Tech 2020a) groundwater beneath TCA 3 and 4 was encountered below the tailings elevation in all boreholes. Groundwater beneath TCA 5 was also well below the base of the tailings.

3.0 ADDITIONAL INFORMATION

Tetra Tech has provided the following additional information for clarification to support NATC submission of the application for a Type B licence.

- Ponded water on the surface of TCA 4 and 5 has been noted in annual reports and is the result of disposal of treated sewage effluent, moisture accumulation during spring freshet (melting snow) and seasonal heavy rain events. The volume of ponded water reduces through evaporation and infiltration/exfiltration. It has been noted in annual geotechnical inspection reports that the ponded water on the tailings surface of TCA 5 has been reducing in volume and this reduction is attributed to evaporation and infiltration/exfiltration. During the latest site visit for the annual inspection the volume of ponded water was estimated at about 5,000 m³. As for TCA 4, the volume of treated sewage effluent being placed over the surface of the tailings has ceased for the winter as care and maintenance is no longer full time and now consists of periodic trips to site that only requires operation of a smaller sewage treatment system during on-site work.

- Many of the historical design and construction reports note that the purpose of the TCA perimeter earth structures (dams) are for the containment of tailings sediments and solids and not water. The TCAs were designed to allow for exfiltration and drainage of excess water through settling of solids and decanting excess water to other approved exfiltration areas.
- All of the TCAs have appropriate perimeter ditching for the purpose of collecting and redirecting upslope surface runoff away from the surface of each TCA.
- Tailings have been deposited near the dam crest; however, low areas and localized depressions provide an estimated combined 52,000 m³ of potential surface storage capacity in TCA 3, 4 and 5. However, since the mine is not in operation the sole source of surface water is environmental inputs, this would be temporary given the exfiltration capacity of the TCAs.

4.0 CONCLUSIONS

Tetra Tech only considers Section 2(5) outlined in Schedule V of the MVFAWR to be applicable for the purpose of water storage by means of dams and dykes. Along the with dams the surface of the settled tailings (now in a solid form) are viewed to be providing “off-stream storage of a quantity of water”, but not in a capacity that exceeds 60,000 m³. The volumes of water that could pond on the surface of the TCAs are now limited to heavy rain events and spring freshet (snow melt). As previously stated by NATC the ponded water on the surface of the TCA tailings is not free water that is impounded by the containment structures (dams). If it were to be considered as such, it would still not meet the criteria requiring a Type A licence, being off-stream storage of >60,000 m³ of water.

4.0 CLOSURE

We trust this letter report meets your present requirements. If you have any questions or comments, please contact the undersigned.

Respectfully submitted,
Tetra Tech Canada Inc.



FILE: 704-ENW.WENW03039-07
FILE: 704-ENW.WENW03039-07
FILE: 704-ENW.WENW03039-07

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FILE: 704-ENW.WENW03039-07
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/et

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APPENDIX A

TETRA TECH'S LIMITATIONS ON THE USE OF THIS DOCUMENT

LIMITATIONS ON USE OF THIS DOCUMENT

GEOTECHNICAL

1.1 USE OF DOCUMENT AND OWNERSHIP

This document pertains to a specific site, a specific development, and a specific scope of work. The document may include plans, drawings, profiles and other supporting documents that collectively constitute the document (the "Professional Document").

The Professional Document is intended for the sole use of TETRA TECH's Client (the "Client") as specifically identified in the TETRA TECH Services Agreement or other Contractual Agreement entered into with the Client (either of which is termed the "Contract" herein). TETRA TECH does not accept any responsibility for the accuracy of any of the data, analyses, recommendations or other contents of the Professional Document when it is used or relied upon by any party other than the Client, unless authorized in writing by TETRA TECH.

Any unauthorized use of the Professional Document is at the sole risk of the user. TETRA TECH accepts no responsibility whatsoever for any loss or damage where such loss or damage is alleged to be or, in fact, caused by the unauthorized use of the Professional Document.

Where TETRA TECH has expressly authorized the use of the Professional Document by a third party (an "Authorized Party"), consideration for such authorization is the Authorized Party's acceptance of these Limitations on Use of this Document as well as any limitations on liability contained in the Contract with the Client (all of which is collectively termed the "Limitations on Liability"). The Authorized Party should carefully review both these Limitations on Use of this Document and the Contract prior to making any use of the Professional Document. Any use made of the Professional Document by an Authorized Party constitutes the Authorized Party's express acceptance of, and agreement to, the Limitations on Liability.

The Professional Document and any other form or type of data or documents generated by TETRA TECH during the performance of the work are TETRA TECH's professional work product and shall remain the copyright property of TETRA TECH.

The Professional Document is subject to copyright and shall not be reproduced either wholly or in part without the prior, written permission of TETRA TECH. Additional copies of the Document, if required, may be obtained upon request.

1.2 ALTERNATIVE DOCUMENT FORMAT

Where TETRA TECH submits electronic file and/or hard copy versions of the Professional Document or any drawings or other project-related documents and deliverables (collectively termed TETRA TECH's "Instruments of Professional Service"), only the signed and/or sealed versions shall be considered final. The original signed and/or sealed electronic file and/or hard copy version archived by TETRA TECH shall be deemed to be the original. TETRA TECH will archive a protected digital copy of the original signed and/or sealed version for a period of 10 years.

Both electronic file and/or hard copy versions of TETRA TECH's Instruments of Professional Service shall not, under any circumstances, be altered by any party except TETRA TECH. TETRA TECH's Instruments of Professional Service will be used only and exactly as submitted by TETRA TECH.

Electronic files submitted by TETRA TECH have been prepared and submitted using specific software and hardware systems. TETRA TECH makes no representation about the compatibility of these files with the Client's current or future software and hardware systems.

1.3 STANDARD OF CARE

Services performed by TETRA TECH for the Professional Document have been conducted in accordance with the Contract, in a manner consistent with the level of skill ordinarily exercised by members of the profession currently practicing under similar conditions in the jurisdiction in which the services are provided. Professional judgment has been applied in developing the conclusions and/or recommendations provided in this Professional Document. No warranty or guarantee, express or implied, is made concerning the test results, comments, recommendations, or any other portion of the Professional Document.

If any error or omission is detected by the Client or an Authorized Party, the error or omission must be immediately brought to the attention of TETRA TECH.

1.4 DISCLOSURE OF INFORMATION BY CLIENT

The Client acknowledges that it has fully cooperated with TETRA TECH with respect to the provision of all available information on the past, present, and proposed conditions on the site, including historical information respecting the use of the site. The Client further acknowledges that in order for TETRA TECH to properly provide the services contracted for in the Contract, TETRA TECH has relied upon the Client with respect to both the full disclosure and accuracy of any such information.

1.5 INFORMATION PROVIDED TO TETRA TECH BY OTHERS

During the performance of the work and the preparation of this Professional Document, TETRA TECH may have relied on information provided by third parties other than the Client.

While TETRA TECH endeavours to verify the accuracy of such information, TETRA TECH accepts no responsibility for the accuracy or the reliability of such information even where inaccurate or unreliable information impacts any recommendations, design or other deliverables and causes the Client or an Authorized Party loss or damage.

1.6 GENERAL LIMITATIONS OF DOCUMENT

This Professional Document is based solely on the conditions presented and the data available to TETRA TECH at the time the data were collected in the field or gathered from available databases.

The Client, and any Authorized Party, acknowledges that the Professional Document is based on limited data and that the conclusions, opinions, and recommendations contained in the Professional Document are the result of the application of professional judgment to such limited data.

The Professional Document is not applicable to any other sites, nor should it be relied upon for types of development other than those to which it refers. Any variation from the site conditions present, or variation in assumed conditions which might form the basis of design or recommendations as outlined in this document, at or on the development proposed as of the date of the Professional Document requires a supplementary exploration, investigation, and assessment.

TETRA TECH is neither qualified to, nor is it making, any recommendations with respect to the purchase, sale, investment or development of the property, the decisions on which are the sole responsibility of the Client.

1.7 ENVIRONMENTAL AND REGULATORY ISSUES

Unless stipulated in the report, TETRA TECH has not been retained to explore, address or consider and has not explored, addressed or considered any environmental or regulatory issues associated with development on the subject site.

1.8 NATURE AND EXACTNESS OF SOIL AND ROCK DESCRIPTIONS

Classification and identification of soils and rocks are based upon commonly accepted systems, methods and standards employed in professional geotechnical practice. This report contains descriptions of the systems and methods used. Where deviations from the system or method prevail, they are specifically mentioned.

Classification and identification of geological units are judgmental in nature as to both type and condition. TETRA TECH does not warrant conditions represented herein as exact, but infers accuracy only to the extent that is common in practice.

Where subsurface conditions encountered during development are different from those described in this report, qualified geotechnical personnel should revisit the site and review recommendations in light of the actual conditions encountered.

1.9 LOGS OF TESTHOLES

The testhole logs are a compilation of conditions and classification of soils and rocks as obtained from field observations and laboratory testing of selected samples. Soil and rock zones have been interpreted. Change from one geological zone to the other, indicated on the logs as a distinct line, can be, in fact, transitional. The extent of transition is interpretive. Any circumstance which requires precise definition of soil or rock zone transition elevations may require further investigation and review.

1.10 STRATIGRAPHIC AND GEOLOGICAL INFORMATION

The stratigraphic and geological information indicated on drawings contained in this report are inferred from logs of test holes and/or soil/rock exposures. Stratigraphy is known only at the locations of the test hole or exposure. Actual geology and stratigraphy between test holes and/or exposures may vary from that shown on these drawings. Natural variations in geological conditions are inherent and are a function of the historical environment. TETRA TECH does not represent the conditions illustrated as exact but recognizes that variations will exist. Where knowledge of more precise locations of geological units is necessary, additional exploration and review may be necessary.

1.11 PROTECTION OF EXPOSED GROUND

Excavation and construction operations expose geological materials to climatic elements (freeze/thaw, wet/dry) and/or mechanical disturbance which can cause severe deterioration. Unless otherwise specifically indicated in this report, the walls and floors of excavations must be protected from the elements, particularly moisture, desiccation, frost action and construction traffic.

1.12 SUPPORT OF ADJACENT GROUND AND STRUCTURES

Unless otherwise specifically advised, support of ground and structures adjacent to the anticipated construction and preservation of adjacent ground and structures from the adverse impact of construction activity is required.

1.13 INFLUENCE OF CONSTRUCTION ACTIVITY

Construction activity can impact structural performance of adjacent buildings and other installations. The influence of all anticipated construction activities should be considered by the contractor, owner, architect and prime engineer in consultation with a geotechnical engineer when the final design and construction techniques, and construction sequence are known.

1.14 OBSERVATIONS DURING CONSTRUCTION

Because of the nature of geological deposits, the judgmental nature of geotechnical engineering, and the potential of adverse circumstances arising from construction activity, observations during site preparation, excavation and construction should be carried out by a geotechnical engineer. These observations may then serve as the basis for confirmation and/or alteration of geotechnical recommendations or design guidelines presented herein.

1.15 DRAINAGE SYSTEMS

Unless otherwise specified, it is a condition of this report that effective temporary and permanent drainage systems are required and that they must be considered in relation to project purpose and function. Where temporary or permanent drainage systems are installed within or around a structure, these systems must protect the structure from loss of ground due to mechanisms such as internal erosion and must be designed so as to assure continued satisfactory performance of the drains. Specific design details regarding the geotechnical aspects of such systems (e.g. bedding material, surrounding soil, soil cover, geotextile type) should be reviewed by the geotechnical engineer to confirm the performance of the system is consistent with the conditions used in the geotechnical design.

1.16 DESIGN PARAMETERS

Bearing capacities for Limit States or Allowable Stress Design, strength/stiffness properties and similar geotechnical design parameters quoted in this report relate to a specific soil or rock type and condition. Construction activity and environmental circumstances can materially change the condition of soil or rock. The elevation at which a soil or rock type occurs is variable. It is a requirement of this report that structural elements be founded in and/or upon geological materials of the type and in the condition used in this report. Sufficient observations should be made by qualified geotechnical personnel during construction to assure that the soil and/or rock conditions considered in this report in fact exist at the site.

1.17 SAMPLES

TETRA TECH will retain all soil and rock samples for 30 days after this report is issued. Further storage or transfer of samples can be made at the Client's expense upon written request, otherwise samples will be discarded.

1.18 APPLICABLE CODES, STANDARDS, GUIDELINES & BEST PRACTICE

This document has been prepared based on the applicable codes, standards, guidelines or best practice as identified in the report. Some mandated codes, standards and guidelines (such as ASTM, AASHTO Bridge Design/Construction Codes, Canadian Highway Bridge Design Code, National/Provincial Building Codes) are routinely updated and corrections made. TETRA TECH cannot predict nor be held liable for any such future changes, amendments, errors or omissions in these documents that may have a bearing on the assessment, design or analyses included in this report.

APPENDIX B

NOVEMBER 20, 2023 MVLWB/BOARD LETTER



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November 20, 2023

File: MV2023L2-0001

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Michael Roesch
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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](#).

No.	Topic	Reviewer Comment	Reviewer Recommendation	Proponent Response
		<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>

No.	Topic	Reviewer Comment	Reviewer Recommendation	Proponent Response
				<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>

No.	Topic	Reviewer Comment	Reviewer Recommendation	Proponent Response
		<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>

No.	Topic	Reviewer Comment	Reviewer Recommendation	Proponent Response
		<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>		