

September 24, 2024

Sahtu Land and Water Board
Box 1, Fort Good Hope, NT, X0E 0H0

RE: K’ahsho Got’ine Committee Comments on Draft Type A Land Use Permit and Type B Water Licence for the Norman Wells Goose to Bear Island Flowline Replacement (S24A-005/S24L1-002)

I am counsel for the K’ahsho Got’ine Committee (the “Committee”), which consists of the Fort Good Hope Métis Nation Local #54 Land Corporation, the Fort Good Hope Dene Community Council, the Fort Good Hope Renewable Resources Council, the K’ahsho Development Foundation and the Yamoga Lands Corporations. Each of member of the Committee plays a key role in representing the K’ahsho Got’ine of Fort Good Hope and protecting the K’ahsho Got’ine’s inherent Indigenous Rights and Sahtu Dene and Métis Comprehensive Land Claim Agreement Rights (“K’ahsho Got’ine Rights”). The Committee submits this letter on behalf of the K’ahsho Got’ine of Fort Good Hope to provide comments on the Sahtu Land and Water Board’s (“SLWB”) draft Type A Land Use Permit and Type B Water Licence for the Line 490 Replacement Project.

The Committee has a strong interest in participating in the review process for Imperial Oil Northwest Territories Ltd.’s (IOR-NWT) applications for a Type A Land Use Permit and Type B Water Licence for the Line 490 Replacement Project with a view to ensuring that direct and cumulative impacts on K’ahsho Got’ine Rights are adequately identified, accommodated, justified, and offset. However, as indicated in the Committee’s July 17, 2024 and August 20, 2024 submissions, the Committee is of the opinion that SLWB’s regulatory process does not meet the requirements for meaningful or informed consultation. In particular, because the SLWB does not provide any funding to facilitate Indigenous group’s informed or meaningful engagement in the regulatory process, as is a required pursuant to the duty to consult.¹ As such, the Committee does not have resources to hire a technical team to support its review of the technical conditions in the SLWB’s draft Land Use Permit and Water Licence and, therefore, the following comments are limited in scope and do not meet the full requirements of the duty to consult or accommodate.

We remind the SLWB that when the Crown contemplates a decision that might adversely impact Indigenous people’s constitutionally protected rights, such as K’ahsho Got’ine Rights, the Crown has an obligation to consult and where appropriate accommodate such Indigenous peoples before a decision is made.² In particular, the Crown has a constitutional obligation to demonstrate a serious consideration of accommodation measures which address the concerns of Indigenous peoples.³ The Committee submits that the SLWB’s draft Land Use Permit and Water Licence do not adequately meet the Crown’s duty to accommodate.

On July 17, 2024, the Committee wrote a letter to the SLWB with recommendations on conditions for the Land Use Permit and Water Licence, should they be approved. The Committee recommended consistent and sustained funding for engagement, K’ahsho Got’ine monitoring programs, economic opportunities, cumulative effects studies, and better

¹ *Enge (North Slave Metis Alliance) v. Mandeville*, 2013 NWTSC 33 at para 269, quoting *Platinex Inc. v. Kitchen Uhmaykoosib Inninuvug First Nation*, 2007 CanLII 20790 (ON SC) at para 27 and *Saugeen First Nation v. Ontario (MNR)*, 2017 ONSC 3456.

² *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at para 35 and *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41 at para 29.

³ *Tsilil-Wautub Nation v. Canada (Attorney General)*, 2018 FCA 153, at para 678.



communication and transparency. However, the SLWB did not integrate any of these recommendations in its recent draft Land Use Plan and Water Licence.

On July 23, 2024, the SLWB wrote to the Committee and indicated that many of the Committee's recommendations were "beyond the Board's authority under legislation." However, contrary to the SLWB's assertion, we submit that the SLWB has broad authority to implement the Committee's. Pursuant to section 72.04(1) of the *Mackenzie Valley Resource Management Act*, the SLWB "may include in respect of a licence in a federal area any conditions it considers appropriate." Pursuant to this authority, the SLWB may issue conditions respecting funding, monitoring, cumulative effects studies and communications and transparency.

The Committee submits that the SLWB's Draft Land Use Permit and Water Licence fail to adequately accommodate K'ahsho Got'ine concerns. To ensure the protection of K'ahsho Got'ine Rights, the Committee submits that the following conditions should be integrated into both the draft Land Use Permit and Water Licence:

1. Capacity Funding for Continued Engagement: The Committee recommends that a condition be included in the Land Use Permit and Water Licence requiring IOR-NWT to provide for and report on capacity funding for Indigenous groups to engage with ongoing regulatory processes and filings on the Line 490 Replacement Project. There are several conditions in the draft Land Use Plan and Water Licence which require, or should require, Indigenous engagement, including requirements to incorporate traditional knowledge, to prepare an engagement plan, and to prepare a spill contingency plan, and to prepare a waste management plan. The Committee does not have any sustained, meaningful or long-term capacity funding to support engagement with these ongoing regulatory processes or filings. Courts have repeatedly held that "the issue of appropriate funding is essential to a fair and balanced consultation process, to ensure a level playing field."⁵ Without access to sustained funding, there is a real risk that the ongoing conditions will be considered and approved without Canada having discharged its duty to consult.
2. K'ahsho Got'ine Monitoring: The Committee recommends a condition which provides support for independent K'ahsho Got'ine led monitoring programs. Currently, the K'ahsho Got'ine Foundation supports water monitoring for the Government of the Northwest Territories and IOR-NWT's Aquatic Effects Monitoring Program. However, the K'ahsho Got'ine do not have autonomous control over the design of the monitoring program, the type of testing completed, or the ownership of the data. Furthermore, the current monitoring programs for the Norman Wells Operations do not include any long-term monitoring of impacts to K'ahsho Got'ine Rights. As a result, K'ahsho Got'ine do not trust the results of IOR-NWT's existing monitoring programs. Without trustworthy data on the quality and health of the water and wildlife, the K'ahsho Got'ine are impaired in the exercise of K'ahsho Got'ine Rights – including our right to healthy water, and to fish, hunt, and harvest. To address the impairment of K'ahsho Got'ine Rights, the Committee recommends that IOR-NWT be required to provide access to the facilities and funding for the Committee to complete independent monitoring for impacts to the environment and K'ahsho Got'ine Rights. This will facilitate K'ahsho Got'ine in continuing to exercise K'ahsho Got'ine Rights in lesser-impacted areas of the Mackenzie River and our surrounding territory. The Committee further recommends that IOR-NWT be required to report on how it has provided access to the facilities, funding, and capacity support for independent monitoring and how it plans to integrate the results and recommendations of K'ahsho Got'ine-led monitoring programs into its operations. Alternatively, the Committee recommends implementing an Indigenous Monitoring Oversight Committee to provide oversight in the water quality monitoring currently being conducted.
3. Cumulative Effects Studies: The Committee recommends that a condition be included in the Land Use Permit and Water Licence requiring IOR-NWT to complete a cumulative effects study, including an assessment of impacts to K'ahsho Got'ine Rights. IOR-NWT should be further required to engage Indigenous groups in such a study. A cumulative effects study is necessary because the last time an environmental assessment was

⁴ SC 1998, c 25

⁵ *Xeni Gwet'in First Nation v British Columbia*, 2007 BCSC 1700 at para 1138

completed for the Norman Wells Operations was in the mid-1980s, at which time law and science did not adequately recognize the adverse impacts of cumulative effects.

4. Communication and transparency: The Committee recommends updating the conditions in the draft Land Use Plan and Water Licence to require that IOR-NWT share all applications, filings and reporting with Indigenous groups. Under the draft Land Use Plan and Water Licence, IOR-NWT is not required to provide notice or engage Indigenous groups on many of its conditions. As a result, Indigenous groups, including the K’ahsho Got’ine, will lack key information on the Line 490 Replacement Project. This impairs the K’ahsho Got’ine in advocating for the protection of their K’ahsho Got’ine Rights.

The Committee further recommends that the SLWB update the conditions of the draft Land Use Plan and draft Water Licence as set out in the tables below. The recommended updates focus on ensuring that IOR-NWT is required to provide impacted Indigenous groups with notice of regulatory filings and is required to engage impacted Indigenous groups in the development of required plans. These updates ensure that the basic requirements of the Crown’s duty to consult, which includes notice and engagement, are met.

The words underlined and in blue indicate additions and the words with a ~~strike-through and in red~~ indicate removed words.

Table 1.1 Committee Recommendations on Draft Land Use Plan Conditions

Draft Condition	Recommended Update
2. At least 48 hours prior to the initial commencement of the land-use operation, the Permittee's Field Supervisor shall notify the Board and contact a GNWT Inspector at (867) 587-2356, and a CIRNAC Inspector at (867) 669-2442.	2. At least 48 hours prior to the initial commencement of the land-use operation, the Permittee's Field Supervisor shall notify the Board and contact a GNWT Inspector at (867) 587-2356, and a CIRNAC Inspector at (867) 669-2442, <u>and impacted Indigenous groups.</u>
3. At least 48 hours prior to commencement of the land-use operation, the Permittee shall provide the following information, in writing, to the Board and an Inspector: <ol style="list-style-type: none"> a) the name(s) of the person(s) in charge of the field operation; b) alternates; and c) all methods for contacting the above person(s). 	3. At least 48 hours prior to commencement of the land-use operation, the Permittee shall provide the following information, in writing, to the Board and an Inspector, <u>and impacted Indigenous groups</u> : <ol style="list-style-type: none"> a) the name(s) of the person(s) in charge of the field operation; b) alternates; and c) all methods for contacting the above person(s).
27. The Permittee shall comply with the Spill Contingency Plan, once approved, and shall annually review the plan and make any necessary revisions to reflect changes in operations, technology, chemicals, or fuels, or as directed by the Board. Revisions to the plan shall be submitted to the Board for approval.	27. The Permittee shall comply with the Spill Contingency Plan, once approved, and . <u>IOR-NWT shall engage impacted Indigenous groups on the Engagement Plan and shall report any outstanding concerns of impacted Indigenous groups with its application for approval. IOR-NWT</u> shall annually review the plan and make any necessary revisions to reflect changes in operations, technology, chemicals, or fuels, or as directed by the Board. Revisions to the plan shall be submitted to the Board for approval <u>with a summary of any outstanding concerns of impacted Indigenous groups on the plan.</u>
31. During the period of this Permit, if a spill occurs or is foreseeable, the Permittee shall[...] <ol style="list-style-type: none"> c) within 24 hours, notify the Board and an Inspector; and d) within 30 days of initially reporting the incident, submit a detailed report to the Board and an Inspector, including descriptions of causes, response actions, and any changes 	31. During the period of this Permit, if a spill occurs or is foreseeable, the Permittee shall[...] <ol style="list-style-type: none"> c) within 24 hours, notify the Board, and an Inspector, <u>and impacted Indigenous groups</u>; and d) within 30 days of initially reporting the incident, submit a detailed report to the Board, and an

to procedures to prevent similar occurrences in the future. Any updates to this report shall be provided to the Board and an Inspector in writing as changes occur.	Inspector, <u>and impacted Indigenous groups</u> , including descriptions of causes, response actions, and any changes to procedures to prevent similar occurrences in the future. Any updates to this report shall be provided to the Board, and an Inspector, <u>and impacted Indigenous groups</u> in writing as changes occur.
40. The Permittee shall comply with the Engagement Plan, once approved, and shall annually review the plan and make any necessary revisions to reflect changes in operations or as directed by the Board. Revisions to the plan shall be submitted to the Board for approval.	40. The Permittee shall comply with the Engagement Plan, once approved, and . <u>IOR-NWT shall engage impacted Indigenous groups on the Engagement Plan and shall report any outstanding concerns of impacted Indigenous groups with its application for approval. IOR-NWT</u> shall annually review the plan and make any necessary revisions to reflect changes in operations or as directed by the Board. Revisions to the plan shall be submitted to the Board for approval <u>with a summary of any outstanding concerns of impacted Indigenous groups on the plan.</u>

Table 1.2 Committee Recommendations on Draft Water Licence Conditions

Draft Condition	KGC Comment and Rationale
B.3. In conducting its activities under this Licence, the Licensee shall make every reasonable effort to consider and incorporate any scientific information and Traditional Knowledge that is made available to the Licensee.	B.3. In conducting its activities under this Licence, the Licensee shall make every reasonable effort to consider and incorporate any scientific information and Traditional Knowledge that is made available to the Licensee <u>and shall engage impacted Indigenous groups to hear Traditional Knowledge and shall incorporate such Traditional Knowledge.</u>
B.16. Beginning [enter date, including the year] and no later than every [enter date] thereafter, the Licensee shall submit an Annual Water Licence Report to the Board and an Inspector. The Report shall be in accordance with the requirements of Schedule 1, Condition 1.	B.16. Beginning [enter date, including the year] and no later than every [enter date] thereafter, the Licensee shall submit an Annual Water Licence Report to the Board, and an Inspector, <u>and impacted Indigenous groups.</u> The Report shall be in accordance with the requirements of Schedule 1, Condition 1.
B.17. The Licensee shall comply with the Engagement Plan, once approved.	B.17. The Licensee shall comply with the Engagement Plan, once approved. <u>IOR-NWT shall engage impacted Indigenous groups on the Engagement Plan and shall report any outstanding concerns of impacted Indigenous groups with its application for approval.</u>
B.18. A minimum of ten days prior to the initial commencement of Project activities, the Licensee shall provide written notification to the Board and an Inspector. Notification shall include the commencement date, and the name and contact information for the individual responsible for overseeing the Project. Written notification shall be provided to the Board and an Inspector if any changes occur.	B.18. A minimum of ten days prior to the initial commencement of Project activities, the Licensee shall provide written notification to the Board, and an Inspector, <u>and impacted Indigenous groups.</u> Notification shall include the commencement date, and the name and contact information for the individual responsible for overseeing the Project. Written notification shall be provided to the Board,

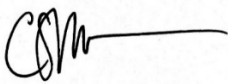
	and an Inspector, and impacted Indigenous groups if any changes occur.
E.4. A minimum of ten days prior to the commencement of Construction of any Engineered Structure(s), the Licensee shall provide written notification to the Board and an Inspector. Notification shall include the Construction commencement date, and the name and contact information for the individual responsible for overseeing Construction. Written notification shall be provided to the Board and an Inspector if any changes occur.	E.4. A minimum of ten days prior to the commencement of Construction of any Engineered Structure(s), the Licensee shall provide written notification to the Board, and an Inspector, and impacted Indigenous groups . Notification shall include the Construction commencement date, and the name and contact information for the individual responsible for overseeing Construction. Written notification shall be provided to the Board, and an Inspector, and impacted Indigenous groups if any changes occur.
F.3 The Licensee shall comply with the Waste Management Plan, once approved.	F.3 The Licensee shall comply with the Waste Management Plan, once approved. IOR-NWT shall engage impacted Indigenous groups on the Waste Management Plan and shall report any outstanding concerns of impacted Indigenous groups to the Board.
F.4 The Licensee shall comply with the Environmental Protection Plan, once approved.	F.4 The Licensee shall comply with the Environmental Protection Plan, once approved. IOR-NWT shall engage impacted Indigenous groups on the Environmental Protection Plan and shall report any outstanding concerns of impacted Indigenous groups to the Board.
F.5 A minimum 60 days prior to the commencement of Project Activities, the Licensee shall submit a Turbidity Monitoring Plan for Board approval.	F.5 A minimum 60 days prior to the commencement of Project Activities, the Licensee shall submit a Turbidity Monitoring Plan for Board approval. IOR-NWT shall engage impacted Indigenous groups on the Turbidity Monitoring Plan and shall report any outstanding concerns of impacted Indigenous groups to the Board upon its application for approval.
H.2 The Licensee shall comply with the Spill Contingency Plan, once approved.	H.2 The Licensee shall comply with the Spill Contingency Plan, once approved. IOR-NWT shall engage impacted Indigenous groups on the Spill Contingency Plan and shall report any outstanding concerns of impacted Indigenous groups to the Board.
H.3 If a spill or an Unauthorized Release occurs or is foreseeable, the Licensee shall [...] <ul style="list-style-type: none"> c) Notify the Board and an Inspector immediately; and d) Within 30 days of initially reporting the incident, or within a timeframe authorized by an Inspector, submit a detailed report to the Board and an Inspector, including descriptions of causes, response actions, and any changes to procedures to prevent similar occurrences in the future. Written notification shall be provided to the Board and an Inspector if any changes occur. 	H.3 If a spill or an Unauthorized Release occurs or is foreseeable, the Licensee shall [...] <ul style="list-style-type: none"> c) Notify the Board, and an Inspector, and impacted Indigenous groups immediately; and d) Within 30 days of initially reporting the incident, or within a timeframe authorized by an Inspector, submit a detailed report to the Board, and an Inspector, and impacted Indigenous groups, including descriptions of causes, response actions, and any changes to procedures to prevent similar occurrences in the future. Written notification shall be provided to the Board, and an Inspector, and impacted Indigenous groups if any changes occur.

Schedule 1, s.1 The Annual Water Licence Report referred to in Part B, Condition 16 of this Licence shall include, but not be limited to, the following information about activities conducted during the previous calendar year [...]
d) A summary of how Traditional Knowledge was incorporated into decision making;

Schedule 1, s.1 The Annual Water Licence Report referred to in Part B, Condition 16 of this Licence shall include, but not be limited to, the following information about activities conducted during the previous calendar year [...]
d) A summary of how [IOR-NWT engaged Indigenous peoples to hear Traditional Knowledge and how Traditional Knowledge](#) was incorporated into decision making;

The SLWB's current draft Land Use Permit and Water Licence fails to accommodate impacts to K'ahsho Got'ine Rights. To ensure the protection of K'ahsho Got'ine Rights, the Committee submits that the conditions set out in this letter must be integrated into the Land Use Permit and Water Licence.

Sincerely,



Ceilidh Stubbs
Legal Counsel for the K'ahsho Got'ine Committee