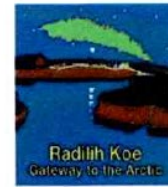


K'asho Got'ine Band



Yamoga LC



August 21, 2024

Sahtu Land and Water Board
Yamoga Building, Old Airport Road
PO Box 1, Fort Good Hope, NT, X0E 0H0

RE: Imperial Oil Resources N.W.T. Limited – Norman Wells Operations – Renewal of Type A Water Licence Application (S24L1-005)

The K'ahsho Got'ine Committee ("KGC") submits the following letter on behalf of the K'ahsho Got'ine of Fort Good Hope in respect of Imperial Oil N.W.T Limited's ("Imperial") application for a Type A Water Licence for the Norman Wells Operations (the "Application"). The K'ahsho Got'ine have a strong interest in meaningfully participating in the Sahtu Land and Water Board's ("Board") review process for the Application with the aim of protecting our inherent Indigenous Rights and our Sahtu Dene and Métis Comprehensive Land Claim Agreement Rights ("K'ahsho Got'ine").

The K'ahsho Got'ine Committee 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 Corporation. Each member of the K'ahsho Got'ine Committee plays a key role in representing the K'ahsho Got'ine of Fort Good Hope and protecting our K'ahsho Got'ine Rights.

The following letter provides an overview of K'ahsho Got'ine Rights and the Norman Wells Operation's impacts on such Rights, an analysis of the Crown's duty to consult K'ahsho Got'ine; the KGC's position on the requirement for a preliminary screening; and notice of a compensation claim.

I. K'ASHO GOT'INE RIGHTS AND IMPACTS TO SUCH RIGHTS

The K'ahsho Got'ine of Fort Good Hope are stewards of our territory and have protected our lands and waters, including the Mackenzie River, since time immemorial. Hiroki Masuzumi explained the importance of land and the protection of land to K'ahsho Got'ine in Oral Indigenous Knowledge Sessions held by the Canada Energy Regulator in Fort Good Hope in May 2024. Hiroki Masuzumi stated:

"Being K'asho Got'ine means more than just a cultural identity. It encompasses a deep connection to the land and a responsibility to protect it. The land is not just a physical space to us. It holds our history, traditions and spirituality."¹

The Mackenzie River is situated in the heart of our territory. The community of Fort Good Hope, important cultural gathering places, the protected area Ts'udé Niljné Tuyeta, and many hunting, fishing, and cultural camps are located along the banks of the Mackenzie River.

¹ Canada Energy Regulator, Hearing OH-001-2023, Oral Indigenous Knowledge Hearing, Volume 2 at page 322

We have constitutionally protected K’ahsho Got’ine Rights to our waters, lands, and practices thereon. Under the Sahtu Dene and Métis Comprehensive Land Claim Agreement, we have established rights, including a right to the substantially unaltered quality of the water in the Mackenzie River and a right to harvest and benefit from the full enjoyment of all species of wildlife within the settlement area.² We exercise many of our K’ahsho Got’ine Rights along and on the Mackenzie River.

The Norman Wells Operations is located directly upstream of our K’ahsho Got’ine territory and our community of Fort Good Hope. As such, the Operations pose a significant risk to our community, our way of life, and the exercise of our constitutionally protected K’ahsho Got’ine Rights. Any spill or contamination on or near the Mackenzie River could impact water quality or K’ahsho Got’ine trust in water quality and would have a devastating impact on the exercise of our K’ahsho Got’ine Rights.

Concern about the Norman Wells Operation’s impacts on the health of the wildlife has already impaired our exercise of our K’ahsho Got’ine Rights. Twyla Edgi explained the impact of the Norman Wells Operations on the harvesting in Oral Indigenous Knowledge Sessions held by the Canada Energy Regulator in Fort Good Hope in May 2024. Twyla Edgi stated:

"I work on dried fish and that's when my kids get so excited because they get to eat Dene-Béré that's their food. And to see my kids smile and want their food. But there was a spill that happened in Norman Wells where all of us had to pull our nets because we were scared what was going into the fish, and I've been seeing lately that there's more of these little white things that are coming on the guts. Like the guts are getting like so much little white lumps and stuff on their guts, and I'm seeing more of it happening lately. So it kind of makes me scared to work on fish and to feed my kids that. And it makes me sad that I have to restrict my kids Dene-Béré because of things that are happening in the water."³

We also rely on the Mackenzie River as a source of drinking water. In Fort Good Hope, water for the community reservoir is pumped and filtered from the Mackenzie River. In K’ahsho Got’ine camps located along the banks of the Mackenzie River, many people also drink unfiltered water directly from the River.

II. DUTY TO CONSULT

The Crown’s duty to consult is proportionate to the strength of Indigenous peoples rights claim and the seriousness of potential adverse impacts on such rights.⁴ In this case, the Crown’s duty to consult is on the high end of the spectrum because K’ahsho Got’ine Rights are proven under the Sahtu Dene and Métis Comprehensive Land Claim Agreement and the potential adverse impacts of the Norman Wells Operations on K’ahsho Got’ine Rights is serious.

In circumstances where Indigenous peoples rights are established under treaty, such as K’ahsho Got’ine Rights established under the *Sahtu Dene and Métis Comprehensive Land Claim Agreement*, the Crown must clearly identify potential mitigation, accommodation and/or justification measures to address potential impacts or infringements on K’ahsho Got’ine Rights prior to making a decision regarding the Application.⁵

² Section 20.1.8(a) and 13.4.1 of the *Sahtu Dene and Metis Comprehensive Land Claim Agreement*.

³ Canada Energy Regulator, Hearing OH-001-2023, Oral Indigenous Knowledge Hearing, Volume 2 at page 174-175

⁴ *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at para 68.

⁵ *R. v. Sparrow*, 1990 CanLII 104 (SCC), [1990] 1 S.C.R. 1075; *R. v. Badger*, [1996] 1 SCR 771, 1996 CanLII 236 (SCC).

As set out in Yamoga Lands Corporation's July 10, 2024 letter to the Board, consultation also requires sufficient capacity funding to enable the K'ahsho Got'ine to engage in a meaningful and informed manner.⁶ We acknowledge that Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) put out a Participant Funding Call as part of the Northern Participant Funding Program, to support participation in this proceeding and we plan to apply for funding under this Program. However, the Participant Funding Call was only distributed on August 9, 2024 and we have not yet had time to make an application. As such, we currently have no funding to participate in the proceedings, including this comment period and we are sure if or how much funding we will receive when we do apply. This makes it difficult for us to prepare meaningful and informed submissions at the time of this comment period.

Despite the lack of current funding available, we have prepared the following submissions as a high-level overview of K'ahsho Got'ine Rights and the impacts of the Norman Wells Operations on such Rights. However, we want to emphasize that these submissions *do not* amount to meaningful or informed engagement because we have not yet received funding to review the applications; attain an in-depth technical understanding of the Project; or engage the K'ahsho Got'ine Assembly on impacts to Rights. We intend to provide further submissions which include a more detailed analysis of project impacts on K'ahsho Got'ine rights after we have received funding or at least have an idea of how much funding is available for our involvement in this review process.

III. PRELIMINARY SCREENING AND ENVIRONMENTAL ASSESSMENT

In its online review system, the Board indicated that it agrees with Imperial's position that the Application may be exempt from preliminary screening in accordance with the *Exemption List Regulations* (the "*Regulations*").⁷ However, the Board also welcomed comments and recommendations from any person who believes a preliminary screening is required and the KGC has prepared the following submissions for that purpose.

Imperial expressed its position that the Application is exempt from preliminary screening because it constitutes a development under Schedule 1: Part 1 section 2.1 of the *Regulations* which fulfilled the requirements of the environmental assessment process under the *Mackenzie Valley Resource Management Act* (the "*Act*")⁸, by completing a preliminary screening in 1999, and the development not been modified since those requirements were met. As such, Imperial submits that the Application is exempt under section 2 of the *Regulations*.

The KGC submits that the Application is not exempt from preliminary screening under Schedule 1: Part 1 section 2.1 of the *Regulations* because the Norman Wells Operations have been modified since the 1999 preliminary screening and may be further modified later this year.

Modification is defined in the *Regulations* as follows: "in respect of a structure, means a change, other than an expansion, that does not alter the purpose or function of the structure."⁹ This definition also gives meaning to the definition of modification under Schedule 1: Part 1 section 2.1(b) of the *Regulations* in respect of the Norman Wells Operations. Pursuant to this definition, a development is not exempt from a preliminary screening if it has been changed, other than an expansion, in a way that has not altered its purpose.

The Norman Wells Operations were changed and, therefore, modified on July 27, 2022, when Line 490, between Goose and Bear Island, failed and was put out of production. The Norman Wells Operations may also be modified

⁶ *Platinex Inc. v Kitchenuhmaykoosib Inninuwug First Nation*, [2007] O.J. No. 2214 (ONSC) at para 27

⁷ SOR 99-13

⁸ SC 1998, c 25

⁹ *Exemption List Regulations*, section 1

later this year if the Applications for the Line 490 Replacement Project are approved and Line 490 is replaced using horizontal directional drilling technology. The failure and replacement of Line 490 constitute changes to the Norman Wells Operations which will not alter its purpose. As such, the Norman Wells Operations have been modified since the 1999 preliminary screening and are not exempt from preliminary screening under Schedule 1: Part 1 section 2.1 of the *Regulations*.

The KGC, therefore, submits that the Application is not exempt from a preliminary screening and requires an environmental assessment because the Application might have a significant adverse impact on the environment or might be a cause of public concern under 125(1)(a) of the Act.

In the event that a regulatory exemption does apply to the Application, section 25.3.4(b) of the Sahtu Dene and Métis Comprehensive Land Claim Agreement authorizes the Mackenzie Valley Environmental Impact Review Board to conduct an environmental assessment of a project despite any regulatory exemption if there is “special environmental concern by reason of [...] cumulative effects or otherwise”:

25.3.3(b) “Legislation shall provide that a development proposal which would otherwise be exempt from assessment may be assessed if, in the opinion of the Review Board, it is considered to be of special environmental concern by reason of its cumulative effects or otherwise.”

Section 25.3.3(b) is not explicitly affirmed in the *Act*, but the language of that section requires that it be affirmed in legislation because the term “shall” is used and is prescriptive. In addition, the Sahtu Dene and Métis Comprehensive Land Claim Agreement prevails to the extent of any inconsistency with legislation.¹⁰ The content of section 25.3.3(b) therefore prevails to the extent of the failure of the *Act* to include such provisions. As such, the KGC relies on section 25.3.3(b) and argues that it authorizes an environmental assessment for the Application because there is “special environmental concern by reason of... cumulative effects”. K’ahsho Got’ine expressed their environmental concern of cumulative effects of Imperial’s operations along the Mackenzie River in the Oral Indigenous Knowledge Sessions held by the Canada Energy Regulator in Fort Good Hope in May 2024. Joseph Tobac stated:

“I feel that I am already living with the impacts of damage to the river. Herring was plentiful in the past, but there are no herring around today. I have not seen any herring come out of the Mackenzie River in my lifetime. I hear stories of the river full of herring.”¹¹

For the reasons set out above, these cumulative effects must be evaluated through an environmental assessment pursuant to section 25.3.3(b).

Furthermore, K’ahsho Got’ine are stewards of our lands and have ultimate decision-making authority within our territory, including decision-making authority over proposed development. This decision-making authority is affirmed by the principles of Free Prior and Informed Consent documented in the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*. Canada and the Government of the Northwest Territories have committed to implementing UNDRIP in legislation. This commitment requires that the government and government actors obtain the K’ahsho Got’ine’s free, prior and informed consent prior to approving development,

¹⁰ Section 3.1.22 “Where there is any inconsistency or conflict between the settlement legislation or this agreement and the provisions of any law, the settlement legislation or this agreement, as the case may be, shall prevail to the extent of the inconsistency or conflict.”

¹¹ Canada Energy Regulator, Imperial Oil Resources N.W.T. Limited Variance Application for Operations Authorization OA 1210-001 and Application for Line 490 Replacement Activities Hearing OH-001-2023, Oral Indigenous Knowledge Hearing, Volume 1 at page 33.

including the Line 490 Replacement Project, on our lands. The K'ahsho Got'ine submit that we cannot provide *informed* consent for the reasons set out above and will not provide consent to the Line 490 Replacement Project without a thorough assessment of the impacts of the proposed project to the environment and our K'ahsho Got'ine Rights.

IV. COMPENSATION CLAIM

In its online review system and work plan, the Board indicated that the deadline to file a claim for water compensation must be submitted by the review comment deadline. The KGC hereby provides notice of its intent to file a claim for water compensation. Please advise us of next steps and further information required in this process for a water compensation.

Sincerely,



Chief Collin Pierrot
Fort Good Hope Dene
Community Council



Edwin Erutse
Yamoga Lands
Corporation



Aurora McNeely
Fort Good Hope Métis
Nation Local #54 Land
Corporation



Bonny Kakfwi
Fort Good Hope Renewable
Resources Council



Darcy Edgi
K'ahsho Got'ine
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