

## Tłıchǫ Government

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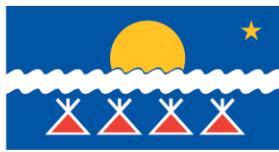
### **Re: Closing Argument for the Kwetı̀ǵàà (Rayrock) Remediation Project; W2020L8-0003 and W2020X0005**

This is the Tłıchǫ Government's closing argument for the Kwetı̀ǵàà (Rayrock) Remediation Project and water licensing process (W2020L8-0003 and W2020X0005). The old Rayrock mine is in the heart of Tłıchǫ lands. We take the remediation of this Project very seriously as a government. Our elders provide us guidance on an ongoing basis, and we work closely with CIRNAC to ensure that information is integrated into project decisions.

The Tłıchǫ Government (TG) has participated throughout the proceedings, specifically offering:

- An intervention report (April 9, 2021), and a summary presentation for the public hearings (April 28-30). These documents cover the participation of the (established in 2010). The elders provided design principles that they wish to see in place (Table 1), such as youth engagement, teaching youth while remediation occurs, government engagement with the TG, ongoing communication, and learning from science and TK, as well as site visits twice a year. Elders also provided site-specific guidance.
- Strong Tłıchǫ presence and active participation at the public hearings, including Elders, men, women, and youth from all four Tłıchǫ communities, and Tłıchǫ Government Grand Chief George Mackenzie. Tłıchǫ people spoke with clear, passionate, and personal statements at the hearing – communicating the hurt, damage, and enduring fear that Rayrock represents in the collective Tłıchǫ psyche; as well as concern and cautious hope for the health of the land, water, wildlife, and for future generations to be able to restore Kwetı̀ǵàà into the Tłıchǫ cultural landscape.
- A response to Undertakings 4-6 (May 14, 2021), which carefully laid out TG closure objectives for the closure plan.
- Comments on the draft water licence and land use permit (June 10, 2021).

We believe Tłıchǫ Government views were clearly presented at the public hearings and in our intervention report. The importance of the Kwetı̀ǵàà (Rayrock) site, the importance of cleaning it up in a way that is guided by western science and traditional knowledge (TK), is vital to restoring Tłıchǫ confidence in the area. The Kwetı̀ǵàà Elders Committee (KEC) and Grand Chief George Mackenzie who



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attended and spoke at the public hearings reinforced the necessity of cleaning up the abandoned mine site properly.

### 1.1 TŁICHǪ GOVERNMENT RECOMMENDATIONS

The land and water should be remediated and the conditions improved to the fullest extent possible, and be inclusive of the entire Rayrock site, including areas surrounding the site.

1.1.1 General principles of Rayrock remediation are tracked here, including how they were treated in the draft licence.

Principle (from Table 1 of TG Intervention)	Draft Water Licence	CIRNAC Comment and TG Response
Make the site safe and shrink the avoidance zone	<p>In general, the physical remediation work is intended to make the site safe and all the water licence conditions and the work TG and CIRNAC are doing together will help make sure that happens.</p> <p>Schedule 2, item 2) for Conditions applying to general conditions refers to providing funding for monitoring. This funding could be used to carry out active Tłıchǫ monitoring and to work on shrinking the avoidance zone through strong risk communication.</p>	No further action needed
Broad Tłıchǫ involvement, including youth.	<p>This principle was recognized in Schedule 2, Condition Applying to General Conditions, d) to include elders.</p> <p>This quote from Stephanie Beaverho in the hearings (28 April 2021) illustrates this point: “And he also said that if you work together as a nation, we can accomplish lots; that's what Jimmy Rabesca said in February. And then, from what Joseph</p>	<p>CIRNAC suggested that capacity-building is beyond the scope of regulatory matters.</p> <p>This is a TG priority and we need to make sure it gets done. Our view is that having it in the water licence recognizes how important it is and how it is linked to the project the Board will be licensing. TG welcomes Schedule 2 references to non-water and land based issues,</p>

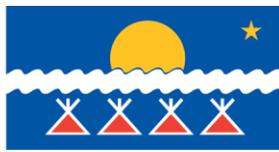


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	Judas said too, Today we need more youth involved and training for our youth to do -- to some more studying and sampling for service and how to do some regulation priority.”	such as engagement, capacity and TK.  TG notes that the WLWB has very broad discretion to set water licence conditions in relation to the project.
Our governments need to keep our communities informed.	Engagement Plan generally refers to this issue	No further comment
Ongoing communication and learning from both science and TK.	There is a requirement to assist with risk communication, with a time frame for at least five years after in Schedule 2, f)	While CIRNAC does not view funding of this matter as a regulatory issue, the TG does and requests that it be maintained and revised as noted.
Teach youth TK while remediation is occurring.	No reference found	No further comment
Conduct of site visits twice each year.	This vital principle was recognized in Schedule 2, Condition Applying to General Conditions, d). This reflects TG intentions and CIRNAC commitment to fund and support this.	No CIRNAC comment made
We raised concerns with the Rayrock Human Health and Ecological Risk Assessment (HHERA) and would like to see the risk assessment done again after the planned remediation work is complete.	No reference made	The HHERA is a fundamental component to re-establishing trust in the area, and is a study required as a part of the Waste Nuclear Substance License. The TG will continue work on this issue through the TG led risk communication, using the results of the HHERA when it is completed again.

Further comment on specific TG comments on the draft water license are:



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- The TG is pleased that some of the TG identified sites for water quality monitoring became added locations by the WLWB. (TG-2 & 3, as referred to in Comment 1).
- The TG notes that the Guidelines for Closure and Reclamation of Mine Sites has a limited definition of closure, one that restricts activities to the use of land or waters or the deposit of waste. The TG has brought a cultural and social perspective to the remediation of the site, and welcomes the vision of remediation as proposed in Schedule 2 (General Conditions, TG Comment 7, CIRNAC response, June 17).
- The TG is pleased that CIRNAC agrees to the co-Inspector or environmental monitor condition (TG Comment 8);
- It is important to get the Closure and Reclamation Objectives and Criteria right. The TG has reissued the Objectives based on the vision of the Elders (See Undertaking #6 Response from TG, May 14, 2021). There are a number of TG comments that fall outside regulatory matters, according to CIRNAC. Due to the fact that there was no environmental assessment, there are no cultural or social measures related to capacity, cultural criteria for closure, and traditional knowledge. These might fall to the Engagement Plan, however the TG prefers to see a more expansive view of capacity taken in relation to this project. Requests such as that made in TG Comment 18 (for capacity building) and in TG Community 16, 17, and 32, 33, 34 related to the vision for objectives and performance assessment are expansive. Including these things in water licence conditions helps ensure key principles are implemented and commitments are followed through on, otherwise they may be seen as a best effort or voluntary requirements. We see that this was largely done in Schedule 2 (the Conditions Applying to General Conditions), and we hope to see that the additional recommendations that have been put forward by the TG are also integrated in the final licence.
- TG also reinforces the importance of maintaining reporting requirements for the confined disposal facility (CDF) and new technologies, (TG Comment 26 & 27). The TG requests an explicit requirement in the Performance Assessment Report to report plain language and technical descriptions of the integrity of the CDF structures. Further, while a ten-year licence may not allow enough time for new technologies to emerge, we cannot know that future licences won't be required. By including the requirement in this Licence, it can be carried forward into any future licences. If there are no emerging technologies in the term of this licence, CIRNAC can simply state this in the PAR. It would also help provide certainty and add value if the water licence somehow requires CIRNAC to report on a long-term schedule to examine emerging technologies, for example every 10, 20, or 50 years.

### 1.2 MILL LAKE AND MILL AREA

The plan for the Mill Lake and Mill Area is emerging. The continued engagement and technical review by the TG internal team, as well as by the Independent Peer Review Panel (IPRP) is vital. The TG continues to learn from our joint technical review, and we greatly value the input and guidance of the IPRP, and



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the ongoing collaborative work review with CIRNAC. With access to the IPRP and continued collaboration with CIRNAC, TG is able to ensure the principles and vision of the Elders and Tłıchǫ Citizens are implemented.

### 1.3 TAILINGS AREAS

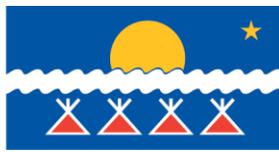
The tailings areas include the two capped tailings storage areas, the tailings pipeline spill sites, and the tailings impacted water bodies including Tìch'ìì kwjwì tìa (Gamma Lake), Tsà tìa (Beta Lake) and Kwetjǰaà tìàa (Alpha Bay). Based on the guidance of the Elders, the Tłıchǫ Government has the following recommendations:

- Environmental quality must be improved in the tailings water bodies.
- Additional measures must be taken to improve the performance of the tailings caps.
- All historic tailings pipeline spills must be capped or appropriately mitigated. Leaving any exposed tailings in place without remediation is not acceptable.
- The Tłıchǫ need to be engaged in planning remedial activities for the tailings areas, with both traditional knowledge and science considered.

The proposed plan does not place adequate effort on minimizing potential impacts from the tailings areas. The capping of the tailings was done over 25 years ago under difficult weather and field conditions. We feel that additional effort is necessary to improve the tailings areas to reduce the chemical and radiological risk at site to as low as reasonably achievable (ALARA principle) and to limit downstream transport of contaminants.

Key recommendations specific to the tailings water bodies are:

- Water quality needs to be improved.
- Options for improving water quality should be thoroughly investigated.
- Active remediation should be performed to improve and protect water quality.
- Expanded monitoring of the tailings areas and drainage paths is warranted. Monitoring should include insects, vegetation, animals, hydrology, water, sediment, benthos, and groundwater.
- Where feasible, contaminated water should be kept in the area rather than allowed to flow downstream.
- Water quality must be protected for future generations.



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The Tłıchǫ Government is currently working with CIRNAC to identify what can be done to improve the environmental quality of the tailings areas and water bodies.

### 1.4 BETA LAKE AND GAMMA LAKE

The remediation of Beta Lake, Gamma Lake, and Alpha Bay (i.e. the tailings water bodies), particularly Beta and Gamma, has been raised by the Tłıchǫ Government and KEC as being **a critical component in the successful remediation of the Rayrock site**. Failure to remediate these tailings water bodies could jeopardize the success of the entire remediation effort.

We understand that the remediation of the tailings water bodies is not part of this water licence application; however, both CIRNAC and the Board acknowledged the concerns raised by Tłıchǫ Government and KEC in respect of the remediation of these water bodies, and allowed for engagement on these concerns in the course of proceedings associated with the current water licence application.

The importance of remediating the tailings water bodies is shown by the TG intervention including Elder's quotes, the oral testimony of Tłıchǫ men, women, Elders, and youth at the public hearings, as well as TG principles around cleaning up the whole site and not leaving areas unremediated, which were emphasized by Grand Chief George Mackenzie at the hearings.

In response to Tłıchǫ concerns about remediation of the tailings water bodies, CIRNAC committed to looking at options for improving the tailings covers adjacent to these lakes and for improving water quality in the lakes themselves. CIRNAC provided TG a draft report titled "Beta and Gamma Lake Remedial Options Review" which set out in detail some of the options for improving water quality in the tailings water bodies. CIRNAC committed to TG that it would include the options analysis as part of their response to interventions to the WLWB. This did not occur; however, CIRNAC has continued to provide assurances to TG about taking actions to remediate the tailings water bodies, and working in good faith with TG to identify solutions.

While the current water licence under consideration by the Board does not include the tailings water bodies, CIRNAC has acknowledged to TG that a licence amendment or Type B water licence will be required to remediate the tailings water bodies and that further dialogue about additional licencing requirements will form part of ongoing discussions about the remediation design and remedial options for the lakes.

**In light of the above, we recommend that the Board notifies the Minister as part of the Board's recommendation on the current water licence application about the importance to the Tłıchǫ of remediating the Beta Lake and Gamma Lake tailings water bodies, and the need for a licence amendment or Type B water licence to allow this remediation work to occur.** These considerations are directly linked to the Rayrock Remediation Project as a whole. As discussed in Section 1.2 below, we are also asking the Board to provide further notice to the Minister regarding commitments made by CIRNAC relating to remediation of the tailings water bodies, in order to fulfill the Board's duty to communicate Crown consultation matters.





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Over the course of the last several months, CIRNAC and Tłıchǫ Government have been meeting to discuss how we can work together to achieve these vital objectives. CIRNAC has acknowledged that achieving these objectives is at the core of the overall remediation goal and purpose. This work is part of true reconciliation – recognizing past harm and finding a positive way to move forward together. The legacy of Rayrock is complex, repairing it requires great care and attention, unwavering commitment, and deep collaboration. We have a strong working relationship with the CIRNAC project team. In the course of our ongoing engagement with CIRNAC, federal project team members have acknowledged and agreed that:

- significant funding is needed to support Tlıcho Government’s active role in the remediation work, and
- without TG in a central role, the remediation project has zero chance of success.

On the record at the WLWB Public Hearings for the Rayrock Remediation Project, CIRNAC officials committed to undertaking ongoing remediation work in fully collaboration with Tłıchǫ representatives, and to covering the costs of Tlıcho participation in all aspects of remediation and monitoring. CIRNAC officials also agreed that the Tłıchǫ should play a lead role in several areas of ongoing remediation, monitoring, and risk communication work associated with the Rayrock Remediation Project.

In the course of the hearings for this water licence application, we asked direct questions to members of the CIRNAC project team about CIRNAC’s commitment to covering all the reasonable costs for Tłıchǫ Government to participate in ongoing remediation efforts. We were told on the record that<sup>1</sup>:

- the Regional Director General had identified that additional grants and contribution funding could be sought for the Tłıchǫ to participate in remediation and monitoring work associated with the Rayrock Remediation Project, and
- CIRNAC is committed to covering all the reasonable costs for Tłıchǫ Government to participate in remediation and monitoring work identified in CIRNAC’s written response to TG’s intervention, and to matching funding to TG’s proposal as long as it is linked to the remediation project.

Now for unspecified reasons beyond the control of our partners on the CIRNAC project team, the crucial funds are not materializing. We are deeply distressed by what appears to be the federal government resiling from commitments made to TG about the support required for TG to play an active role in ongoing remediation and monitoring work. If Canada is indeed renegeing on its commitments relating to capacity funding, this is inconsistent with reconciliation and the Honour of the Crown. It will be deeply harmful to our government-to-government relationship.

We recognize that the Board operates within the framework established by the Tłıchǫ Agreement and the MVRMA, and to a certain extent may be limited by the scope of the applications it is considering, but the Board may also have a duty to inform the Minister about Crown consultation issues that the Board learns about during its proceedings. This may be especially important for projects such as the Rayrock

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<sup>1</sup> WLWB Public Hearing Transcript Date April 28, 2021, page 147. [http://registry.mvlwb.ca/Documents/W2020L8-0003/Rayrock%20-%20Public%20Hearing%20Transcript%20from%20Day%201%20of%203%20-%20Apr%2028\\_21.pdf](http://registry.mvlwb.ca/Documents/W2020L8-0003/Rayrock%20-%20Public%20Hearing%20Transcript%20from%20Day%201%20of%203%20-%20Apr%2028_21.pdf)



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Remediation Project, which is currently expected to undergo only a preliminary screening by the Board, rather than a full environmental assessment.

**Because the matter of capacity funding is a Crown consultation issue directly related to the applications being considered by the Board, we respectfully request that the Board identify this issue when making its Type A Water Licence recommendation to the Minister.**

### 1.6 CONCLUSION

We thank the Board for its careful attention throughout this proceeding, including the use of engagement methods that were both COVID-safe and culturally appropriate. We appreciate the support and collaboration of the CIRNAC project team and all who have participated. And we especially recognize the Elders, youth, and Tłıchǫ Citizens who shared their knowledge, their energy, and spoke from the heart and soul at the public hearings and during the whole remediation planning process.

Masì.

In Tłıchǫ Unity,

Tammy Steinwand-Deschambeault  
Department of Culture, Language & Lands Protection