



**Tłıchǫ Government**

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February 8, 2022

Mason Mantla, Chair  
Wek'èezhii Land and Water Board

**Re: Closing Argument for the Ekati Point Lake Project Proceeding**

Dear Mason Mantla

Please accept this letter as the Tłıchǫ Government's Closing Argument for the Water Licence Amendment Application for the Ekati Point Lake Project.

Tłıchǫ Government supports the Ekati Point Lake Project going ahead. Throughout this proceeding, we have said that the Project should not make life more difficult for ekwò and ekwò migration, and impacts on ekwò habitat must be minimized and mitigated to the fullest extent possible. We have maintained that the water, land, wildlife, and environment must be protected during operations and in the long-term after mine closure. We outlined how the Board could concretely reflect these priorities in the land use permit and water licence.

We would like to make a few general comments and clarify for the Board where we stand on our specific recommendations.

- 1. Important steps remain to identify the best possible design for the waste rock and overburden piles, to protect ekwò habitat and water quality.** In particular, the Tłıchǫ Elders site visit and future Traditional Knowledge discussions may result in new design improvements that are not yet on the table. Our ability to provide meaningful Traditional Knowledge was limited during this proceeding, due to Covid-19 restrictions. We are hopeful that the Tłıchǫ Government will be able to propose improvements that are economically feasible for the project, based on the best available science and Traditional Knowledge. Similarly, there may be new design improvements that arise from an alternatives assessment, if the Board requires one. We believe Arctic must be open to new ideas and improvements to the designs discussed so far. We expect that the remainder of the process for finalizing the design will allow a good faith and robust effort to find the best design for the piles.
- 2. We stand by the recommendations we made in our intervention and on the draft permit and licence conditions.**
- 3. There are some specific recommendations we would like to further explain and emphasize below, and address some of Arctic's responses to our recommendations.**



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## Permit and Licence Conditions

- a) We recommended that the licence or permit identify high level objectives for the Waste Rock Storage Area (WRSA) and overburden pile designs (see TG comment 1). These objectives are about (1) minimizing disturbance of ekwǫ habitat to maintain space for ekwǫ migration, (2) protecting the esker, (3) fitting into the natural terrain, and (4) reclaiming the piles to resemble natural hills. We also recommended an adjustment to the objective for the esker, to make that objective broad like the others.

We stand by our recommended objectives. They are at the heart of the TG's views about the Point Lake Project and how important it is to protect ekwǫ habitat – they should be reflected in the design of the piles, including the closure design. Our recommended objectives are “high-level” enough that they should not unduly burden the company's resources. It is implicit that any design will need to balance these objectives and other factors, and the TG will provide input on this balance.

- b) Also, the Waste Rock Storage Area Design Report schedule should require Arctic to describe how they have met these objectives. This is consistent with our recommendation in TG comment 11 that the Report directly and holistically address ekwǫ habitat. It is very important that the Report discusses all factors that might impact ekwǫ habitat, such as height, location, distance from the esker, shape, orientation, footprint, slopes, etc., not just stability and other engineering topics. This is necessary for the TG to provide meaningful input on the design and how it relates to ekwǫ habitat, especially the final permanent state of the piles when reclamation is complete. TG and the Elders have been working hard on this issue and we hope the Report will help us see how Tłıchǫ input has improved the design of the piles.
- c) Overburden Usage. We recommended conditions to ensure that Arctic uses as much overburden as possible in reclaiming the Ekati site (TG comment 4). Specifically, we recommended:
- An Overburden Use Plan
  - A condition requiring Arctic to maximize the use of Point Lake overburden during operations and closure

Using the overburden has the double benefit of reclaiming land around the site and protecting ekwǫ habitat by shrinking the overburden pile. Arctic can use overburden to meet many closure objectives around the site and help meet the objectives we recommend for the Point Lake WRSAs (in the paragraphs above).

Arctic responded that this issue can be handled under the closure and reclamation plan without any additional licence or permit conditions. Arctic also noted that the licence requires them to engage on this issue. However, we feel that Arctic's approach does not give the Board the tools and information it needs to oversee this important issue. We maintain that an objective to maximize the use of overburden is reasonable and well-supported by the concerns for ekwǫ habitat on the record. We do not believe these requirements are a heavy burden on the



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company. If Arctic believes some uses of overburden are not economically feasible, it can make this case in the Overburden Use Plan for the Board's consideration.

While we prefer a stand-alone Overburden Use Plan, the requirements could be in the schedule for the closure and reclamation plan (Schedule 9) instead.

- d) We stand by our recommendation that the licence should require Arctic to flatten/fill the entire length of the Lac du Sauvage Road shortly after licence issuance (TG comment 5). Arctic has already committed to improving the Lac du Sauvage Road.<sup>1</sup> These improvements are a very important opportunity to reduce the disturbances and barrier effects to ekwǫ habitat at the Point Lake Project. We don't believe this issue should be handled only in the Closure and Reclamation Plan. That approach provides no guarantee that the road will be meaningfully modified to improve ekwǫ movement and provides no assurance of when the work will be done. The closure and reclamation plan is not an effective tool (on its own) for setting timeframes that need Board oversight.

As emphasized by the TG and other parties, this is a habitat issue directly related to the Point Lake project and needs to be addressed as soon as possible – our understanding is that that time will be as soon as overburden from Point Lake is available. This is a very specific issue and warrants specific attention in the licence/permit for Point Lake, it should not be left to the general closure and reclamation planning process for the Ekati Mine.

- e) As we noted in our intervention, we believe Arctic should cover the waste rock piles and flood the pits as soon as possible. We recommended a condition in the licence to ensure this happens (TG comment 17). This is because the longer waste rock sits, the more soluble metals build up on the rock. This increases the risk of contaminating water bodies. Arctic responded that the commitments in their application submission are enough. We disagree. We believe the Board needs a tool to ensure there are no unnecessary delays. Arctic noted that the TG didn't provide a rationale for our suggested timeframes. The TG suggested reasonable timeframes for the company to comment on, so the timeframes could be improved if necessary. Regardless, our proposed condition gives the Board the flexibility to approve a change to the deadline, at Arctic's request.
- f) We stand by our recommendation to include a condition in the permit to address the Misery Road (TG comment 7). Point Lake kimberlite will be hauled on the Misery Road to the processing plant after all other mining has stopped, so it's extended use is a part of the Point Lake Project. The ekwǫ collar data suggest this road is a barrier across ekwǫ habitat and migration pathways. We do not have enough information to know what improvements Arctic can make during operations. We recommend that the Board consider land use permit conditions to obtain more information from Arctic about options for improving the road, and a condition to require these changes if they are warranted. Again, leaving this to the Closure and Reclamation Plan or to the WEMP does not give the Board enough oversight over this important issue.

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<sup>1</sup> See for example page 49 of the public hearing transcripts.



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- g) We recommended improvements to the Sable Road to reduce the effect on ekwò movement through the Ekati Mine and to offset some of the impacts of the Point Lake Project. We understand that Arctic is committed to improving the Sable Road.<sup>2</sup> In an undertaking to the Board, the GNWT stated that “The Tłıchǫ Government’s recommended addition of caribou crossings on the Sable Road are habitat-related mitigations that would best be captured in the Land Use Permit. Currently, Land Use Permit W2016F0006 allows Arctic to construct, operate and maintain a haul road to the Pigeon and Sable Pits and allows for the construction of caribou crossings.” We trust the Board will determine the best way of including requirements for the Sable Road improvements in a WLWB authorization. We believe the Board could include habitat improvements along the Sable Road.

As one option for implementing the TG recommendations on Misery Road and Sable Road, TG recommends that the WLWB consider requiring Arctic to update its Caribou Offset and Mitigation Plan (CMP) to add the Point Lake Project in order to:

- implement an on-site habitat offsetting strategy that considers the Point Lake project as part of the overall Ekati Mine Project, consistent with Measure 6-2(a) for the Jay Project EA.
- make improvements to minimize barrier effects of the Sable Road and Misery Road through on-site habitat offsets/enhancements and accelerated progressive reclamation.

We stand by the remainder of our recommendations, for the reasons already expressed by Tłıchǫ Elders at the public hearing and outlined in our submissions to the Board.

Regarding ekwò issues, we understand that some will be part of the Wildlife Effects Management Plan (WEMP) that the GNWT administers; **however**, we believe the permit and licence should address the most important ekwò habitat and reclamation-related issues. We are not aware of anything in the Wildlife Act that reduces the Board’s authority on these issues. Tłıchǫ Government supports the WEMP and supports regulatory coordination, but we do not believe the WLWB should rely on uncertain future mitigations outside of the Board’s control when issuing permits and licences for this project.

The WLWB has demonstrated that it has a robust and inclusive public process, can set and enforce deadlines, tracks compliance with permits and licences, and can provide oversight on operations, closure, and the overlap between these two phases (e.g., design for closure).

Habitat and reclamation are clearly in the Board’s jurisdiction. **We recommend that in areas where the WLWB has jurisdiction, the Board should exercise its discretion** in order to fulfill objectives and considerations of section 22.3.9 of the Tłıchǫ Agreement. For wildlife habitat, this means setting conditions to ensure that ekwò habitat – including use of, access to, and migration through ekwò habitat – is protected as much as possible. Tłıchǫ Government has made specific recommendations about ekwò habitat and other issues for the Board to consider.

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<sup>2</sup> See for example page 3 of Day 1 of the public hearing transcripts.



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## **Conclusion**

We are confident that the Board will carefully consider all the relevant evidence and will take our recommendations to heart in its decision-making. Masi to the Board, Arctic, all intervenors, the Tłıchǫ Yatıı interpreters, and everyone who supported this proceeding.

In Tłıchǫ Unity,

A handwritten signature in black ink, appearing to read "Tammy Steinwand-Deschambeault".

Tammy Steinwand-Deschambeault  
Director,  
Department of Culture & Lands Protection  
Tłıchǫ Government