NORTH AMERICAN TUNGSTEN CORPORATION LTD

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June 3, 2025

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

Attention: Kathy Racher, Executive Director

Dear Ms. Racher,

Re: MV2023L2-0001 and MV2023D0010 – Termination of Proceedings

North American Tungsten Corporation Ltd. ("**NATC**") is providing this letter in response to the Mackenzie Valley Land and Water Board ("**MVLWB**") decision on November 6, 2024 (attached) and the related request to submit updated documents, as needed, in order to continue the proceeding for water licence MV2023L2-0001. Accordingly, NATC is hereby notifying the MVLWB that it will not be providing updated documents, but rather is terminating the proceedings associated with MV2023L2-0001 and MV2023D0010, being the type B water licence ("**Type B Proceeding**") and land use permit ("**LUP Proceeding**") for care and maintenance of the Cantung Mine, respectively.

NATC no longer requires a licence and permit specific to care and maintenance for the following reasons:

a) the protracted Type B Proceeding resulting from responses to, and consideration from, the MVLWB and other stakeholders with respect to information requests from the MVLWB and in particular, information request #3 ("**IR3**"), whereby IR3 required the review and analysis of the legal framework relating to the issuance of a Type B licence;

b) the issuance of NATC's existing water licence MV2023L2-0006; and

c) the significant progress NATC has made in advancing permanent closure planning of the Cantung Mine.

Further, NATC views that continuing with the Type B Proceeding (MV2023L2-0001) and LUP Proceeding (MV2023D0010) is no longer in the public interest. NATC's time and resources, and those of its Indigenous partners ("**Indigenous Partners**") and other stakeholders, would be better used towards expeditiously advancing permanent closure of the Cantung Mine.

NATC appreciates the thoughtful and thorough arguments submitted by parties in response to IR3 and the MVLWB's carefully considered decision.

NATC looks forward to continuing permanent closure planning with its Indigenous Partners and other stakeholders and will continue to work closely with the MVLWB on formulating an efficient and appropriate regulatory path forward. Respondents in the Type B Proceeding (MV2023L2-0001) and LUP Proceeding (MV2023D0010) have indicated a strong preference for a public hearing on future

licencing for the Cantung Mine to be held in person and in affected Indigenous communities; NATC continues to support this interest and expects this to be represented in a future workplan for a closure water licence.

Should you have any questions regarding the foregoing, feel free to contact the writer or Marianna Lee at (604) 639 - 0845 or marianna.lee@alvarezandmarsal.com.

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. Murray, A. Love, J. Ho
CIRNAC Northern Contaminated Sites Program: J. Mackey, M. Yetman, S. Kennedy, M. Benjamin
A&M: M. Lee, 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; Łíídlı̨ı̨ Kų́ę́ First Nation; Nahʔą Dehé Dene Band; Ross River Dena Council

Mackenzie Valley Land and Water Board

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November 6, 2024

File: MV2023L2-0001

Todd Martin
Court-Appointed Monitor
North American Tungsten Corporation Ltd.
902-925 West Georgia St.
Vancouver BC V6C 3L2

Sent by email

Dear Todd Martin,

Re: Type A vs type B Water Licence and Public Hearing Board Decisions – Cantung Mine Site – Mining and Milling

The Mackenzie Valley Land and Water Board (Board) met on October 24, 2024, and considered whether it has the jurisdiction to issue a type B water licence to North American Tungsten Corporation Ltd. (NATCL) for care and maintenance of the Cantung Mine (the Project) as described in the Application for Water Licence (Licence) MV2023L2-0001 submitted on March 14, 2023.[1]

The Board has determined that:

1) That the Project described in the Application for Licence MV2023L2-0001 meets the licensing criteria for a type B water licence, and the Board will accept and process the Application as an application for a type B water licence; and
2) That, in the public interest, a public hearing shall be scheduled as part of the regulatory proceeding for the Application.

The details of the Board's decision are set out in the attached Reasons for Decision.

The Board notes that following the submission of the Application for Licence MV2023L2-0001, on July 6, 2023, NATCL submitted a renewal application for a type A Licence (MV2023L2-0006) for mining and milling activities at the Cantung Mine site.[2] It was noted by NATCL that this was necessary so that they could

[1] See MVLWB Online Registry www.mvlwb.com for NATCL - Application - Water Licence - Mar15_23.
[2] See MVLWB Online Registry for NATCL - MV2023L2-0006.

continue the current licensed activities while the regulatory proceeding for Licence MV2023L2-0001 was ongoing, and the Board issued the renewal Licence on February 1, 2024.

In order to recommence the water licensing process for Licence MV2023L2-0001, the Board requires NATCL to submit any documents that may have been updated during the regulatory proceeding for Licence MV2023L2-0006 or that reflect any changes since the submission of this Application. All submissions are to be in accordance with the *LWB Document Submission Standards*.

Following the submission of any updated documents, a draft work plan will be developed outlining the steps in the regulatory process and sent out to the distribution list for review. As noted above, the work plan will include a public hearing. The location of the public hearing has not yet been determined.

Note that if the Board decides to issue the type B Licence for the Project, and there are no other Project activities that will be continuing under the existing type A Licence MV2023L2-0006, then the type A Licence should be cancelled.

The Board recommends that NATCL contact Board staff to discuss the submission of updated documents for the Application, the process for applying to cancel Licence MV2023L2-0006, and any comments or concerns that NATCL may have.

Please direct questions or concerns regarding this letter to Kathy Racher via email.

Yours sincerely,

Tanya MacIntosh

Tanya MacIntosh
Chair, Mackenzie Valley Land and Water Board

BCC'd to: NATCL/Cantung Distribution List

Attached: Reasons for Decision

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Reasons for Decision

Issued pursuant to section 72.25 of the *Mackenzie Valley Resource Management Act* (MVRMA)

Water Licence Application	
File Number	MV2023L2-0001
Company	North American Tungsten Corporation Ltd.
Project	Care and Maintenance of the Cantung Mine
Location	Cantung Mine, NT
Activity	Mining and Milling
Date of Decision	October 24, 2024

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On October 24, 2024, the Mackenzie Valley Land and Water Board (MVLWB or Board) met and considered whether it had the jurisdiction to issue a type B water licence to North American Tungsten Corporation Ltd. (NATCL) (the Applicant) for care and maintenance of the Cantung Mine (the Project) as described in NATCL's Application for Water Licence (Licence) MV2023L2-0001. After reviewing the Application and the evidence gathered during an Information Request and review process, the Board has made the following decisions:

1) That the Project described in the Application for Licence MV2023L2-0001 meets the licensing criteria for a type B water licence, and the Board will accept and process the Application as an application for a type B water licence; and
2) That, in the public interest, a public hearing shall be scheduled as part of the regulatory proceeding for the Application.

These Reasons for Decision set out the Board's regulatory process for the Application to date, its Ruling with rationale regarding the applicable licensing criteria of the Water Licence, and its decision on scheduling a public hearing.

A summary of the Application and the main issues identified during the proceeding is provided in sections 2.0 and 3.0 below, followed by an outline of the regulatory process for the Application in section 4.0. Section 5.0 describes how the applicable legislative requirements have been met. The Board's decisions and supporting rationale are set out in section 6.0.

1.0 List of Defined Terms and Acronyms

Applicant/Licensee	North American Tungsten Corporation Ltd.
Application	The complete application package submitted by the Applicant for Water Licence MV2023L2-0001.
CIRNAC	Crown-Indigenous Relations and Northern Affairs Canada, Yellowknife Office
CIRNAC- Inspector	Crown-Indigenous Relations and Northern Affairs Canada, Inspector
Distribution List	The list of individuals and organizations to whom materials from the regulatory proceeding were circulated.[1]
ECCC	Environment and Climate Change Canada
GNWT	Government of the Northwest Territories
GNWT-ECC	Government of the Northwest Territories – Environment and Climate Change
IR	Information Request
Inspector	An Inspector designated under subsection 84(1) of the *Mackenzie Valley Resource Management Act*
Licence	Water Licence MV2023L2-0001
LFN	Liard First Nation

[1] To access the Distribution List, see the LWBs' Online Review System for Cantung Care and Maintenance - Type B Renewal Licence and Type A Permit Applications - Mar24_23.

LKFN	Łíídlıı̨ Kų́ę́ First Nation
LWBs	Land and Water Boards of the Mackenzie Valley
MVFAWR or Regulations	Mackenzie Valley Federal Areas Waters Regulations
MVLWB or Board	Mackenzie Valley Land and Water Board
MVRMA	*Mackenzie Valley Resource Management Act*
Minister	Minister of Northern Affairs
NDDB	Nahɔą Dehé Dene Band
ORS	Online Review System (https://new.onlinereviewsystem.ca/reviews)
Party	As per the LWB *Rules of Procedures*, an applicant, a person, or an organization participating in this regulatory process.
Project	Care and maintenance of the Cantung Mine

2.0 Summary of Application

On March 14, 2023, the Applicant submitted a type B water licence application (MV2023L2-0001)[2] (the Application) and a type A land use permit application (MV2023D0010) to conduct care and maintenance activities at the Cantung Mine site. These Reasons for Decision focus solely on the jurisdictional and procedural issues raised in relation to the licence – any discussion on the associated permit is not addressed in these Reasons as it is not relevant to the decisions before the Board.

NATCL summarized[3] the objectives of care and maintenance (C&M) as:

- maintaining Mine site compliance with applicable authorizations and regulations
- protecting public safety and interest relative to the Mine
- carrying out risk reduction activities on site
- conducting final closure planning (this includes engaging affected Parties on the plan for final closure)

The Application includes the following proposed activities:

- withdrawal of water for domestic use and dust suppression;
- deposit of waste to the Tailings Containment Areas (TCAs), Landfill, and Contaminated Soil Treatment Facility;
- disposal of sewage;
- handling and storage of petroleum products and hazardous materials;
- operation and maintenance of Sewage Treatment Plant, Landfill, and Contaminated Soil Treatment Facility;
- maintenance of TCAs; and

[2] See MVLWB Online Registry www.mvlwb.com for NATCL - Application - Water Licence - Mar15_23.

[3] See MVLWB Online Registry for NATCL - Application - Project Description - Mar24_23.

- progressive reclamation.

These activities are located within a federal area of the Dehcho Region. Previously, NATCL held type A Licence MV2015L2-0003 for mining and milling activities at the Cantung Mine site.[4] Licence MV2015L2-0003 expired on January 27, 2024, and was replaced by Licence MV2023L2-0006, issued by the Board on February 1, 2024.[5]

In making its decision and preparing these Reasons for Decision, the Board has reviewed and considered:

1) The Application as submitted by the Applicant for the Project;
2) The evidence and submissions received by the Board from the Applicant and all Parties in relation to the Application; and
3) The comments and recommendations, evidence, and submissions received by the Board from Parties during the regulatory proceeding for this Ruling.

3.0 Main Issues Raised During the Regulatory Proceeding

During the initial review of the Application, Parties raised two issues that required resolution before the Board could proceed with the Application. These Reasons for Decision focus solely on these two issues; however, points relevant to either of these issues that were not disputed by Parties are not addressed in detail.

1) Whether the Project requires a type B or a type A water licence

In their initial comments on the Application, NATCL, Crown Indigenous Relations and Northern Affairs Canada-Yellowknife (CIRNAC), and the Government of the Northwest Territories – Department of Environment and Climate Change (GNWT-ECC) disagreed about the interpretation and effect of the legislation with respect to the type of licence required for the Project.[6] CIRNAC and the GNWT-ECC both argued that the Project requires a type A licence, while NATCL asserted that the Project only met the criteria for a type B licence.

Since the type A and type B licences have different requirements with respect to regulatory process (i.e., requirements for a public hearing and Ministerial sign-off of the final licence), the Board decided to make a legal Ruling before continuing the regulatory process for the Application. Section 6.1 of these Reasons present the evidence submitted by Parties and analyzed by the Board in coming to its decision that the activities described in the Application meet the requirement for a type B water licence, and that the Application will be accepted and processed as a type B licence application.

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[4] See MVLWB Online Registry for NATCL - Cantung - Approval - Modification Request - Dec21_22.

[5] See MVLWB Online Registry for NATCL - Issuance - Type A Water Licence - Feb1_24.

[6] See MVLWB Online Review System for Cantung Care and Maintenance - Type B Renewal Licence and Type A Permit Applications - Mar 24_23; GNWT-ECC comment 2; CIRNAC comment 1.

2) If the Application is determined to be a type B licence application, whether the Board should schedule a public hearing

In its comments on the initial Application, Nahɔą Dehé Dene Band (NDDB) requested that there be a public hearing for the Project and that the hearing take place in Nahanni Butte. In a letter submitted during review of the initial Application, Liard First Nation stated that "it is critical" that the water licence process have a technical meeting and a public hearing, but that the location of the public hearing be at the Board's discretion. In response, NATCL supported the requests for both a technical meeting and a public hearing.

If the Application were to be processed as a type A application, a public hearing would have been mandatory. However, since the Board decided to proceed with the Application as a type B licence application, the public hearing is optional.[7] For the reasons described in section 6.2, the Board has decided to include a public hearing for this proceeding.

4.0 Regulatory Process

On March 14, 2023, the Applicant submitted the Application. On March 24, 2023, additional information was received, and the Application was subsequently deemed complete and circulated to the Distribution List for public review on the Online Review System (ORS).[8]

Public notice of the Application was published in *News North* during the week of March 27, 2023, to fulfill subsection 72.16(1) of the MVRMA.[9]

On April 28, 2023, the review period was extended to May 19, 2023, in response to a request from CIRNAC.[10] By May 19, 2023, the Board received comments and recommendations regarding the Application from the following Parties:

- Liard First Nation (LFN);
- CIRNAC;
- Environment and Climate Change Canada (ECCC);
- Acho Dene Koe First Nation;
- CIRNAC-Inspector;
- Nahɔą Dehé Dene Band (NDDB);
- Łíídlıı Kų́ę́ First Nation (LKFN);
- Government of the Northwest Territories Department of Environment and Climate Change (GNWT-ECC);

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[7] Section 72.15(1) of the MVRMA.

[8] See MVLWB Online Review System for Cantung Care and Maintenance - Type B Renewal Licence and Type A Permit Applications - Mar24_23.

[9] See MVLWB Online Registry for NATCL - Application - News North - Mar27_23.

[10] See MVLWB Online Registry for NATCL - Application - Review Comment Extension Request - April28_23.

- Parks Canada; and
- Board staff also submitted comments and questions for the purposes of clarification.

On June 2, 2023, the response deadline was extended to June 6, 2023, in response to a request from NATCL.[11] NATCL responded to comments on the ORS by June 6, 2023.[12]

On June 20, 2023, Board staff sent the Applicant two Information Requests (IRs).[13] IR#1 was related to the water quality of some site discharges and IR#2 requested information on the classification of the tailings impoundment dam. NATCL responded to the IRs by July 24, 2023.[14] On October 10, 2023, the Applicant submitted a Dam Consequence Classification Review to supplement the IR#2 response that was submitted on July 24, 2023.[15]

On November 20, 2023, Board staff sent IR#3 to NATCL, CIRNAC, and GNWT-ECC[16] to gather additional evidence and argument related to the whether the activities described in the Application met the criteria for a type B or a type A licence. The original due date for the IR#3 responses was December 18, 2023.

On December 11, 2023, NATCL requested an extension to IR#3 which was granted by Board staff. On February 23, 2024, responses to IR#3 were received from NATCL, CIRNAC, and GNWT-ECC.

In its February 23, 2024, response to IR#3, NATCL objected to the MVLWB's proposed approach of sending the IR#3 responses to a Mackenzie Valley-wide distribution list. NATCL stated that the Board should only "seek(s) input from the Parties to the Proceeding, not the public at large" and that, therefore, the "distribution of NATCL's response to IR#3 should be restricted to the Parties to the Proceeding."[17] In a March 26, 2024, response, Board staff explained why the review was open to all parties in the Mackenzie Valley.[18]

On April 4, 2024, Board staff initiated a public review of the IR#3 responses from NATCL, CIRNAC, and GNWT-ECC. This public review was open to parties across the Mackenzie Valley including organizations, governments, First Nations, Indigenous organizations, industry, and licensees.[19] In response to requests from parties, extensions to the review deadlines were granted by Board staff on April 17, May 3, and May 13, 2024. On May 21, 2024, public review comments were received from the following parties:

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[11] See MVLWB Online Registry for NATCL - Application - Review Comment Response Extension Request - June 2_23.
[12] See MVLWB Online Registry for NATCL - Application - Initial Review Comments and Attachments - June 6_23.
[13] See MVLWB Online Registry for NATCL - Application - Information Request - June 20_23.
[14] See MVLWB Online Registry for NATCL - Application - Information Request Response - July 24_23.
[15] See MVLWB Online Registry for NATCL - Application - Dam Consequence Classification Review and Cover Letter - Oct 10_23.
[16] See MVLWB Online Registry for NATCL - Application - Information Request - Nov 20_23.
[17] See MVLWB Online Registry for NATCL - Response from NATCL to Information Request 3 - Feb 23_24.
[18] See MVLWB Online Registry for NATCL - MVLWB Response to IR3 - Mar25_24.
[19] To access the Distribution List, see the LWBs' Online Review System for Cantung Mine - Care and Maintenance - Legal Interpretation - When would a type B licence replace a type A licence - April4_24.

- Liard First Nation (LFN)
- Nahɔą Dehé Dene Band (NDDB)
- Łíídlıı̨ Kų́ę́ First Nation (LKFN)
- Fisheries and Oceans Canada
- Tłı̨chǫ Government
- NWT and NU Chamber of Mines (Chamber)
- GNWT-ECC

On May 31, 2024, responses to public review comments were submitted by CIRNAC and GNWT-ECC.

On June 4, July 3, and July 31, 2024, extensions to the response deadline were requested by NATCL and granted by Board staff. On August 28, 2024, NATCL submitted its final responses to the Board.

On October 24, 2024, the Board met to make a Ruling on whether the Application should be for a type A or type B licence, and if the Application were to be considered a type B licence application, whether the regulatory proceeding should include a public hearing in the public interest. These decisions and related reasons are described in sections 5.0 and 6.0 below.

5.0 Legislative Requirements Related to this Proceeding

This Project is subject to the MVRMA and the Mackenzie Valley Federal Areas Waters Regulations (MVFAWR) with respect to licensing because it is located in a federal area.

In this proceeding, the Board has considered the people and users of the land and water in the Mackenzie Valley, and any Traditional Knowledge and scientific information that was made available to the Board during the proceeding for this Ruling, as per section 60.1 of the MVRMA. To that end, the Board notes that while a project-specific distribution list was and will be used in the regulatory proceeding for the Application, Board staff invited all parties in the Mackenzie Valley to provide input on the specific questions of legal interpretation that arose from the regulatory proceeding. Although NATCL objected to this broader distribution list,[20] the Board is of the opinion that Board staff's approach was correct. As noted by Board staff, one of the LWBs' most important responsibilities is to run inclusive and transparent processes to ensure all potentially affects parties are consulted. Indeed, pursuant to section 9.1 of the MVRMA, the purpose of the establishment of the boards is to enable residents of the Mackenzie Valley to participate in the management of its resources for the benefit of the residents and of other Canadians.

In this case, parties outside of the region immediately surrounding the Cantung Mine may be affected by this Ruling, since the interpretation of the MVRMA in the Ruling may be relevant to other water licence

[20] See MVLWB Online Registry for NATCL - Response from NATCL to Information Request 3 - Feb 23_24.

proceedings in the Mackenzie Valley.[21] The consideration of information provided to the Board is discussed in detail in section 6.0.

5.1 Legislation relevant to whether the Project requires a type B or a type A licence

As per the MVFAWR, the proposed use of water and the potential deposit of waste[22] for this Project require a water licence. Accordingly, the Board has jurisdiction to issue the Licence as per subsection 60(1) and section 102 of the MVRMA. To carry out the correct regulatory process for the Application however, the Board needed, in this case, to first make a ruling on whether the Application met the criteria for a type A or type B licence. The details of this Ruling and relevant interpretations of the legislation are described in section 6.1.

Section 8 of the MVFAWR set out the relevant criteria in relation to the LWBs' licensing power. This is the only section of the MVFAWR (outside of the Schedules) that references type A or type B licences, and the only section of the MVFAWR that references subsection 72.03(1) of the MVRMA.

> 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.]

5.2 Legislation relevant to an optional public hearing in a proceeding for a type B licence application

A public hearing is a mandatory part of a regulatory proceeding for a type A water licence, but it is optional for a type B water licence proceeding. Paragraph 72.15(1)(a) of the MVRMA describes that a LWB may hold a public hearing for a type B proceeding in the public interest:

> 72.15 (1) If a board is satisfied that it would be in the public interest, it may hold a public hearing in connection with any matter relating to its objects, including, in respect of a federal area or lands outside a federal area,
> (a) the issuance or renewal of, or an amendment to, a type B licence;

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[21] See MVLWB Online Registry for NATCL - MVLWB Response to IR3 - Mar25_24.

[22] The Applicant applied for a water licence based on proposed water use; they did not indicate that there would be any waste deposit. IR#1, issued by Board staff on June 20, 2023, asked for further information so the Board and all parties could evaluate the potential for waste deposit. As described further in section 6.1.4, the potential deposit of waste will be discussed during the regulatory proceeding. Note that the deposit of waste does not affect the licence classification in this case.

Note that the MVRMA does not include a definition or criteria for what is "in the public interest" so this interpretation is at the Board's discretion.

If a public hearing is held for a type B licence, then section 72.13 requires that the federal Minister approve the licence.

6.0 Decision

As noted in section 2.0, NATCL submitted the Application for a type B licence in support of conducting care and maintenance activities at the Cantung Mine Site. In making its decision on whether a type A or type B licence application is required, the Board has reviewed the Application, the evidence submitted to date in the regulatory proceeding, the evidence and arguments submitted regarding IR#3, and the relevant legislation. Based on this review, the Board has determined that the applicable legislation indicates it has the authority to issue a type B licence for the Project if appropriate for the proposed activities, and further, after evaluating the Application against the applicable licensing criteria, that the Application is appropriately classified as a type B licence application. Consequently, the Board will accept and process the Application as a type B licence application. However, given that two Parties requested a public hearing, and that NATCL and other Parties are not opposed to a public hearing, the Board has decided to include a public hearing in the regulatory proceeding for the Application.

Section 6.1 details the Board's reasons for its decision on whether a type A or B licence is required for the Project as proposed in the Application. Section 6.2 then presents the Board's reasons for its subsequent decision to hold a public hearing.

6.1 Determination of the Type of Licence Required

As a matter of course, applicants are expected to evaluate their own project against the licensing criteria and indicate the class and type of licence they are applying for in their application. On receipt of an application, Board staff review the proposed activities and confirm that the proposed class and type of licence appear correct, pending any additional information provided during the proceeding.

In this case, in their original comments regarding the Application, CIRNAC and GNWT-ECC both recommended that NATCL withdraw its type B Application and resubmit it as an application for a type A water licence.[23] Although CIRNAC and GNWT-ECC both believed that the Project should be licenced as a type A, they did so for different reasons:

[23] See MVLWB Online Review System for Cantung Care and Maintenance - Type B Renewal Licence and Type A Permit Applications - March 24, 2023; GNWT-ECC comment 2 and CIRNAC comment 1.

- GNWT-ECC: "The 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."[24]
- CIRNAC argued that storage of existing waste within the Tailings Containment Areas (TCAs) exceeds the criteria for a type B water licence as per Column III of Schedule V, item 2(5) in the MVFAWR and, therefore, that the Project still requires a type A water licence.[25]

GNWT-ECC's position, as articulated in its initial comments on the Application, is that the legislation only allows projects to go from a type A to a type B licence under certain specific circumstances. GNWT-ECC subsequently implied that these circumstances are not met in this case. Therefore, to determine how to evaluate the Project against the licensing criteria and to carry out the correct regulatory process for the Application, the Board first needed to make a ruling on whether it could issue a type B licence for the Project.

To support this Ruling, IR#3 was issued to gather information on two consecutive legal questions: one for the general case and one for the specific case. These two questions were:

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?

6.1.1 Interpretation of the legislative framework

In its May 31, 2024, submission, GNWT-ECC summarized their interpretation with respect to the type A to type B question as follows:

- "Until a mine that required a type A water licence during active mining and milling, on the basis of deposit of waste, has met the closure criteria set by the applicable land and water board, that mine continues to require a type A water licence.
- Once the closure criteria have been met or if the mine is abandoned and the Crown or another entity then becomes responsible for the remediation, the undertaking becomes a miscellaneous undertaking rather than a mining and milling undertaking."[26]

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[24] See MVLWB Online Review System for Cantung Care and Maintenance - Type B Renewal Licence and Type A Permit Applications - March 24, 2023; GNWT-ECC comment 2.

[25] See MVLWB Online Review System for Cantung Care and Maintenance - Type B Renewal Licence and Type A Permit Applications - Mar 24 23; CIRNAC comment 1.

[26] See MVLWB Online Registry for NATCL - Responses from GNWT-ECC to Comments on IR3 - May31 24.

The GNWT-ECC supported its interpretation on the basis that it "aligns with the provisions of the MVFAWR," that it is "conceptually logical," and that it avoids "absurd consequences."[27] However, both NATCL and the Chamber noted that there is no specific language or wording in the MVRMA or the MVFAWR that supports GNWT-ECC's interpretation.[28]

The implication of GNWT-ECC's argument in the second bullet point above is that the determination of whether a project that previously had a type A licence can be continued under a type B licence is based on the applicant's identity and intentions. This approach is contrary to the objective analysis taken by the LWBs in classifying licences based on the nature of a proposed use of water and deposit of waste, as set out in the Regulations. As noted by Tłı̨chǫ Government, "[m]aking the possibility of the reclassification of an undertaking contingent on who the operator is and requiring that a licence type determination for projects in receivership be based on a subjective analysis of whether there is any potential to seek a new operator would move away from the activity-based licensing criteria that underpin the regime and towards determinations based on the analysis of proponents and their intentions."[29]

CIRNAC took the view that the Board would have the jurisdiction to issue a type B water licence to replace a type A water licence if the scope of the application met the criteria for a type B water licence under the MVFAWR.[30]

The Tłı̨chǫ Government point out that:

> "Curtailing the Boards' authority to issue type B licences where the original licence for an undertaking is type A in certain instances (i.e., if closure criteria for a mine have not been met or if there remains the potential to see a new operator) would undermine the Boards' ability to make accurate, reasonable, evidence-based decisions as they attempt to fulfill their mandates."[31]

The NWT & Nunavut Chamber of Mines (Chamber) submitted that the analysis with respect to IR#3 question a) is no more complicated than: "If an application for a use of water or deposit of waste meets the criteria in the Schedules to each set of regulations for a type B licence, the board shall issue a type B licence." And "If an application for a use of water or deposit of waste meets the criteria in the Schedules to each set of regulations for a type A licence, the board shall issue a type A licence." The Chamber goes on to submit that "Once a Type A, does not mean always a Type A," and that should the mine enter back

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[27] See MVLWB Online Registry for NATCL - Responses from GNWT-ECC to Comments on IR3 - May31_24.

[28] See MVLWB Online Registry for NATCL - Responses from NATCL to Comments on IR3 - Aug28_24; Appendix A and NATCL - Comments and Recommendations on IR3 from Chamber of Mines - May14_24.

[29] See MVLWB Online Registry for NATCL - Comments and Recommendations on IR3 from TG - May24_24.

[30] See MVLWB Online Registry for NATCL - Response from CIRNAC to IR3 - Feb23_24.

[31] See MVLWB Online Registry for NATCL - Comments and Recommendations on IR3 from TG - May24_24.

into production, and that activity requires a type A licence, then the licensee would need to secure a type A licence.[32]

Other arguments made by the Parties are addressed in the analysis below.

Analysis and conclusion

The LWBs' specific jurisdiction to issue licences in federal areas under Part 3 of the MVRMA flows from subsection 72.03(1) of the MVRMA:

> 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, on payment of the fees prescribed by regulations made under paragraph 90.3(1)(k), at the times and in the manner prescribed by any applicable regulations made under paragraph 90.3(1)(l) or, in the absence of such regulations, at the times and in the manner set out in 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.]

The "regulations" referred to in this section are the MVFAWR.

The federal *Interpretation Act* states: "The expression 'shall' is to be construed as imperative and the expression 'may' as permissive."[33]

The word "may" in subsection 72.03(1)'s opening phrase "a board may issue" is to be construed as permissive. This signals that the section gives the LWBs a power to do something that they would otherwise not have legal authority to do, i.e., issue a licence in a federal area. In the absence of any limitations, this power confers a discretion on a LWB to decide whether to issue a licence.

There is, however, an express limitation on a LWB's licencing power. A LWB cannot issue licences as it sees fit. Pursuant to subsection 72.03(1) of the MVRMA, Parliament has indicated its intention that a LWB may only issue type A licences and type B licences "in accordance with the criteria set out in the regulations." Consideration of the criteria in the Regulations is therefore paramount when exercising a LWB's power to issue licences.

The Board was unable to find any language in the MVRMA or the MVFAWR that support's GNWT-ECC's interpretation or that precludes the Board from issuing a type B licence to replace a type A licence in situations when the activities associated with a proposed project will only exceed type B licensing criteria

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[32] See MVLWB Online Registry for NATCL - Comments and Recommendations on IR3 from Chamber of Mines - May14_24.

[33] Section 11 of the *Interpretation Act*.

and will no longer exceed type A licensing criteria. By the same token, in situations when the activities associated with a proposed project exceed type A licensing criteria, the Board did not find anything in the MVRMA or the MVFAWR that precludes the Board from issuing a type A licence to replace a type B licence. The Board concludes that the determinative provisions in all cases will be the criteria in the MVFAWR, as per subsection 72.03(1) of the MVRMA.

6.1.2 Consideration of type A and B licence processes and requirements

In addition to presenting their interpretation of the legislative provisions directly related to how the licensing criteria are to be applied, some Parties presented other arguments for why a type A licence should be required for the Project.

Requirements of a type B versus a type A licence

In its comments on responses to IR#3, LFN states that "a type A licence has a higher threshold of responsibility and expectation that a type B" and that "issuing a type B licence in these circumstances reduces confidence in regulatory processes."[34] GNWT-ECC also expressed the opinion that a type A licence has "more rigorous requirements" than a type B licence.[35]

According to the MVRMA, there are only two differences in the regulatory process for a type A versus a type B licence. First, public hearings are mandatory for a type A licence and optional for a type B licence. Second, in the case of a type A licence, the Board recommends approval (or not) of a licence to the Minister; the final licence approval requires the Minister's signature before the Board issues the licence.

The Board notes that subsection 72.04(1) of the MVRMA lists the kinds of conditions that can be included in any licence – type A or B. As stated by NATCL: "the MVRMA does not restrict the conditions that can be placed on a class [type] of licence. The MVLWB is authorized to include conditions in a licence which the MVLWB considers appropriate."[36] LFN urged the Board to use the precautionary principle in setting licence conditions.[37]

Consultation and engagement

In its comments on the IR#3 responses, LFN also states that Ministerial sign-off is essential and that the Minister should be forced to weigh in on the sufficiency of consultation in this matter.[38] LFN does not connect this argument to a legislative provision regarding which licence type is required, and no other Parties presented this same argument.

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[34] See MVLWB Online Registry for NATCL - Comments and Recommendations on IR3 from LFN - May21_24; page 8.
[35] See MVLWB Online Registry for NATCL - Response from GNWT-ECC to Information Request 3 - Feb 23_24.
[36] See MVLWB Online Registry for NATCL - Responses from NATCL to Comments on IR3 - Aug28_24; page A7.
[37] See MVLWB Online Registry for NATCL - Comments and Recommendations on IR3 from LFN - May21_24; page 10.
[38] See MVLWB Online Registry for NATCL - Comments and Recommendations on IR3 from LFN - May21_24; page 2.

The Board further considered the LFN's concerns in its subsequent decision on whether to hold a public hearing as part of the regulatory proceeding (see section 6.2). The Board also notes that regardless of the type of licence required, and as recently noted by the Supreme Court of the Northwest Territories, consultation is built into the regulatory process, both in legislation and policy.[39] The MVRMA codifies how consultation is to be carried out. Section 3 of the MVRMA provides:

> 3. Wherever in this Act reference is made, in relation to any matter, to a power or duty to consult, that power or duty shall be exercised
> (a) by providing, to the party to be consulted,
> (i) notice of the matter in sufficient form and detail to allow the party to prepare its views on the matter,
> (ii) a reasonable period for the party to prepare those views, and
> (iii) an opportunity to present those views to the party having the power or duty to consult; and
> (b) by considering, fully and impartially, any views so presented.

As has been made clear to all Parties in this proceeding, and all LWB proceedings, the Crown may rely on the Board's process to consider and determine whether the duty to consult has been discharged.[40]

Project splitting

LFN argues that "[i]ssuing a type B licence on renewal of a type A licence is project splitting." This is not an application for renewal of a licence, and the Board is considering the Application on its own merits, according to whether the proposed activities trigger licencing criteria in the MVFAWR. If all of the proposed activities require a type B licence, and there are no other Project activities that will be continuing under the existing type A Licence, then that is not project splitting. With respect to this Application, if the Board decides to issue the type B Licence then it would expect that the existing type A licence would be cancelled.

Liabilities created during operations

GNWT-ECC also argued that "[c]ontinuing to require a type A licence is conceptually logical," on the grounds that "[t]he more rigorous requirements under a type A licence for mining and milling during care and maintenance are conceptually appropriate given that the risk to the environment from those liabilities is not reduced during the period of care and maintenance." As stated elsewhere in these Reasons, the type of licence in any particular case is dictated by the licensing criteria as set out in the Regulations.

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[39] *Gwich'in Tribal Council v KBL Environmental Ltd et al*, 2024 NWTSC 37 at para 39.

[40] Note that every item the Board distributes for review on the Online Review System has the following statement at the top of the page regarding Crown Consultation: The Crown relies on the Board's process as the primary means to fulfill its duty to consult with Indigenous Peoples and, if appropriate, accommodate potential adverse impacts to asserted or established Aboriginal and/or Treaty rights resulting from any decisions by the federal government, territorial government, or Board in relation to this review item.

Further, the assumption under GNWT-ECC's argument that a type A licence is necessarily more rigorous than a type B licence is not accurate— as noted earlier in these Reasons, there is no reason the same or similar licence conditions could not carry over from a type A licence into a type B licence, depending on what is appropriate in any specific case. As NATCL noted: "MVLWB may issue the conditions it feels are necessary to address environmental liabilities at the Site regardless of the class of licence it issues."[41]

Analysis and conclusion

The Board notes that while subsection 72.03(1) of the MVRMA constrains the LWBs' jurisdiction to issue type A and type B licences in accordance with the criteria in the MVFAWR, subsection 72.03(5) and section 72.04 of the MVRMA grant a LWB broad jurisdiction to impose conditions in a licence that it considers appropriate, including conditions "relating to any future closing or abandonment of the appurtenant undertaking." Subsection 72.03(5) and section 72.04 do not distinguish between type A and type B licences, meaning a LWB has broad discretion to develop similar conditions in both types of licences. For example, LFN urged the Board to use the precautionary principle,[42] and there is nothing preventing the Board from employing the precautionary principle to set conditions in a type B licence where it is appropriate to do so.

With regard to the regulatory process for the Application, concerns about the differences between type A and B licensing proceedings and the requirement for Ministerial sign-off on the final licence are addressed by the Board's decision to hold a public hearing in the regulatory proceeding for the Application (see section 6.2).

With respect to concerns about differing requirements of type A and type B licences, the Board concludes that it can include any conditions in the Licence that are appropriate for the Project, regardless of the type of licence required. In determining licence conditions, the Board must be guided by the objects and purposes of the MVRMA,[43] but there is no suggestion in the MVRMA that a type A or a type B licence is inherently better suited to meeting the objectives of the MVRMA. Nor is there any suggestion in the MVRMA that particular types of conditions are better suited to a type A or type B licence. Rather, the type of licence will be dictated by the MVFAWR, and the conditions will be imposed on a case-by-case basis according to the facts of the particular application before the Board, keeping in mind the overall object of the Act.

6.1.3 Consideration of historical use of the project site when classifying a new application

In its response to IR#3, NATCL states:

> "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

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[41] See MVLWB Online Registry for NATCL - Responses from NATCL to Comments on IR3 - Aug28_24; page A7.

[42] See MVLWB Online Registry for NATCL - Comments and Recommendations on IR3 from LFN - May21_24; page 10.

[43] Sections 9.2 and 101.1(1) of the MVRMA.

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."

This interpretation of the language of the MVRMA and MVFAWR is consistent with NATCL's argument that the legislation allows the Board to issue a new type B licence to a project that may previously been licenced as a type A. Both GNWT-ECC and LFN disagreed with this position.

In a letter to the Boards in 2018, GNWT-ECC argued that an applicant for a licence that has expired must apply for the same type of licence that authorized the original undertaking.[44] In its February 23, 2024, submission, GNWT-ECC maintains this position and then weaves together language from three sections of the Regulations to support that position:

- From Schedule V of the MVFAWR, GWNT-ECC concludes that "the rate at which milling occurs ***or occurred*** is therefore the determining factor of whether a type A licence is required." [Emphasis added]
- Based on information requirements in section 6(2)(f) of the Regulations plus the above criterion for a type A licence, GNWT-ECC concludes that "if waste generated during the term of a type A licence for mining and milling continues to be deposited to receiving waters to any extent or there continues to be storage or treatment of any such waste ***beyond that type A licence's term***, a type A licence for mining and milling continues to be required until the closure criteria for that mine are met." [Emphasis added]
- With respect to section 8(2) of the Regulations, GNWT-ECC points out that there is ***"no indication*** the criterion for a type A licence on the basis of deposit of waste is limited to only the deposit of waste that occurs during the term of the licence." [Emphasis added]

Essentially, GNWT-ECC is arguing that the Board must consider a historical licence classification when considering an application for a new licence. However, the Board cannot find any language in Schedule V that speaks to what "occurred" in a past licence, nor can it find language in the Regulations about how the classification of a new licence application is dependent on anything that happens "beyond that type A licence's term."[45] Finally, it isn't possible to make a conclusion on what the legislators meant for the LWBs to consider with respect to historical use of a site when the legislation gives "no indication" either way on the issue.

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[44] See MVLWB Online Registry for NATCL - Applications - Initial Review Comments and Attachments - June 6 23; page 143, GNWT Sept14 18 Letter to the Boards.

[45] As stated earlier in the Reasons, there is a distinction between what information informs the classification of a licence application and what informs the conditions of a new licence. The Board can and does consider the potential environmental impacts of previous site activities when setting licence conditions.

In its comments on NATCL's IR#3 response, LFN states: "NATC's argument that the MVRMA only considers the "present and future" impacts on water and surrounding areas is completely divorced from the context of the entire legislative regime."[46] One of the ways LFN supports its argument is as follows:

> "The MVRMA includes cumulative impacts in several of its processes. While cumulative impacts are not explicitly ascribed in the MVFAWR, they are part of the preliminary screening process of a licence and a general requirement of the Act. Because the applicant is applying to continue works associated with a continuing project, the project's accumulated body of risk still applies."

While NATCL acknowledges that the MVRMA contains references to cumulative impacts, it disputes that "cumulative impacts are relevant to the current application."[47]

Analysis and conclusion

The Board has seen nothing in the broader legislative scheme that indicates the Board must have regard to a historical licence classification when presented with an application for a new licence. As noted by the Northwest Territories Supreme Court, commenting on the MVRMA, "[t]he legislative framework is prospective in nature, aimed at mitigating loss or damage that may occur in the future as a result of a proposed use while still permitting development."[48] And further "[t]he Board applies remedial tools in the context of an application for a licence that *may* be granted, not one that has been granted already [...] The licensee must comply with the conditions of the licence while engaging in the activity for which the licence is granted."[49] To this it can be added that there is no restriction on the Board from carrying over past licence conditions from a type A licence to a type B licence, as appropriate, but this does not mean that the classification of the licence itself as type A or type B needs to remain constant between licences.

Section 72.03 of the MVRMA provides that "a board may issue, in accordance with the criteria set out in the regulations [...] 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." Both "may issue" and "to use waters or deposit waste" are expressions of something that will happen in the future. There is nothing in section 72.03 of the MVRMA that constrains the Board's discretion to issue a licence to the same type of licence that authorized the original project. In fact, the Board's discretion is constrained to the criteria in the MVFAWR, which does not speak to the way in which a project may have been classified historically. Again, what is relevant is whether the criteria in the Schedules to the Regulations are met for any particular application, and not what was authorized under a past licence.

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[46] See MVLWB Online Registry for NATCL - Comments and Recommendations on IR3 from LFN - May21_24; Section II.1.

[47] See MVLWB Online Registry for NATCL - Responses from NATCL to Comments on IR3 - Aug28_24.

[48] *Carter v. Northwest Territories Power Corp.*, 2014 NWTSC 19 at para 121.

[49] *Ibid* at para 123.

None of this interpretation means that, as LFN stated, "a decision-maker must ignore all previous water uses and waste deposits." While activities conducted under past licences and cumulative effects *may not be relevant to the classification analysis for a new licence*, the impacts or liabilities incurred under the past licences can be relevant to the conditions in the new licence. In the context of this Project, conditions can be included in the new licence – whether it is a type B or a type A – that, for example, ensure existing waste is properly stored and monitored, as well as conditions that require NATCL to develop a closure and reclamation plan that addresses the entire Mine Site, including historical impacts and liabilities.

6.1.4 Evaluation of applicable licensing criteria

While the Board determined that it can issue a type B licence to NATCL for the Project as described above, the Board also needed to determine whether a type B licence is appropriate for the proposed activities. This determination requires an evaluation of the proposed activities against the applicable licensing criteria.

Storage of waste by dams

CIRNAC stated that the "MVLWB would have the jurisdiction to issue a Type B water licence to NATCL in response to its application if the scope of the application met the criteria for a Type B water licence under Column III of Schedule V of the *Mackenzie Valley Federal Areas Waters Regulations*." However, CIRNAC believes that "given the facts and the storage of waste by dams in this case, NATCL requires a Type A water licence as per Schedule V of the *Mackenzie Valley Federal Areas Waters Regulations*, specifically Column IV, Item 2(5)." The dams CIRNAC is referring to are the ones that contain the tailings (the Tailings Containment Areas or TCAs). [50] The Board notes that Item 2(5) (see Table 1 below) specifically references the quantity of water stored; there is no reference to the storage of waste or tailings.

Table 1: Schedule V, Item 2(5) of the Regulations

Item	Column I	Column II	Column III	Column IV
	Water Use/ Deposit of Waste	Water Use and Deposit of Waste Without a Licence	Water Use and Deposit of Waste Requiring a Type "B" Licence	Water Use and Deposit of Waste Requiring a Type "A" Licence
2(5)	Alternation of flow or storage by means of dams or dikes	Off-stream storage of a quantity of water less than or equal to 2 500 m^3	Off-stream storage of a quantity of water greater than 2,500 m^3 and less than 60,000 m^3, or instream storage of a quantity of water less than 60,000 m^3	All other alterations or storage

[50] See MVLWB Online Review System for Cantung Care and Maintenance - Type B Renewal Licence and Type A Permit Applications - Mar 24 23; CIRNAC comment 1.

NATCL offered these pieces of evidence in response to CIRNAC's interpretation of Schedule V, Item 2(5):

- That the existing TCAs are impounding drained tailings and not water with fluid tailings.
- That the TCA dams are designed for the containment of tailings sediments and solids, not water. Also, that the dams are designed to allow for exfiltration and drainage of excess water.
- That although there is occasionally ponded water on the surface of TCA 4 and 5, the volume was estimated at about 5,000 m^3, which is still within the thresholds of a type B licence.[51]

LFN noted that none of the analysis provided by NATCL included a "consideration as to whether the impounding and drainage of water in the TCAs constitutes an "other" form of storage" which would require a type A licence under Schedule V, Item 2(5), Column IV.[52] The language of Column IV is unclear but, since the other columns all reference the storage of water specifically, it is most logical to assume that the type A criterion is also specific to the storage of water.

LFN also raised the possibility that the "project's selection of a TCA on the embankment of the Flat River constitutes a disruption of the riverbank" and may qualify as an "other alteration" under Column IV of Schedule V, Item 2(5).[53] No other Party made this argument. NATCL stated that they disagreed with LFN's argument, stating that "[w]hile NATC's TCAs are constructed proximal to the right bank of the Flat River, the dams are constructed outside of the floodplain, not on the riverbank and so are not altering the flow of the Flat River." NATCL cites the Geotechnical Assessment of the Tailings Storage Facilities, as submitted with the Application, as supporting evidence.[54]

Deposit of waste during care and maintenance

In its Application, NATCL did not indicate that the licensing criteria for deposit of waste would apply to the Project. GNWT-ECC noted that "it is not possible to avoid ongoing deposit of waste to receiving waters and storage of waste from the past active operation of Cantung Mine during care and maintenance." They went on to list a number of waste deposits that "will or could occur" at the site during the care and maintenance phase of the Project.[55]

During the initial Application review, several other Parties raised concerns about the quality of the minewater flowing out of the Main Mine Portal and Conveyor Gallery and recommended that Effluent Quality Criteria be set for that discharge.[56] In response to these comments, Board staff issued IR#1 to gather the information needed to determine if the passive discharge of minewater constitutes a deposit

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[51] See MVLWB Online Registry for NATCL - Response from NATCL to Information Request 3 - Feb 23_24; Appendix A (page A6) and Appendix B (section 3.0).

[52] See MVLWB Online Registry for NATCL - Comments and Recommendations on IR3 from LFN - May21_24; Section III.1.

[53] *Ibid.*

[54] See MVLWB Online Registry for NATCL - Responses from NATCL to Comments on IR3 - Aug28_24; page A6.

[55] See MVLWB Online Registry for NATCL - Response from GNWT-ECC to Information Request 3 - Feb 23_24.

[56] See MVLWB Online Review System for Cantung Care and Maintenance - Type B Renewal Licence and Type A Permit Applications - Mar 24_23; ECCC comment 1; LKFN comments 17 and 19; LFN comment 6.

of waste.[57] NATCL continues to take the position that "it does not consider the water emanating from the mine to be a waste;" however, NATCL also acknowledges Parties' varying opinions and states the "matter needs to be subject to technical discussion that is most appropriately undertaken at a Technical Meeting."[58]

The Board notes that, with respect to the deposit of waste associated with a mining and milling project, a type B licence is required for "any direct or indirect deposit of waste to surface waters."[59] Only the "deposit of waste from milling, at a rate of 100 tonnes or more of ore per day"[60] would require a type A licence, and the Application does not propose any milling.

Analysis and conclusion

The Board concludes that the Application requires a type B licence for a Mining and Milling Undertaking as per Schedule V of the Regulations. This determination is based on the following:

- Item 2(5) of Schedule V specifically refers to the storage of water, not waste.
- NATCL has provided evidence that the TCAs are designed to store tailings and to allow the flow of water out through the dams.
- The estimated amount of ponded water on the TCAs at any time is significantly less than the 60,000 m^3 threshold for a type B licence (as per Column III of Item 2(5)).
- There is no evidence that any of activities proposed in the Application exceed the type A licensing criteria listed in Column IV of Schedule V.

The Board has not yet determined whether the Project includes any deposit of waste; this will be determined during the upcoming regulatory proceeding. However, even if it is determined that NATCL is depositing waste as part of the Project, this will not change the type of licence required for the Project, because no milling is proposed.

6.2 Determination of whether to Hold a Public Hearing in the Public Interest

Subsequent to the Board's determination that the Application can and should be considered as an application for a type B water licence, the Board will process the Application as appropriate for a type B licence application. In general, while a public hearing is a mandatory part of a regulatory proceeding for a type A water licence, it is an optional part of a type B water licence proceeding. Under the MVRMA, the Board has the discretion to hold a public hearing for a type B proceeding if it is in the public interest. The MVRMA does not include a definition or criteria for "the public interest," so this interpretation is also left to the Board's discretion.

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[57] See MVLWB Online Registry for NATCL - Application - Information Request - June 20_23.

[58] See MVLWB Online Registry for NATCL - Responses from NATCL to Comments on IR3 - Aug28_24; page A6.

[59] Schedule V, Item 3(b), Column III of the MVFAWR.

[60] Schedule V, Item 3(b), Column IV of the MVFAWR.

In this case, three Parties requested that a public hearing be held:

- NDDB requested a public hearing be held in Nahanni Butte, stating that: "Care and Maintenance of Cantung mine is a complex issue that continues to be of great concern and interest to NDDB members. NDDB would like the opportunity to address the Mackenzie Valley Land and Water Board ("MVLWB") directly and in person to share community views on the application."[61]
- LKFN recommended a public hearing "as a critical component of the licencing process in this instance," stating that: "In the context of a project which was once a type A, and then becomes a type B, it will typically be in the public interest for licencing applications to trigger a public hearing in any event, given the nature of the genesis project, and the likelihood of ongoing, substantial liabilities and environmental risks."[62]
- LFN stated that "it is critical" that the water licence process have a technical meeting and a public hearing, but that the location of the public hearing be at the Board's discretion.[63]

NATCL agreed to these recommendations.

Analysis and conclusion

The Board notes that LFN has stated that if a public hearing is held, Ministerial sign-off on the final licence will be required.[64] Both LFN and LKFN raised concerns about impacts to their rights, and a public hearing may be a forum to present evidence of impact of the Application on rights and title, should any Parties choose to do so, and other Parties including the Crown may respond.

The Board concludes, based on the submissions of several Parties, that it would be in the public interest to hold a public hearing as part of the regulatory proceeding for the type B licence Application for the Cantung care and maintenance Project. The Board notes that none of the other Parties objected to a public hearing and that NATCL agreed to it.

6.3 Other Issues

LFN argued that "NATCL is a corporate interloper ... and they are standing in for Canada," and that "the Board should not be put in a position where it is forced to render a decision in the face of these conflicts of interest."[65] The Applicant for these proceedings is North American Tungsten Corporation Ltd., currently under the control of a court-appointed Monitor in proceeding No. S-154746 in the Supreme Court of British Columbia. Broadly speaking, the Monitor has "stepped into the shoes" of NATCL with oversight of

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[61] See MVLWB Online Review System for Cantung Care and Maintenance - Type B Renewal Licence and Type A Permit Applications - Mar 24 23; NDDB - comment 1.

[62] See MVLWB Online Registry for NATCL - Comments and Recommendations on IR3 from LKFN - May22 24; page 4.

[63] See MVLWB Online Registry for NATCL - Application - Initial Review Comments and Attachments - June 6 23; page 4 of LFN's letter on page 152/164.

[64] See MVLWB Online Registry for NATCL - Comments and Recommendations on IR3 from LFN - May21 24; page 2.

[65] See MVLWB Online Registry for NATCL - Comments and Recommendations on IR3 from LFN - May21 24.

NATCL's business and financial affairs, including supervision and oversight of operations at the Cantung site. Under the control of the Monitor, NATCL maintains its own separate legal identity. While it appears that Canada is funding the Monitor's activities, this arrangement is pursuant to a Court order and outside the Board's jurisdiction. Canada and the Monitor are separately represented in the Court proceedings, and as a Court-appointed officer, the Monitor reports to the Supreme Court of British Columbia, who has so far approved its activities.

7.0 Conclusion

The Board has determined that the Project, as described in the Application for Licence MV2023L2-0001, requires a type B water licence and to schedule, in the public interest, a public hearing as part of the regulatory proceeding for the Application.

SIGNATURE

Tanya MacIntosh

November 6, 2024

Tanya MacIntosh, Chair
Mackenzie Valley Land and Water Board

Date