



February 22, 2024

Ms. Kathy Racher, Executive Director
Mackenzie Valley Land and Water Board
7th Floor 4922 48th Street
PO Box 2130
Yellowknife, NT X1A 2P6

Sent via Email

RE: MV2023L2-0001 North American Tungsten Ltd. Care and Maintenance Water Licence Application – Information Request #3 - Crown-Indigenous Relations and Northern Affairs Canada Response

Dear Ms. Racher;

On November 20, 2023, the Mackenzie Valley Land and Water Board (MVLWB) issued Information Request #3 to North American Tungsten Corporation Ltd. (NATCL), Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC), and Government of the Northwest Territories – Department of Environment and Climate Change (GNWT-ECC). Following a request by NATCL, on December 11, 2023 the MVLWB extended the submission deadline for responses to Information Request #3 for all organizations to February 23, 2024. Information Request #3 is regarding the type of licence NATCL requires to conduct care and maintenance at the Cantung Mine Site as all three parties provided different interpretations during the public review process on the MVLWB's Online Review System. A Type A Licence is currently held by NATCL for the Cantung Mine Site (2015L2-0003) that is set to expire on January 27, 2024. The MVLWB received an application for a Type B water licence (MV2023L2-0001) for care and maintenance activities at the Cantung Mine Site on March 14, 2023.

CIRNAC - Resource and Land Management (CIRNAC-RLM) have prepared the following responses to the information requested.

Information Request 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?

For federal areas, the *Mackenzie Valley Resource Management Act*, *Mackenzie Valley Federal Areas Waters Regulations*, and *Exemption List Regulations* work together to determine whether a water licence is required and, if required, what Type/class (A or B) of water licence is triggered. The classification of an undertaking (i.e., as industrial, mining and milling, power, or miscellaneous) is not the only factor in deciding whether a Type A or Type B licence is required. The type of licence is also determined by the volume of water used or waste deposited and, in some cases, the method by which the waste is deposited and disposed, as set out in the Schedules to the *Mackenzie Valley Federal Areas Waters Regulations*. Section 8 of the *Mackenzie Valley Federal Areas Waters Regulations*, and referenced schedules, set out the criteria and sources for water licence classification:



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.

Under Section 72.13 of the *Mackenzie Valley Resource Management Act*, the land and water boards have jurisdiction to issue, renew, amend, or cancel a water licence in federal areas. In almost all cases, changes to a licence have to be made via an application by the licence holder. Should a licence holder seek to replace their Type A water licence with a Type B licence because the factual circumstances of their project (their use of water or deposit of waste) now fall within a different column of the Schedule, they would have to apply to the applicable land and water board.

As such, a project may require a Type A licence, as determined by column IV in Schedules IV through VIII, however, over time a subsequent future phases of the project may no longer trigger a Type A licence, but still trigger the need for a Type B licence. We are of the view that a change in licence Class can only be legislatively achieved via a new application (upon expiry or cancellation of the existing water licence) and not via an amendment to an existing water licence.

An example of a change from a Type A water licence to a Type B water licence can be seen with the abandoned Colomac mine site managed by CIRNAC - Contaminants and Remediation Directorate (CARD). Upon expiry of the Type A water licence ([MV2004L8-0001](#)) for remediation activity at the site, a new application for a Type B water licence ([WV2009L8-0003](#)) was submitted by CIRNAC-CARD. As part of the application, CARD's covering letter indicated that "based on the scope of the remaining work and level of water use and waste disposal activities, we believe that a Type B water use licence is the most appropriate instrument to authorize this work". The scope of the Type B water licence application was to allow for completion of remediation and restoration activities. The Wek'èezhii Land and Water Board granted the Type B licence stating in their [February 18, 2010 Staff Report](#):

This water licence application is considered a Type B (rather than a Type A) for two reasons: (1) the project is a continuation of remediation activities that were reviewed and approved in the past; none of the proposed activities require a Type A water licence and (2) water use and waste deposition are expected to be less than what is currently licensed.

In reviewing the applicable legislation, and the Colomac mine site example, it would appear that neither the *Mackenzie Valley Resource Management Act*, nor the *Mackenzie Valley Federal Areas Waters Regulations* preclude the holder of a Type A water licence from applying for a Type B licence after cancellation, or expiry, of their Type A licence if, at the time of application, the proposed work does not meet the threshold for a Type A water licence but does trigger a Type B licence. The legislation would also suggest that the Board have broad jurisdiction in this regard, including in relation to security requirements and terms and conditions to manage the site and its eventual remediation.

Information Request 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?

It is CIRNAC-RLM's view 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*.

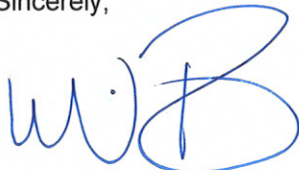
However, CIRNAC-RLM stands by our previous opinion that, given the facts and the storage of waste by dams in this case, NATCL requires a Type A water licence as per Schedule V of the *Mackenzie Valley Federal Areas Waters Regulations*, specifically Column IV, Item 2(5). The rationale for this is presented in our comment on the Online Review System [CIRNAC (Yellowknife)-1] included in Appendix 1 of the Information Request (page 6 of 8).

The waste generated while mining and milling was in operation has been deposited and stored on site, through the use of tailings containment dams. The volume of tailings deposited and stored at the site remains the same as it did when the site was operational; it has not been removed from site, covered, or otherwise remediated. Placing the mine into care and maintenance status, and the expiry of the Type A water licence does not eliminate the need to account for the presence of the waste deposited from mining and milling activities, and the tailings containment dams used to store the waste onsite that were previously authorized.

The scope of NATCL's licence renewal must account for the ongoing operation and maintenance of tailings containment dams for the continued storage of waste generated and deposited onsite.

Thank you for the opportunity to respond to this Information Request. If there are any additional questions or if clarification is required, please contact the undersigned.

Sincerely,



Michael Roesch
Senior Project Manager, Resource & Lands Management
Crown-Indigenous Relations and Northern Affairs Canada