

Reviewer Comments and Proponent Responses

Project: Cantung Care and Maintenance

Board: Mackenzie Valley Land and Water Board

Organization: North American Tungsten (NATCL) - Cantung

No.	Topic	Reviewer Comment	Reviewer Recommendation	Proponent Response
Naha Dehe Dene Band (NDDB) - Elliot Holland				
1	Public Hearing	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.	NDDB recommends that a Public Hearing be held in Nahanni Butte as part of the MVLWB's review of this licence application.	NATC supports this request.
Liard First Nation (Yukon) - Zuneza Cove				
1	General comments: LFN has expectations of both Canada and the MVLWB in relation to the Cantung Mine that need to be integrated into both the water licensing and bilateral Canada LFN reconciliation framework processes.	While NATC is the applicant for the current application, it is recognized that Canada, through the department of Crown Indigenous Relations and Northern Affairs Canada (CIRNAC), has a controlling role over the finances and direction of the works associated with the water licence, land use permit and eventual final closure and reclamation of the Cantung Mine and property. As such, LFN refers to Canada as the responsible authority in carrying out the terms and conditions of any approved water licence or land use application. Further, LFN strongly believes that Canada should engage with LFN on the comments and recommendations herein as part of the current review process. In this context, Canada should engage with LFN and then provide a supplemental response to the MVLWB in relation to collaborative closure and reclamation planning. The MVLWB would make conditions from Canada's supplemental response commitments and from its dialogue with impacted Indigenous groups as part of any approved water licence and land use permit application. Please refer to the attached letter.	Canada is requested to expedite setting up a technical table with LFN through a reconciliation framework, and to actively implement recommendations provided below and elsewhere by LFN into commitments and actions. This includes meeting with LFN on our comments and recommendations in this table prior to filing Canada's response with the MVLWB. The MVLWB is requested to use a portion of the current water licence process to chart a course with Canada and impacted Indigenous groups that will be followed in the course of collaborative closure and reclamation planning, and to include conditions to the water licence that reflect these expectations.	<p>NATC is aware that CIRNAC has had, and continues to have, bilateral discussions with LFN in relation to the water licence and land use permit applications. Should the MVLWB wish to receive additional details about CIRNAC's direct engagement with LFN it would be most appropriate for the MVLWB to request this information from CIRNAC or LFN directly.</p> <p>Regardless, NATC provides the following information for the MVLWB's consideration.</p> <p>NATC acknowledges and appreciates Mr. Stewart's submission.</p> <p>NATC agrees with LFN that the care and maintenance period addressed in new water licence must be used to progressively ramp up the necessary information gathering, planning, monitoring, closure and reclamation planning.</p> <p>NATC supports LFN's request for a technical meeting and public hearing.</p> <p>Further, please refer the to aspects of the discussion provided in response to MVLWB-12.</p>

No.	Topic	Reviewer Comment	Reviewer Recommendation	Proponent Response
GNWT-ENR - EAM (Environmental Assessment and Monitoring) - Environmental Regulatory Analyst				
2	Class of Water Licence	<p>GNWT-ECC notes that North American Tungsten Corporation Ltd. (NATC) has submitted a complete renewal application for a Type B water licence. NATC currently has a Type A water licence (MV2015L2-0003). GNWT-ECC understands the purpose of NATC seeking to switch to a Type B from a Type A is to conduct care and maintenance activities at the Cantung Mine site. In the application form, NATC has classified the type of undertaking as “Mining and Milling” under the Water Regulations. GNWT-ECC agrees that “mining and milling” is the appropriate classification of the care and maintenance and eventual final closure of the Cantung Mine site. However, 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 .</p> <p>ECC would like to draw attention to the attached letter from GNWT sent to the Land and Water Boards of the Mackenzie Valley on September 14, 2018, in which GNWT provided its opinion on the classification of undertaking and licensing criteria or triggers. In this letter, GNWT stated the following on undertaking classification for closure:</p> <p>“Therefore, it is the GNWT’s position that once a class of licence is determined as per the Waters Regulations Schedules D through H, that undertaking includes closure. To this end, if a Type A water licence is triggered for an undertaking, the Board should consider closure as part of the scope of the undertaking. Further as per s.27(1), the Board has discretion in setting conditions relating to closure and reclamation including: the submission of Closure and Reclamation Plans, Progress Reports, Reclamation Completion Reports and Performance Assessments (see Guidelines for the Closure and Reclamation of Advanced Exploration and Mine Sites in the Northwest Territories, 2013).”</p>	<p>GNWT-ECC recommends that the Board require NATC to withdraw its current application and submit an application for renewal of a Type A water licence.</p>	<p>NATC believes the undertaking is not the only deciding factor in deciding whether a type A or B water licence is required for an undertaking.</p> <p>NATC is applying for a Type B licence because it understands that it satisfies the criteria for a Type B licence in accordance with Schedule V of the Mackenzie Valley Federal Areas Waters Regulations. Or rather, that it does not meet the thresholds requiring a Type A licence as it is not: using water for milling at a rate of 100 or more tonnes of ore per day or use of water for production leaching; altering flow or storage by means of dams or dikes; depositing waste from milling at a rate of 100 tonnes or more of ore per day.</p> <p>Accordingly, NATC agrees that the class of licence is determined as per the Mackenzie Valley Federal Areas Waters Regulations.</p> <p>NATC sees no provision preventing a mining and milling undertaking that holds a Type A licence from 'downgrading' its licence to a Type B licence prior to fulfilling the closure objectives.</p> <p>NATC notes that both the Mackenzie Valley Federal Areas Waters Regulations (applicable to Cantung) and the Waters Regulations (referenced by GNWT ENR) are mute on aspects pertaining to satisfying closure objectives.</p> <p>NATC is requesting that the Board continue in a new Type B licence the closure-related conditions existing in the current Type A licence, as indicated in its draft waste licence submitted with the application. NATC sees nothing precluding the Board from considering closure in a Type B water licence in the same manner in which it does for a Type A licence as is evidenced by the myriad examples of Type B licences wherein a licensee is required to post security, provide advance notice of an intent to close and to</p>

		As such, GNWT-ECC recommends that the Board require NATC to withdraw its current application and submit an application for renewal of a Type A water licence.		<p>fulfill its obligations under an approved Closure and Reclamation Plan.</p> <p>While the GNWT refers to the Waters Act (specifically as per s.27(1)) which does not apply on Federal Lands, NATC agrees that the Board has discretion pursuant to 72.04 (1) of the MVRMA and respectfully encourages it to interpret the legislation to allow for a correct application of the regulations, as outlined above, and continue the process NATC to obtain a Type B water licence for care and maintenance activities associated with its Mining and Milling Undertaking.</p> <p>In relation to W2009L8-0003, the project did go from a Type A to a Type B water licence at the time of licence renewal. In its Reasons For Decision, the WLWB relied on the licence criteria in regulations to inform its decisions. It also considered that the project was a continuation of activities that were reviewed and approved in the past, that none of the activities proposed to occur under the new licence require a Type A water licence, and that water use and waste deposition are expected to be less than what is currently licensed. All of these apply in the case of NATC's current application.</p>
CIRNAC (Yellowknife) - Megan Larose				
1	Type A or Type B Licence	<p>In considering NATCL's application for a water licence, CIRNAC notes the following information:</p> <p>1. Schedule V of the MV Federal Areas Water Regulations outline the criteria for when a Type B (Column III) or Type A (Column IV) water licence is required for a mining and milling undertaking. Item 2(5) of Schedule V relates to the alteration of flow or storage by means of dams or dikes and states that a Type B Licence is required if:</p> <ul style="list-style-type: none"> - Off-stream storage of a quantity of water greater than 2 500 m3 and less than 60 000 m3, or instream storage of a quantity of water less than 60 000 m3 <p>All other alterations or storage (by means of dams or dikes) requires a Type A licence.</p>	<p>CIRNAC-RLM recommends that NATCL withdraw the Type B water licence application and re-submit an application for a Type A water licence.</p>	<p>NATC agrees that the licensing criteria are outlined in Schedule V of the Mackenzie Valley Federal Areas Waters Regulations.</p> <p>NATC also agrees that it has dams on site that meet the definition of a dam as per the Dam Safety Guidelines and based on the definition included in the land and water board standard water licence conditions template. These dams impound tailings that are ephemerally wetted; the dams do not impound free water and are in fact largely dry since tailings deposition ceased. Further, the dams that are not capped were designed to ensure that any water that occurs ephemerally necessarily drains out of the dams by exfiltration. The Cantung dams are not water-impounding structures.</p>

	<p>2. The land and water board standard water licence conditions template Version 2.1 (February 9, 2023) provides a list of defined terms for use when developing draft water licences. The definition for dam is: a structure that meets the definition of a Dam as per the Dam Safety Guidelines and is intended to contain, withhold, divert, or retain Water or Waste.</p> <p>3. The Canadian Dam Association (CDA) website provides the following definition for a dam on their website:</p> <ul style="list-style-type: none"> - A dam is a barrier constructed for the retention of water, water containing any other substance, fluid waste, or tailings, provided the barrier is capable of impounding at least 30,000 m3 of liquid and is at least 2.5 m high. Height is measured vertically to the top of the barrier - from the natural bed of the stream or watercourse at the downstream toe of the barrier, in the case of a barrier across a stream or watercourse; or - from the lowest elevation at the outside limit of the barrier, in the case of a barrier that is not across a stream or watercourse. <p>4. The Tailings Storage Facility - Operations Maintenance and Surveillance Manual (Section 1.3 Scope) submitted by NATCL indicates that the manual is intended to fulfill requirements associated with all authorizations as well as the Canadian Dam Safety Guidelines. The tailings containment area (TCA) are referred to as containment dams throughout the Operations Maintenance and Surveillance Manual and Tables 3 through Table 7 provide the details for each TCA, including the type of dam, the construction method, containment structure maximum height, and the capacity (volume). Tailings containment areas 1, 2 and 3 are described as side-hill impoundment dams and tailings containment areas 4 and 5 are described as Cross-valley impoundment dams. The maximum height and capacity of each tailings containment area is as follows:</p> <ul style="list-style-type: none"> - TCA 1: Height - 15m; Volume - 85,300m3 (capped and reclaimed) 	<p>To support this, please refer to the Conceptual Site Model Table 7-4, which provides a summary of observed moisture contents in tailings samples from each TCA. TCAs 3, 4 and 5 have slightly lower average moisture content in tailings than TCAs 1 and 2, ranging from 3-36% moisture in TCA 3, 3-44% moisture in TCA 4 and 3-20% moisture in TCA 5. NATC appreciates that these moisture measurements are not directly comparable to a volumetric measurement, however these results are presented here to demonstrate that the TCAs are not saturated, and to further confirm NATC's perspective that the Cantung dams are not water-impounding structures.</p> <p>While the TCAs are dams that store tailings, NATC respectfully disagrees about the application of item 2(5) Schedule V of the Mackenzie Valley Federal Areas Waters Regulations; while this needs to be considered when determining licencing criteria, it does not apply as the Cantung dams are not water-impounding structures and so needs to be dismissed.</p> <p>NATC agrees that some of the TCAs remain operational as outlined in the TSF OMS Manual. However, these operations do not include a deposit of waste from milling at a rate of 100 tonnes or more of ore per day.</p> <p>NATC understands that while Item 2(5) is focused on a specific type of water use or deposit of waste, these licencing criteria apply to the scope of the current undertaking being licenced and the related activities, not those that occurred in the past. Accordingly, just because a deposit of waste from milling at a rate of 100 tonnes or more of ore per day occurred in the past under a previous authorization, the same criteria do not automatically apply to different activities.</p> <p>From time to time, ephemeral water has accumulated on the surface of TCA 5, up to approximately 15,000 m3. While NATC believes this is not free water that is impounded by the dams, if it were to be considered as such, it would still not</p>
--	---	---

	<p>- TCA 2: Height - 13m; Volume - 61,000m³ (capped and reclaimed)</p> <p>- TCA 3: Height - 41m; Volume - 2,240,000m³ (uncapped)</p> <p>- TCA 4: Height - 31m ; Volume - 669,000m³ (uncapped)</p> <p>- TCA 5: Height - 26.7m; Volume - 556,400m³ (partially filled, uncapped)</p> <p>Based on the above information, the TCAs at the Cantung Mine Site appear to meet the definition of a dam as per the Dam Safety Guidelines and based on the definition included in the land and water board standard water licence conditions template. If the TCA are considered to be dams for the purpose of storage (e.g. tailings), then the criteria under Item 2(5) of Schedule V of the MV federal waters regulations as it relates to the alteration of flow or storage by means of dams or dikes must be considered. The total volume of tailings being stored by the TCAs exceed the criteria for water use and deposit of waste requiring a Type B licence but does fit within the criteria for a Type A licence "all other alterations or storage". The licensing criteria for mining and milling undertakings provided in Schedule V are not specific to a particular phase of the mining cycle, and Item 2(5) is focused on a specific type of water use or deposit of waste. CIRNAC-RLM is not aware of any constraints or limitations suggesting that the criteria should only be considered for a new development or at a particular time in the context of the life of a mine. It is acknowledged that NATCL is not proposing to construct a new TCA or deposit new mine tailings; however, the existing TCAs remain a central component of the mine site infrastructure at Cantung. The operations maintenance and surveillance manual suggests that not only do the TCAs continue to function as dams to store (historical) tailings, all TCAs require regular inspection and monitoring in accordance with the Dam Safety Guidelines, TCA4 remains operational for the disposal of sewage effluent, storage of contaminated soil, and for contingency storage of groundwater during care and maintenance, and TCAs 3, 4, and 5 have not been capped/reclaimed.</p>		<p>meet the criteria in Schedule V of the Mackenzie Valley Federal Areas Waters Regulations requirign a Type A licence, being offstream storage of >60,000 m³ of water.</p> <p>Given this, NATC sees no need to withdraw its application and resubmit an application for a Type A water licence.</p> <p>Please refer to the discussion provided in response to GNWT-ENR-EAM-2. NATC sees no need to withdraw its application and resubmit.</p>
--	--	--	--

		Considering the above information, CIRNAC-RLM is of the opinion that NATCL requires a Type A licence for care and maintenance activities, as per Item 2(5) of Schedule 5 of the MV Federal Waters Regulations given the presence of the TCA that will continue to be operational in some capacity during care and maintenance.		
--	--	--	--	--



SEP 14 2018

Ms. Shelagh Montgomery
Executive Director
Mackenzie Valley Land and Water Board

Mr. Ryan Fequet
Executive Director
Wek'èezhì Land and Water Board

Mr. Paul Dixon
Executive Director
Sahtu Land and Water Board

Mr. Leonard DeBastien
Executive Director
Gwich'in Land and Water Board

Re: Regulating developments during the closure phase

The Government of the Northwest Territories (GNWT) received your letter dated July 25, 2018 in which the Land and Water Boards of the Mackenzie Valley were seeking response to the following questions in relation to Licencing projects in the closure phase. The specific questions were:

Classification of Undertaking

- 1) When a development goes into closure, what classification of undertaking does it fall under? Does it remain the same (e.g., continue to be a mining and milling project), or does it become a miscellaneous undertaking? Please consider CARD projects, non-CARD projects, and projects that are grandfathered under section 157.1 of the MVRMA when considering this question.

.../2

Licensing Criteria or Triggers

- 2) If the development continues to be classified as the original undertaking during the closure and reclamation phase, and the original undertaking is a type A water licence, will it always be a type A water licence (e.g., during the long-term monitoring phase even when there is no deposit of waste)? At any point, does a type A water licence turn into a type B water licence? In other words, are the triggers outlined in the applicable Regulations for a water licence forever linked to the waste deposited or the water used by the original undertaking? Again, please consider CARD projects and non-CARD projects when considering this question.
- 3) When is a water licence no longer required? Again, please consider CARD and non-CARD projects when considering this question.

The GNWT provides the response to each of these questions below.

In response to question 1) above, the *Waters Act* and Regulations outline both what type of licence, or class, is required for an undertaking and the conditions to be considered by the Board when issuing a water licence. Specifically, s.27(1) sets out that the Board may include conditions in the licence, whether a Type A or Type B, including: e) conditions relating to any future closing or abandonment of the appurtenant undertaking. Also, see s. 5(2)(h) of the *Waters Regulations* which outline the information to be provided to the Board in an application for a water licence. Further, the references to the *Canada Mining Regulations* in the *Waters Regulations* should now reference the *Mining Regulations*, under the *Northwest Territories Lands Act* as the *Canada Mining Regulations* have been repealed. The *Mining Regulations* contemplate the full life cycle of a mine as demonstrated by the definition of mine:

“mine” means an undertaking that produces or has produced minerals or processed minerals from lands to which the Act applies, and includes the depreciable assets that are located in the Northwest Territories and used in connection with the undertaking;

Note this definition is used for the purposes of administering mineral interests and royalties. When this definition is read in context of other sections of the *Mining Regulations*, it is clear that the operation of a mine may include the re-processing of tailings, the reclamation phase and the undertaking as a whole.

Therefore, it is the GNWT's position that once a class of licence is determined as per the Waters Regulations Schedules D through H, that undertaking includes closure. To this end, if a Type A water licence is triggered for an undertaking, the Board should consider closure as part of the scope of the undertaking. Further as per s.27(1), the Board has discretion in setting conditions relating to closure and reclamation including: the submission of Closure and Reclamation Plans, Progress Reports, Reclamation Completion Reports and Performance Assessments (see Guidelines for the Closure and Reclamation of Advanced Exploration and Mine Sites in the Northwest Territories, 2013).

The closure phase of an undertaking should not be considered a miscellaneous activity, unless the undertaking was classified miscellaneous as per Schedule H of the Waters Regulations when it was first licenced. If a third party, private or public, takes over responsibility for an undertaking that party should be assigned the licence as per s.39 of the *Waters Act*. If the water licence has expired, the party applying to conduct closure activities should apply for the type of licence which authorized the original undertaking. To be clear, remediation does not change the class of the undertaking.

With regard to the Makenzie Valley Resource Management Act reference, grandfathering under this s. 157.1 does not affect the classification of a project under the Act and Regulations.

In response to question 2), the duration of a water licence is guided by s. 26(2) of the *Waters Act*. The duration of closure and the post-closure period is site-specific and should be determined on a case-by-case basis. The Boards have discretion in setting the term of any Type A or Type B water licence. When determining licence term, the GNWT recognizes that the complexity of the undertaking and its remediation will have a bearing on how long active remediation will be required. The goal of closure and reclamation is to ensure that the remediated site is stable and no longer a risk to the environment or the aquatic environment.

In response to when a Type A licence can be reduced to a Type B licence, the *Waters Act* and Regulations do not contemplate such a change. If no water is being used and no waste is being deposited then a water licence would not be required. However, from a hypothetical standpoint, reducing a class of licence only seems plausible following successful remediation coupled with several years of performance assessments reporting. Thus, a lesser licence could be associated with longer term

monitoring and maintenance. The *Waters Act* does not grant authority to the Board to change a class of licence, if a class of licence is required pursuant to the Waters Regulations.

ENR is currently in the process of amending the Waters Act and intends to amend the Waters Regulations once the legislative amendment is complete. The questions posed in question 2) could be considered during the review of the Waters Regulations.

In response to question 3), the Waters Regulations are clear on when a water licence is not required, for example, when there is an authorized use or use is under threshold. However, the *Waters Act* and Regulations are not clear on when a water licence, once triggered, is no longer required.

In regard to smaller scale developments, a water licence is no longer required once the undertaking has been completed, remediation and/or cleanup is complete and there is limited risk to the environment. When this is the case, the inspector will conduct a final inspection and recommend to the Board that the water licence be closed.

However, in relation to larger scale activities such as mining, the exact period when a water licence is no longer required is not clear. Hypothetically speaking, when closure and reclamation has been completed, post-closure monitoring suggests the site is stable both physically and chemically and the site has been successfully remediated, a water licence may no longer be required. This stage should include a final site inspection and a recommendation by the inspector to the Board that the water licence can be closed. Note, some assurance that long-term liabilities will be covered (i.e. monitoring, maintenance, etc.) would be required prior to licence closure.

Currently, the Waters Act does not include a process for closing a water licence. This is something that both ENR and regulatory boards feel is an important amendment to the *Waters Act* and it has been included in our legislative proposal.

The GNWT notes that questions about land-related aspects of closure regulation may arise as developments enter closure. GNWT staff are available to discuss these and other closure questions with Board and federal staff.

In closing, thank you for providing this opportunity to further clarify our position on these matters. If you have any questions regarding the responses, please contact Mr. Nathen Richea at Nathen.Richea@gov.nt.ca or 767-9234 ext. 53110.

Sincerely,



Nathen Richea
Director
Water Resources Division

cc. Mr. Michael Roesch, Senior Program Manager
Crown and Indigenous Relations and Northern Affairs Canada

Ms. Lorraine Seale, Director
Securities and Project Assessment, Department of Lands



Liard First Nation Executive Council Office

PO Box 328 WATSON LAKE YT Y0A 1C0

Phone: 867.536.7901 • Fax: 867.536.7910 • Email: ea@liardfirstnation.ca

WATSON LAKE

May 19, 2023

Mackenzie Valley Land and Water Board
P.O. Box 2130
4922 - 48th Street 7th Floor YK Centre Mall
Yellowknife, NT X1A 2P6

Att: Dr. Kathy Racher, Executive Director

Dear Board Members:

Re: Liard First Nation Initial Review of Water Licence Application MV2023L2-0001

We write to provide Liard First Nation's initial review of the Water Licence Application made by North American Tungsten Limited ("**NATL**") and the Government of Canada ("**Canada**" and together, the "**Proponents**") to the Mackenzie Valley Land and Water Board ("**MVLWB**" or "**the Board**") for a new Water Licence for the Cantung Mine's ("**Cantung**" or "**the mine**") continued care and maintenance, filed in early 2023.

LFN has reviewed the documents on the public record for this proposed Water Licence and developed the attached set of comments in Excel in the format preferred by the MVLWB. Our comments herein need to be considered alongside those Excel comments.

Background

In part due to the lack of attention to fundamental reconciliation issues in the proponent's application materials, we re-iterate here the background previously submitted to the Board in our comments on the Failure Mode and Effects Analysis and initial Water Licence Modification, provided to the MVLWB on February 14, 2023.¹

Liard First Nation ("**LFN**") is a member of the Kaska Nation. For the rest of the document Kaska Aboriginal Rights, as defined in Section 35, will be referred to as "Kaska Rights". Kaska Rights holders share a common culture based on our clan system and traditional laws, a common language with distinct dialects, and a common history grounded in our stories and myths, the oral traditions of our Elders, and cooperation in international trade and the defense of Kaska lands. LFN and our Kaska brothers and sisters at Ross River, Dease River and Kwadacha have traditionally occupied an area of approximately 240,000 km² of land in what today includes the Northwest Territories, the Yukon and British Columbia (see **Figure 1: Map of Kaska Traditional Territory**). As shown on the map of Kaska traditional territory, the Cantung Mine and the

¹ LFN understands that our February 14, 2023, letter will be shared with the Board as part of this proceeding and is appreciative of the MVLWB staff's commitment to request as part of this process that the proponent provide a formal update on the public record to some of the requests made in that February 14 letter.

Nahanni Range Road lie entirely within Kaska traditional territory.²¹ Early European accounts of trade and contact with the Kaska in the 1800s referred to our ancestors as the *Nahanni*. These European traders and explorers recognized the *Nahanni* of their day as having a distinct language not spoken in the Mackenzie valley. In those times, we traded as middlemen between Russians on the Pacific coast and those who the colonizers called Slavey and Beaver First Nations.

The Kaska, including LFN, hold Kaska Rights and title (“Kaska Rights” and “Kaska title”) in the Project-affected area. LFN has a strong and temporally deep connection to the Flats, the Flat and Nahanni Rivers, and areas encompassing and surrounding Cantung. Anything that happens at Cantung impacts Kaska Rights exercises, and the mine’s presence has had a significant negative impact on Kaska people who once relied on the area for our traditional well-being and way of life.

As we have explained to Canada over the many years of this project, including during the minimal consultation offered by the Northern Contaminated Sites Program (“**NCSP**”) during the last three years:

The pass was an important thoroughfare for Kaska people visiting close relations in what is now the Northwest Territories, and also served as part of an important international trade route. As with most roads in Kaska territory, the Nahanni Range Road follows a traditional Kaska trail. The Flats also provided good caribou hunting, which made it a key stop for Kaska families following their annual and multi-annual rounds. Cantung itself impacted both goat and caribou movements, changing their migration patterns so that they now go around the back side of the mountain rather than through the Flats to areas where Kaska traditionally harvested them. Because of the Cantung mine, families were displaced from an area we had traditionally used and occupied for generations.

There are also hot springs in the immediate area of the mine. Those hot springs were both an important spiritual waypoint for those travelling to the Nahanni for spiritual activities, and a refuge in survival and emergency situations.

Travis Stewart

In the 50 years the Cantung site has been occupied, Canada has never integrated our vision for what the area should become, our knowledge and ways of understanding what is present and how to benefit from respectfully finding application in the care and maintenance or remediation and closure of the failed Cantung mine. The Kaska are not accommodated for Cantung associated harms, past, present and ongoing. LFN has an inherent interest in seeing these lands and values returned to the conditions necessary so that our members are independently assured their infringed Kaska Rights are resumed and meaningfully exercised. If past and current infringements are not reversed as a direct result of mine closure, then the Kaska Rights infringed temporarily for half a century will be permanently lost – extinguished for future generations. This responsibility weighs heavily on us. We share it with you in the hope and expectation that the MVLWB will, within your mandate, also embrace this responsibility.

The opportunity we also share is to use this care and maintenance period to lay the foundations that ensures the reversal of infringement - the creation of conditions and circumstances required for the restoration of meaningful Kaska Rights. To do this, Cantung regulatory processes and reclamation planning must incorporate a solid understanding of how the mine affected and

²¹ Map. Schedule ‘A’ to Statement of Claim, *Kaska Nation v. Canada and Government of the Northwest Territories*, Yellowknife Registry, S1 CV201 00000036.

continues to affect Kaska Rights, and how LFN believes Kaska Rights practices can be restored and sustained in the area. While there are many steps to take toward this objective, we believe it must begin now with the water license application. We believe this license constitutes a new beginning for Cantung and the Kaska. The license will enable the next steps in the transition of the failed Cantung mining project toward successful closure – and finally, the resumption of meaningful Kaska Rights.

General Concerns

The new proposed water licence and land use permit are premised on the assumption that the only things left to do until final closure is to manage the risks posed by decaying mining infrastructure, with special focus on the tailings storage facilities. This approach takes a generous leap of faith that all Project-related effects and impacts have been adequately understood and addressed. LFN takes comfort that the MVRMA, s.111, makes explicit reference that an impact to the environment is "any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources". We understand this to include our exercises of meaningful Kaska Rights and the various values and resources that are required to support, understand, and restore those Rights.

There are also impacts to the well-being and way of life of Indigenous peoples. Under section 60.1(a) of the MVRMA, the Board must have consideration to "the importance of conservation to the well-being and way of life of the aboriginal peoples of Canada to whom section 30 of the Constitution Act, 1982 applies "; and (b) "any traditional knowledge and scientific information that is made available to it". The Kaska way-of-life and well-being is a reflection of Kaska ability to meaningfully exercise Kaska Rights. That has been compromised by the mining at Cantung and its infrastructure and restoring those rights should be acknowledged as a central goal of understanding and planning for remediation activities. The Kaska have not had the benefit of having our traditional knowledge integrated in the earlier decisions made by the Board.

Process-wise, an applicant would normally apply to develop an Interim-Closure and Reclamation Plan (ICRP) in consultation with affected parties and in anticipation of closing down their operation. That ICRP process allows stakeholders to have an early influence on the goals of closure. LFN has not had this opportunity. LFN requires independent assurance that Kaska citizens will be able to exercise meaningful Rights exercises during care and maintenance, remediation activities and following closure. That means beginning to identify and restore the diverse values required to support meaningful exercises of Kaska Rights. A longer-term Kaska focus must be progressively brought into the revised care and maintenance water license and any remediation and closure planning and decision making. We believe the process for this Water Licence can help set out the necessary steps and expectations of Canada (the party ultimately responsible for the Cantung site and its liabilities) over the closure and reclamation planning period, and we have identified some of these necessary steps and expectations in our "Process Recommendations" below and our attached comments.

To be clear, LFN's expectation is that the care and maintenance period addressed in an amended water license must be used to progressively ramp up the necessary information gathering, planning, monitoring, short term remediation and long-term remediation and closure planning and activity that will give Kaska people independent assurance that this failed mine has not permanently extinguished our Kaska Rights.

I would like to advise you that the changes I have called for in LFN's bilateral relationship with Canada around Cantung have been embraced by them and are being implemented. Two

coordinated collaboration tables are created. One table has the responsibility for completing a written government to government agreement that spells out how the harms from Canada's Cantung related Crown decisions can be reconciled through effective regulatory cooperation and remediation planning and activity – and the achievement of closure goals reflecting an end land state vision LFN can support. Also, there is now a technical table intended to enable effective, collaboration and joint decision making on technical matters. We are optimistic that these steps will help ensure meaningful exercises of Kaska Rights are highlighted, resumed and sustained. We look forward to linking this work with the work mandated for the MVLWB.

LFN's MVLWB Process Recommendations

LFN has the following comments regarding the MVLWB process for this water licence proceeding:

LFN notes that the GNWT has requested that this water licence continue to be a Type A Water Licence. LFN's position is that this water licence remains for a serious undertaking and, whether it is a Type A or a Type B Water Licence (a matter for the Board to determine), it is critical that this water licence process have a technical meeting and a public hearing (on this we agree with the NDDB). A public hearing is critical so that the Board members can hear directly from impacted Indigenous groups. The location of the public hearing is at the discretion of the Board.

LFN strongly requests that the Board determine that a technical meeting, likely more than one day, be held on this water licence, and that the Board canvas the parties to the proceeding on what topics should be covered. Without prejudice to future submissions on this topic, LFN may be interested in the following being part of the technical meeting agenda:

- Timing, process and data collection requirements for Closure and Reclamation planning and necessary associated conditions in this water licence,
- Indigenous monitoring plans,
- Progressive reclamation requirements and role of Indigenous nations in progressive reclamation/risk reduction activities,
- Water quality criteria and aquatic effects management and adaptive management,
- Identification of Kaska Rights, the determination of effects on Kaska Rights during care and maintenance, and collaboration on accommodations,
- among other topics.

As LFN has noted numerous times previously, it is simultaneously engaged in similar high level, complex assessments, Crown consultations and reconciliation processes in the NWT, Yukon, and British Columbia. LFN requests that the Board provide a draft water licence process schedule for the parties to review and comment on, before finalizing the work plan for this proceeding. We received a prior copy from the proponent, only to be told later by MVLWB staff that this was not a formal document. Greater clarity and greater input from Indigenous groups is required in scheduling and work planning.

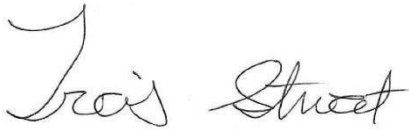
Overall, LFN suggests it is generally premature to weigh in on licence conditions until a technical meeting can be held and will generally reserve our comments on licence condition details until that time.

Closure

The Kaska have had to live with the serious negative impacts of five failed mines authorized by Canada. For example, the Faro Project, almost assuredly, has resulted in the extinguishment of

Kaska Rights exercises over a large mountain scape. This cannot be allowed to occur in relation to Cantung. Beginning with this Cantung care and maintenance water license, the long period of harm could become a time when all involved and affected collaborate around the steps required to reconcile Cantung's past with a fresh beginning, one that will likely look a lot like things were before the Cantung mine and Nahanni Range Road began.

Yours sincerely,
Liard First Nation

A handwritten signature in cursive script that reads "Travis Stewart".

Travis Stewart
Director, LFN Lands and Resources

cc. Mark Cliffe-Phillips, Executive Director
Jeff Mackey, Director, Contaminated Sites Branch
North American Tungsten, c/o Alvarez & Marsal
Tom Isaac, Justice Canada
Madeline Benjamin, CIRNAC
John Ketchum, NWT Geological Survey
Scott Milton, Yukon Highways and Public Works
Yukon Environmental and Socio-economic Assessment Board

Attachment: LFN comments on the Water Licence Application materials (excel sheet)

1. Figure 1: Map of Kaska Traditional Territory

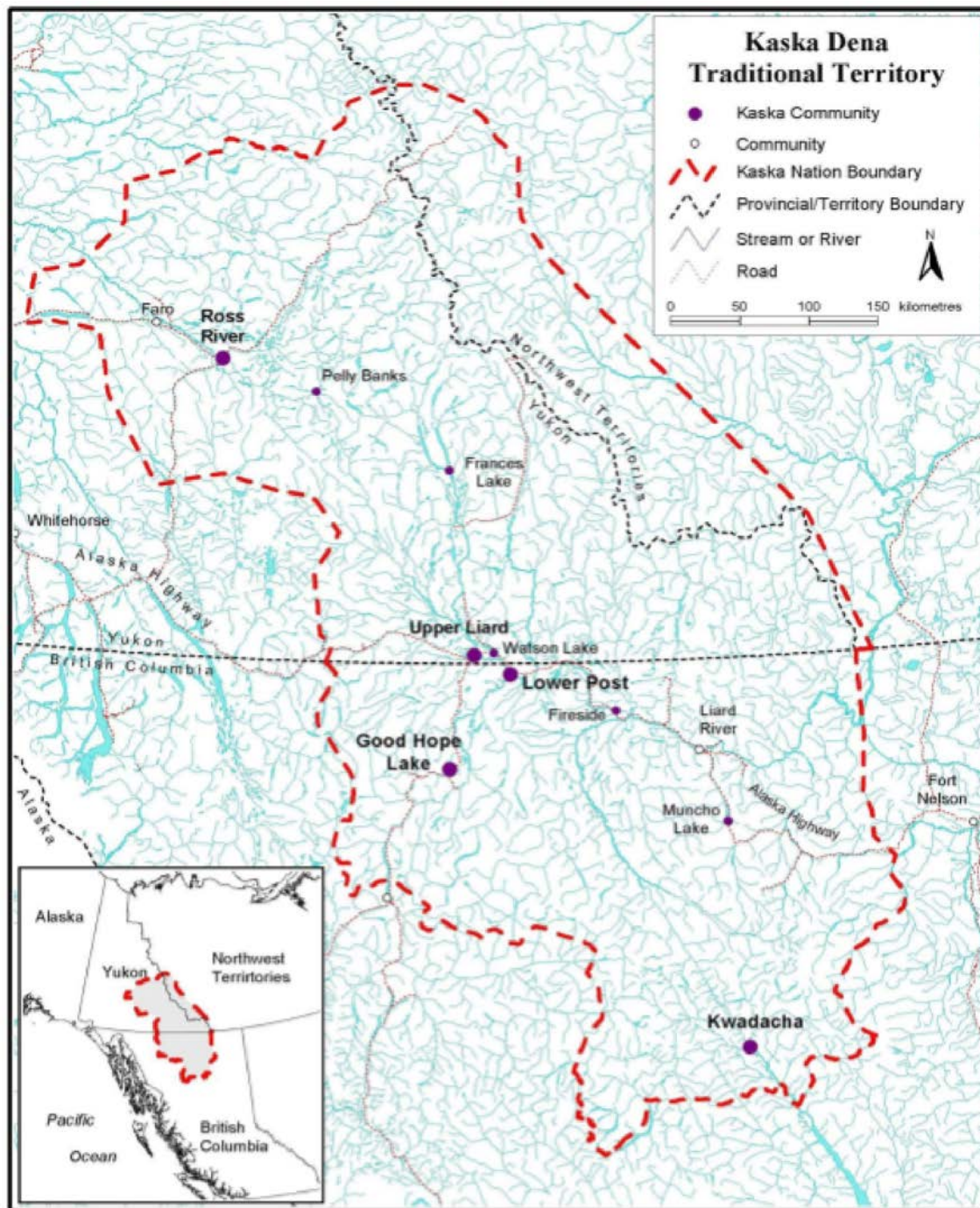


Figure . Map of Kaska traditional territory. The Nahanni Range Road is visible east and northeast of Frances Lake, with its terminus at the Cantung Mine. The project area can be seen to lie entirely within Kaska traditional territory.