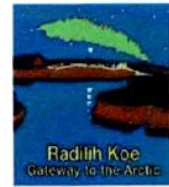


K'asho Got'ine Band



Yamoga LC



January 28, 2025

Valarie Gordon, Chair
Sahtu Land and Water Board
Yamoga Building, Old Airport Road
PO Box 1, Fort Good Hope NT X0E 0H0

Attention Ms. Valarie Gordon

**RE: Water Licence S13L1-007 – Norman Wells Operations
Sahtu Land and Water Board Proposal for a Three-Year Emergency Renewal of Water Licence S13L1-007**

We, the K'asho Got'ine Committee¹ write, on behalf of the K'asho Got'ine of Fort Good Hope, in response to the Sahtu Land and Water Board's (the "Board") request for comments and recommendations on the proposed emergency three-year renewal of Imperial Oil Resources N.W.T. Limited's ("Imperial") Water Licence S13L1-007 (the "Emergency Licence").

On January 11, 2025, we received directions from the K'asho Got'ine Assembly² to oppose the three-year term of renewal for Water Licence S13L1-007 and advocate for a shorter-term renewal that (i) balances the adverse risks of a shut-down with the adverse risks of continued operations, and (ii) is proportional to the time period required to mitigate the environmental, human-health and energy-related risks of an immediate shut-down. To determine a term of renewal that meets these goals, further information is required from Imperial and the Board on the steps and timelines required for a shut-down of production.

I. Risk of Continued Operations

The K'asho Got'ine of Fort Good Hope are stewards of our territory and have protected our lands and waters, including the Mackenzie River, since time immemorial. We have constitutionally protected inherent Indigenous Rights and *Sahtu Dene and Métis Comprehensive Land Claim Agreement* Rights to our lands, waters, and practices thereon, which we exercise on and adjacent to the Mackenzie River.³

¹ The K'asho Got'ine Committee consists of the Fort Good Hope Métis Nation Local #54 Land Corporation, the Fort Good Hope Dene Community Council, the Fort Good Hope Renewable Resources Council, the K'asho Development Foundation and the Yamoga Lands Corporation. Each member of the K'asho Got'ine Committee plays a key role in representing the K'asho Got'ine of Fort Good Hope and protecting our K'asho Got'ine Rights.

² The K'asho Got'ine Assembly comprises all K'asho Got'ine people. It is our internal political decision-making institution and government. Important issues are openly discussed in a public forum with the goal of reaching consensus on any decisions made. K'asho Got'ine Committee leadership takes its instructions from the Assembly.

³ Section 20.1.8(a) and 13.4.1 of the *Sahtu Dene and Metis Comprehensive Land Claim Agreement*.

The Norman Wells Operations is located directly upstream of our territory and our community of Fort Good Hope and has a significant adverse impact on our way of life and the exercise of our constitutionally protected K'ahsho Got'ine Rights.

K'ahsho Got'ine do not trust the Norman Wells Operations and this lack of trust impacts the exercise of K'ahsho Got'ine Rights. K'ahsho Got'ine have repeatedly expressed concerns about the impact of the Norman Wells Operations on the health of the Mackenzie River, including concerns about water quality, fish health, animal health and human health.⁴ K'ahsho Got'ine have also repeatedly shared Indigenous Knowledge about observed changes to the Mackenzie River including reduced fish populations,⁵ animals changing their migration patterns away from the Mackenzie River,⁶ animal and fish deformities,⁷ increased oil seeps,⁸ low water levels,⁹ and dredging of the riverbed.¹⁰ These concerns about the impact of the Norman Wells operations on the Mackenzie River have significantly impacted the exercise of our K'ahsho Got'ine Rights, including rights to hunt, fish and harvest from the Mackenzie River. K'ahsho Got'ine have limited exposure to the Mackenzie River by filtering river water or drinking bottled water,¹¹ preventing our children from swimming in the river,¹² limiting fishing, hunting, and harvesting on and near the river,¹³ and limiting the consumption of harvested foods from the river. The proposed three-year term of the Emergency Licence will allow the Norman Wells Operations to continue to impair our K'ahsho Got'ine Rights without meaningful accommodation.

The proposed Emergency Licence would allow the Norman Wells Operations to continue to operate on the terms and conditions of Water Licence S13L1-00, issued in 2014, without a meaningful re-evaluation of impacts to the environment and K'ahsho Got'ine Rights. Water Licence S13L1-007, issued in 2014, does not include terms and conditions to mitigate present-day environmental risks, including risks caused by aging infrastructure and recent changes in the Mackenzie River's water levels and flow volumes. The immediacy of this environmental risk was demonstrated in July 2022, when unprecedented dredging of the Mackenzie Riverbed uncovered Flowline 490 and caused a spill into the Mackenzie River.

Given the significance of the Norman Wells Operation's impacts to K'ahsho Got'ine Rights and the risk to the environment, the K'ahsho Got'ine Committee argues that the term of Emergency Licence should only be as long as needed to avoid emergency situations and potential environmental impacts.

In its January 9, 2025 decision to initiate a proceeding for the Emergency Licence, the Board stated that our concerns regarding the operation's adverse impacts "are better suited" for the Environmental Assessment process, which "will provide an opportunity to consider longer-term environmental impacts of the Project." The Board further stated that the proposed Emergency Licence "is short term and is only intended to prevent an emergency by keeping the current water licensing framework in place." We disagree with the Board's assessment. As described above, the Norman Wells Operations adversely impacts our K'ahsho Got'ine Rights and the proposed Emergency Licence will continue to adversely impact our K'ahsho Got'ine Rights for an additional three-year term.

⁴ Hearing Transcript Volume 2 at pages 175, 179, 226-227, 257, 290, 295, 306, 316, 329-330, Filing ID: [C29693-1](#).

⁵ Joseph Tobac, Hearing Transcript Volume 1 at page 33, Filing ID: [C29675-1](#).

⁶ Chief Pierrot Transcript Volume1 at page 14-15 Filing ID: [C29675-1](#).

⁷ Tommy Kakfwi, Hearing Transcript Volume 3 at page 353, Filing ID: [C29702](#).

⁸ Chief Pierrot Transcript Volume 1 at page 21 Filing ID: [C29675-1](#).

⁹ Aurora McNeely, Hearing Transcript Volume 2 at pages 253, Filing ID: [C29693-1](#).

¹⁰ Chief Pierrot Transcript Volume 1 at page 21 Filing ID: [C29675-1](#).

¹¹ Joseph Tobac at page 33, John T'seleie at page 63, Buddy Gully at page 75, Hearing Transcript Volume1, Filing ID: [C29675-1](#), and Cara Manuel Hearing Transcript Volume 2 at pages 329-330, Filing ID: [C29693-1](#).

¹² Buddy Gully Hearing Transcript Volume 1 at page 77, Filing ID: [C29675-1](#).

¹³ Bonny Kakfwi, Hearing Transcript Volume 2 at pages 257, Filing ID: [C29693-1](#).

We remind the Board that when the Crown contemplates a decision that might adversely impact Indigenous people's constitutionally protected rights, such as K'ahsho Got'ine Rights, the Crown has an obligation to consult and, where appropriate, accommodate such Indigenous peoples before a decision is made.¹⁴ Furthermore, in circumstances where Indigenous peoples' constitutionally protected rights are protected under treaty, like K'ahsho Got'ine Rights protected under the Sahtu Dene and Métis Comprehensive Land Claim Agreement, the Crown must go beyond consultation and must justify any infringement of such rights before making a decision.¹⁵ As described above, the proposed Emergency Licence has the potential to adversely impact K'ahsho Got'ine Rights. As a result, the Crown has an obligation to consult, accommodate and justify infringement of K'ahsho Got'ine Rights when exercising authority in relation to the Emergency Licence, including consultation on K'ahsho Got'ine concerns about the adverse impact of the continued operations.

II. Balancing Risks of an Immediate Shut-In and Assessing a Proportional Renewal Term

The Board proposed a three-year term for the Emergency Licence to avoid a shut-in of production while the environmental assessment for the overall operations is completed. The Board concluded that the three-year licence was in the public interest because it would avoid the emergency risks posed by a short-term shut-in. However, interested parties, Imperial and the Board did not consider the risks posed by the ongoing operations on the environment or K'ahsho Got'ine Rights, nor did they consider options to mitigate the emergency risks and complete a shut-in safely. Due to the risks of the ongoing operations, we argue that the Board should consider a shorter-term Emergency Licence proportional to the time required to mitigate risks posed by an emergency shut-in.

In its January 9, 2025 decision to initiate a proceeding for the Emergency Licence, the Board summarized the public's submissions on the consequences and risks of an emergency shut-in, including: (i) environmental harm caused by flowline leaks, (ii) regional energy shortages and increased energy costs; (iii) local and regional economic impacts; (iv) impacts to residents' quality of life, health and well-being; (v) increased risk of health and safety incidents for workers on site; and (v) increased pressure on the winter road.

While we share many of these concerns, we believe that the risks of a shut-in of production can be mitigated. We also believe that the proposed three-year term is longer than necessary to mitigate the risks of a shut-in.

a. Environmental Concerns

In its letter to the Board dated December 9, 2024, Imperial expressed concern about the environmental risks of an immediate shut-in of production. Imperial stated that a winter shut-in would increase the risks of flowlines freezing or splitting and causing damage to the environment. Imperial also indicated that a shut-in would cause an increased risk of diesel spills due to the need for generators. Finally, Imperial expressed concern that its capacity to monitor these environmental risks would be limited during a shut-in. No other interested party provided novel information on the environmental risks of an immediate shut-in.

Given the significance of the Mackenzie River to our community, we take Imperial's concerns about environmental risks of a shut-in seriously. However, like the Sahtu Secretariat Incorporated stated in its December 23, 2024 letter to the Board, we are not in a position to independently verify Imperial's claims regarding the technical aspects of a shut-in. As such, to determine an environmentally safe timeline for a shut-in of productions, we request that

¹⁴ *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at para 35 and *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*, 2017 SCC 41 at para 29.

¹⁵ *R. v. Sparrow*, 1990 CanLII 104 (SCC), [1990] 1 S.C.R. 1075; *R. v. Badger*, [1996] 1 SCR 771, 1996 CanLII 236 (SCC).

Imperial provide detailed information on the processes required for a shut-in of production. The Board must then provide interested parties with an opportunity to provide further comment on these steps and timelines.

Despite this, none of the environmental risks identified by Imperial appear to require a full three-year term of renewal. First, the risk of flowlines freezing and splitting could be mitigated by planning a shut-in during the summer instead of the winter. Second, the risk of diesel spills could be mitigated by the development of an environmental protection and emergency response plan. Third, the lack of monitoring capacity could be resolved by hiring monitors and implementing a comprehensive monitoring program during the shut-in period. Therefore, the three-year term of the Emergency Licence is not necessary to mitigate the environmental risks of a shut-in.

b. Regional and Energy Shortages

In letters to the Board dated December 2024, Imperial and the Northwest Territories Power Corporation (“NTPC”) submitted that a shut-in of the Norman Wells Operations would create increased pressure on energy sources in the Town of Norman Wells because the Norman Wells Operations is the primary power producer for the community.

The K’ahsho Got’ine Committee is sympathetic to the risk of energy shortages and supports a plan that will allow the Town of Norman Wells to coordinate to avoid the risk of power outages. However, the risk of energy shortages may be mitigated without requiring the full three-year term of renewal. The NTPC indicated that it has a diesel generation plant in Norman Wells that provides backup power when the Norman Wells Operations is curtailed. This plant was built to a standard to be capable of providing primary power and currently has sufficient capacity to meet peak community load. However, the NTPC stated that the power supply could be at risk if an issue emerges that requires a shutdown of one of the generators. To mitigate this risk, NTPC plans to bring an additional generator into the community on the winter road this year, but the generator will not be operational before the end of the term of Water Licence S13L1-007, in early March, 2025. To ensure that the Norman Wells has a reliable energy source throughout winter 2025, we support a shorter-term renewal of the licence that will allow the NTPC time to import, test and install the generator. However, the term of the Emergency Licence must be proportional to the time required to mitigate the risks of a shut-in. The NTPC has clearly indicated that the risk of energy shortages can be mitigated by installing a new generator. This installation and testing of the generator should require a few months maximum, not three years, and therefore, a three-year term of the Emergency Licence is also not necessary to mitigate the energy risks of a shut-in.

c. Economic Impacts, Quality of Life, Worker Safety and Pressure on Winter Road

Imperial and several other interested parties expressed concern about the impacts of an emergency shut-in on the local and regional economy, the quality of rights of residents of Norman Wells, worker safety and traffic on the winter road.

The K’ahsho Got’ine Committee understands that a temporary shut-in will impact the local and regional economy; however, like the Tuli’ta Renewable Resources Council, we believe that the significance of these economic impacts have been exaggerated. The K’ahsho Got’ine of Fort Good Hope do not benefit from the operations. Imperial has not partnered with K’ahsho Got’ine businesses and has not entered into any financial agreement to support the long-term needs of our community. Imperial has also stated that it plans to start closure and reclamation for the Norman Wells Operations within the next five to ten years. As a result, a significant shift in the local and regional economy is inevitable and any positive economic benefit of current operations is short-term. Furthermore, we argue that the short-term economic benefit of the Norman Wells Operations does not outweigh the adverse

impacts of the Norman Wells Operations on the environment and K'ahsho Got'ine Rights. K'ahsho Got'ine will continue to exercise our rights and rely on the environment long after the closure of the Norman Wells Operations. As such, we submit that the economic risks of a shut-in of production do not justify the three-year term of the Emergency Licence.

With respect to the quality of rights of residents of Norman Wells, worker safety and pressure on the winter road, the K'ahsho Got'ine Committee submits that these concerns will not require three-years to mitigate.

III. Conclusion

K'ahsho Got'ine are stewards of our lands and have ultimate decision-making authority within our territory, including decision-making authority over proposed development. This decision-making authority is affirmed by the principles of Free Prior and Informed Consent documented in the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*. Canada and the Government of the Northwest Territories have committed to implementing UNDRIP in legislation. This commitment requires that the government and government actors obtain the K'ahsho Got'ine's free, prior and informed consent prior to approving development, including the Emergency Licence.

The K'ahsho Got'ine do not provide consent for the three-year term of the Emergency Licence because continued operations pose a significant threat to our K'ahsho Got'ine Rights and way of life, and the proposed three-year term is not balanced with the risks of continued operations and is not proportional to the time required to mitigate the risks of a shut-in of production. We submit that the Board should approve a shorter-term Emergency Licence which is proportional to the time required to mitigate the environmental, human-health and energy-related risks of a shut-in of production. To determine an environmentally, human-health and energy safe timeline for a shut-in of productions, we request that Imperial provide detailed information on the processes required for a shut-in of production. The Board must then provide interested parties with an opportunity to provide further comment on these steps and timelines.

Respectfully,



Chief Collin Pierrot
Fort Good Hope Dene
Community Council



Joseph Tobac
Yamoga Lands
Corporation



Aurora McNeely
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