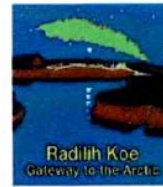


K'asho Got'ine Band



Yamoga LC



July 17, 2024

Sahtu Land and Water Board  
Box 1, Fort Good Hope, NT, X0E 0H0

**RE: Norman Wells Goose to Bear Island Flowline Replacement New Type A Land Use Permit and Type B Water Licence (S24A-005/S24L1-002)**

The K'asho Got'ine Committee submits these comments on behalf of the K'asho Got'ine of Fort Good Hope in respect of Imperial Oil Northwest Territories Ltd.'s applications for a Type A Land Use Permit and Type B Water Licence for the Line 490 Replacement Project.

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 Corporations. Each of 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 inherent Indigenous Rights and our Sahtu Dene and Métis Comprehensive Land Claim Agreement Rights.

Sincerely,

Chief Collin Pierrot  
Fort Good Hope Dene  
Community Council

Edwin Erutse  
Yamoga Lands  
Corporation

Aurora McNeely  
Fort Good Hope Metis  
Nation Local #54 Land  
Corporation

Bonny Kakfwi  
Fort Good Hope Renewable  
Resources Council

Darcy Edgi  
K'asho Got'ine  
Foundation

## I. Overview

The K'ahsho Got'ine Committee has a strong interest in participating in the Sahtu Land and Water Board's (SLWB) review process for Imperial Oil Northwest Territories Ltd.'s (IOR-NWT) applications for a Type A Land Use Permit and Type B Water Licence for the Line 490 Replacement Project with a view to ensuring that the Project's direct and cumulative impacts on our K'ahsho Got'ine ability to practice our Rights are adequately identified, accommodated, justified, and offset. However, the current regulatory process for the Project does not provide adequate timelines or funding to facilitate our informed or meaningful engagement. In addition, the regulatory process fails to meet the threshold for consultation, accommodation, justification of infringement or free prior and informed consent.

Given this, the K'ahsho Got'ine Committee opposes the issuance of a Type A Land Use Permit and Type B Water Licence for the Project and withholds consent in respect of the Project until such time as we are provided the opportunity to engage in an informed or meaningful manner, at which time we will assess the Project impacts and provide a fulsome response.

The following submissions set out a high-level overview of K'ahsho Got'ine Rights downstream of the Project; describes the Crown's consultation obligations and the limitations of this regulatory processes; summarizes K'ahsho Got'ine concerns in respect of the Project and makes recommendations on mitigation measures. However, we want to emphasize that these submissions *do not* amount to meaningful or informed engagement because we have not had the time or funding to review the applications; attain an in-depth technical understanding of the Project; or engage the K'ahsho Got'ine Assembly on impacts to Rights.

## II. K'ahsho Got'ine Rights in the Mackenzie River Basin

The K'ahsho 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. The Mackenzie River is situated in the heart of our territory. The community of Fort Good Hope, important cultural gathering places, the protected area Ts'udé Niljné Tuyeta, and many hunting, fishing, and cultural camps are located along the banks of the Mackenzie River.

We have constitutionally protected rights, including inherent Indigenous and Sahtu Dene and Metis Land Claim Agreement Rights to our waters, lands, and practices thereon. Under the Sahtu Dene and Metis Land Claim Agreement, we also have a Right to the "substantially unaltered" quality of waters flowing through and adjacent to our Sahtu Settlement Lands, including the Mackenzie River.<sup>1</sup> We exercise many of our Rights along and on the Mackenzie River, including our rights to fish, hunt, trap and harvest.

## III. Duty to Consult, Accommodate and Justify Infringement

We remind the SLWB that when the Crown contemplates a decision that might adversely affect Indigenous people's constitutionally protected rights, it has an obligation to consult and where

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<sup>1</sup> Sahtu Dene and Metis Comprehensive Land Claim Agreement, section 20.1.8(a) "Participants have the right to have waters which are on or flow through or are adjacent to Sahtu lands remain substantially unaltered as to quality, quantity and rate of flow when such waters are on or flow through or are adjacent to Sahtu lands." The Mackenzie River flows through and is adjacent to Sahtu Lands.

appropriate accommodate Indigenous peoples before making a decision.<sup>2</sup> Furthermore, in circumstances where Indigenous peoples rights are established under treaty, like K’ahsho Got’ine Rights established under the Sahtu Dene and Metis Land Claim Agreement, the Crown must go beyond consultation and must justify any infringement of Indigenous Rights before making a decision.<sup>3</sup>

Canada has also committed to implementing the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*.<sup>4</sup> We share that goal. Existing Canadian law governing consultation obligations is inconsistent with *UNDRIP*. Though s 35 jurisprudence enshrines our right to meaningful consultation, accommodation, and justification of infringement, *UNDRIP* demands an even higher standard from Canada: free, prior, and informed consent. To obtain consent, Canada must deal directly with our chosen representatives, with adequate time and information such that our representatives can seek direction and decisions from our Assembly as required.<sup>5</sup>

In this case, the Crown has an obligation to consult, accommodate, justify any infringement of K’ahsho Got’ine Rights and obtain free prior and informed consent before making a decision. The activities proposed in the Line 490 Replacement Project, if approved, would take place on, around and under the Mackenzie River, which is directly upstream of our K’ahsho Got’ine territory. Any impact of the Project on the Mackenzie River will flow directly into the heart of our territory where we exercise our Rights. As such, the proposed Line 490 Replacement Project poses a significant risk to our community, our way of life, and the exercise of our Rights, including our Right to the maintenance of the quality and quantity of water flowing through the Mackenzie River.

SLWB’s Online Review System indicates that the Crown is relying on the SLWB’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.” However, the SLWB’s review process has not provided adequate time or funding for the K’ahsho Got’ine to engage in an informed or meaningful manner. Informed engagement requires sufficient time and funding to allow us to review and assess the proposed applications with technical, legal and environmental support. Meaningful engagement also requires sufficient time and funding to allow us to engage K’ahsho Got’ine knowledge-holders and gather evidence of land-use and K’ahsho Got’ine Rights to assess the potential adverse impacts of the Project on our Rights.

#### Timelines:

The SLWB’s timeline for interested parties to engage and provide comments for preliminary screening and review of the Project is insufficient to support meaningful engagement, particularly considering the technical complexity of the proposed project and the potential for adverse impacts to K’ahsho Got’ine

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<sup>2</sup> *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at para 35

<sup>3</sup> *R. v. Sparrow*, 1990 CanLII 104 (SCC), [1990] 1 S.C.R. 1075; *R. v. Badger*, [1996] 1 SCR 771, 1996 CanLII 236 (SCC)

<sup>4</sup> United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, Vol III, UN Doc A/61/49 [UNDRIP], affirmed in Canadian law pursuant to the *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14

<sup>5</sup> Our internal political decision-making institution, our government, is the K’ahsho Got’ine Assembly, which comprises all K’ahsho Got’ine people. Important issues are openly discussed in a public forum with the goal of reaching a consensus on any decisions made. Leadership then takes the decisions or directions of the Assembly forward in dealings with Canadian governments and institutions.

Rights. The SLWB's comment period extensions did not adequately accommodate the community of Fort Good Hope's state of emergency and evacuation order between June 15 and July 6, 2024. The K'ahsho Got'ine only had 17 weekdays in total to respond to this process (excluding time that the community was under an evacuation order):

1. June 3: Application package distributed
2. June 15: Fort Good Hope placed residents on a fire-related evacuation order
3. June 17: Reviewer comment period extended until July 3
4. June 19: Original reviewer comment due date
5. July 5: Reviewer comment period extended until July 17
6. July 6: Fort Good Hope lifts evacuation order
7. July 17: Comment period closes

Furthermore, the K'ahsho Got'ine only had 6 weekdays to engage in the review process before the evacuation order was issued. Following the evacuation order, the K'ahsho Got'ine had an additional 11 working days, but had limited capacity to engage in the review process because leadership has been prioritizing the support and adjustment of community members.

Courts have found that compressed timelines, which do not allow for meaningful engagement from affected Indigenous rights-holders, such as the SLWB's review process timeline in this case, may violate the Crown's duty to consult, accommodate and justify infringement of Indigenous rights.<sup>6</sup>

#### Funding:

The SLWB, the Crown and Imperial have not provided any funding to cover our costs of meaningful participation in the SLWB's review of the applications. Courts have found that, in some circumstances, meaningful consultation requires Canada to provide funding for First Nations to engage in consultation.<sup>7</sup> Courts have also repeatedly held that "the issue of appropriate funding is essential to a fair and balanced consultation process, to ensure a level playing field".<sup>8</sup> Without funding available to cover the costs of our meaningful engagement, there is a real risk that the SLWB will issue authorizations that affect our Rights without the Crown having discharged its duty to consult.

The K'ahsho Got'ine have no sustained funding to support engagement in regulatory proceedings and, as such, to date, we have incurred significant financial costs in responding to regulatory proceedings for the Norman Wells Operations. Without adequate funding, our responses do not meet the threshold of informed, meaningful engagement.

#### **IV. Impacts to K'ahsho Got'ine Rights**

As indicated above, we have a strong interest in participating in decision-making processes for the Norman Wells Operations, including the applications for the Line 490 Replacement Project. As such, despite the

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<sup>6</sup> *Moulton Contracting Ltd. v British Columbia*, 2013 BCSC 2348 at para 293.

<sup>7</sup> *Saugeen First Nation v. Ontario (MNR)*, 2017 ONSC 3456

<sup>8</sup> *Enge (North Slave Metis Alliance) v. Mandeville*, 2013 NWTSC 33 at para 269, quoting *Platinex Inc. v. Kitchen Uhmaykoosib Inninuwig First Nation*, 2007 CanLII 20790 (ON SC) at para 27.

lack of adequate time and funding available to provide a meaningful and informed comment, we have used what limited resources we do have to set out a high-level summary of potential adverse impacts of the Project to K'ahsho Got'ine Rights.

Our primary concern is the protection of the water quality of the Mackenzie River. We have Rights to the quality and quantity of water in the Mackenzie River under the Land Claim Agreement, Rights to fish, hunt, trap and harvest along the Mackenzie River and Rights to exercise cultural and spiritual practices along the River. The Norman Wells Operations, generally, and the Line 490 Replacement Project, specifically, pose a significant threat to these Rights because of the location of our territory directly downstream of the Operations. The following summary describes the risks of adverse impacts to our relationship to the land, our source of drinking water (and as a result, human health), our rights to fish, hunt, trap and harvest and our sustenance. This summary relies primarily on testimony from Oral Indigenous Knowledge Sessions held for the Hearing Process of the Canada Energy Regulator in respect of the applications to extend IOR-NWT's Operations Authorization and for the Line 490 Replacement Project.

#### Impacts on Relationship to the Mackenzie River

The K'ahsho Got'ine are stewards of our lands and waters. However, the Norman Wells Operations has adversely impacted our relationship to the Mackenzie River and thereby the exercise of K'ahsho Got'ine Rights. In Oral Indigenous Knowledge Sessions, community members indicated that they are concerned that IOR-NWT's proposal to reopen Line 490 using Horizontal Directional Drilling technology will further deteriorate the water quality in the Mackenzie River. These concerns and lack of trust in the proposed Project further adversely impacts our relationship to the Mackenzie River and the exercise of our Rights.

Chief Collin Pierrot pointed out the connection between water, land, and culture. The land, waters, fish, and animals are necessary to transmit knowledge across generations:

This is our very same drinking water that we've been using for 100 years, more than 100 years, and we're going to continue to use it with or without your help, for drinking clean water and raising our young people in the fish camps we always use on the Mackenzie River, teaching our young people out on the land to hunt and continue practicing our culture and our tradition.<sup>9</sup>

Hiroki Masuzumi also described the relationship between K'asho Got'ine and their land:

Being K'asho Got'ine means more than just a cultural identity. It encompasses a deep connection to the land and a responsibility to protect it. The land is not just a physical space to us. It holds our history, traditions and spirituality.<sup>10</sup>

And Brenda T'Seleie Pierrot described her profound respect for, and connection, to the land and water:

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<sup>9</sup> Canada Energy Regulator, Imperial Oil Resources N.W.T. Limited Variance Application for Operations Authorization OA 1210-001 and Application for Line 490 Replacement Activities Hearing OH-001-2023, Oral Indigenous Knowledge Hearing, Volume 1 at page 29.

<sup>10</sup> Canada Energy Regulator, Imperial Oil Resources N.W.T. Limited Variance Application for Operations Authorization OA 1210-001 and Application for Line 490 Replacement Activities Hearing OH-001-2023, Oral Indigenous Knowledge Hearing, Volume 2 at page 322.

I have a lot of respect for water, fire and our land. It's a living thing to me. We don't ever disrespect the water or fire or the land because this is our main source of life. We take care of our water, we take care of our land because that's where we get our food from. That's where we eat fish from. That's where our animals drink from.<sup>11</sup>

### Drinking Water and Human Health

K'ahsho Got'ine rely on the Mackenzie River as a source of drinking water. In Fort Good Hope, water for the community reservoir is pumped and filtered from the Mackenzie River and in hunting and fishing camps located along the banks of the Mackenzie River, many people drink unfiltered water directly from the River. Community members have expressed concern about the potential adverse impacts of the Norman Wells Operations and the Line 490 Replacement Project on water quality and human health as a result of consumption. As, Buddy Gully put it:

I could make a pot of tea and if I was to give you guys a cup, would you drink it? Because us, we do. Everybody else does here, too.<sup>12</sup>

### Fishing/hunting/trapping/harvesting

Community members have also expressed concerns about the impact of the Line 490 Project on fishing, hunting, trapping and harvesting. In Oral Indigenous Knowledge Sessions, many community members described the deterioration of fish and wildlife and expressed concerns about the impacts of the Line 490 Project on the fish and the wildlife. In addition, the mistrust in the water quality has impacted our ability to use our traditional territory for fishing, hunting, trapping and travelling, because access to a safe water supply is critical to our ability to travel. Bonnie Kakfwi explained:

Most of our Elders and adults have been growing up here drinking the water right from the land, from the creeks, the lakes and the Mackenzie River. Historically, we never used bottled water or filtered water or water from the town treatment plant. We had drinking water from the land. That's how we lived our lives as K'asho Got'ine, and that's our right. We cannot do that anymore. Now we have to travel on the Mackenzie River and bring clean water with us... We carry gallons of water with us from town whenever we travel out on the river... Now I'm really concerned about contamination in the river. It's making its way into the fish, meat of the animals, and the drinking water.<sup>13</sup>

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<sup>11</sup> Canada Energy Regulator, Imperial Oil Resources N.W.T. Limited Variance Application for Operations Authorization OA 1210-001 and Application for Line 490 Replacement Activities Hearing OH-001-2023, Oral Indigenous Knowledge Hearing, Volume 1 at page 116.

<sup>12</sup> Canada Energy Regulator, Imperial Oil Resources N.W.T. Limited Variance Application for Operations Authorization OA 1210-001 and Application for Line 490 Replacement Activities Hearing OH-001-2023, Oral Indigenous Knowledge Hearing, Volume 1 at page 75.

<sup>13</sup> Canada Energy Regulator, Imperial Oil Resources N.W.T. Limited Variance Application for Operations Authorization OA 1210-001 and Application for Line 490 Replacement Activities Hearing OH-001-2023, Oral Indigenous Knowledge Hearing, Volume 2 at page 258.

## Impact on Sustenance / Harvested Foods

Many K'ahsho Got'ine rely on harvested foods for sustenance. However, in Oral Indigenous Knowledge Sessions, community members expressed that they do not trust that the fish, animals, and plants they harvest are safe to eat due to the deterioration of the water quality. As Chief Collin Pierrot put it succinctly:

The very same animals that swim and drink water and use the Mackenzie River, to raise their young. These are the very same animals that we use to feed our young.<sup>14</sup>

Twyla Edgi Masusumi described the impact of the Norman Wells Operations on how she feeds her four children:

I work on dried fish and that's when my kids get so excited because they get to eat Dene-Béré that's their food. And to see my kids smile and want their food. But there was a spill that happened in Norman Wells where all of us had to pull our nets because we were scared what was going into the fish, and I've been seeing lately that there's more of these little white things that are coming on the guts. Like the guts are getting like so much little white lumps and stuff on their guts, and I'm seeing more of it happening lately. So it kind of makes me scared to work on fish and to feed my kids that. And it makes me sad that I have to restrict my kids Dene-Béré because of things that are happening in the water.<sup>15</sup>

Arthur Tobac also described how important country foods are for the people – especially considering how expensive and unhealthy food from the grocery store is:

Without food from the land, families would be hard-pressed to keep their children and themselves eating healthy meals. Food from the land is fresh, nutritious, and high quality, while the food we get from the stores is often expensive and it doesn't have the nutritional value found in country foods. People rely on good country foods to stay healthy. Food from the animals and the fish that we harvest from our land and our river. And I wanted to bring this up because in my work with housing, we try to house people, but the high cost of fuel, the high cost of food is such an issue here in our community, and there are times when we are made aware that maybe young mothers are having to choose between food or fuel.<sup>16</sup>

## **V. Recommendations to Mitigate Impact on Rights**

As set out above, we have not received adequate time or funding to engage in the SLWB's review process in an informed or meaningful manner. Despite these limitations, this section sets out a high-level summary

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<sup>14</sup> Canada Energy Regulator, Imperial Oil Resources N.W.T. Limited Variance Application for Operations Authorization OA 1210-001 and Application for Line 490 Replacement Activities Hearing OH-001-2023, Oral Indigenous Knowledge Hearing, Volume 1 at page 18.

<sup>15</sup> Canada Energy Regulator, Imperial Oil Resources N.W.T. Limited Variance Application for Operations Authorization OA 1210-001 and Application for Line 490 Replacement Activities Hearing OH-001-2023, Oral Indigenous Knowledge Hearing, Volume 2 at page 174-175.

<sup>16</sup> Canada Energy Regulator, Imperial Oil Resources N.W.T. Limited Variance Application for Operations Authorization OA 1210-001 and Application for Line 490 Replacement Activities Hearing OH-001-2023, Oral Indigenous Knowledge Hearing, Volume 2 at page 245-246.

of recommendations on conditions which may be implemented to support the protection of K'ahsho Got'ine Rights if the Line 490 Replacement Project is approved. The following recommendations have been developed at leadership meetings and with input from the community at Oral Indigenous Knowledge Sessions; however, they do not represent a specific or detailed analysis of recommendations to address specific concerns on the Line 490 Replacement Project.

#### Consistent and Sustained Funding for Engagement:

We recommend that, if the SLWB approves the applications, the SLWB include provisions in the Water Licence and the Land Use Permit requiring IOR-NWT to provide funding to support Indigenous people's engagement with regulatory processes and ongoing filings for the Line 490 Replacement Project.

As indicated above, the K'ahsho Got'ine do not have any sustained or meaningful funding to support our engagement with regulatory processes for the Norman Wells Operations. In particular, the Kahsho Got'ine do not have any funding with respect to SLWB review processes. This lack of funding significantly impairs our ability to meaningfully engage in regulatory processes and ongoing filings.

#### K'ahsho Got'ine-Led Monitoring Programs:

We recommend that, if the SLWB approves the applications, the SLWB include provisions in the Water Licence and the Land Use Permit requiring IOR-NWT to provide support and capacity funding for independent K'ahsho Got'ine-led monitoring of the Line 490 Replacement Project activities, including monitoring of the water quality during construction phase. We further recommend that IOR-NWT be required to provide the K'ahsho Got'ine with access to the facilities and the area under construction to support such monitoring efforts.

While the K'ahsho Got'ine are currently involved in monitoring activities by way of the Aquatic Effects Monitoring Program, there is no specific monitoring program for the Line 490 Replacement Project. Furthermore, the K'ahsho Got'ine do not have autonomous control over the design of the monitoring program, the type of testing completed, or the ownership of the data for the Aquatic Effects Monitoring Program. As a result, K'ahsho Got'ine do not trust the results of the Aquatic Effects Monitoring Program. Without trustworthy data on the quality and health of the water and wildlife, the K'ahsho Got'ine are impaired in their exercise of their rights – including their rights to healthy water, to fish, hunt and harvest. To address the impairment of K'ahsho Got'ine Rights, we recommend that IOR-NWT be required to provide access to the facilities and funding for the K'ahsho Got'ine to complete independent monitoring for impacts to the environment and K'ahsho Got'ine Rights. This will facilitate K'ahsho Got'ine in continuing to exercise their Rights in the Mackenzie River.

#### Economic Opportunities:

We recommend that, if the SLWB approves the applications, the SLWB include provisions in the Water Licence and the Land Use Permit requiring IOR-NWT to provide Indigenous peoples with opportunities for employment, contracting procurement and training in respect of the ongoing operations. We further



recommend that Imperial be required to report on Indigenous employment, contracting, procurement and training.

Imperial does not currently have a business relationship with any K'ahsho Got'ine owned companies. To facilitate the economic participation of Indigenous peoples, we recommend adding requirements on such opportunities.

#### Cumulative Effects Assessment on Cultural Well-Being

We recommend that, if the SLWB approves the applications, the SLWB include provisions in the Water Licence and the Land Use Permit requiring IOR-NWT to complete a comprehensive cumulative effects assessment in collaboration of Indigenous groups to assess the impacts of the Line 490 Replacement Project on the environment and the exercise of Indigenous Rights.

We have expressed concerns about how the cumulative effects of development, including the Line 490 Replacement Project, have undermined the exercise of our Rights. As such, we recommend a condition requiring the completion of a cumulative effects assessment of impacts to Indigenous Rights.

#### Communications and Transparency

We recommend that, if the SLWB approves the applications, the SLWB include provisions in the Water Licence and the Land Use Permit requiring IOR-NWT to provide notice of all project updates and regulatory filings to Indigenous peoples.

We have expressed concerns about the lack of trust and information sharing with IOR-NWT. To resolve these issues, we recommend a condition requiring greater communications and transparency.

### **VI. Conclusion**

We, the K'ahsho Got'ine, are very concerned about the adverse impacts of the Norman Wells Operations and the Line 490 Replacement Project on our Rights and particularly our water quality and have a strong interest in engaging in ongoing regulatory processes. However, the SLWB's condensed review process for the Applications does not provide us with the opportunity to engage in an informed or meaningful manner. In particular, we have not had the opportunity to review the applications in-depth, we have not had the opportunity to hire technical experts to assess the new technologies proposed and we have not had the opportunity to engage our Assembly to identify and express adverse impacts of the proposed Project. Our submissions on impacts to rights and mitigation measures above provide a very high-level overview of our concerns based solely on work developed for other regulatory processes. We do not consider this to be an informed or meaningful response. The SLWB's regulatory process fails to meet the Crown's legal obligations to consult, accommodate, and justify infringements of Rights. It also fails to attain free prior and informed consent. Given all of this, we oppose the issuance of a Type A Land Use Permit and Type B Water Licence for the Project and withholds consent in respect of the Project until such time as we are provided the opportunity to engage in an informed or meaningful manner, at which time we will re-assess the Project impacts and provide a fulsome response.