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October 5, 2023

File: MV2023L2-0006

Mark Cliffe-Phillips  
Mackenzie Valley Review Board  
200 Scotia Centre  
Box 938, 5102-50th Avenue  
Yellowknife NT X1A 2N7

Sent by email

Dear Mark Cliffe-Phillips,

**Re: North American Tungsten Corporation Ltd. – Notice of Preliminary Screening Determination – Renewal Application for Type A Water Licence – Mining and Milling – Cantung Mine, NT**

The Mackenzie Valley Land and Water Board (Board) met on September 28, 2023 and considered the Renewal Application from North American Tungsten Ltd. (NATCL) for Water Licence (Licence) MV2023L2-0006 for mining and milling at the Cantung Mine site (Project) in accordance with the *Mackenzie Valley Resource Management Act (MVRMA)*.

The Project was previously licensed prior to June 22, 1984, and the Application does not include abandonment, decommissioning, or significant alterations to the Project. Accordingly, the Board has determined that Part 5 of the MVRMA does not apply pursuant to section 157.1 of the MVRMA. Consequently, no preliminary screening was conducted.

Please contact Kathy Racher via [email](#) or at (867) 766-7457 with any questions or concerns regarding this letter.

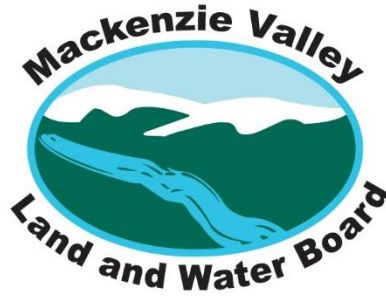
Yours sincerely,

A handwritten signature in blue ink that reads "Tanya MacIntosh". The signature is written in a cursive style with a long horizontal stroke at the beginning.

Tanya MacIntosh  
Chair, Mackenzie Valley Land and Water Board

BCC'd to: NATCL/Cantung Distribution List  
Todd Martin, NATCL  
Tim Morton – Inspector, CIRNAC

Attached: Preliminary Screening Determination and Reasons for Decision



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## Preliminary Screening Determination and Reasons for Decision

Water Licence and Land Use Permit Applications	
File Number	MV2023L2-0006
Company	North American Tungsten Corporation Ltd.
Project	Mining and Milling Renewal Application
Location	Cantung Mine, NT
Activity	Mining and Milling
Date of Decision	September 28, 2023

### 1.0 Decision

In accordance with subsection 124(1) of the Mackenzie Valley Resource Management Act (MVRMA), the Mackenzie Valley Land and Water Board (MLWB or Board) met on September 28, 2023 to make a preliminary screening determination on the type A Licence renewal Application from North American Tungsten Corporation Ltd. (NATCL) (Applicant) for Water Licence MV2023L2-0006 (Licence)<sup>1</sup> for mining and milling activities at the Cantung Mine site (Project).

The Project was previously licensed prior to June 22, 1984, and the Applications do not include abandonment, decommissioning, or significant alterations to the Project. Accordingly, the Board has determined that Part 5 of the MVRMA does not apply pursuant to section 157.1 of the MVRMA, and no preliminary screening is required.

The Board's determinations, including reasons for its decisions, are detailed in sections [3.0](#) and [4.0](#).

<sup>1</sup> See MVLWB Online Registry [NATCL – Type A Renewal Application – Application Form – July 6 23](#).

## 2.0 List of Defined Terms and Acronyms

Applicant	North American Tungsten Corporation Ltd.
Applications	The complete application package submitted by the Applicant for Water Licence MV2023L2-0006.
Board	Mackenzie Valley Land and Water Board
CIRNAC	Crown-Indigenous Relations and Northern Affairs Canada
DFO	Department of Fisheries and Oceans
EA	Environmental Assessment
GNWT	Government of the Northwest Territories
GNWT-ECC	Government of the Northwest Territories – Environment and Climate Change
MVLWB	Mackenzie Valley Land and Water Board
MVRMA	<i>Mackenzie Valley Resource Management Act</i>
Minister	Minister of Northern Affairs
NDDB	Nahᓃą Dehé Dene Band
ORS	Online Review System ( <a href="http://www.new.onlinereviewssystem.ca">www.new.onlinereviewssystem.ca</a> )
Party	As per the LWB <a href="#">Rules of Procedures</a> , an applicant, a person, or an organization participating in the regulatory proceeding for the Applications.
Project	Mining and milling activities at the Cantung Mine site, which is the proposed development (as defined in Part 5 of the MVRMA). <sup>2</sup>
Review Board	Mackenzie Valley Environmental Impact Review Board

## 3.0 Background and Preliminary Screening Discussion

### Project Description

The Cantung Mine operated for several years including 1962-1986, 2002-2003, 2005, and 2009-2010. Due to the decline in the price of tungsten overtime, the company filed for creditor protection on June 9, 2015, with the Supreme Court of British Columbia (B.C.) (the Court) pursuant to the *Companies' Creditors Arrangement Act* (CCAA), R.S.C. 1985, c. C-36. The Project transitioned to care and maintenance on October 26, 2015, with funding for relevant activities provided by Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC).

On November 16, 2015, the Court granted the NATCL's request for bankruptcy protection and appointed Alvarez & Marsal Canada Inc. as the Project's Monitor. On November 18, 2015, Canada reclassified the site as a "New Site Requiring Remediation" as per the Devolution Agreement. The administration and control of surface land and rights were transferred from the GNWT to Canada (subsurface rights were retained by the GNWT). Since the court's initial ruling on bankruptcy protection, the Monitor, Alvarez & Marsal Canada Inc., have sought and been granted several extensions under the CCAA.

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<sup>2</sup> "development" is defined in Part 5 of the MVRMA as:

"any undertaking, or any part or extension of an undertaking, that is carried out on land or water and includes an acquisition of lands pursuant to the *Historic Sites and Monuments Act* and measures carried out by a department or agency of government leading to the establishment of a park subject to the *Canada National Parks Act* or the establishment of a park under a territorial law."

In July 2019, the Court granted an order to jointly market and sell the Cantung and nearby Mactung properties to the private sector. The Monitor, on behalf of the Licensee, and in coordination with the Governments of the Northwest Territories (GNWT) and Canada, undertook a sales and marketing process to secure a successful buyer for the Project. In April 2022, the sales and marketing process was terminated without the selection of a buyer. Since then, a decision has been made to transition the Project from care and maintenance to final closure and reclamation. Previous options of returning the Project to an operational mine or continuing to fund the current phase of care and maintenance are no longer viable. NATCL currently holds type A Licence MV2015L2-0003 for mining and milling at the Cantung Mine site. Licence MV2015L2-0003 will expire on January 27, 2024.<sup>3</sup>

### Regulatory History – Preliminary Screening

On February 1, 2022, NATCL applied to the Board for a licence (MV2002L2-0019) to replace Water Licence N3L2-0004 (issued in 1995) for its mining operation on the Flat River.<sup>4</sup> During the review of this Application, the Board decided that section 157.1 of the MVRMA did not apply as Licence MV2002L2-0019 was not a continuation of the original water licence N3L3-0004 issued in 1975, and that a renewed licence in effect was a new licence.<sup>5</sup> The Board subsequently conducted a preliminary screening of the Application and referred it to the Review Board for Environmental Assessment (EA).<sup>6</sup>

On August 22, 2022 NATCL sought judicial review of the Board's decision to conduct a preliminary screening of the Application, which was dismissed by Justice Schuler of the Supreme Court of the Northwest Territories.<sup>7</sup> NATCL then filed a Notice of Appeal from the decision of Justice Schuler to the Northwest Territories Court of Appeal on January 9, 2023.<sup>8</sup> The Court of Appeal overturned Justice Schuler's decision and held that section 157.1 of the MVRMA grandfathers an *undertaking* licensed prior to June 22, 1984 rather than a *licence* issued prior to June 22, 1984.<sup>9</sup>

Since Licence MV2002L2-0019 was issued by the Board on November 29, 2003, the Board did conduct several preliminary screenings on applications made by NATCL, associated with the following authorizations: MV2002L2-0019 and MV2014D0012<sup>10</sup>; MV2009Q0049<sup>11</sup>; MV2010C0055<sup>12</sup>; MV2012S0011<sup>13</sup>; MV2012C0014<sup>14</sup>; MV2014C0015<sup>15</sup>; MV2019S0009.<sup>16</sup> These screenings were necessary as

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<sup>3</sup> See MVLWB Online Registry for [MV2015L2-0003](#).

<sup>4</sup> See MVLWB Online Registry for [MV2002L2-0019](#).

<sup>5</sup> North American Tungsten Corp v Mackenzie Valley Land and Water Board, 2003 NWTCA 5.

<sup>6</sup> See MVLWB Online Registry for [MV2002L2-0019 – NATCL – Preliminary Screening – Jul03](#).

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> North American Tungsten Corp v Mackenzie Valley Land and Water Board, 2003 NWTCA 5.

<sup>10</sup> See MVLWB Online Registry for [MV2002L2-0019 MV2014D0012 - NATCL – Preliminary Screening Determination – Aug13-14; MV2002L2-0019 MV2014D0012 – NATCL Amendment and New LUP – Preliminary Screening – Mar2-15](#).

<sup>11</sup> See MVLWB Online Registry for [MV2009Q0049 – NATCL – Application – Preliminary Screening Report – Apr01-10](#).

<sup>12</sup> See MVLWB Online Registry for [MV2010C0055 – NATCL – Application – Preliminary Screening Report – May27-11](#).

<sup>13</sup> See MVLWB Online Registry for [MV2012S0011 – NATCL – Application – Preliminary Screening Report – Jun7-12](#).

<sup>14</sup> See MVLWB Online Registry for [MV2012C0014 – NATCL – Application – Preliminary Screening Report – Jun20-12](#).

<sup>15</sup> See MVLWB Online Registry for [MV2014C0015 – NATCL – Preliminary Screening Report – Jul3-14](#).

<sup>16</sup> See MVLWB Online Registry for [MV2019S0009 – NATCL – Issuance – Preliminary Screening Report – Jun6-19](#).

the applications included significant project alterations and were not exempt pursuant to section 157.1 of the MVRMA.

On April 21, 2015, NATCL submitted a Renewal Application for Licence MV2015L2-0003. The Board decided that the Renewal Application was exempt from preliminary screening because of section 157.1 and because no significant alteration of the project was proposed since the previous screening.<sup>17</sup>

### Description of Applications

On July 6, 2023, NATCL submitted a Renewal Application for a type A Licence (MV2023L2-0006) for mining and milling activities at the Cantung Mine site. In the Cover Letter, NATCL discussed that the Application was necessary so that NATCL can continue its current licensed activities while the regulatory proceeding for Permit MV2023D0010 and Licence MV2023L2-0001 is ongoing; this proceeding is not expected to be completed prior to the expiration of Licence MV2015L2-0003.<sup>18</sup> NATCL requested the same scope and no changes to the terms and conditions as the current Licence MV2015L2-0003, and a term of two years.

The following documents were included with the Application:

- [Application Form](#)
- [Cover Letter](#)

An Engagement Record<sup>19</sup> was included in the Application. Cantung noted they engaged with the following Parties:

- Acho Dene Koe First Nation
- Dehcho First Nation
- Fort Simpson Métis Local 52
- Kaska Dena Council
- Liard First Nation
- Łíídlı́ Kúé First Nation
- Nahąą Dehé Dene Band (NDDB)
- Ross River Dena Council

The Engagement Summary indicated that NATCL had engaged with Parties about the Application from June 15-30, 2023, and that no issues requiring resolution were raised.

### Description of Applications – Preliminary Screening

Under section 157.1 of the MVRMA, Part 5 of the MVRMA does not apply to licences or permits for projects that were previously licensed and/or permitted prior to June 22, 1984 and do not include abandonment, decommissioning, or significant alterations of the project.

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<sup>17</sup> See MVLWB Online Registry for [MV2015L2-0003 – NATCL – Preliminary Screening Exemption Confirmation Letter – Jul16-15](#).

<sup>18</sup> See MLWB Online Review System for [Cantung Care and Maintenance – Type B Renewal Licence and New Type A Permit Applications – June 6 23](#).

<sup>19</sup> See MVLWB Online Registry for [NATCL – Type A Renewal Application – Engagement Record – July 6 23](#).

In the Cover Letter NATCL discussed that the Application is for a scope that is the same as the current Licence MV2015L2-0003. In the Application Form, NATCL argued that the Application should be exempt from preliminary screening similar to Licence MV2015L2-0003 as per the Board's July 16, 2015 decision.<sup>20</sup>

### **3.1 Public Record and Regulatory Proceeding**

To assist the Board in its preliminary screening determination for the Project, the Board distributed the Applications for public review on July 14, 2023 inviting reviewers to provide comments and recommendations on the Application and the preliminary screening (e.g., on impacts and mitigation measures) using the Online Review System (ORS). The Board received comments and recommendations by August 4, 2023 from Department of Fisheries and Oceans (DFO), Parks Canada, CIRNAC; Transport Canada, NDDB; and Government of the Northwest Territories Department of Environment and Climate Change (GNWT-ECC).<sup>21</sup> Board staff also submitted comments and questions for the purposes of clarification. NATCL submitted responses to comments and recommendations on August 11, 2023. The Board did not receive comments about the preliminary screening during the review of the Application.

The Board is satisfied that a reasonable period of notice was given to affected communities and First Nations, as required by subsection 63(2) of the MVRMA.

Pursuant to section 27, paragraphs (a) and (b) of the Dehcho First Nations (DCFN) Interim Measures Agreement, the Board has determined that written notice was given to the DCFN, and that a reasonable period of time was allowed for DCFN to make representations with respect to the Applications.

### **4.0 Potential Impacts and Proposed Mitigations**

Although the Board has determined that the Project is exempt from preliminary screening, the Board will consider the potential impacts and proposed mitigations in establishing the Licence and Permit conditions. For Board licences and permits in general, potential impacts can be mitigated through existing, standard, and/or project-specific licence and/or permit conditions. These conditions may include requirements for management and monitoring plans that provide detailed information regarding the implementation of mitigation measures and the evaluation of their effectiveness.

All Parties will have an opportunity to provide recommendations to the Board regarding draft conditions. In finalizing the conditions, the Board will consider these recommendations and all of the evidence provided through the regulatory proceeding.

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<sup>20</sup> See MVLWB Online Registry for [MV2015L2-0003 – NATCL – Preliminary Screening Exemption Confirmation Letter – Jul16-15](#).

<sup>21</sup> See MVLWB Online Review System for [Cantung Mining and Milling – Type A Renewal Licence Application – Aug 11 23](#).

**5.0 Conclusion**

The Project was previously licensed prior to June 22, 1984, and the Applications do not include abandonment, decommissioning, or significant alterations to the Project. Accordingly, the Board has determined that Part 5 of the MVRMA does not apply pursuant to section 157.1 of the MVRMA. Consequently, no preliminary screening was conducted.

SIGNATURE



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**Tanya MacIntosh, Chair**  
**Mackenzie Valley Land and Water Board**

October 5, 2023

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**Date**