

Mackenzie Valley Land and Water Board

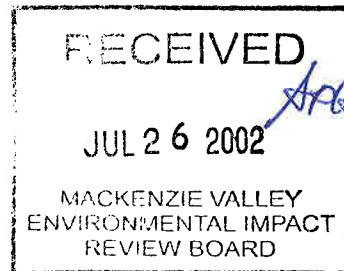
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YELLOWKNIFE, NT X1A 2P6
Phone (867) 669-0506 • FAX (867) 873-6610

July 24, 2002

File: N3L2-0004

Mr. Vern Christensen, Executive Director
Mackenzie Valley Environmental Impact Review Board
Box 938
200 Scotia Center
YELLOWKNIFE NT X1A 2N7

867-766-7074



Dear Mr. Christensen:

North American Tungsten Corporation Ltd., N3L2-0004
Mining and Milling, Tungsten NT

This Mackenzie Valley Land and Water Board (MVLWB) met on July 18, 2002 to deal with the aforementioned Water License application. The decision was made to refer the application to the Mackenzie Valley Environmental Impact Review Board (MVEIRB) for an environmental assessment pursuant to subsection 125 (1) of the *Mackenzie Valley Resource Management Act*. The reasons for decision and the preliminary screening report are attached for your information.

If you have any questions, contact Janpeter Lennie-Misgeld, Regulatory Officer at (867) 669-0506 or email mvlwbpermit@mvlwb.com.

Yours sincerely,


Melody J. McLeod
Chair

Copy to: Vern Christensen, Mackenzie Valley Environmental Impact Review Board
Janpeter Lennie-Misgeld, MVLWB

Attachments

PRELIMINARY SCREENING REPORT FORM

PRELIMINARY SCREENER: MVLWB REFERENCE / FILE NUMBER: N3L2-0004 TITLE: Mining and Milling, Cantung Minesite ORGANIZATION: North American Tungsten Corp. (NATC) MEETING DATE: July 18, 2002	EIRB REFERENCE NUMBER:
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- Type of Development:** (CHECK ALL THAT APPLY)
- | | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | New |
| <input type="checkbox"/> | Amend, EIRB Ref. # |
| <input checked="" type="checkbox"/> | Requires permit, license or authorization |
| <input type="checkbox"/> | Does not require permit, license or authorization |

Principal Activities (related to scoping)
(CHECK ALL THAT APPLY)

- | | | |
|---|--|---|
| <input type="checkbox"/> Construction | <input type="checkbox"/> Exploration | <input checked="" type="checkbox"/> Decommissioning |
| <input type="checkbox"/> Installation | <input checked="" type="checkbox"/> Industrial | <input checked="" type="checkbox"/> Abandonment |
| <input type="checkbox"/> Maintenance | <input type="checkbox"/> Recreation | <input type="checkbox"/> Aerial |
| <input type="checkbox"/> Expansion | <input type="checkbox"/> Municipal | <input type="checkbox"/> Harvesting |
| <input checked="" type="checkbox"/> Operation | <input type="checkbox"/> Quarry | <input type="checkbox"/> Camp |
| <input type="checkbox"/> Repair | <input type="checkbox"/> Linear / Corridor | <input type="checkbox"/> Scientific/ |
| <input type="checkbox"/> Research | <input type="checkbox"/> Sewage | <input type="checkbox"/> Solid Waste |
| <input type="checkbox"/> Water Intake | | |
| <input type="checkbox"/> Other: _____ | | |

Principal Development Components (related to scoping)

- | | |
|---|--|
| <input type="checkbox"/> Access Road
<input type="checkbox"/> construction
<input type="checkbox"/> abandonment/removal
<input type="checkbox"/> modification e.g., widening, straightening
<input checked="" type="checkbox"/> Automobile, Aircraft or Vessel Movement
<input checked="" type="checkbox"/> Blasting
<input type="checkbox"/> Building
<input type="checkbox"/> Burning
<input type="checkbox"/> Burying
<input type="checkbox"/> Channeling
<input type="checkbox"/> Cut and Fill
<input type="checkbox"/> Cutting of Trees or Removal of Vegetation
<input checked="" type="checkbox"/> Dams and Impoundments
<input type="checkbox"/> construction
<input type="checkbox"/> abandonment/removal
<input type="checkbox"/> modification
<input type="checkbox"/> Ditch Construction
<input type="checkbox"/> Drainage Alteration
<input checked="" type="checkbox"/> Drilling other than Geoscientific
<input type="checkbox"/> Ecological Surveys
<input type="checkbox"/> Excavation
<input checked="" type="checkbox"/> Explosive Storage – ANFO and Cartridge water based emulsion.
<input checked="" type="checkbox"/> Fuel Storage
<input type="checkbox"/> Topsoil, Overburden or Soil

<input type="checkbox"/> fill <input type="checkbox"/> removal
<input type="checkbox"/> disposal <input type="checkbox"/> storage | <input checked="" type="checkbox"/> Waste Management
<input type="checkbox"/> disposal of hazardous waste
<input checked="" type="checkbox"/> waste generation
<input checked="" type="checkbox"/> Sewage
<input checked="" type="checkbox"/> disposal of sewage
<input type="checkbox"/> Geoscientific Sampling
<input type="checkbox"/> trenching
<input type="checkbox"/> diamond drill
<input type="checkbox"/> borehole core sampling
<input type="checkbox"/> bulk soil sampling
<input type="checkbox"/> Gravel
<input type="checkbox"/> Hydrological Testing
<input checked="" type="checkbox"/> Site Restoration – Progressive reclamation
<input type="checkbox"/> fertilization
<input type="checkbox"/> grubbing
<input type="checkbox"/> planting/seeding
<input type="checkbox"/> reforestation
<input type="checkbox"/> scarify
<input type="checkbox"/> spraying
<input type="checkbox"/> recontouring
<input type="checkbox"/> Slashing and removal of vegetation
<input type="checkbox"/> Soil Testing
<input type="checkbox"/> Stream Crossing/Bridging
<input checked="" type="checkbox"/> Tunnelling/Underground: Mining of underground workings
<input type="checkbox"/> Other (describe): |
|---|--|

NTS Topographic Map Sheet Numbers
105H

Latitude / Longitude and UTM System:

61° 57' N; 128° 16' W

Nearest Community and Water Body:

Nahanni Butte, Flat River

Land Status (*consultation information*)

Free Hold / Private Commissioners Land Federal Crown Land Municipal Land

Transboundary Implications

British Columbia Alberta Saskatchewan Yukon
 Nunavut Wood Buffalo National Park Inuvialuit Settlement Region

Type of Transboundary Implication: Impact / Effect Development

Public Concern _____
(DESCRIBE)

PHYSICAL - CHEMICAL EFFECTS

IMPACT

1. Ground Water

- water table alteration
- water quality changes

- infiltration changes
- other
- N/A

MITIGATION

- Monitoring is required under the current Water Licence.
- In the 1960's approx. 172, 000 tons of tailings were deposited in the flood plain of the Flat River. Testing was done (Robertson 1995, Aur 1997, and EBA 2001a) on these tailings revealing that tailings were acidic with acid staining evident in some areas. Testing also determined that oxidation and net acid generation processes are well established and will continue to be active as alkalinity is consumed. Mitigative measures were undertaken - tailings were covered, irrigated, fertilized and seeded in 1996 and subsequent water quality monitoring required under the Water License is reported to have had no adverse impacts to the Flat River.
- Tailings deposited in Tailings Pond 3 are acid consuming with significant neutralization potential (Robertson 2001). Recent test pit sampling has shown pockets of potentially acid generating materials at depth in the pond, however the extent has not been clearly defined. Groundwater monitoring has not shown evidence of adverse impacts.
- Mine spill contingency plan (EBA 2001b) and Emergency Response Plan (NATCL 2001b) in place for potential contamination of groundwater through spills.
- Groundwater pumping contingency plan in place if groundwater license limits are exceeded.
- Monitoring is required under the current Water Licence.
- Monitoring is required under the current Water Licence.

IMPACT

2. Surface Water

- flow or level changes
- water quality changes

- water quantity changes
- Drainage pattern changes

- temperature
- wetland changes / loss
- other:
- N/A

MITIGATION

- Monitoring is required under the current Water Licence.
- Minewater is recycled in the mill to minimize disposal into tailings ponds.
- Mill exits are bermed to prevent spill escape from the mill.
- Mine spill contingency plan (EBA 2001b) and Emergency Response Plan (NATCL 2001b) in place for potential contamination of water through spills.
- Monitoring is required under the current Water Licence.
- NATC has undertaken the following measures in response to fuel spill of approx. 20, 000 liters on January 18, 2002;
 - updated spill contingency plan
 - contaminated soil from road bed was removed
 - oil/water separator installed in existing ditch to capture any fuel
 - absorbent pads and boom installed to capture any bypassing fuel
 - absorbent booms also placed across the Flat River, downstream of plant site
 - additional safeguards implemented to prevent reoccurrence

- Use of water regulated through Water Licence.
- Abandonment and Restoration Plan in place for restoration of mine site and surface drainage regime. At final closure, breaches will be left in recontoured road beds to allow runoff to re-establish natural pathways.

IMPACT

3. Noise

- noise in/near water
- other: noise increase
- N/A

MITIGATION

- No mitigation.
- No mitigation.

IMPACT**4. Land** geologic structure changes soil contamination buffer zone loss soil compaction & settling Destabilization / erosion permafrost regime alteration other: explosives/scarring N/A**MITIGATION**

- Mine spill contingency plan (EBA 2001b) and Emergency Response Plan (NATCL 2001b) in place for potential contamination of soils through spills.
- Conditions in Water License to address potential soil contamination.
- NATC has undertaken the following measures in response to fuel spill of approx. 20, 000 liters on January 18, 2002;
 - updated spill contingency plan
 - contaminated soil from road bed was removed
 - Additional soil analysis and checking to be conducted to verify clean-up
 - additional safeguards implemented to prevent reoccurrence

- Abandonment and Restoration Plan in place for restoration of mine site.
 - road beds to be re-contoured and scarified, paved surfaces to removed

- Road to pit will be permanently blocked after operations, otherwise pit will be left as is to for natural sloughing of pit walls to occur.
- Underground mine openings to be permanently sealed after operations.

IMPACT**5. Non Renewable Natural Resources** resource depletion other: N/A**MITIGATION**

- Depletion of ore reserves, no mitigation.

IMPACT**6. Air/Climate/ Atmosphere** Other N/A**MITIGATION**

- Dust is generated due to on site operations.

BIOLOGICAL ENVIRONMENT

IMPACT

1. Vegetation

- species composition
- species introduction
- toxin / heavy accumulation
- other:
- N/A

MITIGATION

- Vegetation loss on minesite and infrastructure, mitigated through abandonment and restoration plan.
- Any reseeded for reclamation will only use approved seed mixtures.

IMPACT

2. Wildlife & Fish

- effects on rare, threatened or endangered species
- fish population changes

MITIGATION

- DFO letter of advice to NATC outlined recommendations/mitigations;
 - Water intakes should be properly screened to prevent entrainment of fish.
 - An analysis of hydrology of Flat River to determine if water withdrawals are impacting fish habitat downstream of the intake.
 - Establishment of a detailed hydrology program on the Flat River to gauge volume of water flowing in and out of project site.
 - Risk assessment be undertaken for all the tailings ponds and deposits.

- waterfowl population changes
- breeding disturbance
- population reduction
- species diversity change
- health changes
(Identify)
- behavioural changes
(Identify)
- habitat changes / effects
- game species effects
- toxins / heavy metals
- forestry changes
- agricultural changes
- other:
- N/A

INTERACTING ENVIRONMENT

IMPACT

MITIGATION

1. Habitat and Communities

- predator-prey
- wildlife habitat / ecosystem
Composition changes
- reduction / removal of
keystone or endangered
species
- removal of wildlife corridor or
buffer zone
- other:
- N/A

IMPACT

MITIGATION

2. Social and Economic

- planning / zoning changes or
conflicts
- increase in urban facilities or
services use
- rental house
- airport operations / capacity
changes
- human health hazard
- impair the recreational use of
water or aesthetic quality
- affect water use for other
purposes
- affect other land use
operations
- quality of life changes
- public concern
- other:
- N/A

- Minister of RWED, Jim Antoine, stated that NATC has not hired many NWT residents as mineworkers and no NWT based businesses have been awarded contracts at the site. NATC and GNWT to investigate initiatives to bring increased employment and business benefits to the NWT.

IMPACT

MITIGATION

3. Cultural and Heritage

- effects to historic property
- increased economic pressure

on historic properties

change to or loss of historic resources

change to or loss of archaeological resources

increased pressure on archaeological sites

change to or loss of aesthetically important site

affects to aboriginal lifestyle

other:

N/A

NOTES:

Consultation

- Pursuant to Section. 27 Subsections (a) and (b) of the **Deh Cho First Nations** Interim Measures Agreement, the MVLWB 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 application.

Project Summary/Scope

- Cantung mine located 310 km north of Watson Lake close to the Yukon Border.
- Mining and milling operations on existing site resumed January 10, 2002.
- Mine was previously inactive (care and maintenance) from 1986 until reopening in 2002.
- Project consists of:
 - Airstrip
 - All-weather gravel roads via Highway 4 in the Yukon
 - Open pit and underground workings
 - Townsite
 - Four tailings ponds in total
 - Former tailings ponds 1 and 2 are capped and covered.
 - Tailings ponds 3 and 4 are currently in operation.
 - tailings pond 5 to be constructed in the future
 - Mine production at 680-910 tonnes per day

PRELIMINARY SCREENER / REFERRING BODY INFORMATION
(CHECK ALL THAT APPLY)

	RA or DRA	ADVICE	PERMIT REQUIRED
<u>Federal</u>			
CANADIAN HERITAGE (PARKS CANADA)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CANADIAN NUCLEAR SAFETY COMMISSION	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CANADIAN TRANSPORTATION AGENCY	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENVIRONMENT CANADA	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FISHERIES & OCEANS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
INDIAN AFFAIRS & NORTHERN DEVELOPMENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
INDUSTRY CANADA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NATIONAL DEFENSE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NATIONAL ENERGY BOARD	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NATURAL RESOURCES CANADA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PUBLIC WORKS & GOVERNMENT SERVICES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TRANSPORT CANADA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NOGD	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Territorial</u>			
RESOURCES, WILDLIFE AND ECONOMIC DEVELOPMENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MUNICIPAL AND COMMUNITY AFFAIRS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TRANSPORTATION	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HEALTH BOARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
PRINCE OF WALES HERITAGE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Aboriginal / First Nation</u>			
NAHENDEH LAND & ENVIRONMENTAL SERVICES	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NAHANNI BUTTE DENE BAND	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ACHO DENE KOE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FORT LIARD METIS DEV CORP	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LIIDLII KUE FIRST NATION	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEH CHO FIRST NATION	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DENE NATION	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LIIDLII KUE FIRST NATIONS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
METIS LOCAL 52	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Local Government

HAMLET OF FORT LIARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
VILLAGE OF FORT SIMPSON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

REASONS FOR DECISION

(LIST ALL REASONS AND SUPPORTING RATIONALES FOR PRELIMINARY SCREENING DECISION)

DECISION:

Refer to separate Reasons for Decision.

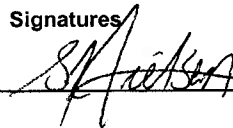
PRELIMINARY SCREENING DECISION	
<input checked="" type="checkbox"/>	Outside Local Government Boundaries
<input checked="" type="checkbox"/>	The development proposal might have a significant adverse impact on the environment, <i>refer it to the EIRB.</i>
<input type="checkbox"/>	<i>Proceed with regulatory process and/or implementation.</i>
<input checked="" type="checkbox"/>	The development proposal might have public concern, <i>refer it to the EIRB.</i>
<input type="checkbox"/>	<i>Proceed with regulatory process and/or implementation.</i>
<input type="checkbox"/>	Wholly within Local Government Boundaries
<input type="checkbox"/>	The development proposal is likely to have a significant adverse impact on air, water or renewable resources, <i>refer it to the EIRB.</i>
<input type="checkbox"/>	<i>Proceed with regulatory process and/or implementation.</i>
<input type="checkbox"/>	The development proposal might have public concern, <i>refer it to the EIRB.</i>
<input type="checkbox"/>	<i>Proceed with regulatory process and/or implementation.</i>

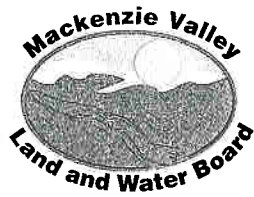
Preliminary Screening Organization

Mackenzie Valley Land and Water Board

July 23, 2002

Signatures





Mackenzie Valley Land and Water Board

7th Floor - 4910 50th Avenue • P. . Box 2130
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Phone (867) 669-0506 • FAX (867) 873-6610

In the Matter of: An Application for the Renewal of Water License
N3L2-0004 by North American Tungsten Corporation Ltd.

And in the Matter of: A hearing pursuant to section 24 of the *Mackenzie Valley
Resource Management Act*.

Mackenzie Valley Land and Water Board

REASONS FOR DECISION

Issued pursuant to Section 26
of the *Northwest Territories Waters Act*, R.S.C. 1992, c.39

Background:

North American Tungsten Corporation Ltd. (the "Applicant" or "NA Tungsten" below) applied to the Mackenzie Valley Land and Water Board (the "MVLWB" or the "Board" below) on February 21, 2002 for a renewal of water license N3L2 – 0004 for its mining operation on the Flat River. In the period between March 2002 and May 2002, the Board received a significant volume of correspondence, including e-mails from individuals, environmental organizations and government agencies, including the Parks Canada Agency, indicating their concern with this application. The Board also received some correspondence supporting the water license renewal. On balance, however, the majority of the correspondents requested that the matter be referred to Environmental Assessment pursuant to part 5 of the *Mackenzie Valley Resource Management Act* (MVRMA).

NA Tungsten wrote to the MVLWB on February 1, April 23 and May 29, 2002 indicating its view that the application was exempt from preliminary screening under the MVRMA as a result of section 157.1 of the Act. The Applicant took the position that the current license N3L2-0004 was simply a continuation of the original license issued to Canada Tungsten Ltd. N3L3-0004 effective June 30, 1975. This license had been assigned to NA Tungsten in a previous proceeding.

It was common ground among the parties to this proceeding that if section 157.1 of the MVRMA applies to the current license, part 5 of the Act does not apply, and no preliminary screening of the license renewal application should be conducted by the MVLWB. The question of the application of section 157.1 is a matter of legal interpretation which depends on the nature and effect of a "renewal" of a water license under the *Northwest Territories Waters Act* (NWT WA). Simply put does a renewal of a water license result in a continuation of the existing license, subject to the Board's authority to make changes to its conditions, or does a renewal result in the issuance of a new license?

Given the level of concern expressed about this water license application and issues related to the application of part 5 of the MVRMA to the renewal, the Board decided on May 30, 2002, to convene a hearing pursuant to section 24 of the MVRMA in order to hear from the Applicant and interested parties on the legal interpretation of section 157.1 of the MVRMA. Because there were no facts in issue and this matter primarily involved legal argument, the Board ordered that the hearing be conducted by way of written submissions.

The Applicant submitted their argument on June 24th 2002. Submissions from eight interested parties were received by July 8th, 2002 and the company's reply was received on July 11th, 2002. The Board met and decided this matter on July 18th, 2002. That decision is set out below.

Decision:

The MVLWB has decided that a water license renewal under the NWT WA results in the issuance of a new license on the terms set out at the time of the renewal.

As a result, the Board holds that section 157.1 of the MVRMA does not apply to the NA Tungsten water license renewal application because the current license is not a continuation of a license issued before June 22, 1984. Consequently, part 5 of the MVRMA must be applied to the NA Tungsten renewal application.

The MVLWB has also conducted a preliminary screening of the water license renewal application. Reasons for decision for that screening will be issued under separate cover. The Board has decided pursuant to subsection 125(1) of the MVRMA to refer the renewal application to the Mackenzie Valley Environmental Impact Review Board (MVEIRB) for Environmental Assessment (EA).

The Board is however, aware that the current license, N3L2-0004 expires on September 29th, 2002. The Board thus considers it unlikely that the MVEIRB's EA process will be complete before the license expires. The MVLWB does not want the Applicant to be forced to cease operations while the EA process is under way. Consequently, the Board has also decided, pursuant to subsection 18(1)(b) of the NWT WA that it would be in the public interest to amend the term of the current license by extending it until such time as the EA process and the water license hearing into the renewal which must follow, are complete, or until September 29, 2003, whichever happens first. The only change

proposed is then the extension of the term of the current license to allow the Applicant to continue its current activities unchanged until the EA and regulatory processes are completed.

The decision to extend the term of the license is also subject to part 5 of the MVRMA. The Board has conducted a preliminary screening of this decision and has decided that no referral to the MVEIRB is warranted, particularly since that Board will be conducting an EA addressing the longer term question of the renewal of NA Tungsten's operations by way of a new water license. Reasons for decision for this preliminary screening will also be issued under separate cover.

Public notice will be given of the Board's intention to amend and extend the term of the current license as required by subsection 21(3) of the NWT WA. If necessary, a hearing into this amendment will be convened.

The Interpretation of Section 157.1 of the MVRMA:

The legal question upon which the interpretation of section 157.1 of the MVRMA turned is "What is the nature and effect of a renewal of a water license?"

Section 157.1 only applies if the current water license N3L2-0004 is a continuation of a license related to an undertaking for which a license was issued before June 22, 1984. Conversely, if the effect of a renewal is the issuance of a new license, then section 157.1 does not apply. The result in those circumstances would be that part 5 of the MVRMA must be satisfied and since the renewal of a water license is one of the decisions which attracts preliminary screening under the *Preliminary Screening Requirement Regulations*, if section 157.1 does not apply, the MVLWB is obliged to conduct a preliminary screening of the license renewal application.

The Board appreciates all the submissions made by the parties to this hearing. They were most helpful in the decision making process.

Counsel for NA Tungsten identified the provisions of the NWT WA and its regulations where the terms "license" and "renewal" are used, often together, including the definitions, subsections 18(1) and (2), subsections 21(1), (2) and (3) as well as references in the regulations and in the MVRMA. The Applicant also submitted an extensive compilation of materials from the Water Register related to the current and previous licenses for this undertaking. These materials show that several of the previous water licenses and the current license, on their face, indicate that they are renewals. Correspondence from previous Chairs of the NWT Water Board and current Chair of the MVLWB was also cited in which reference was made to the renewal of these licenses or to the licenses themselves as "renewals".

The Canadian Parks and Wilderness Society (CPAWS) also reviewed the Water Register and in their July 8, 2002 submission identified correspondence relating to previous water licenses renewals which referred to them as "new" licenses.

The Board is of the view that the question of the nature of a renewal is a matter of statutory interpretation. This issue has never arisen before this Board or previously before the NWT Water Board. To interpret the routine correspondence or even a label on a regulatory document such as a water license as binding on the Board would be wrong. What determines the nature of a license renewal is the NWT WA itself. If the correspondence or even the licenses themselves are at odds with the correct interpretation of a license renewal under the statute, they are simply wrong.

Review of the legal authorities cited by the Applicant and other parties was helpful to the Board.

Counsel for NA Tungsten cited *Patterson v. Gallant*, [1994] 3 SCR 1080. This is an insurance law case which points out that two separate meanings can be ascribed to a “renewal” of an insurance policy. The first results in a continuous policy. The other meaning involves a situation where a separate and distinct policy comes into existence at each renewal. The Applicant also cited *R. v. Pleich*, [1980] OJ No. 1233 (Ont. C.A.) a case drawn from the regulatory context which held that in that context a general understanding is that “renewal involves the temporal extension of something that is in existence and not the revival of something that has ceased to exist”.

The Board finds that the *Pleich* case is relevant. The *Patterson* case, however, is drawn from the insurance law context which is very different. The case speaks of offer and acceptance and contract law principles which do not apply in the context of water licensing.

CPAWS made reference to *Smylie v. The Queen*, [1900] 27 Ont. App. Rep., 172 (Ont. C.A.). This case involved the renewal of timber licenses on Crown lands. In *Smylie*, it was held that each renewal was a new grant of timber rights.

Other authorities also provide some guidance on the meaning of “renew” or “renewal”.

Carswell's Words and Phrases also cites *Pleich* (see above) and indicates the multiplicity of meanings that “renewal” may have. The quote from *Pleich* is more fully outlined in this text:

Dictionary definitions of “renewal” do not solve the problem. When they are consulted it may be seen that the word is capable of several meanings, including “to make new”, “to restore to the same condition as when new” (which would support the view that the thing renewed must be in existence) and “to revive, resuscitate” (which would support the view that a lapsed authorization could be renewed). **In my view, although the ultimate answer has to be determined from the statutory context, the more “standard” meaning is the one that assumes the continued existence of the matter “renewed”. (emphasis added)**

The Seventh Edition of Black's Law Dictionary defines “renewal”:

1. The act of restoring or re-establishing. 2. The re-creation of a legal relationship or the replacement of an old contract with a new contract, as opposed to the mere extension of a previous relationship or contract.

The legal definition of the term “renew” is also relevant:

Carswell's Words and Phrases outlines the discussion in Ontario case law of the term renewal as addressed by the courts.

>The term “renew” [as found in s. 45 of the *Labour Relations Act*, R.S.O. 1970, c.220] suggests not a continuance of the existing agreement but a resuscitation or regeneration or revivification. The old agreement comes to an end, ceases to operate...and a new one comes into existence at the fixed point of time.

Carswell's Words and Phrases also cites a British Columbia Supreme Court interpretation of “renew”.

In the context [of “renewed” as used in B.C. R. 9 (1990)] “renew” must bear a meaning such as those provided in the Shorter Oxford English Dictionary as follows:

Renew...to make new, or as new, again: to restore to the same condition as when new, young or fresh...to restore, re-establish, set up again, bring back into use or existence...

Black's Law Dictionary, 4th ed., contains a similar definition of “renew”:

Renew. To make new again; to restore to freshness...to begin again; to recommence...to restore to existence; to revive; to re-establish; to recreate; to replace...

It seems to the MVLWB, having reviewed the submissions by the Applicant and the other parties that the meaning of the word “renewal” will have to be determined in its statutory context. The authorities cited could support either possible interpretation of a “renewal”. It appears that all these authorities depend on their own context. None of them are persuasive in the context of the NWT WA.

In its reply, the Applicant argues that if a renewal of a license always involved a new grant of rights that there would be no reason for Parliament to have explicitly provided for renewals in the NWT WA. Counsel for NA Tungsten argued that if a renewal was something other than a grant of a new license, most likely it was the continuation of an existing license for a term of years.

The Board is also of the view that the question of the term of a water license is central to the interpretation of a renewal. Water licenses are issued for specific terms. The term of a license could be amended in order to extend it by application of the licensee. But that is not what takes place upon a renewal. The most common scenario is that the term set for the license comes to an end and a new license is issued. In the case of the NA Tungsten

license there have been a number of significant changes in the terms and conditions of the license over the years. The mine was, for example, on care and maintenance for several years. There is no guarantee of a renewal under the NWT WA and the MVLWB has the discretion to set whatever terms and conditions it considers appropriate for a renewed license. None of these factors imply that an extension of a water license by way of a renewal is like an extension of something that is already in existence. In fact they suggest the opposite, that the advent of a renewal gives the Board the opportunity to remake the license, if significant change is warranted the Board can do so, irrespective of the terms of the previous license. Furthermore, the Board does not have to grant a renewal or any license at all.

Section 14 of the NWT WA specifies that the maximum term for a water license is 25 years. Subsection 18(1) indicates that a renewal cannot be for a term exceeding twenty five years either. If a renewal were simply a continuation of an existing license, the term specified in the renewal should take into account the maximum term set out in section 14 of the Act, so that the statutory maximum is not exceeded. This has not been done on any of the NA Tungsten license renewals. Each of these renewals specifies a new effective and a new termination date. If these renewals can be for terms which, when added to the original license term, exceed the statutory maximum, which is the case here since the twenty-five years would have been up in 2000, then the renewals must be new licenses.

This has been the understanding and practice of the NWT Water Board and the MVLWB. It is our opinion for these reasons that renewals of water licenses are in effect the issuance of new licenses. As a result the Board concludes that section 157.1 of the MVRMA has no bearing on NA Tungsten's application for a water license renewal and that part 5 of the MVRMA should be applied to the application.

Signed on behalf of the Mackenzie Valley Land and Water Board:



Melody J. McLeod, Chairperson

July 24, 2002.