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MACKENZIE VALLEY
ENVIRONMENTAL IMPACT
REVIEW BOARD

No. A-001-AP-2003000001
Yellowknife Registry

IN THE COURT OF APPEAL OF THE
NORTHWEST TERRITORIES

IN THE MATTER OF AN APPLICATION FOR
THE RENEWAL OF WATER LICENCE N3L2-004
BY NORTH AMERICAN TUNGSTEN
CORPORATION LTD.

Service admitted
on behalf of the
MUEIRB Two 17th
day of January 2003



BETWEEN:

NORTH AMERICAN TUNGSTEN
CORPORATION LTD.

APPLICANT

AND:

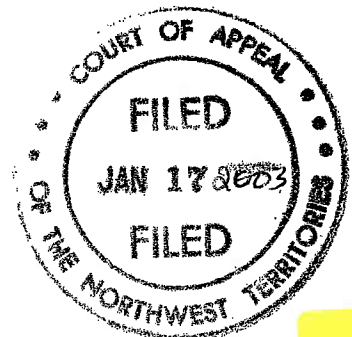
MACKENZIE VALLEY LAND AND
WATER BOARD

RESPONDENT

NOTICE OF MOTION

FASKEN MARTINEAU DuMOULIN LLP
Barristers & Solicitors
Suite 702 - 5201 Franklin (50th) Avenue
Yellowknife, NT., X1A 3S9
867 766 6400

Counsel: John U. Bayly, Q.C.
Matter No: NOR00367



No. A-0001-AP-2003000001
Yellowknife Registry

IN THE COURT OF APPEAL OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF AN APPLICATION FOR THE
RENEWAL OF WATER LICENCE N3L2-0004 BY NORTH
AMERICAN TUNGSTEN CORPORATION LTD.**

BETWEEN:

NORTH AMERICAN TUNGSTEN CORPORATION LTD.

APPELLANT
(APPLICANT)

AND:

MACKENZIE VALLEY LAND AND WATER BOARD

RESPONDENT
(RESPONDENT)

NOTICE OF MOTION

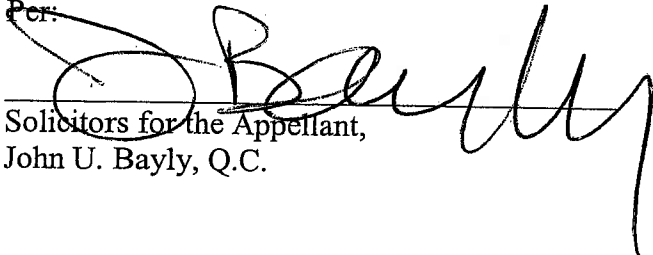
TAKE NOTICE that on Tuesday the 21st day of January 2003 at 10 o'clock in the morning at the Courthouse in Yellowknife, an application will be made for a judicial stay of proceedings of the Mackenzie Valley Environmental Impact Review Board and the decision of the Mackenzie Valley Land and Water Board dated July 24, 2002, as upheld and confirmed by the Judgment of the Honourable Justice Virginia Schuler entered in the Registry of the Supreme Court of the North West Territories as of January 9, 2003, directing the Appellant to submit to the provisions of Part 5 of the *Mackenzie Valley Resource Management Act* as those provisions relate to the environmental assessment of its undertaking at Tungsten Northwest Territories prior to its application for the renewal of its water licence under the *Northwest Territories Waters Act* being heard.

AND TAKE NOTICE that in support of this application will be read the Affidavit of Mr. Stephen Leahy, the provisions of Rule 7 of the *Northwest Territories Court of Appeal Civil Rule*, Section 29 of the *Judicature Act of the Northwest Territories* together with such further and other materials as counsel may advise and the Court permit.

DATED at the City of Yellowknife, in the Northwest Territories this 17th day of January 2003.

Fasken Martineau DuMoulin LLP

Per:


Solicitors for the Appellant,
John U. Bayly, Q.C.

TO: The Registrar
Court of Appeal of the Northwest Territories
Courthouse, Yellowknife, NWT

AND TO: Mr. John Donihee
Solicitor for the Respondent,
Mackenzie Valley Land and Water Board

AND TO: Mr. Gordon Wray
Alternate Chair of the Mackenzie Valley
Environmental Impact Review Board

No. A-001-AP-200300001
Yellowknife Registry

IN THE COURT OF APPEAL OF THE
NORTHWEST TERRITORIES

IN THE MATTER OF AN APPLICATION FOR
THE RENEWAL OF WATER LICENCE N3L2-004
BY NORTH AMERICAN TUNGSTEN
CORPORATION LTD.

BETWEEN:

NORTH AMERICAN TUNGSTEN
CORPORATION LTD.

APPLICANT

AND:

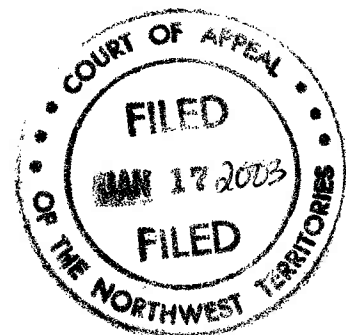
MACKENZIE VALLEY LAND AND
WATER BOARD

RESPONDENT

NOTICE OF MOTION

FASKEN MARTINEAU DuMOULIN LLP
Barristers & Solicitors
Suite 702 - 5201 Franklin (50th) Avenue
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867 766 6400

Counsel: John U. Bayly, Q.C.
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IN THE COURT OF APPEAL OF THE
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IN THE MATTER OF AN APPLICATION FOR
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BY NORTH AMERICAN TUNGSTEN
CORPORATION LTD.

BETWEEN:

NORTH AMERICAN TUNGSTEN
CORPORATION LTD.

APPLICANT

AND:

MACKENZIE VALLEY LAND AND
WATER BOARD

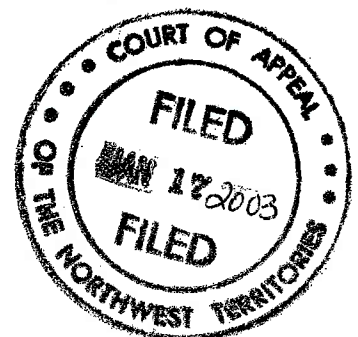
RESPONDENT

*Service admitted
on behalf of the
MUEIR B. this
17th day of January
2003 [Signature]*

UNDERTAKING
REGARDING THE AFFIDAVIT OF
STEPHEN LEAHY OF VANCOUVER,
BRITISH COLUMBIA

FASKEN MARTINEAU DuMOULIN LLP
Barristers & Solicitors
Suite 702 - 5201 Franklin (50th) Avenue
Yellowknife, NT., X1A 3S9
867 766 6400

Counsel: John U. Bayly, Q.C.
Matter No: NOR00367



IN THE COURT OF APPEAL OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF AN APPLICATION FOR THE
RENEWAL OF WATER LICENCE N3L2-0004 BY NORTH
AMERICAN TUNGSTEN CORPORATION LTD.**

BETWEEN:

NORTH AMERICAN TUNGSTEN CORPORATION LTD.

APPELLANT
(APPLICANT)

AND:

MACKENZIE VALLEY LAND AND WATER BOARD

RESPONDENT
(RESPONDENT)

**UNDERTAKING
REGARDING THE AFFIDAVIT OF
STEPHEN LEAHY OF VANCOUVER, BRITISH COLUMBIA**

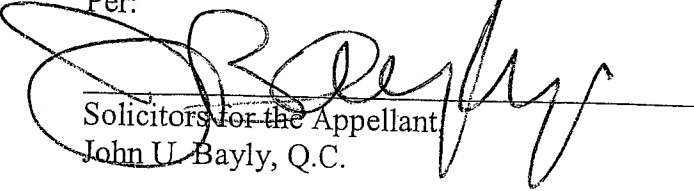
THE ATTACHED affidavit, having been duly sworn before a notary public in and for the Province of British Columbia, was sent to me by electronic transmission for filing in support of the Applicant/Appellant's motion for a stay of execution in this matter under Rule 7 of the *Court of Appeal Civil Rule* pending appeal.

THE ORIGINAL affidavit is being sent to me by courier. I undertake to file the original with this Court forthwith after it has been delivered. In the meantime, I propose to serve filed copies of the attached document on the Respondent's solicitor and on the Alternate Chair of the Mackenzie Valley Impact Review Board.

UNDERTAKEN BY ME at the City of Yellowknife, in the Northwest Territories this 17th day of January 2003.

Fasken Martineau DuMoulin LLP

Per:


Solicitors for the Appellant
John U. Bayly, Q.C.

Stephen Leahy #1
January 17, 2003

No. A-0001-AP-2003000001
Yellowknife Registry

IN THE COURT OF APPEAL OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF AN APPLICATION FOR THE
RENEWAL OF WATER LICENCE N3L2-0004 BY NORTH
AMERICAN TUNGSTEN CORPORATION LTD.**

BETWEEN:

NORTH AMERICAN TUNGSTEN CORPORATION LTD.

**APPELLANT
(APPLICANT)**

AND:

MACKENZIE VALLEY LAND AND WATER BOARD

**RESPONDENT
(RESPONDENT)**

AFFIDAVIT

I, Stephen Leahy, Businessman, of 11-1155 Melville Street, in the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Chairman of North American Tungsten Corporation Ltd., the Appellant in these proceedings and as such have knowledge of the matters hereinafter deposed to except where deposed to upon information and belief in which case I do verily believe them to be true.
2. North American Tungsten Corporation Ltd. owns the Cantung mine (the "Mine") on the Flat River near the Yukon/Northwest Territories border, and in connection with that Mine it holds a water licence pursuant to the terms of the *Northwest Territories Water Act*.
3. That water licence (the "Licence") was due to expire on September 29, 2002.

4. By Reasons for Decision dated July 24, 2002, a copy whereof is marked **Exhibit "A"** to this my affidavit, the Mackenzie Valley Land and Water Board ("MVLWB") extended the Licence for 60 days, to November 30, 2002.
5. On November 20, 2002, following a public hearing, the MVLWB granted a further extension of the Licence to November 30, 2003 to enable the Mine to continue to operate while the environmental assessment and review processes and the hearings into its water licence are pending. Now produced and shown to me and marked **Exhibit "B"** to this my Affidavit is a copy of the Board's Reasons for Decision granting the licence extension.
6. The Licence was extended on identical terms to those under which it had originally been granted. Now produced and shown to me and marked **Exhibit "C"** to this my Affidavit is a copy of the extended Licence.
7. North American Tungsten Corporation Ltd. is a small public mining company. Its Mine at Tungsten Northwest Territories is its only producing property and it has no other mines either operating or in the developmental phase.
8. Prior to the re-opening of the Mine and commencement of production on April 1, 2002, an independent financial forecast suggested that world tungsten prices would continue to rise. Instead, prices have fallen to approximately one half of what they were expected to be. The existence of supply contracts with two major tungsten users, with floor prices now well above the world market price, have enabled the company to continue to operate and to be marginally profitable.
9. At current supply contract tungsten prices the Mine has known tungsten ore reserves of less than three years.

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N.T.C.

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24-Jul-2002 15:21 From: MVLWB

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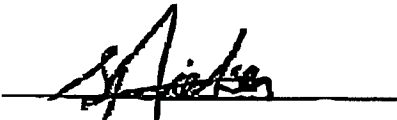
In order to complete the steps necessary for this amendment process, the Board requires the time to advertise and, if necessary, conduct a hearing. In the Board's opinion, there is not adequate time available to ensure that all the necessary steps can be completed before September 29th, 2002.

Decision:

The MVLWB has decided that it is necessary to extend the term of the current licence N3L2-0004 for sixty (60) days pursuant to paragraph 21(3)(b) of the Northwest Territories Waters Act. This short term extension will ensure that a public hearing can be held, if required, into the proposed one year extension to the term of the current licence which is intended to allow for Environmental Assessment and regulatory proceedings.

The Board is of the view that this short term extension is in the public interest since it will provide for an opportunity to have a hearing, if required.

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



for Melody J. McLeod, Chairperson

July 24, 2002.



Mackenzie Valley Land and Water Board
 7th Floor - 4910 50th Avenue • P.O. Box 2130
 YELLOWKNIFE, NT X1A 2P6
 Phone (867) 669-0506 • FAX (867) 873-6610

IN THE MATTER OF:

AN AMENDMENT TO EXTEND THE TERM
 OF WATER LICENSE N3L2-0004 HELD BY
 THE NORTH AMERICAN TUNGSTEN
 CORPORATION LTD.

REASONS FOR DECISION OF THE MACKENZIE VALLEY
 LAND AND WATER BOARD

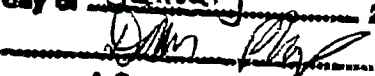
Background:

North American Tungsten Corporation Ltd. (the Applicant) applied to the Mackenzie Valley Land and Water Board (the MVLWB or the Board) on February 21, 2002 for a renewal of water license N3L2-0004 for its mining operation on the Flat River in the Northwest Territories.

The MVLWB conducted a preliminary screening of the water license renewal application. On July 18th, 2002, the Board decided pursuant to Subsection 125(1) of the *Mackenzie Valley Resource Management Act (MVRMA)*, to refer the renewal application to the Mackenzie Valley Environmental Impact Review Board (MVEIRB) for Environmental Assessment (EA).

However, the Board was aware that the current license, N3L2-0004 was due to expire on September 29th, 2002. The Board considered it unlikely that the MVEIRB's EA process would be completed before the license expired. The MVLWB did not want the Applicant to be forced to cease operations while the EA process was under way. Consequently, the Board decided, pursuant to Subsection 18(1)(b) of the *Northwest Territories Waters Act (NWTWA)*, that it would be in the public interest to consider an amendment to 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, can be completed or until November 29, 2003, whichever happens first.

The Board advertised its intention to amend the term of the license on September 9th, 2002. A public hearing was held in Fort Liard, NT on October 21st, 2002 to consider the amendment to extend the term of Water License N3L2-0004 for one (1) year. Further information pertaining to this proceeding and to the public hearing, including a transcript, has been filed on the Board's public registry.

This is Exhibit "B" referred to in the
 affidavit of Stephen Leahy
 made before me on this 17th
 day of January 20 03

 A Commissioner for taking
 Affidavits for British Columbia

The only intervenor that took part in the hearing was the Canadian Parks and Wilderness Society (CPAWS) - (NWT). Their written submission was filed in advance of the hearing.

The Issue:

The Applicant's current water license expires on November 29th, 2002. The MVLWB decided to consider an amendment to the term of the current license N3L2-0004 to provide the time necessary for the EA process under Part 5 of the MVRMA, and for the water licensing proceedings, which will follow.

Decision:

The MVLWB has decided that it is necessary to extend the term of the current license N3L2-0004 for one (1) year pursuant to Paragraph 18. (1)(b) of the NWTWA. This extension will allow the Applicant to continue operations while the EA and regulatory proceedings are under way.

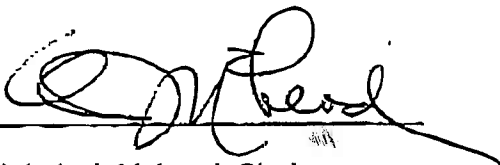
The intervenor, CPAWS, expressed concerns relating generally to two issues:

- that the existing security deposit providing for abandonment and reclamation of the site is inadequate, and
- that the existing monitoring of water quality was intended to address the licensed operation while it was in the status of care and maintenance, and as such that these license terms are inadequate for a mine in full production.

The Board is of the view that the security issue is best addressed subsequent to the completion of an EA and that the monitoring concerns raised by CPAWS can be addressed through revisions to the existing Surveillance Network Program.

The Board concludes approval of an extension to the term of license N3L2-0004 is in the public interest as it allows for continued operations at the mine site while EA and regulatory proceedings are conducted.

Signed on behalf of the Mackenzie Valley Land and Water Board



Melody J. McLeod, Chair
November 20, 2002.



**MACKENZIE VALLEY LAND AND WATER BOARD
WATER LICENSE**

Pursuant to the *Mackenzie Valley Resource Management Act* and Regulations, the Mackenzie Valley Land and Water Board, hereinafter referred to as the Board, hereby grants to:

North American Tungsten Corporation Ltd.
(Licensee)

of Suite 1400, 1188 West Georgia Street, VANCOUVER BC V6E 4A2
(Mailing Address)

hereinafter called the Licensee, the right to alter, divert or otherwise use water subject to the restrictions and conditions contained in the *Northwest Territories Waters Act* and Regulations made thereunder and subject to and in accordance with the conditions specified in this License.

AMENDMENT

License Number: N3L2-0004

License Type: A

Water Management Area: Northwest Territories (03)

Location: Tungsten, NWT
61° 57' North, 128° 16' West

Purpose: Water use and Waste Disposal

Description: Mining and Milling Undertaking and Associated Uses

Quantity of water not to be exceeded: See Water License - Part C

Effective Date of License: November 30, 2002

Expiry Date of License: November 29, 2003

This License issued and recorded at Yellowknife includes and is subject to the annexed conditions.

This is Exhibit "C" referred to in the affidavit of Stephen Leahy made before me on this 17th day of January 20 03

[Signature]
A Commissioner for taking Affidavits for British Columbia

MACKENZIE VALLEY LAND AND WATER BOARD

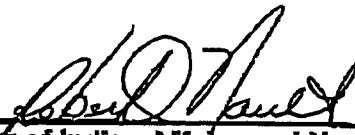


Witness

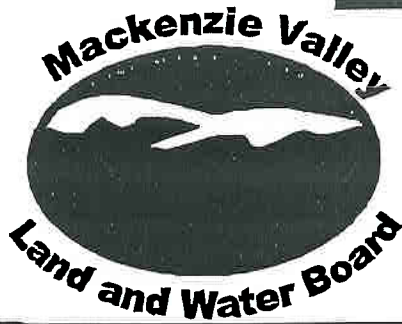


Chair

APPROVED BY



**Minister of Indian Affairs and Northern
Development**



Mackenzie Valley Land and Water Board
 7th Floor - 4910 50th Avenue
 P.O. Box 2130
 YELLOWKNIFE NT X1A 2P6
 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*.

This is Exhibit 10 referred to in the
 affidavit of Stephen Leahy
 made before me on this 17th
 day of January 2003
[Signature]
 A Commissioner for taking
 Affidavits for British Columbia

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.

Action No. S-0001-CV-2002000232
Yellowknife Registry

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF AN APPLICATION FOR THE
RENEWAL OF WATER LICENCE N3L2-0004 BY NORTH
AMERICAN TUNGSTEN CORPORATION LTD.**

BETWEEN:

NORTH AMERICAN TUNGSTEN CORPORATION LTD.

APPLICANT

AND:

MACKENZIE VALLEY LAND AND WATER BOARD

RESPONDENT

**BEFORE THE HONOURABLE
JUSTICE VIRGINIA SCHULER IN
SPECIAL CHAMBERS**

) At the Courthouse in the City of Yellowknife,
)
) in the Northwest Territories, Thursday the
) 9th day of January, A.D. 2002
2003

JUDGMENT

THIS APPLICATION for judicial review having come on before me for argument November 25, 2002 in special chambers at the Courthouse in Yellowknife, in the Northwest Territories; and having read the application, the supporting Affidavit, the record, the briefs of argument and the learned authorities cited;

AND HAVING heard the submissions of counsel;

IT IS HEREBY ORDERED AND ADJUDGED:

1. That the Canadian Arctic Resources Committee, the Canadian Parks and Wilderness Society and the Attorney General of Canada are granted standing as interveners in this application.
2. That the Mackenzie Valley Land and Water Board, as Respondent in these proceedings, can speak to the jurisdictional matters raised by the Applicant in the matter of the remedies requested.

This is Exhibit "H" referred to in the affidavit of Stephen Leahy made before me on this 17th day of January 20 03
[Signature]
A Commissioner for taking

TR

3. That the application for judicial review of the decisions of the Mackenzie Valley Land and Water Board, both dated July 24, 2002, is hereby dismissed.

4. That if counsel wish to speak to costs, they may contact the Court Registry within thirty (30) days of the date of filing of Reasons for Decision, November 28, 2002.

TR

Clerk of the Court

APPROVED AS TO JUDGMENT GIVEN:

John Donihee, Barrister & Solicitor

Per: John Donihee
Counsel for Mackenzie Valley Land and Water Board

Department of Justice Canada

Per: [Signature]
Counsel for Attorney General of Canada

Sierra Legal Defence Fund

Per: _____
Counsel for Canadian Arctic Resources Committee
and Canadian Parks and Wilderness Society

TR

Fasken Martineau DuMoulin LLP

Per: _____
Counsel for North American Tungsten Corporation Ltd.

TR

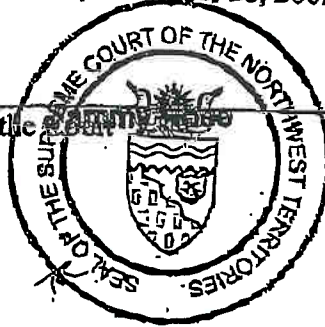
ENTERED THIS _____ DAY OF _____ 2002.

Clerk of the Court

3. That the application for judicial review of the decisions of the Mackenzie Valley Land and Water Board, both dated July 24, 2002, is hereby dismissed.

4. That if counsel wish to speak to costs, they may contact the Court Registry within thirty (30) days of the date of filing of Reasons for Decision, November 28, 2002.

~~Cl~~ Clerk of the Court



APPROVED AS TO JUDGMENT GIVEN:

John Donihee, Barrister & Solicitor

Per: _____
Counsel for Mackenzie Valley Land and Water Board

Department of Justice Canada

Per: _____
Counsel for Attorney General of Canada

Sierra Legal Defence Fund

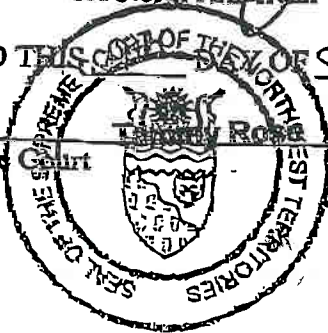
Per: [Signature]
Counsel for Canadian Arctic Resources Committee
and Canadian Parks and Wilderness Society

Fasken Martineau DuMoulin LLP

Per: [Signature]
Counsel for North American Tungsten Corporation Ltd.

ENTERED THIS COURT OF THE NORTHWEST TERRITORIES OF January 2002
2003

~~Cl~~ Clerk of the Court



Hereby certify that the foregoing is a true copy of the original of which it purports to be a copy

[Signature]
CLERK OF THE SUPREME COURT

No. S-001-CV-200200232
Yellowknife Registry

**IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES**

**IN THE MATTER OF AN APPLICATION FOR
THE RENEWAL OF WATER LICENCE N3L2-004
BY NORTH AMERICAN TUNGSTEN
CORPORATION LTD.**

BETWEEN:

**NORTH AMERICAN TUNGSTEN
CORPORATION LTD.**

APPLICANT

AND:

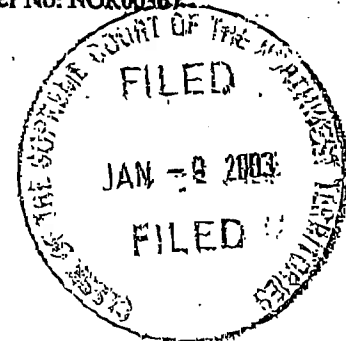
**MACKENZIE VALLEY LAND AND
WATER BOARD**

RESPONDENT

JUDGMENT

**FASKEN MARTINEAU DuMOULIN LLP
Barristers & Solicitors
Suite 702 - 5201 Franklin (50th) Avenue
Yellowknife, NT., X1A 3S9
867 766 6400**

**Counsel: John U. Bayly, Q.C.
Matter No: NOR00167**



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Action No. S-0001-CV-2002000232
Yellowknife Registry

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF AN APPLICATION FOR THE
RENEWAL OF WATER LICENCE N3L2-0004 BY NORTH
AMERICAN TUNGSTEN CORPORATION LTD.**

BETWEEN:

NORTH AMERICAN TUNGSTEN CORPORATION LTD.

APPLICANT

AND:

MACKENZIE VALLEY LAND AND WATER BOARD

RESPONDENT

**BEFORE THE HONOURABLE
JUSTICE VIRGINIA SCHULER IN
SPECIAL CHAMBERS**

) At the Courthouse in the City of Yellowknife,
)
) in the Northwest Territories, _____ the
)
) _____ day of _____, A.D. 2002.

JUDGMENT

THIS APPLICATION for judicial review having come on before me for argument November 25, 2002 in special chambers at the Courthouse in Yellowknife, in the Northwest Territories; and having read the application, the supporting Affidavit, the record, the briefs of argument and the learned authorities cited;

AND HAVING heard the submissions of counsel;

IT IS HEREBY ORDERED AND ADJUDGED:

1. That the Canadian Arctic Resources Committee, the Canadian Parks and Wilderness Society and the Attorney General of Canada are granted standing as interveners in this application.
2. That the Mackenzie Valley Land and Water Board, as Respondent in these proceedings, can speak to the jurisdictional matters raised by the Applicant in the matter of the remedies requested.

3. That the application for judicial review of the decisions of the Mackenzie Valley Land and Water Board, both dated July 24, 2002, is hereby dismissed.

4. That if counsel wish to speak to costs, they may contact the Court Registry within thirty (30) days of the date of filing of Reasons for Decision, November 28, 2002.

Clerk of the Court

APPROVED AS TO JUDGMENT GIVEN:

John Donihue, Barrister & Solicitor

Per: John Donihue
Counsel for Mackenzie Valley Land and Water Board

Department of Justice Canada

Per: _____
Counsel for Attorney General of Canada

Sierra Legal Defence Fund

Per: _____
Counsel for Canadian Arctic Resources Committee
and Canadian Parks and Wilderness Society

Fasken Martineau DuMoulin LLP

Per: _____
Counsel for North American Tungsten Corporation Ltd.

ENTERED THIS _____ DAY OF _____ 2002.

Clerk of the Court

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No. S-001-CV-200200232
Yellowknife Registry

**IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES**

**IN THE MATTER OF AN APPLICATION FOR
THE RENEWAL OF WATER LICENCE N3L2-004
BY NORTH AMERICAN TUNGSTEN
CORPORATION LTD.**

BETWEEN;

**NORTH AMERICAN TUNGSTEN
CORPORATION LTD.**

APPLICANT

AND:

**MACKENZIE VALLEY LAND AND
WATER BOARD**

RESPONDENT

JUDGMENT

**FASKEN MARTINEAU DuMOULIN LLP
Barristers & Solicitors
Suite 702 - 5201 Franklin (50th) Avenue
Yellowknife, NT., X1A 3S9
867 766 6400**

**Counsel: John U. Bayly, Q.C.
Matter No; NOR00367**

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
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D. Geoffrey Cowper
Direct 604 631 3185
Facsimile 604 632 3185
gcowper@van.fasken.com

January 14, 2003
File No.: NOR00354

DELIVERED VIA FACSIMILE

Canadian Institute of Resources Law
Murray Fraser Hall, Room 3330
University of Calgary
Calgary, AB T2N 1N4

Attention: Mr. John Donihee

Dear Sirs/Mesdames:

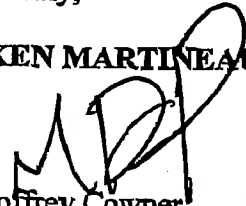
**Re: North American Tungsten v. Mackenzie Valley Land and Water Board
Appeal to the NWT Court of Appeal**

We enclose for your review and approval the Appeal Books Index prepared in this matter.

Please indicate your agreement as to the contents of Appeal Books by signing the enclosed duplicate copy of this letter and return same to our offices at your earliest opportunity so that we may insert it into the Appeal Books per the Northwest Territories *Rules of Court*.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

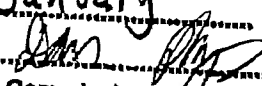
per 

D. Geoffrey Cowper

DGC/mjz

Encl.

- cc: Department of Justice, Canada, *(Intervenor)*
- cc: Department of Justice, GNWT, *(Intervenor)*
- cc: Sierra Legal Defence Fund, *(Intervenor)*

This is Exhibit "I" referred to in the
 affidavit of Stephen Leahy
 made before me on this 17th
 day of January 20 03

 A Commissioner for taking
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Clerk's Certificate, Form 1

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IN THE COURT OF APPEAL OF THE
NORTHWEST TERRITORIES

IN THE MATTER OF AN APPLICATION FOR
THE RENEWAL OF WATER LICENCE N3L2-004
BY NORTH AMERICAN TUNGSTEN
CORPORATION LTD.

BETWEEN:

NORTH AMERICAN TUNGSTEN
CORPORATION LTD.

APPLICANT

AND:

MACKENZIE VALLEY LAND AND
WATER BOARD

RESPONDENT

**UNDERTAKING
REGARDING THE AFFIDAVIT OF
STEPHEN LEAHY OF VANCOUVER,
BRITISH COLUMBIA**

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