

**Joe Acorn**

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**From:** Stephen Mathyk [stephen@mvlwb.com]  
**Sent:** Tuesday, July 09, 2002 3:32 PM  
**To:** Joe Acorn  
**Subject:** Hearing submissions



HearingSubmissions  
.pdf

As requested...

Stephen Mathyk

Regulatory Officer  
MVLWB  
Ph: 867-669-0506  
fx: 867-873-6610  
stephen@mvlwb.com

**Stephen Mathyk**

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**From:** Rebecca Mason & Reid McLachlan [redcanoe@istar.ca]  
**Sent:** Friday, July 05, 2002 10:18 AM  
**To:** mvlwbpermit@mvlwb.com  
**Cc:** Stephen Mathyk; Brenda Backen  
**Subject:** Email version regarding the Water Licence Renewal N3L2-0004

Hello,  
Here is an email duplicate of the fax I sent you.  
Cheers,  
Becky

Becky Mason  
899 Route 105, Chelsea, Quebec, J9B 1P3  
Tel: 819 827 4159, Fax: 819 827 8563,  
Email: redcanoe@istar.ca www.wilds.mb.ca/redcanoe

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

July 5, 2002  
Dear Mackenzie Valley Land and Water Board,  
Here are my comments regarding the Water Licence Renewal N3L2-0004.  
Sincerely,  
Becky Mason

\*\*\*\*\*  
A preliminary screening of the water license application is required based on Section 157.1 of the MVRMA ("THE ACT") and the nature of the licence renewal for the following reasons:

- 1- There is significant public concern (nationally and internationally) about the water uses currently planned upstream of Nahanni National Park.
- 2-In 1997, the mine was issued a renewal water license for caretaker status. The licensee has not proved in its June 26, 2002 submission that there has not been a significant alteration of the project since the 1997 licence was granted. Part 5 of the Act applies, triggering at a minimum a "preliminary screening" as defined in section 111 of the Act.
- 3-There is also no mention that at anytime an environment assessment was ever completed for the mine site, given that the mining operations began in the early 1960s. Given the large scale operation of this project and the potential to impact land and waters of the Nahanni National Park Reserve, I demand that a complete environment assessment be conducted prior to renewal of the water licence is granted.
- 4- Foremost the Federal Government is obligated to protect the "ecological integrity" of the Nahanni National Park under the National Parks Act.

Becky Mason, Watercolourist and concerned Canadian.

--

Becky Mason & Reid McLachlan  
Chelsea, Quebec, Canada

Canoeing & Visual Art  
<http://www.wilds.mb.ca/redcanoe>

Becky Mason  
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Tel: 819 827 4159, Fax: 819 827 8563  
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File

JUL - 5 2002

Application # N3L2-0004

Copied To KLIPMILLC/ISM/Reg  
July 5, 2002

Mackenzie Valley Land and Water Board  
7th Floor - 1910 50th Avenue  
P.O. Box 2000, YELLOWKNIFE NT X1A 2P6  
Ph: (867) 666-0506, Fax: (867) 873-6610

Dear Mackenzie Valley Land and Water Board,  
Here are my comments regarding the Water Licence Renewal N3L2-0004.

Sincerely,

*Becky Mason*  
Becky Mason

A preliminary screening of the water license application is required based on Section 157.1 of the MVRMA ("THE ACT") and the nature of the licence renewal for the following reasons:

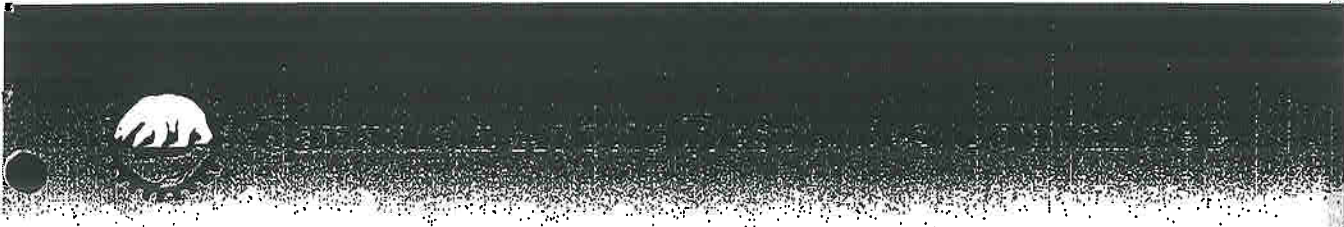
1- There is significant public concern (nationally and internationally) about the water uses currently planned upstream of Nahanni National Park.

2- In 1997 the mine was issued a renewal water license for caretaker status. The licensee has not proved in its June 26, 2002 submission that there has not been a significant alteration of the project since the 1997 licence was granted. Part 5 of the Act applies, triggering at a minimum a "preliminary screening" as defined in section 111 of the Act.

3- There is also no mention that at anytime an environment assessment was ever completed for the mine site, given that the mining operations began in the early 1960s. Given the large scale operation of this project and the potential to impact land and waters of the Nahanni National Park Reserve, I demand that a complete environment assessment be conducted prior to renewal of the water license is granted.

4- Foremost the Federal Government is obligated to protect the "ecological integrity" of the Nahanni National Park under the National Parks Act.

Becky Mason, Watercolourist and concerned Canadian



July 5, 2002

Melody J. McLeod  
Chairperson  
Mackenzie Valley Land and Water Board  
7<sup>th</sup> floor  
4910 50<sup>th</sup> Avenue  
P.O. Box 2130  
Yellowknife, NT X1A 2P6

Mackenzie Valley Land  
& Water Board  
File \_\_\_\_\_

JUL - 5 2002

Application # N3L2-0004  
Copied To KLIPMILC/Sm/Reg

BY FACSIMILE TRANSMISSION  
TO NO. (867) 873-6610

Dear Ms. McLeod:

Re: North American Tungsten Corporation  
Licence renewal application no. L3L2-0004

Please find following our submissions in response to those of North American Tungsten Corporation, on the hearing into the application of s. 157.1 of the Mackenzie Valley Resource Management Act to the above-noted licence renewal application.

Yours very truly,

Karen G. Wristen  
Executive Director

7 Hinton Ave. N., Suite 200  
Ottawa, ON K1Y 4P1  
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Submission to:

**Mackenzie Valley Land and Water Board**

By: **Canadian Arctic Resources Committee**

Re: **A hearing convened pursuant to s. 24 of the *Mackenzie Valley Resource Management Act*, in the matter of the application of s. 157.1 of the said *Act* to the application by North American Tungsten Corporation Ltd. for a renewal of its water licence no. N3L 2-0004**

Dated: July 5, 2002

Prepared by: **Karen G. Wristen, B.A., LL.B.  
Executive Director,  
Canadian Arctic Resources Committee  
200 – 7 Hinton Avenue North  
Ottawa ON K1Y 4P1**

Tel: (613) 759-4284 ext 246

Fax: (613) 722-3318

## PART 1: FACTS

1. The applicant herein is North American Tungsten Corporation Ltd. It seeks renewal of a water licence issued by the Northwest Territories Water Board on September 30, 1995 to Canada Tungsten Mining Corporation. The term "applicant" will be used throughout these submissions to refer to North American Tungsten Corporation Ltd. or Canada Tungsten Mining Corporation.
2. The applicant was first granted a water licence in June of 1975, for the purpose of operating a mine and milling undertaking and associated uses within lands now subject to the *Mackenzie Valley Resource Management Act*.
3. The applicant has enjoyed successive grants of licence to use water between 1975 and 1995. Its current licence will expire on Sept 29, 2002.
4. The *Northwest Territories Water Act* ("Water Act") governs the issuance of water licences. They may be issued by either the Mackenzie Valley Water Board or the Mackenzie Valley Environmental Impact Review Board, depending upon the determinations made in the course of environmental screening of the application under the *Mackenzie Valley Resource Management Act*
5. The Mackenzie Valley Land and Water Board ("MVLWB") has invited submissions from all interested parties on the question whether the applicant may claim the protection of s. 157.1 of the *Mackenzie Valley Resource Management Act* from the operation of Part 5 of the said Act.
6. Part 5, if it applies to this application, may require the MVLWB to refer the application for licence renewal to the Mackenzie Valley Environmental Impact Review Board for environmental assessment.
7. Canadian Arctic Resources Committee Inc. is a non-profit public interest organization incorporated pursuant to the laws of Canada. Its mission includes research and advocacy to promote sustainable development in Canada's arctic regions. The organization accordingly takes a particular interest in matters of environmental assessment and regulation of the use of public resources.

## Part 2: Submissions

### *Introduction*

8. The applicant seeks the right to appropriate water, a publicly-owned resource, to its own use. Its current rights to such appropriation will expire on September 29, 2002, unless a competent authority acts to grant a new water licence—an action that is completely within a Board's discretion to do, or refrain from doing.
9. The entire regime of water licensing under the *Northwest Territories Water Act* is intended to safeguard this public resource by subjecting it to time-limited and conditional appropriations. When a licence expires, its owner must cease use of the water or face possible prosecution for illegal appropriation. An application to "renew" the licence is subjected to precisely the same, rigorous evaluation that would be accorded an application for a first water licence. In the "renewal" process, the Board has full authority to refuse an application or to change entirely any or all of the terms that attached to the expiring licence.
10. The very fact that the regime is structured so as to cause the licence to expire, and to require fresh scrutiny of an application to "renew", suggests that it is intended that the application be reviewed on the basis of the environmental conditions, the law and the public interest at the time of the renewal.

### ***The meaning and application of s. 157.1 of the Mackenzie Valley Resource Management Act***

11. Section 157.1 is a transitional provision, intended to exempt certain licences issued prior to June 22, 1984 from the application of Part 5 of the Act. Part 5 sets out the requirements for preliminary screening, environmental assessment and environmental impact review in relation to proposals for development. By virtue of s. 118, no licence may be issued under any federal or territorial law unless there is compliance with Part 5, or exemption from its provisions found in the statute itself.
12. The legislative intent here, it is submitted, was to "grandfather" certain licences that had been issued prior to the institution of our modern regime of environmental assessment. The section applies only to those licences issued before June 22, 1984 and expiring after the *Mackenzie Valley Resource Management Act* became law (June 18, 1998).
13. The Water Act authorizes licences to be granted for terms of up to 25 years. Thus, s. 157.1 will apply as a transitional provision to licences with a term of 4 or more years, granted prior to the institution of environmental assessment regimes. The section will cease to have any possible force and effect in June, 2009—25 years following June, 1984.

***Effective date of the Applicant's Licence***

14. The applicant's entire submission is premised upon the argument that a licence which, on its face, was issued on September 30, 1995, can be said to have been issued prior to June 22, 1984, because it is a renewal of prior licences. CARC respectfully submits that this interpretation cannot be sustained in the face of the plain language of the licence itself and the Act under which it was issued.

***The Legal Instrument***

15. The legal instrument issued by the Board upon renewal of a licence is a "grant of licence". These words are found on the face of the licence:

...the Board hereby grants to...the Licensee, the right to alter, divert or otherwise use water subject to the restrictions and conditions [in the relevant legislation and the licence] [emphasis added].

16. The power to "issue" a licence is contained only in s. 14 of the Water Act and it governs both the issuance of a first-time licence and a renewal. There is no power granted in the statute to "issue a renewal"; s. 18 authorizes the Board to *decide* to renew (or not) and then subjects the renewal to the provisions of ss. 14-17.
17. The licence stipulates on its face both an effective date and an expiry date. It is submitted that, if the applicant's interpretation of the Act were correct, the effective date of the licence would be stipulated to be June, 1975. It is in fact September 30, 1995.
18. The significance of the fact that each licence is a fresh grant of rights with a new effective date, is that it argues against the existence of a "continuous licence" analogous to the "continuous policy" referred to in the applicant's excerpt from *Patterson v. Gallant* (1994) 3 S.C.R. 1080 at 1088-9:

Two separate meanings can be scribed to a "renewal of an insurance policy. The first meaning results from a continuous policy. Such policies provide for further extensions to the term of an existing contract...In a single continuous policy, questions of formation are answered by reference to the original offer and acceptance that initiated the coverage. By contrast, the other meaning of a "renewal" of an insurance policy involves the situation where a separate and distinct contract comes into existence at each renewal.

***Construction of the statutory context***

19. Based on the law quoted above, if successive water licences were "continuous", it is submitted that one would also expect to find in the legislation some provision governing renewals that referred back to the



original grant—something analogous to the “existing contract” and “offer and acceptance” referred to above.

20. In fact, quite the reverse is found:
  - o there is no right of renewal; renewal may be refused or granted on terms completely different from prior licences (s. 18)
  - o existing licences expire if they are not renewed (s.5, General Procedures for the Administration of Water Licences in the Northwest Territories).
  - o A new application is required if a licensee wishes to renew and the Board may require the provision of any information it deems necessary to assess it (s. 16)
  - o the Board may on its own motion cancel, amend or renew a licence (s. 18)
  - o the licence itself is issued for a fixed period and contains no reference to renewal (s. 14)
21. It is submitted that a review of the statutory context strongly suggests that each licence is a new grant, based upon the law as it stands at the date of application, the information received with the application, the environmental screening and the public submissions made at the time of the application.
22. This construction of the statutory context is wholly in keeping with proper stewardship of a public resource. Particularly where a resource is not physically sequestered, but shared by other users and essential to the survival of the ecosystem in which it is found, the regulatory regime must be structured to provide periodic reconsideration and the ability to decline the licence without incurring liability to compensate the licensee for the loss of a continuing right. Ecosystem needs and the rights of other users must be weighed against the application, in light of the quality and availability of water at the date of application. This is, in our respectful submission, the proper analysis on a “purposive approach” to construction of the statute.
23. The applicant argues that s. 18 of the Water Act, dealing with renewals, is meaningless unless it means ‘to extend an existing licence’. It is submitted that a section dealing with renewal was essential in the legislation, given that the term of a licence is fixed. The renewal provisions simply make it clear that, despite the fixed term of its first licence, a licensee may apply for a ‘renewal’, but is forewarned that this new license may be refused or granted on different terms.
24. The applicant further argues that licensees “expect and should have a right to expect that, as conscientious operators, their licences will be renewed throughout the working life of their operations”. Yet the statute provides no basis for an expectation of, or a right of, licence renewal. A more reasonable expectation, based on the law, would be that a renewal will be approved and a new licence issued if the application meets the stewardship objectives of the Water Act and is

determined to have no significant adverse impact on the environment, and to have caused no public concern.

25. For all of the reasons set out above, CARC submits that the licence for which the applicant seeks renewal was issued on September 30, 1995 as a fresh grant of rights and cannot, therefore, be subject to the provisions of s. 157.1.

All of which is respectfully submitted

This 5<sup>th</sup> day of July, 2002



Karen G. Wister  
Executive Director,  
Canadian Arctic Resources Committee

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## Brenda Backen

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**From:** Lara & Doug Beckett [druid@pgweb.com]  
**Sent:** Monday, July 08, 2002 12:52 AM  
**To:** mvlwbpermit@mvlwb.com  
**Cc:** donb@renc.igs.net  
**Subject:** Submission re: N3L2-004



submission.wps

Rob Wooley Executive Director  
Mackenzie Valley Land and Water Board  
7th Floor, 4910-50th Ave.  
P.O. Box 2130  
Yellowknife, NT X1A 2P6  
Tel (867)669-0506  
Email mvlwbpermit@mvlwb.com  
Fax (867) 873-6610

Dear Mr. Wooley,

Re: Request for Full Impact Environmental Assessment with respect to the water licence N3L2-004 renewal for the Tungsten mine on the Flat River be ordered.

I believe a full impact environmental assessment, or at a minimum a preliminary screening (as per Part 5 of the Mackenzie Valley Resource Management Act, hereafter referred to as 'the Act') should be performed before consideration is made to grant renewal of water licence N3L2-004 for the Tungsten mine on the Flat River.

I believe grandfathering accommodation as per section 157.1 would be procedurally unfair, as:

1. In 1975, the mine was issued a water licence for the purpose of operating a mine and milling undertaking and associated uses. The applicant has not proved in its June 26, 2002 submission that there has not been a significant alteration of the project since the original 1975 licence was granted. The applicant has also stated in their April 23, 2002 letter to the MVLWB that "concerns may be addressed in two ways. The first is through the screening required by your (MVLWB) board. A screening is a form of Environmental Assessment, the scope of which may be determined by your board. "Due to these two reasons (1. the applicant has not proven that there has not been a significant alteration of the project; and 2. the applicant has referred to a screening to address concerns), Part 5 of the Act should apply, thus triggering at a minimum a "preliminary screening" as defined in section 111 of the Act;

2. The current water license was established upon renewal since June 22, 1984. As such, the transition to be procedurally fair to the licence holder has been fulfilled. Especially as 2 or more renewals have occurred since June 22, 1984. Additionally, since the applicant's latest renewal, the Act has been formerly adopted (1999) and should be subject to all parts of the Act;

3. The grandfather accommodation would not be procedurally fair, recognizing the licence has been renewed since June 22, 1984; the mine was not in operation from 1986 until 2001; and recognizing the substantial time that has elapsed since June 22, 1984;

4. It appears the tungsten deposits proposed for mining were located since June 22, 1984. As such, the mining of these deposits should not

justify the grandfather accommodation;

5. It would not be procedurally fair to permit a company to accumulate exploration costs when the potential resulting development will be considered unsuitable;

6. It appears conditions have changed significantly enough that an expansion is required to the settling ponds;

7. There has been a 'significant alteration' in the social expectations for the area. Especially as it appears the social expectations reflected in the proposed water licence renewal reflects societies pre-1975 values;

8. There has been a 'significant alteration' in the use of the proposed and surrounding area. This will have significant repercussions with respect to the evaluation of adverse impacts on the environment that the water licence and potential resulting development could have;

9. There has been a 'significant alteration' in our knowledge of the environment. This will have significant repercussions with respect to the evaluation of adverse impacts on the environment that the water licence and potential resulting development would have; and

10. The history of risk (re: diesel fuel spill in 1997 and the latest in 2002) at the site warrants a full impact environmental assessment could be very beneficial in identifying means of minimizing risk of future contamination events.

It is interesting how the N3L2-004 renewal document uses the argument that the same process and equipment is being used now as was in use prior to the 1986 mine shut-down to support the notion that there has been no significant alteration to the project. This clearly implies applicants who pro-actively attempt to use new technology, equipment and processes that are more environmentally 'friendly' could be penalized, relative to applicants 'willing' to put the environment, workers, wildlife and other surrounding values at greater risk. I would consider a legal framework that discourages applicants to operate in 'good faith' a failure. Given old equipment and mining techniques are being used on the site, in itself warrants a full impact environmental assessment - especially as the equipment and process has never been fully assessed in detail.

I believe limiting the scope of the hearing, as to whether a full impact environmental assessment should be performed, to section 157.1 of the Mackenzie Valley Resource Management Act to be in error:

1. Proposed activities may have detrimental implications to fish subject to Federal Department of Fisheries and Oceans mandate, or National Park mandate;

2. Proposed activities may result in excessive sedimentation and siltation (re: historical problems with siltation) having detrimental implications to downstream National Park and Federal Department of Fisheries and Oceans interests;

3. Proposed activities may have detrimental implications to other surrounding resources, such as the local hot springs;

4. Proposed licence renewal may be subject to the Canadian Environmental Assessment Act (CEAA) as there appears to be a bermed PCB storage area within the licence area (figure 2 on the MVLWB website <http://www.mvlwb.com/N3L2-0004/ApplicationN3L2-0004.htm>);

5. The registration of the Nahanni as a World Heritage site could be placed in jeopardy;

6. The ability to achieve the social expectation of expanding the

Nahanni National Park could be negatively impacted; and

7. In response to my September 27 letter concerning activity in or around the Nahanni National Park - I was assured no activity that might detrimentally affect the Nahanni River, nor the ability to expand the park's boundaries in the future would be permitted.

In addition, if cyanide was used previously (i.e. in the flotation process) I would appreciate assurance that adequate ground water monitoring is being maintained regarding the successful attenuation of the cyanide. I am concerned the continuance of conventional tailings disposal will aggravate and promote further cyanide dispersal.

As the Flat river is a major tributary of the Nahanni and the Nahanni National Park. Activities on the Flat river can have significant negative implications to the Nahanni, Liard and Mckenzie Rivers; to the Nahanni National Park; to any potential expansion of the Nahanni National Park; and to the Nahanni World Heritage Site designation.

On the basis of the arguments above, and as the objective of the MVLWB is to "regulate the use of land and waters and the deposit of waste so as to provide for the conservation, development and utilization of land and water resources in a manner that will provide optimum benefit to the residents of the settlement areas and of the Mackenzie Valley and to all Canadians" - I urge you forward a request to the Govenor in Council to make regulations authorizing a board or an inspector to require a Full Impact Environmental Assessment as per section 90 (n) of the Mackenzie Valley Resource Management Act, assented to June 18, 1998.

Thank you for considering my input. Acknowledgement of your receipt of my submission would be appreciated.

Yours truly,  
Doug Beckett  
14305 Westbe Road  
Prince George, BC  
V2N 5C2  
Phone/fax: (250) 560-5556  
Reply email: whitewater.canoe@unb.ca

**Brenda Backen**

**From:** Don Beckett [donb@renc.igs.net]  
**Sent:** Sunday, July 07, 2002 12:27 PM  
**To:** Bob Wooley  
**Subject:** Re; N A T Water Licence Renewal Application N3L3-0004

Bob Wooley Executive Director  
Mackenzie Valley Land and Water Board  
7th Floor, 4910-50th Ave.  
P.O. Box 2130  
Yellowknife, NT X1A 2P6  
Dear Mr Wooley

June 6, 2002

Apparently, consideration for this request is based on the "GRANDFATHER" clause.

1) I would argue that all Grandfathers (I am a grandfather) eventually die. Is this grandfather clause going to live on to June 30th 2075, 100 years from the original licence, or forever? Water renewal licence have a term not exceeding 25 years 2.2 NWTWA 18.(1)(a), 1975 to 2000 is 25 years. Can it not be construed that the grandfather clause 157.1 be dealt with on the same level playing field with renewal?

2) Appendix D leaves some doubt of the fact that this licence was renewed continuously. In addition, there was activity at this site before July 1973 but I see no documentation for water licence prior to 1975.

3) It would appear the board is at liberty to call for a Full Impact Environment Assessment 2.1 MVRMA 24.(1) and 2.2 NWTWA 21.(1)  
I am **one** of the PUBLIC and feel strongly that a Full Impact Environmental Assessment be done prior to reactivation of this mine. This E A must take into account potential or new found deposits in the area.

**and**, if this is considered a type "A" licence  
2.2 NWTWA 21 (2)(a)

4) The PCB area, 175 meters north of the pumping and mixing house, is also a concern. A Full Impact Environmental Assessment will no doubt consider this matter.  
See map. NeL2-0004/figure2.PDF

5) What is a "Borrow Pit BH 102", 155 meters south of the pumping and mixing house?  
See map. NeL2-0004/figure2.PDF. A Full Impact Environmental Assessment would explain this.

6) Are the settling ponds sufficient to meet discharge requirements, especially if mine production is increased?. Again, a Full Impact Environmental Assessment would review this.

**COMMENTS**

In view of additional environmental database since 1975, it is evident that a Full Impact Environmental Assessment must be implemented. e.g. Automobiles built in 1975 certainly do not meet the emission control standards expected to-day. The new standards are accepted by the public and industry as a necessity to protecting our environment. If a Full Impact Environmental Assessment is not called for by the Board, this mine will then operate under obsolete regulations.

The Nahanni is a World Heritage site. Short sighted decisions **based on profit**, coupled with poor/pressured Government decisions, can quickly destroy an irreplaceable Natural commodity.

During my first trip to the Yukon and the NWT, our initial plan was to canoe the Flat River and into the

7/8/2002

Nahanni. We elected for the Moose Ponds to Fort Simpson, even though the Flat River was easily accessible. This decision was because we wanted a pristine Headwaters, free of human activity and free of potential effluent contamination (for drinking purposes) from the mine site.

Respectively submitted,

Don Beckett,  
RR# 2, Box# 8  
CALABOGIE, Ont.  
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1 (613) 752 - 2862

7/8/2002



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Mr. Bob Wooley  
Executive Director  
Mackenzie Valley Land and Water Board  
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7<sup>th</sup> Floor 4910 50<sup>th</sup> Ave  
Yellowknife, NT X1A 2P6  
Fax: (867) 873-6610

Mackenzie Valley Land  
& Water Board

File

JUL - 8 2002

Application # N3L2-0004

Copied To KUPWILC/Sm/Reg

July 8, 2002

RE: North American Tungsten Corporation Ltd. Water License N3L2-0004

Dear Mr. Wooley:

The Canadian Nature Federation respectfully recommends that an environmental assessment be completed prior to the renewing of the above noted water license. The CanTung mine, which is located on the Flat River—which feeds into the South Nahanni River (a Canadian Heritage River), could have potentially harmful environmental impacts on water quality in the Nahanni National Park Reserve (NNPR). As a UNESCO World Heritage Site it is imperative that the Park Reserve, as well as the surrounding watershed, be protected by every possible means.

Others have echoed our concern for the degradation of water quality in the South Nahanni Watershed (SNW) from mining activity. Parks Canada's July 2000 NNPR Fact Sheet identifies mining activity as the "single greatest threat" to the Park Reserve and watershed (page 9). As well, the report of the Panel on the Ecological Integrity of Canada's National Parks (Parks Canada Agency, 2000) lists mining and transportation adjacent to National Parks as ecological stresses that significantly affect most parks.<sup>1</sup>

Concern for the effects of mining in the SNW prompted a water quality monitoring study within the NNPR. The report indicates that "the cumulative impact of the mining activities [in the SNW] could be considerable" (page 9)<sup>2</sup>, and that mining activity has "the potential to adversely affect the water quality of the basin and disrupt the life processes which depend on it" (Page 19)<sup>2</sup>. The report goes on to recommend that, "water quality monitoring [should] be significantly expanded if exploration and development activities in the basin proceed" (page 51).

We are concerned that the Mackenzie Valley Land and Water Board cannot be confident that the existing permit meets the minimum current environmental standards. The renewal of the water license is not straightforward—if the mine had been operational and in good working order for the last 16 years, it could potentially be unnecessary for the project to undergo an

<sup>1</sup> Parks Canada Agency, 2000. "Unimpaired for Future Generations?" Protecting Ecological Integrity with Canada's National Parks. Vol. I. "A Call to Action." Report of the Panel on the Ecological Integrity of Canada's National Parks. Ottawa, ON.

<sup>2</sup> Environment Canada, Conservation and Protection, and Canadian Parks Service. 1991. Protecting the Waters of Nahanni National Park Reserve, N.W.T.



environmental screening. Particularly given that CanTung has been out of operation since 1986, there is no way of knowing the current conditions of the mine, specifically of the water infrastructure. Allowing the mine to continue operations without being fully aware of the potential consequences of those operations could be devastating. This is the only opportunity to undertake an environmental assessment of this mine site since the CanTung mine does not require a land use permit to operate, only a surface lease and a water license.

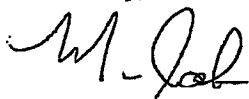
Since CanTung has re-opened, a spill in January 2002 of more than 23,000 litres of diesel fuel has already emphasized the major shortcomings in the infrastructure and fuel handling procedures at the mine. This incident illustrates that there were significant problems with the mining operations that should have been addressed prior to re-commencing the operations. Issues associated with the fuel system and improper fuel handling operations were not discovered until a major accident occurred. To prevent future environmental incidents and to allow for other unknown issues to be identified and addressed, a full environmental assessment of the mine site, before the renewal of its water license, is crucial.

Section 157.1 of the MacKenzie Valley Resource Management Act, which stipulates that Part 5 does not apply to any licenses or permits issued before June 22, 1984, is open to interpretation as the wording is ambiguous. NA Tungsten interprets this section to mean that their permit is exempt from having to undergo an environmental screening by MVEIRB prior to the renewal of their water license. However, as Section 157.1 does not refer to license renewals specifically, NA Tungsten's claims may be unjustified.

The Canadian Nature Federation respectfully urges the Board not to be swayed by the ambiguity of this clause and to instead use precaution when making their decision. Given the surrounding natural environment and the location of the CanTung mine within the South Nahanni Watershed, there is reason to be concerned about the effects of mining activity on water quality as well as other cumulative impacts that mining activity could have in the South Nahanni Watershed and the Nahanni National Park Reserve. In conclusion, the CNF submits that the Board use caution and refer the renewal of CanTung's water license to an environmental assessment.

Thank you for your careful consideration when making your decision on this matter. If you have any questions regarding the Canadian Nature Federation's position, please do not hesitate to contact me.

Sincerely,



for  
**Christie Spence**  
Wildlands Campaign Manager  
Canadian Nature Federation

C.c. Honourable Sheila Copps, Minister of Canadian Heritage  
Honourable Robert Nault, Minister of Indian Affairs and Northern Development  
Right Honourable Jean Chrétien, Prime Minister of Canada  
Mr. Vern Christensen, Executive Director, Mackenzie Valley Environmental Impact  
Review Board  
Ms. Laura Van Ham, Environmental Specialist, National Energy Board

Chuck Blyth  
Superintendent  
Nahanni National Park Reserve  
P.O. Box 348  
Fort Simpson, NWT X0E 0N0

8 July 2002

Mr. Stephen Mathyk  
Regulatory Officer  
Mackenzie Valley Land and Water Board  
7th Floor - 4910 50th Avenue  
P.O. Box 2130  
Yellowknife, NT X1A 2P6

Dear Mr. Mathyk:

This letter is in response to the correspondence relating to the public hearing being held for North American Tungsten file N3L2-0004 which was forwarded to Parks Canada as a result of our expressed desire to participate in the hearing. Since the scope of the hearing is limited to the question of whether a preliminary screening of the water licence application is required based on the interpretation of Section 157.1 of the MVRMA and the nature of the license renewal, our comments will be limited to these issues.

With respect to section 157.1 of *Mackenzie Valley Resource Management Act* (MVRMA) which states:

"Part 5 does not apply in respect of any licence, permit or other authorization related to an undertaking that is the subject of a licence or permit issued before June 22, 1984, except a licence, permit or other authorization for an abandonment, decommissioning or other significant alteration of the project."

Parks Canada would suggest that the MVLWB consider two important factors in determining whether or not Part 5 of the MVRMA applies as follows:

- The first consideration is whether or not the undertaking for which the licence is being requested is the same undertaking that was the subject of the licence issued before 1984. To determine if the project has been significantly altered, the MVLWB could review previous applications for water licences and other relevant information. Things to consider could include, among other things, the tailings ponds in use now as compared to the original undertaking and the changes to other infrastructure in use or not in use today. If the project has been significantly altered from the initial project description in the licence issued prior to June 22, 1984, Part 5 of the MVRMA would apply.
- The second consideration is whether or not the current application involves an abandonment and restoration plan to be implemented within the time-frame of the current application. If this is the case, it appears that section 157.1 would require North American Tungsten Corporation be subject to Part 5 of the MVRMA.

If you have any questions or wish to discuss this further, please do not hesitate to contact me at (867) 695-3151.

---

Yours sincerely,

Chuck Blyth  
Superintendent



# Liidlíi Kue First Nation

June 20, 2002

Bob Wooley  
Mackenzie Valley Land and Water Board  
7<sup>th</sup> Floor - 4910 50<sup>th</sup> Avenue  
PO BOX 2130  
Yellowknife, NWT X1A 2P6

Mackenzie Valley Land  
& Water Board

File \_\_\_\_\_

JUN 20 2002

Application # N3L2-0004  
Copied To KLIPUM/LC/SM/  
Reg

Re: North American Tungsten - Notice of Hearing

Dear Mr. Wooley,

This letter is in response to the notice of hearing for North American Tungsten's water license renewal. The hearing is limited to the interpretation of Section 157(1) of the MVLW Act.

We interpret that part 5 of the Mackenzie Valley Land and Water Board act does apply to North American Tungsten's water license. The license is issued under the MVLWB act and therefore is subject to the scrutiny of the Act.

Part 5 of the Act also states;

*Where there is any inconsistency or conflict between this Act and a land claim Agreement, an Act giving effect to a land claim agreement or the Indian Act, the Agreement, the Act or the Indian Act prevails over this Act to the extent of inconsistency or conflict.*

There is an Interim Measure Agreement between the Deh Cho First Nations and the Government of Canada. Section 45 of the Agreement concerns Mineral Impact and Benefits agreements and states that:

*Canada shall ensure that the proponent of a major mining project that requires any authorization from Canada and that will impact on members of the Deh Cho First Nations is required to enter into negotiations with the Deh Cho First nations for the purpose of concluding an agreement relating to the project.*

We would like further conditions met on the water license with respect to the affected first nation's communities. This is a result of the most recent spill that occurred at the Mine. We learned of the spill not from Tungsten or DIAND officials but through the media. We feel our concerns can be addressed through conditions on the license.

P.O. Box 469

Fort Simpson, NT X0E 0N0

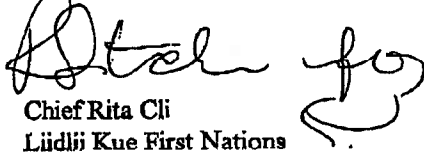
Phone: (867) 695-3131 Fax: (867) 695-2665

E-mail: [denavac@cancom.net](mailto:denavac@cancom.net) website: [www.cancom.net/~lkfndlr](http://www.cancom.net/~lkfndlr)

Liidlji Kue First Nations is one of the affected communities and there are concerns of the lack of benefits to the region from the Mine. We would like to work with North American Tungsten to resolve this issue through a Mineral Impact and Benefits Agreement as is stated in the Interim Measures Agreement.

We look forward to hearing and working with North American Tungsten Mine.

Sincerely,



Chief Rita Cli  
Liidlji Kue First Nations

c.c Deh Cho First Nations  
Nahanni Butte First Nations



**CANADIAN PARKS AND  
WILDERNESS SOCIETY  
NWT CHAPTER**

Box 1934, Yellowknife, NT X1A 2P4  
Phone: (867) 873-9893 Fax: (867) 873-9593 e-mail: cpawsnwt@thocodge.ca

July 8, 2002  
Mackenzie Valley Land  
& Water Board

Bob Wooley  
Executive Director  
Mackenzie Valley Land and Water Board  
7th Floor, 4910-50th Ave.  
P.O. Box 2130  
Yellowknife, NT X1A 2P6  
Fax: (867) 873-6610

file

JUL - 8 2002

Application # N3L2-0004Copied To KC/PUW/LLCLSM/Reg

**Re: North American Tungsten Water Licence Application N3L2-0004 Public Hearing**

Dear Mr. Wooley,

Please accept the following submission of the Canadian Parks and Wilderness Society – Northwest Territories Chapter (CPAWS-NWT) in the public hearing for the above noted water licence application. CPAWS-NWT is part of a national non-profit conservation organization, dedicated to protecting Canada's wilderness.

CPAWS-NWT submits that a preliminary screening of the above noted water licence application by North American Tungsten corporation Ltd. (NATCL) is required based on the interpretation of section 157.1 of the *Mackenzie Valley Resource Management Act*, S.C. 1998, c. 25 (MVRMA) and the nature of the licence renewal for the following reasons:

**1. A RENEWAL OF A LICENCE CONSTITUTES A NEW LICENCE; THUS THE OPERATIVE DATE OF THE LICENCE IS SEPTEMBER 30, 1995**

Section 157.1 states that Part V will not apply in respect of licences or permits that were issued before June 22, 1984. However, in this case, the licence in question was issued on September 30, 1995. That the initial licence was originally issued on June 30, 1975, does not mean that it is automatically "grandfathered" because a renewal of a licence constitutes a new licence.

The courts have held that in the context of the use of Crown Lands, that renewals of licences to use land and resources are not guaranteed, but rather, that each renewal constitutes a new grant. In *Smylie v. The Queen*, 1900 [27 Ont. App. R. 172] at pp. 191, Moss, J.A. stated:

The term "renewal" seems to be applied to licences issued after the first. But in reality this is not an accurate description. They are not in the nature of a restoration or revival of

a right. *Each is a new grant. It bears no necessary relation to the preceding licence. It may or may not be couched in the same language and subject to the same conditions, regulations and restrictions, as the former. It is not the continuance of an old or existing right, but the creation of a new original right* [emphasis added].

Cited with approval by Anglin J., in *Booth v. Canada* (1915), 51 S.C.R. 20, and Morse J. in *Enterlake Air Services Ltd. v. Bissett Air Services Ltd.* (1991), 74 Man. R. (2d) 201 (Q.B.).

The NATCL licence renewal is similar to that which was at issue in the Smylie decision. Both situations involve licences for the use of crown, or publicly owned resources: in the Smylie decision it involves timber, and in the NATCL application it involves water.

**1.a. Numerous changes to the licence over the years are evidence that the terms of the original licence expired long ago**

This licence has been subjected to 5 separate renewals and/or extensions, some of which were conducted after public hearings. The original terms and conditions of this 1975 licence are no longer the same, amendments to the terms and conditions were made several times during water licence renewals. The original 1975 licence is substantially different than the 1995 licence; there have been significant alterations to the licence over the years. Some of these alterations include:

**Significant changes in water quantity limits.** Since 1975, the quantity of water not to be exceeded has become greater than twice as much as the original licence, as described below:

▪ June 30, 1975 to June 28, 1978:	944,985 m <sup>3</sup> /year
▪ June 30, 1978 to Sept 1982:	1,370,000 m <sup>3</sup> /year
▪ Sept 30, 1983 to Sept 29, 1988:	2,366,000 m <sup>3</sup> /year
▪ Sept 30, 1988 to Sept 29, 1995:	2,366,000 m <sup>3</sup> /year
▪ Sept 30, 1995 to Sept 29, 2002:	2,340,000 m <sup>3</sup> /year

**Significant increases in the security deposit requirements.** The security deposit required for an operational mine has increased 900% since the first water licence.

▪ June 30, 1975 to June 28, 1978:	\$100,000
▪ June 30, 1978 to Sept 1982:	\$150,000
▪ Sept 30, 1983 to Sept 29, 1988:	\$250,000
▪ Sept 30, 1988 to Sept 29, 1995:	\$250,000
▪ Sept 30, 1995 to Sept 29, 2002:	\$350,000 when mine is not in operation \$900,000 when mine is in operation.

**Significant changes in the scope of the reporting requirements.** The reporting requirements of NATCL are much greater than in the original licence, for example:

- The September 30, 1988 licence added reporting to the NWT Spill Report Line, Total Suspended Solids monitoring, and tailings pond 5 into the reporting requirements.

- The September 30, 1995 licence added requirements for a water recycling feasibility study, conditions for the construction of tailings pond 5 and groundwater monitoring wells for approval, removed cyanide from the regulated parameters, and added a condition for the addition of an effluent treatment plant.

All of the above indicate how the terms and conditions of the water licences have changed since the issuance of the original licence, each has been a new licence with differing terms and conditions. CPAWS-NWT respectfully submits that the baseline considerations for any licence renewal will be based upon the 1995, not the 1975 licence.

**1.b. The Northwest Territories Water Board has consistently considered each renewal as a new licence.**

According to the NWT Water Board, each renewal involves a separate application, an evaluation of the licensee's performance and compliance with the licence as granted, as illustrated in previous correspondence from the NWT Water Board regarding renewals of this water licence. For example:

- The January 16, 1979 letter from Glenn Warner of the NWT Water Board to Canada Tungsten Mining Corporation states "...if renewal of the Licence is contemplated, to apply to the Water Board for a *new* Licence. *The decision on this new Licence rests with the Water Board and is based in part on the performance of the Licensee during the time of the previous Licence and the views of the public at the hearing, which must be held prior to the granting of a new Licence*" [emphasis added].
- The October 13, 1983 letter from Glenn Warner of the NWT Water Board to Canada Tungsten Mining Corporation states "If the renewal of a Licence is contemplated it is the responsibility of the Licensee to apply to the Water Board for a *new* Licence. *The past performance of the Licensee plus the points raised during the required public hearing will be used to determine the terms and conditions of a new Licence*" [emphasis added].
- The same language is used in the October 3, 1988 letter from the NWT Water Board to Canada Tungsten Mining Corporation.
- The October 13, 1995 letter from Gordon Wray of the NWT Water Board to Canada Tungsten Mining Corporation states "In conclusion, please be advised that this letter with attached procedures, all inspection reports, and correspondence related thereto are part of the public Water Register, and are intended to keep all interested parties informed of the manner in which Licence requirements are being met. *All Water register material will be considered when the Licence comes up for renewal or amendment*" [emphasis added].

The above correspondence clearly indicates that in the view of the regulator a licence renewal constitutes a new licence. CPAWS-NWT respectfully submits that the operative date for



consideration of this licence application is the date of the issuance of the current licence, September 30, 1995, and thus s. 157.1 does not apply to exempt this application.

## **2. INSURANCE LAW AND REGULATORY LAW ARE DISTINCT AREAS OF THE LAW**

With respect to the submission of NATCL, they appear to rely significantly on the use of the term "renewal" as applied in Insurance Law. However, CPAWS-NWT respectfully submits that insurance law and regulatory law are two entirely separate areas of law: insurance law is based on the protection of private commercial/financial interests, whereas regulatory law, especially environmental regulatory law, is grounded upon a publicly legislated intention to protect public health and environmental quality.

## **3. SECTION 124(1) AND SCHEDULE 1 OF THE *PRELIMINARY SCREENING REQUIREMENT REGULATIONS* UNDER THE MVRMA CONFIRMS THAT A PRELIMINARY SCREENING IS REQUIRED**

Section 124(1) establishes when a preliminary screening will be required for licence applications, and combined with Schedule 1 of the *Preliminary Screening Requirement Regulations*, SOR/99-12, expressly requires that a preliminary screening be conducted for licence renewals filed pursuant to s. 18(1)(a) of the *Northwest Territories Waters Act*, S.C. 1992, c. 39. Section 124(1) states that:

124(1) Where, pursuant to any federal or territorial law specified in the regulations made under paragraph 143(1)(b), an application is made to a regulatory authority or designated regulatory agency for a licence, permit or other authorization required for the carrying out of a development, the authority ... shall conduct a preliminary screening for the proposal for development ...

Water licence application N3L2-0004 is clearly an application for an authorization that qualifies under the MVRMA. Schedule 1 of the *Preliminary Screening Requirement Regulations* identifies s. 18(1)(a) of the *NWT Waters Act* as a provision which triggers a preliminary screening.

Further, the licence application does not qualify under any of the exemptions identified in the *Exemption List Regulations*, SOR/99-13 under the MVRMA. CPAWS-NWT respectfully submits that if a licence renewal was intended to be exempted from the requirement to conduct a preliminary screening, such renewals would not have been expressly included in the *Preliminary Screening Requirement Regulations*.

**CONCLUSION**

At the heart of this matter are the numerous serious environmental concerns relating to this application, as CPAWS-NWT has outlined in our previous submission regarding Water Licence N3L2-0004, dated May 10, 2002 (attached), where we requested the Water Licence application be referred to environmental assessment. These environmental issues relate to the location of the NATCL mine within the South Nahanni Watershed (SNW) upstream of the Nahanni National Park Reserve, concerns over the effects of mining activity on water quality, water losses from tailings pond 3, the January 2002 fuel spill (#02-018) and related causes, the reported July 2002 tailings spill (#02-410), and the potential for the mining activity to add to cumulative environmental impacts in the SNW.

Parks Canada also outlined their environmental concerns in a submission dated April 15, 2002. In that submission Parks Canada recommended the water licence application be referred to environmental assessment due to environmental concerns over water quality and quantity, aquatic life, air, wildlife, soil and vegetation and cumulative effects. These concerns need to be addressed in a thorough and comprehensive fashion, as a preliminary screening and possible environmental assessment would allow for.

In conclusion, on grounds of both legal interpretation of section 157.1 and a reading of section 124 of the MVRMA and the associated regulations, there is no compelling case to exempt this water licence application, from a preliminary screening or possible environmental assessment under Part 5 of the MVRMA.

Sincerely,



for Greg Yeoman  
Conservation Director,  
CPAWS-NWT

Cc (by email) Steve Mathyk, Regulatory Officer, MVLWB  
Laurie Cordell, Regulatory Officer, MVLWB

Attach.



**CANADIAN PARKS AND  
WILDERNESS SOCIETY  
NWT CHAPTER**

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Laurie Cordell  
Regulatory Officer  
Mackenzie Valley Land and Water Board  
Box 2130  
7<sup>th</sup> Floor 4910 50<sup>th</sup> Ave  
Yellowknife, NT X1A 2P6  
Fax: (867) 873-6610

May 10, 2002

**RE: North American Tungsten Corporation Ltd. Water Licence N3L2-0004**

Dear Ms. Cordell:

Please accept this letter as comments of the Northwest Territories Chapter of the Canadian Parks and Wilderness Society (CPAWS-NWT) on the water licence application listed above. CPAWS-NWT is part of a national non-profit conservation organization, dedicated to protecting Canada's wilderness.

**Context**

In our December 19, 2001 letter to the Mackenzie Valley Land and Water Board, CPAWS-NWT included a section which outlined the important conservation values of the wilderness area that surrounds the CanTung mine. We again want to highlight these conservation designations as a reminder of the unique ecological context in which the North American Tungsten (hereafter referred to as 'CanTung') application is made.

The conservation designations in the area are the Nahanni National Park Reserve (NNPR), which is also a UNESCO World Heritage Site; and the South Nahanni river within the Park Reserve is a Canadian Heritage River. Also, a large portion of the South Nahanni Watershed is a potential protected area, as it has been identified for subsurface withdrawal by the Government of Canada and the Deh Cho First Nations in the Deh Cho Process negotiations.

The CanTung mine site is located in the South Nahanni Watershed (SNW), approximately 40 km from the NNPR boundary. This is an area with globally significant wilderness values and natural features, which are recognized and protected by the national and international conservation designations listed above. It is because of the wilderness values and designations in this area that CPAWS-NWT is requesting that this water licence application be referred to an environmental assessment.

### National Park Reserve

The recently revised *Canada National Parks Act* (2000) declares that the "maintenance or restoration of ecological integrity, through the protection of natural resources and natural processes, shall be the first priority of the Minister when considering all aspects of the management of parks" (section 8(2)). This purpose of National Parks is echoed by the report of the Panel on the Ecological Integrity of Canada's National Parks (Parks Canada Agency, 2000)<sup>1</sup>, which stated that "conserving, restoring and maintaining ecological integrity is the core of Parks Canada's mandate."

The SNW is a large wild area, approximately 33,000 km<sup>2</sup> in size, which contains the NNPR within its boundaries. The area of immediate area of concern when protecting the ecological integrity of the Park Reserve, as identified by Parks Canada, is the entire South Nahanni Watershed and a small portion of the Liard River basin adjacent to the confluence with the South Nahanni River. Parks Canada has clearly stated the role of the watershed in protecting the ecological integrity of the NNPR:

"Among the most obvious examples of the importance of watershed protection to the ecological integrity of Nahanni National Park Reserve are water quality and woodland caribou. As the park covers only one-seventh of the South Nahanni watershed, the majority of the waters flowing through the park originate outside its borders, and any upstream activities do have the potential to impact water quality in the park."<sup>2</sup>

Obviously then, the NNPR will be impacted by what occurs in the SNW, whether or not it occurs within the current Park Reserve boundaries.

### World Heritage Site

The NNPR is also internationally recognized as a United Nations Educational, Scientific and Cultural Organization Natural World Heritage Site for its globally significant natural features and wilderness values on par with other World Heritage Sites such as the Great Barrier Reef, the Galapagos Islands and the Grand Canyon. Nahanni was designated under two different criteria; as "an outstanding example representing significant ongoing ecological processes or biological evolution" and for its "superlative natural phenomena, formations or features or areas of outstanding natural beauty." (United Nations Educational, Scientific and Cultural Organization, 1998).<sup>3</sup>

### Canadian Heritage River

A Canadian Heritage River designation is meant to ensure that rivers of outstanding natural, historic or recreational value are recognized and managed in a manner which conserves their distinctive values, while allowing for public use and enjoyment of the rivers. The South Nahanni river was designated to recognize its natural and recreational resources, as the river "provides a wilderness river experience which is unique in Canada, in a setting of world-class, natural beauty"(The Canadian Heritage River System, 2000)<sup>4</sup>

<sup>1</sup> Parks Canada Agency. 2000. "Unimpaired for Future Generations"? Protecting Ecological Integrity with Canada's National Parks. Vol. I. "A Call to Action." Report of the Panel on the Ecological Integrity of Canada's National Parks. Ottawa, ON.

<sup>2</sup> Mackenzie Valley Environmental Impact Review Board Information Request Response from Parks Canada, September 2000.

<sup>3</sup> <http://www.unesco.org/wihc/opgwtoc.htm#debur>

<sup>4</sup> [http://www.chrs.ca/Rivers/SouthNahanni/SouthNahanni\\_e.htm](http://www.chrs.ca/Rivers/SouthNahanni/SouthNahanni_e.htm).

#### Potential Protected Area

Another aspect of the unique context of this application is that areas of high cultural and ecological value within the South Nahanni Watershed are the subject of negotiations for interim land withdrawals between the Government of Canada and the Deh Cho First Nations, through the Deh Cho Process.

#### Context Summary

It is within the context of globally significant ecological values and protective designations which an assessment of this application must be based. The importance of protecting the ecological values of the watershed and NNPR, as well as the status of the SNW as a proposed protected area, are the reasons why CPAWS-NWT is requesting this water licence application be referred to an environmental assessment. Since the CanTung mine does not require a land use permit to operate, only the surface lease and a water licence, this water licence application is the only opportunity to undertake an environmental assessment of this mine site<sup>5</sup>.

In the sections below, please find the specific concerns related to the CanTung water licence permit application.

#### Water Quality

The July 2000 NNPR Fact Sheet identifies mining activity as the "single greatest threat" to the Park Reserve and watershed (page 9). Additionally, the report of the Panel on the Ecological Integrity of Canada's National Parks (Parks Canada Agency, 2000) lists mining and transportation adjacent to National Parks as ecological stresses which significantly affect most parks.<sup>6</sup>

The potential for mining activity to degrade water quality in the SNW led to the implementation of a water quality monitoring study in the NNPR. The report '*Protecting the Waters of Nahanni National Park Reserve, N.W.T.*' by Environment Canada, Conservation and Protection, and Canadian Parks Service (1991) states "the cumulative impact of the mining activities [in the SNW] could be considerable" (page 9), and that mining activity has "*the potential to adversely affect the water quality of the basin and disrupt the life processes which depend on it*" (page 19, emphasis added), and recommended that "water quality monitoring be significantly expanded if exploration and development activities in the basin proceed" (page 51).

The subsequent report '*Protecting the Aquatic Quality of Nahanni National Park Reserve, N.W.T.*' by Environment Canada and Heritage Canada (1998) states the mining potential in the Greater Nahanni Ecosystem presents a serious threat to water quality within the Nahanni National Park Reserve.

<sup>5</sup> Historically, an environmental assessment of the CanTung mine operations was not required or completed.

<sup>6</sup> Parks Canada Agency. 2000. 'Unimpaired for Future Generations'? Protecting Ecological Integrity with Canada's National Parks. Vol. I. "A Call to Action." Report of the Panel on the Ecological Integrity of Canada's National Parks. Ottawa, ON.

"Aquatic quality monitoring activities should continue at present levels, and be increased if new development occurs in the South Nahanni River basin, such as start-up of a metal mine on Prairie Creek, re-opening of the Tungsten mine ..."<sup>7</sup>

The CanTung mine re-opened after 15 years of inactivity without an environmental assessment. As a condition of the licence renewal, it is requested that the recommendations in the aforementioned 1991 and 1998 water quality reports be examined and implemented the prior to renewing this water licence, and that the licence be subject to relevant conditions contained in the reports in order to maintain the present high level of water quality in the SNW. However, it should be noted again that the best method to maintain water quality is not to licence activities which could put it at risk, without first subjecting those activities to a thorough environmental assessment.

#### Long Term Stability of Tailings Pond Slopes

Inspections of the tailings ponds in October 2000 by Skaha Consultants indicated that they were in stable condition.<sup>8</sup> During that inspection it was also noted that tailings pond 3 had permanent trickles of seepage at the base of the impoundment, and that the seepage was determined to be a combination of groundwater discharge and the result of rainfall. The schematics (Figures 7 and 8) in the licence application indicate that there are 140 cubic metres (or 140,000 L) per day of water losses from pond 3. This is a rather large volume of water loss, which may itself be a problem, and may be indicative of future problems with the tailings pond. That the pond was flooded in July 2000 as cited in the October 2000 Geotechnical Site Inspection report (page 5) causes further concern for the current and future stability of this tailings facility.

This documentation of seepage or "base exfiltration" from containment Pond 3 is significant and should be mitigated immediately, prior to the commencement of mining operations, and closely monitored in the long term. It should also be noted that the inspections during October 2000 were made during the "long term care and maintenance" phase of the mine, and not during actual mining operations. As such, it is uncertain whether this volume estimate of water loss would increase and to what extent during the actual mining operations. Likewise, the water licence application submission does not address whether the water quality of this seepage water would be altered during mining operations. Therefore, in order to sustain a healthy watershed, the current leaking tailings ponds must strictly adhere to environmental regulations and standards, and any erosion or runoff problems remediated prior to continued operation of the mine.

#### Fuel Spill

The January 2002 spill of more than 23,000 litres of diesel fuel highlighted numerous shortcomings in the fuel system and fuel handling procedures at the mine. The subsequent report acknowledged the lack of full and accurate fuel metering and labeling of valves, lack of written procedures for operating the fuel system, lack of proper training for people using the fuel system, lack of a schematic of the fuel system, and that the system was susceptible to this type of accident. This incident illustrates that there were significant problems with the mining operations that needed to be addressed prior to re-starting operations. Issues associated with the fuel system

<sup>7</sup> Environment Canada and Heritage Canada. December 1998. Protecting the Aquatic Quality of Nahanni National Park Reserve, N.W.T.. Page: ii.

<sup>8</sup> Skaha Consultants. October, 2000. Tailings Impoundments, Tungsten NWT. Geotechnical Inspection Report.

and improper fuel handling operations were not discovered until a major accident occurred. To prevent future similar environmental incidents, a full environmental assessment of the mine site would allow for other, yet unknown issues to be identified and addressed. Again, this water licence application is the only opportunity to subject the CanTung mining operations to an environmental assessment.

#### Cumulative Impacts

The cumulative impacts of mining and other industrial development within the SNW have the potential to impact water quality, and the ability of Parks Canada to fulfill its mandate to protect the ecological integrity of the Park Reserve.

There are two mine sites and two other sites with high potential that CPAWS-NWT is aware of in the watershed. These are the Canadian Zinc Prairie Creek mine, and the Cantung mine; Copper Ridge Exploration's Howard Pass lead, zinc and silver placer mining project, and the Union Carbide project at Lened Creek. In addition there are at least two other mining projects which are in the early exploration phase. Oil and gas seismic exploration is also occurring within the watershed, with Explor Data, Talisman, Arcis all receiving permits to shoot seismic lines in the last two years. With all of these projects existing in the same watershed, there is high potential for significant adverse cumulative environmental impacts to the water quality.

#### Precautionary Principle

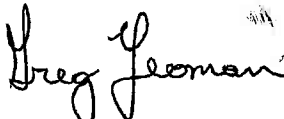
In the January 2002 Report of Environmental Assessment on the Canadian Zinc Corporation, Underground Decline/Exploratory Drilling and Metallurgical Pilot Plant Developments, the MVEIRB stated that they were:

"concerned that unalterable land use decisions may result in significant adverse impacts should such decisions be found to compromise the nationally and internationally values Nahanni National Park World Heritage Site" page 48.

Given the surrounding natural environment, CPAWS-NWT respectfully submits that the Board use the precautionary principle when making their decision. Simply put, the precautionary principle means err on the side of caution. As outlined above there are outstanding concerns regarding the environmental impacts of the CanTung mine, and referring the application to EA is the decision which will result in the least amount of potential harm to the natural environment.

In conclusion, the location of the CanTung mine within the SNW, concerns over the effects of mining activity on water quality, water losses from tailings pond 3, the fuel spill and related causes, and the potential for the mining activity to add to cumulative impacts in the SNW are reasons for this application to be referred to an environmental assessment.

Sincerely,



Greg Yeoman  
Conservation Director  
CPAWS-NWT