NORTH SLAVE METIS ALLIANCE

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Re: MVRMA s157.1 and Miramar Con Mine Ltd. Water License Extension

As requested, the North Slave Métis Alliance (NSMA) respectfully submits the following comments regarding the exemption of Miramar Con's application to amend Water License #N1L2-0040 from environmental assessment by Section 157.1 of the Mackenzie Valley Resource Management Act (MVRMA).

Part 7 of the MVRMA deals with "TRANSITIONAL PROVISIONS, CONSEQUENTIAL AMENDMENTS AND COMING INTO FORCE". The "Grandfather Clause", Section 157.1, is found under the Transitional Provisions heading, along with other sections which continue **existing** land use permits (s.151), **existing** land use rights and interests (s. 152), and **existing** water licences (s.153). The next two sections (s. 154, 155) provide for **pending** applications for permits or licences to be completed under the legislation in effect at the time of application. Section 157(1) deems Inspectors under the previous legislation to continue as Inspectors under the new MVLRMA.

Section 157.1 exempts "any licence, permit or other authorization related to an undertaking that **IS** the subject of a licence or permit issued before June 22, 1984" from the provisions of Part 5 - Mackenzie Valley Environmental Impact Review Board, **EXCEPT** licences, permits or other authorizations for **abandonment, decommissioning** or other **significant alteration** of the project.

In 2002, the Mackenzie Valley Land and Water Board (MVLWB) dealt with a similar assertion by North American Tungsten that they were exempt from Part 5 of the MVRMA since their existing licence, although renewed in 1995, was a continuation of the licence they had been issued prior to1984. The Water Board disagreed, and referred the application to environmental assessment. In *North American Tungsten Corporation Ltd. v. Mackenzie Valley Land and Water Board*, 2002 (NWTSC 76) the court upheld the Water Board's ruling that a renewed water licence is a new licence, and that the "grandfather" clause did not apply. On appeal, in *North American Tungsten Corporation Ltd. v. Mackenzie Valley Land and Water Board, 2003 (NWTCA 5),* the court ruled that it was the undertaking which is grandfathered, if it was licensed prior to June 22, 1984, and not just the licence. This court did not address the issue of whether or

not the undertaking had changed significantly, or whether it was abandonment or decommissioning, and therefore did not address the core issue of whether the undertaking **IS** (still) the subject of the licence that existed on June 22, 1984.

NSMA's understanding is that the grandfather clause was intended to provide a reasonable degree of certainty and continuity for existing undertakings, while protecting the environment, during the transitional period during implementation of the new MVRMA legislation. This exemption lasts as long as the undertaking **IS** the subject of any licence or permit issued before June 22, 1984. This could be interpreted to last only to the end of the term of the longest licence or authorization, or as long as the undertaking that was the subject of that licence has not changed. NSMA prefers the logic and reasoning contained in the 2002 ruling, and prefers only the licence to be grandfathered. NSMA finds it less compelling to protect companies from environmental screening or review, than to protect the environment, and our community which depends on that environment, from undesirable developments.

Fortunately, it is not necessary to engage in that argument at this time. Miramar's application is not exempt, either way you look at it. The current licence was issued in 2000, so that licence is not grandfathered. The undertaking has been significantly altered, since it June 22, 1984, and is in fact being decommissioned and closed, which activities are specifically excluded from the grandfathering exemption. The workings are being flooded, roads and mining equipment are being removed, buildings are being torn down, and the closure plan is being implemented before even being approved.

NSMA has not been consulted regarding the closure criteria and goals for this project, and objects to any plans to "reclaim" areas as "contaminated" or "hazardous waste" sites. Our members expect to resume our long-interrupted residential, commercial, recreational, cultural and subsistence activities on the mine site once mining is complete. NSMA desires an environmental assessment, or review, before irreversible actions are taken regarding the closure of this mine. Since activities are ongoing, and potentially irreversible, an environmental assessment or review would be welcomed, sooner rather than later.

In the meantime, NSMA supports the continued processing of calcine and arsenic sludges, under the existing licence, and encourages Miramar Con Mine to rectify their ongoing non-compliance with their existing licence regarding the processing of those wastes, and the completion of an acceptable closure and restoration plan.

Sincerely,

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