Dél̨ı̨nę Got'ı̨nę Government
Our People. Our Future. Our Dél̨ı̨nę.

Simon Toogood
Senior Environmental Assessment Advisor
Mackenzie Valley Environmental Impact Review Board
Box 938, #200 Scotia Centre 5102-50th Ave
Yellowknife, NT X1A 2N7
stoogood@reviewboard.ca

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Náhkale;

RE: Dél̨ı̨nę Got'ı̨nę Government's Intervention for Line 490 Replacement Project (EA2425-01)

On September 24, 2024 the Sahtú Secretariat Incorporated (SSI) referred the Line 490 Replacement (the Project) applications to the Mackenzie Valley Environmental Impact Review Board (Review Board) for an environmental assessment (EA), under s. 126(2) of the Mackenzie Valley Resource Management Act.

The Dél̨ı̨nę Got'ı̨nę Government (DGG) is recognized through the Dél̨ı̨nę Self Government agreement, a treaty constitutionally protected under the Constitution Act (1982) section 35 and negotiated subsequent to the Sahtú Dene/Metis Comprehensive Land Claim Agreement. The Dél̨ı̨nę Got'ı̨nę Government is a self-governing Indigenous government and is the representative organization of the Dél̨ı̨nę Got'ı̨nę and their rights in all forums and in all matters impacting Dél̨ı̨nę Got'ı̨nę Government authorities and Dél̨ı̨nę Got'ı̨nę rights.

The project was referred by SSI due to the unique nature of the project and the absence of meaningful consultation and concerns regarding the long-standing imbalance between environmental and social impacts of the development and the offsetting benefits received in the area from the project.

The DGG has reviewed the information available on the public registry for this EA (EA2425-01) and is of the opinion that there are still outstanding concerns that should prevent the approval of the Project without the implementation of measures to address these concerns.

Máhsı

Todd Slack
On behalf of Dél̨ı̨nę Got'ı̨nę Government

Part 1: Continued imbalance between the environment and cultural cost of development and the offsetting benefits of the project.

Rationale for Concern

One of the central goals for this Environmental Assessment was to consider local economic benefits and opportunities related to this project[1,2]. Despite a distinct effort attempting to understand what regional financial and economic benefits are provided by this project, and the Norman Wells Operation as a whole, DGG has struggled to gather appropriate information. When examined within an NWT context, our initial conclusions are that this project has failed to benefit Sahtu Got'ine in a manner akin to other large operations (accounting for project size and nature).

The project's updated Summary Impact Statement (SIS) failed to directly address this aspect of the EA. Section 3.4 of the SIS is entitled "Local Economic Benefits and Opportunities" but provides no data or information on what these benefits and opportunities will consist of beyond general statements. This is actually a step back from the limited and disjointed information that was eventually presented as part of the supplementary information within the Canada Energy Regulator (CER) process where information requests were largely refused).

This lack of a coherent and meaningful response is surprising given the repeated assertions from Imperial that they have effectively engaged and understand community issues. Beyond whatever individual engagements the project held, the issue is made very plain in the SSI letter referring the project to MVEIRB, where there is a clear request to describe the financial and economic benefits. Part 3 of that letter identified Lack of Local Benefit as a key concern.

DGG observes that companies who are proud of their record publicize and speak to it, often at length. Imperial has consistently failed to do this. Despite the recent review proceedings, the proponent has failed to provide appropriate information equivalent to what has been done – and what has largely become best practice – at the Diamond mines or large infrastructure projects. As Parties, we are fortunate that this EA allowed for some additional information gathering, as it seems unlikely that we would have any real insight into the benefits provided by the project without them.

Even with the proponent response to DGG IR-1 and IR-2 – in which they actually provided answers to more than half of the requests posed to them (Compared to few effective responses during the CER process) – the performance of the project relative to its peers is not easy to determine.

[1] Section 2.2 Scope of Assessment - Bullet 3, Page 4
https://new.reviewboard.ca/sites/default/files/project_document/PR49%2C%20Scope%20of%20Environmental%20Assessment%20and%20Reasons%20for%20Decision%20Dec%2011%2C%202024.pdf

[2] Part 3 -
https://new.reviewboard.ca/sites/default/files/project_document/SSI%20to%20CER%20re%20OA%20Extension.pdf

Socio-Economic Performance

DGG has reviewed the response to DGG IR-1 and IR-2, and when the project is considered through a socio-economic benefits lens, our conclusion is that the project generally has performed worse than other large infrastructure/construction and natural resource projects.

This evaluation was completed by comparing the raw numbers provided in the IR response to readily accessible values from Socio-Economic Reports from other large projects from across the territory. For example, Ekati values were taken from the publicly released annual Socio-Economic Agreement report, while the Giant Mine values were pulled from their Annual Reports filed to the Mackenzie Valley Land and Water Board.

- DGG does not have the capacity to undertake sophisticated financial analysis. Our evaluation was done through a simple comparison of raw values, across years, between Imperial and other operations.
- We note that DGG did not attempt to arrive at precise or specific conclusions due to the difficulty. The annual variation in the reporting meant that we needed to use a broader lens.

Our conclusions for some key indicators:

- Employment: Imperial generally tracks lower for Northern (high 30% average) and Indigenous (roughly 20% average) workers when compared with other large industrial operations in the territory. The mines routinely had years where northern employee rates were over 50% and Indigenous employees represented 40-50% (or more at Ekati) of their employees.

- Spending: Imperial generally tracks lower for overall spending (proportional to the operation) within the Northwest Territories. Other large industrial operations in the territory often exceeded 60% of external spending with northern sources contractors, with significant proportions spent at Indigenous firms. In comparison, Imperial's operations displayed the reverse behaviour, with most of the spending directed to southern based enterprises.

DGG cannot draw similar conclusions for other socio-economic areas, as they are more difficult to meaningfully or adequately compare. However, these values can serve as leading indicators that support the general view for other issues. Based on our limited read, DGG is concerned that issues such as training and educational opportunities are similarly reduced with Imperial relative to other projects. For the purposes of this intervention, we have focused on employment and contracts as they are the most comparable with available information.

Standard of Performance:

There is no accepted standard for socio-economic performance , and DGG acknowledges that it likely has different expectations than Imperial. Thus, We are forced to look for a proxy or analog to establish acceptable minimums.

To serve as objective criteria or independent benchmarks, DGG looked to the *negotiated* Socio-Economic Agreements that exist for a number of large operations in the Territory. GNWT is also a partner to the Giant Mine Remediation Project, where they recently agreed to Key Performance

Indicators for that project. These targets represent useful external benchmarks, particularly as they are a result of thorough multi-party negotiations. They are not singular views, but rather compromise agreements arrived at by governments, industry and in the Giant case, Indigenous Governments.

Though they vary in the particulars, DGG believes a fair summation of the agreement targets (during the operations phase) is:

- Employment[3,4]: 60+% Northerners with Indigenous persons accounting for more than 40%.
- Contracting: 60% of goods and services will be done through Northern businesses.

If we use rough standards established in the socio-economic agreements and the KPIs established for Giant, our assessment is that Imperial would fail to meet the threshold for success. With the limited data available, DGG does not believe it would have ever met the targets throughout its history.

That this is the state of events is particularly disappointing given the long history of the Norman Wells Operation. A century long history and experience should have resulted in better performance – with constant attention and effort leading to improvement with much higher local participation and much greater contract servicing. Given this history, DGG does not believe that the company can be relied on to prioritize northern benefits, necessitating the imposition of mitigations in the future.

Mitigations Required

Within the abridged timeline for this environmental assessment there has been little opportunity to explore or assess the past impacts of the Norman Wells Operation as we would have preferred. However, DGG has determined that Imperial has failed to meet reasonable performance expectations for natural resource extraction. What may have been acceptable and was allowed over past decades ago is irrelevant.

Imperial must do better for the people of the Sahtú. The failure of the company to provide a reasonable level of socio-economic benefits is clearly a significant impact to the social and economic well-being of the residents of the Sahtú.

As mentioned, this is a shortened or abridged EA proceeding. There was little time to review the past effects, meaning limited opportunity to discuss and develop appropriate mitigations to these effects. However, we are all aware of the upcoming opportunities to resolve this issue and in the interim, we request that the Board order measures to inform the upcoming processes and allow for better exchanges in the future.

Recommended Measure: DGG recommends that the Board require Imperial to complete two studies to inform future processes

1) *Complete a thorough analysis of the project's performance relative to NWT benchmarks and identify areas for improvement.*

[3] https://www.iti.gov.nt.ca/en/services/socio-economic-agreements
[4] https://gmob.ca/wp-content/uploads/2024/04/GIANT-2023-Socio-Economic-Strategy-2023-2028-Low-Res-1.pdf

Working with Governments (Federal, Territorial and Indigenous) to develop a terms of reference, this analysis will be a thorough comparison of the Norman Wells Operation's performance relative to other large scale operation, with recommendations on what has worked well (lessons for all) and what requires improvement (lessons for this project and the Parties).

DGG recommends that this would ideally completed by a third party, jointly selected for expertise and knowledge of financial analysis and the northern environment. Ideally, this should be completed prior to the first Information Request period for EA2425-02, though DGG acknowledge this may be overly ambitious.

2) *Starting in 2025/26 Imperial be required to complete an annual socio-economic report for the Norman Wells Operation.*

Working with Governments (Federal, Territorial and Indigenous) to design a socio-economic report that provides meaningful data and insightful reporting on the project. This should be done in a way that promotes comparison with other large projects in the NWT, with a focus on readability and plain language wherever possible.

Part 2: Closure and Reclamation information must be provided by the proponent

Throughout the permitting process for the Project and specifically as part of this EA, parties have raised concerns related to reclamation and closure of both the ruptured Line 490 and the replacement flowline to be installed.

Imperial has taken the position that closure considerations are both outside the scope of this assessment and more appropriately address as part of the pending EA of Imperial's closure plan. While DGG agrees that this will be an issue to be considered as part of future site closure, it is poor planning to potentially approve a project through EA without having a clear idea how the project will be closed.

DGG refuses to create the potential for history to repeat itself by leaving another environmental liability on Sahtú lands. Discussing the principles of, and approach to closure during EA is essential to inform the future Land and Water Board stage. Parties have learned from the closure planning for the Diamond mines – failure to establish clarity on goals and objectives during EA is not acceptable. It leads to interpretation disputes on closure standards during the regulatory stage, which is a particular concern with this project as they have routinely deferred the necessary engagement and effort associated with the planning.

Unlike the 3-5 year interim closure planning model used elsewhere in the territory, in the 10 years since the issuance of their last Water Licence, Imperial has made little to no meaningful progress on collaborative closure and reclamation planning. Now the people of the Sahtú will be asked to wait the better part of a decade before knowing how this new project will be closed.

DDG believe that in order for Interveners to completely understand the potential short and long-term impacts associated with this particular project the proponent must provide information regarding its decommissioning and final reclamation state. This information must be provided prior to its more than likely permanent installation in the ground. DGG believes that the proponent almost certainly intends to leave the line 490 and the replacement flowline on Sahtú land and under the Dehcho (Mackenzie River) for the rest of time, informed consent should be solicited and obtained prior to the EA approval.

Recommended Measure:

3) *Imperial to submit a Line 490 specific Interim Closure and Reclamation Plan for SWLB review and approval prior to the commencement of replacement activities. The ICRP should include, at minimum a description of how both Line 490 and the replacement flowline will be decommissioned and closure criteria that will demonstrate success.*

Part 3: Concerns related to monitoring, management and mitigation of Project-specific impacts are not sufficiently considered or addressed by Imperial.

Insufficient information has been provided by the proponent on what, if any, monitoring will occur and what, if any, mitigation options are available should monitoring results indicate the possibility for significant adverse effects related to replacement activities.

Imperial has provided no information on how, or if, any possible monitoring is appropriately designed to confirm impact predictions and monitor for unpredicted effects. Additionally, no information has been provided on how monitoring results will inform the need for additional mitigation or adaptive management actions in relation to the Aquatics Effects Monitoring Program, which the DGG and numerous other interveners have indicated as being of significant environmental and cultural value.

In response to the SRRB concerns related to monitoring and mitigation Imperial responded:

> *"Adaptive management and mitigation and monitoring are not primary issues for an installation project of limited duration. The scope of the Line 490 project is limited in time, scale and risk. Longer term monitoring, such as the AEMP outside the scope of this EA and are appropriately considered as a condition of S13L1-007 as the current water licence for the NWO and the associated working group."*

In response to DGG monitoring and mitigation concerns, Imperial responded:

> "*The scope of the Line 490 replacement project does not anticipate any material impact on fish bearing waters. During construction active turbidity monitoring will be executed to detect any potential effects on the Mackenzie River during drilling. During the operation phase, the established AEMP under the active Water Licence S13L1-007 will continue to be executed. There are several sampling locations positioned both upstream and downstream of the*

proposed replacement activities. The AEMP is a licenced requirement of the S13L1-007 for NW Operations and is outside the scope of this EA."

In response to KGC concerns related to monitoring and mitigation Imperial responded:

"The Aquatic Effects Monitoring Program (AEMP), is regulated by the SLWB under the existing Type A Water Licence S13L1-007 and outside of the scope of the Line 490 Replacement Project. Execution of the AEMP will continue under the existing licence during operations to monitor for adverse effects on the Mackenzie River, including the construction phase of Line 490 replacement activities."

In response to all concerns raised, Imperial has avoided providing any information on what mitigations would be implemented should project effects be detected or what level of change would be considered a project effect. They do however, direct reviewers to the operational AEMP, which they propose is sufficiently designed to monitor for project related effect.

DDG is not confident that the AEMP will be capable of detecting potential effects related to line replacement activities. Our understanding is that the that the AEMP is neither designed nor intended to monitor and manage potential effects as part of a proactive active environmental monitoring and mitigation plan. The use of the AEMP for project related monitoring would result in the reporting of any project related effects will occur as part of the AEMP annual report, not during project operations when the implementing of management or mitigation are still possible.

With this concern above, we also note that since the issuance of Imperials previous WL (2014), Imperial has yet to submit an AEMP that has sufficiently met SLWB standards and criteria to be approved. DDG finds reliance on the existing AEMP and its ability to detect and prevent impacts is a significant issue.

A clear standard to be met is required to offset potential impacts. The need to identify effective monitoring, mitigation options and management actions is an integral part of the Environmental Assessment process. While the specific details of these activities can be further refined during the follow-on LWB process, the requirement for the existence of those programs is an information gap that could lead to significant impacts.

Imperial has stated that mitigation is not a "primary concern for this assessment". We do not believe that this conclusion is part of the proponent's authority. Their concern is to demonstrate that they will not have significant impacts and this position – that it is not a concern for this assessment – fails to address the onus of responsibility that they have. In any event, DGG disagrees and believes that it quite apparent that water quality is central to the scope of this process. Their failure to adequately respond – presenting little assessment to potential impacts, especially regarding upset conditions - to this aspect is further indication why such measures are required now.

Recommended Measure: DGG recommends that the Review Board include a measure requiring monitoring and mitigation

4) *Imperial to submit a Line 490 specific Monitoring and Mitigation Plan to the SWLB review and approval, prior to the commencement of replacement activities. This plan should include:*
   - *Description of potential effects*
   - *Sampling Locations*
   - *List of parameters to be monitored*
   - *Description of Action Levels that, if exceeded, will trigger management responses by the proponent*
   - *List of management and mitigation actions available to the proponent in response to the proposed action levels*
   - *Notification and Reporting deadlines for action level exceedances*

Conclusion

The DGG recognizes that the Projects relatively small size and duration are not at the scale of projects typically considered by the Review Board. However, regardless of the small scale there remain some outstanding concerns that Imperial's submissions have not addressed. Taking the first step towards resolving these gaps should be a straightforward action.

DGG has submitted these concerns with full understanding that this is one of a number of review proceedings that are ongoing. It has been written with the understanding that there will be future proceedings within the MVRMA. We have attempted to focus our recommendations in a way that allows these other proceedings to be guided by the outcome of this EA. For example, in each of our recommendations we are not seeking direct remedies for the gaps, we are seeking to establish the need for something to be completed in the future.

Together with other parties, we hope that this aides the Board in its decision.