



17 February 2021

Via email: Martin.Haefele@yesab.ca

Dear Martin Haefele,

Re: Quartz Exploration – Coal Creek (Monster) (2020-0195)

I write on behalf of the Tr'ondëk Hwëch'in ("TH") to express our strong opposition to the proposed Quartz Exploration – Coal Creek (Monster) (the "Project").

The Project is within an area with very high cultural values to TH citizens. This Cultural Integrity Area ("Area") has been identified by TH as a high value area on many occasions, including the Dawson Regional Land Use Planning Process.¹ The project is also within the Dawson Planning Region, for which a land use plan has not yet been approved under Chapter 11 of the TH Final Agreement.

The Cultural Integrity Area includes key wildlife habitat for many species of wildlife and is consequently a highly used area within TH Traditional Territory. It is enjoyed by TH citizens for traditional hunting and trapping activities. The Cultural Integrity Area also contains many parcels of TH Settlement Land, heritage and cultural resources and the Dawson to Fort McPherson heritage route. It is therefore an area of very high value to TH, and to the environmental integrity of TH Traditional Territory.

The proposed development activity occurs in specific areas that are of the utmost value – culturally, ecologically, spiritually – to the Tr'ondëk Hwëch'in. As declared in Tr'ondëk Hwëch'in Council Resolution CR2018-11-22-07, which was passed in 2018, we continue to strongly oppose any development in the northern part of our Traditional Territory. This Resolution is grounded in the beliefs, values, stories, knowledge and practices passed on from our ancestors. It declares the collective effort as expressed by our people to protect these special areas and maintain our traditional way of life on the land.

We trust that the Council Order and Resolution provides clarity to YESAB and we will continue our efforts in upholding the views, interests and concerns of the Tr'ondëk Hwëch'in Citizens and our role as stewards of our ancestral lands.

A key goal of the TH Final Agreement, as set out in its recitals, is to "*recognize and protect a way of life that is based on an economic and spiritual relationship between Tr'ondëk Huch'in and the land.*" TH have a particularly strong relationship with this Cultural Integrity Area. Resource development in the absence of an approved Dawson Land Use Plan (the "Plan") goes against this goal and will negatively affect TH rights under the TH Final Agreement, as set out further in this letter. This is unacceptable to TH.

Until such time that a Plan is in place, TH therefore opposes not only the Project, but all new land use applications, land developments, Class 1 activities and mining activities throughout the Cultural Integrity Area.

Chapter 11: Land Use Planning

The specific objectives of Chapter 11 are to minimize actual or potential land use conflicts, to recognize and promote the cultural values of Yukon Indian People, and to ensure that social, cultural, economic and environmental policies are applied to the management, protection and use of land, water and resources in an integrated and coordinated manner so as to ensure Sustainable Development. Given the significant

¹ See the Issues and Interests Report: Appendix B – TH Submission, and Resource Assessment Report: Appendix C – TH Resource Report

cultural, economic and environmental interests of TH in the Cultural Integrity Area, allowing resource development in the absence of the Plan will exacerbate rather than minimize actual or potential land use conflicts, damage the cultural values of TH People and go against Sustainable Development. It also defeats the very purpose of land use planning, as it allows the land and important ecological and cultural values to be irreparably damaged before the land use planning process is completed.

As noted by the Supreme Court of Canada in *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53,

Under the Yukon treaties, the Yukon First Nations surrendered their Aboriginal rights in almost 484,000 square kilometres, roughly the size of Spain, in exchange for defined treaty rights in respect of land tenure and a quantum of settlement land (41,595 square kilometres), access to Crown lands, fish and wildlife harvesting, heritage resources, financial compensation, and participation in the management of public resources. [Emphasis added].

Allowing ongoing resource development on land that has not yet been subject to the land use planning process enshrined in the Final Agreement, and which has been flagged by a Yukon First Nation as of particularly high value culturally and ecologically, is a breach of this constitutionally protected right of TH to meaningful participation in the management of public resources.

We note that our intention is to ensure an appropriate balance of protection and Sustainable Development² throughout our Traditional Territory, and we are therefore actively participating in the Dawson Planning processes. While our ideal position would be to provide interim protection for the entire Dawson planning region, we appreciate the need for economic development. The Cultural Integrity Area therefore identifies a specific area of particularly high value to TH where resource development should not occur in the absence of the Plan. We believe this supports the objectives of Chapter 11 and appropriately balances the rights of TH and other Yukoners.

Chapter 16: Fish and Wildlife harvesting and habitat

The Cultural Integrity Area includes critical wildlife habitat for key species, as well as unique and special landscape features such as wildlife mineral licks, rare plant and animal species and intact old-growth forest.³ Fish, wildlife, birds and plants found in this area are an integral component of who the TH people are.

TH citizens continue to harvest extensively from the land and in this Area. Harvesting fish, wildlife and plants is not only for food value – for First Nation individuals and communities these practices extend deeper as harvesting times are holistic. This is a time for reconnecting with the land and the environment, bonding with family, and teaching through oral knowledge and history. Harvesting of resources has also been an important traditional economic activity for thousands of years. Harvesting therefore has important cultural, as well as significant economic, benefits for TH.

Many of the trapping concessions owned by TH and TH Citizens are found in the Cultural Integrity Area, and TH people have trapped in this area for generations. Citizens continue to trap today for food, clothing, and income and to pass on tradition and culture. TH anticipates that youth education workshops will further increase interest in the culturally significant activity of trapping in the near future. Any potential relocation of trap line trails due to resource development activities would involve significant effort and financial investment.

While the project portion of the landscape may not receive as much use by people (including TH citizens) as other parts, it still plays an important role in supporting healthy local wildlife populations, which may

² According to the TH Final Agreement, Sustainable Development means beneficial socio-economic change that does not undermine the ecological and social systems upon which communities and societies are dependent.

³ See for example the Dawson Planning Region Resource Assessment Report, including maps of Wildlife Key Areas, Caribou: Range and Habitat Suitability, Sheep: Habitat Selection – Late Winter, Moose (adult) Habitat selection – Late Winter; Unique and Special Landscape Features

then disperse or migrate to locations that receive greater use by Citizens (e.g. Dempster highway or Yukon River). It is thus important to maintain some level of undisturbed landscape in the TH Traditional Territory to ensure that there are enough intact habitats and landscape connectivity to maintain healthy wildlife populations, now and into the future.

Based on the importance of the Cultural Integrity Area to TH citizens, our view is that it should be an area in which less development occurs. Areas such as the Cultural Integrity Area must remain intact in order for flora and fauna to thrive and for traditional pursuits to continue.

Chapter 16 of the TH Final Agreement recognizes the TH People's right to continue the integral tradition of harvesting. The objectives of Chapter 16 include:

- 16.1.1.3 to preserve and enhance the culture, identity and values of Yukon Indian People;*
- ...*
- 16.1.1.5 to guarantee the rights of Yukon Indian People to harvest and the rights of Yukon First Nations to manage renewable resources on Settlement Land;*
- ...*
- 16.1.1.9 to honour the Harvesting and Fish and Wildlife management customs of Yukon Indian People and to provide for the Yukon Indian People's ongoing needs for Fish and Wildlife;*

Section 16.4.2 sets out the TH right to harvest for Subsistence within TH Traditional Territory, and 16.4.4 further sets out the right to give, trade, barter and sell Fish and Wildlife Products harvested.

In the absence of a Plan, rapid or poorly planned development in the Cultural Integrity Area can cause cumulative adverse effects that will reduce fish, wildlife, bird, and plant habitat. This will in turn limit harvesting opportunities, negatively impact TH's rights under Chapter 16 and go against the stated objectives of Chapter 16. This will, in turn, result in loss of culture and economic opportunities. This loss would not only be unacceptable but would also require compensation e.g. to assist with cultural enhancement through alternative avenues. Such a consequence needs to be avoided.

Moose

Ungulates, particularly moose, are a principal component of the traditional diet and are essential to the health of TH People. For many generations, moose provided food, nutrients, traditional supplies/tools and clothing for TH People. Continuing this important practice is necessary to preserve the traditional lifestyles and identities of individual TH citizens and the community as a whole

The Cultural Integrity Area includes important habitat for both adult moose and cows with calves, including late winter range, which is critical to survival in years of high snowfall accumulation.

Caribou

Caribou are a highly valued source of food, nutrients, traditional tools and clothing for TH. As with moose, the harvesting of caribou today continues to provide for the preservation of TH culture, tradition, and lifestyle.

The Cultural Integrity Area includes habitat for four caribou groups: the Clear Creek (CCCH), Hart River (HRCH), Forty Mile (FMCH), and Porcupine Caribou (PCH). Three of the herds are mountain caribou, which are listed as a Species of Concern under the *Species At Risk Act*. Many caribou populations are declining throughout the North and in particular within TH Traditional Territory. For many years, TH has significantly reduced harvesting of caribou due to declining populations. Re-growth of lichens (an essential food for caribou) is estimated to take approximately 40 years to re-generate, so any damage from resource development has long-term, and potentially critical, effects to caribou habitat. Lichen-rich habitats are sparse on our landscape and we require careful planning to ensure persistence and longevity of this critical habitat type. Caribou typically favour high elevation ridges and other wind-swept areas where forage is more accessible. Unfortunately, that is often the same areas where quartz exploration and mining activities also happen, increasing the likelihood that caribou will be displaced from important habitats.

The proposed project falls within the fall and winter range of the FMCH, the winter range of the PCH and the western portion of the year-round range of the HRCH. A considerable portion of the FMCH wintered near there as recently as last year. Habitat quality information that we have received from the YG Biologist suggests that the Ogilvie Mountains west of the Dempster Highway (including the project area) contain large portions of high quality caribou habitat. This habitat may become even more important for the FMCH in the future, if their population continues to increase and they are forced to use more of the Canadian portion of their range, particularly in summer. Goal 1 of the FMCH Harvest Management Plan (signed off by both TH and YG Environment) is to "Promote a robust, sustainable population, maximizing herd use of habitat within the historic range of Yukon." Objective 1.2 is to "Promote and support management actions that allow for continued use and expansion into the herd's historic range." This project may impinge upon these herd management goals and objectives.

Sheep

Sheep are important to TH as a traditional food. The Cultural Integrity Area includes key areas and predicted high value habitat for sheep. Sheep have a small migration area where they can feel safe from people and predation, it is important to ensure sheep habitat is protected not only from land development but also from repeated air travel. Sheep are specialists and require very specific habitats and migratory corridors. Again, careful planning within our Traditional Territory will identify critical areas for protection, which will in turn work to ensure the persistence of a species.

There is a well-established sheep population that uses the high elevation habitats near/adjacent to the project area. Sheep are known to be quite sensitive to disturbance (even outside of lambing season), are not known to become habituated to human activities very easily, and, therefore, are likely to be displaced by quartz exploration activities, particularly by the amount of proposed helicopter flights (700 flights/year) associated with this project. This disruption/displacement could have serious consequences for local sheep populations that are already known to be prone to substantial winter die-off events.

Furbearers

Furbearers such as wolf, fox, lynx, beaver and marten are very important species to TH, and particularly to Citizens who occupy commercial trapping concessions within TH Traditional Territory. These trapping concessions range along the Dempster Highway, extending outwards towards Dawson, and the Taiga and Ogilvie Mountain Ranges. In the past, some families trapped as a lifestyle and to earn an income. Today, many trap to carry on a tradition and for the enjoyment of being out on the land, selling the furs when prices are good or using the furs for clothing.

Grizzly Bears

Grizzly bears are known as "umbrella species" which means that their habitat requirements overlap with a significant amount of flora and fauna. Identification of critical Grizzly habitat and planning for required conservation will benefit countless other species by protecting a range of critical habitats and maintaining ecosystem health. Grizzlies require large, intact and undisturbed ecosystems. Conservation efforts require informed and thoughtful decisions about trade-offs that may result in jeopardizing ecosystem integrity. The Cultural Integrity Area includes habitat for many species such as grizzlies, and also include small mammals and raptors that all have an important role to play in the ecosystem. TH considers the ecological connectivity of all species and their habitats to be important so creating intact habitat areas for one species may have positive influences on others.

Right to peaceful enjoyment of Settlement Land

The Cultural Integrity Area includes 144 of TH's 247 TH Settlement Land parcels, or 88.1% (226,367 ha) of the total Settlement Land area. This includes a number of site-specific parcels located along the Dempster Highway, selected by TH families. The parcels were selected for meaningful cultural, land-based or family reasons, including to protect existing cabins, hunting and fishing sites, for future economic potential, recreational value, and to protect existing traditional gravesites. Typically parcels were selected based on hunting, fishing, berry-picking or other harvesting uses; existing cabins or camp sites indicating long-term family attachments to specific places; proximity to water for camp purposes,

fishing and travelling, and relative nearness to Dawson City. TH selected Settlement Land in large part so as to maintain cultural connections and harvesting opportunities.

TH's chosen location for Nänkāk ch'èhòlay ("Land of Plenty") on Settlement Land parcel R-22B, east of the Dempster and adjacent to the North Klondike River, illustrates how the area is important to TH citizens and culture. TH has developed camp infrastructure at the site over a number of years, which is frequently used for gatherings, youth culture camps, retreats, meetings, Elders groups, and teaching circles.

The Settlement Land parcels are part of the small fraction of land that was retained when TH surrendered title to 95% of our Traditional Territory in the Final Agreement. The promise of the Final Agreement, which is entrenched in the Constitution of Canada, is to promote and protect the cultural distinctiveness and way of life of TH, which depends upon the ability to flourish on the land. A key goal of the TH Final Agreement as set out in its recitals is to "*recognize and protect a way of life that is based on an economic and spiritual relationship between Tr'ondëk Hwëch'in and the land*". When our land is compromised by development, in its function and its productivity, this promise of the Final Agreement is broken.

The stated objective of Chapter 9 (Settlement Land Amount) is to "*recognize the fundamental importance of land in protecting and enhancing a Yukon First Nation's cultural identity, traditional values and life style, and in providing a foundation for a Yukon First Nation's self-government arrangements*".

Under the Final Agreement, rights of access to Settlement Land are subject to the condition that there shall be no significant or unnecessary interference with the use and peaceful enjoyment of Settlement Land (6.1.6.3, 6.4.3.3, 17.12.1.3, 18.6.1.3, 18.6.2.3). It is a central principle of the Final Agreement that TH and its citizens should have a right to peaceful use and enjoyment of Settlement Land.

Given the high cultural value of the Cultural Integrity Area and the number of Settlement Land parcels it contains, allowing resource development in the absence of a Plan may adversely affect TH rights to peaceful enjoyment of Settlement Land and damage a way of life that is based on the economic and spiritual relationship with that land.

Chapter 13: Heritage

Tr'ondëk Hwëch'in view their traditional territory as a holistic cultural landscape, with land at the center of culture. Heritage is not something from the past, but a way of life reflected in the beliefs, values, knowledge, and practices passed from generation to generation. As such, Tr'ondëk Hwëch'in defines Heritage Resources broadly to include many physical and spiritual values within the natural landscape.

The objectives of Chapter 13 (Heritage) of the TH Final Agreement include at 13.1.1.8 "*to identify and mitigate the impact of development upon Heritage Resources through integrated resource management including land use planning and development assessment processes*".

The Cultural Integrity Area is particularly rich in known heritage resource sites, specifically related to hunting, fishing and trapping. It also encompasses two important educational cultural camps such as Land of Plenty and Cache Creek, numerous gravesites, traditional gathering and village sites, and many historic and archaeological sites scattered through the area. Traditional use sites, spiritual and story locales, harvest areas, as well as long ago sites all contribute to the cultural fabric of this landscape. Note, there are many unmapped heritage resource sites throughout the Cultural Integrity Area.

S.13.4.6.3 of the Final Agreement recognizes heritage routes and sites in TH Traditional Territory identified in Schedule C as "*having cultural and heritage significance*" to TH. The Dawson to Fort McPherson, Hän Migration, and Eagle to Old Crow routes all traverse through the Cultural Integrity Area, demonstrating the significance of the area for travel by TH and other First Nation people.

Resource development in the Cultural Integrity Area in the absence of a Plan risks damaging heritage resources and negatively impacting TH access to, and enjoyment of, Heritage Resources.

Chapter 17: Forest Resources⁴

The Cultural Integrity Area contains forest resources that are particularly important to TH due to proximity to Dawson City, the Dempster Highway and Settlement Land parcels. TH People use many species of trees, shrubs, berries, herbs, moss and fungi for food, fuel, medicine, fibre for clothing and building, and cultural materials for ceremonial use.

Under 17.3.1.1 and 17.3.1.3 of the TH Final Agreement, TH have the right to harvest Forest Resources on Crown Land for purposes incidental to the exercise of their traditional pursuits of hunting, fishing, trapping and gathering, and to their traditional customs, culture and religion or for the traditional production of handicrafts and implements.

Allowing resource development in the Cultural Integrity Area in the absence of a Plan may adversely affect TH rights to harvest Forest Resources in this particularly important area.

Chapter 14: Water Management

Under 14.8.1 of the TH Final Agreement, TH have the right to have Water which is on or flowing through or adjacent to Settlement Land remain substantially unaltered as to quantity, quality and rate of flow.

Under 14.5.1, subject to Laws of General Application, TH People shall have the right to use Water for a Traditional Use.

Activities in the Cultural Integrity Area may result in water used by citizens for drinking or camp site purposes become unpotable or reduced, and may otherwise affect water flowing through or adjacent to one of the many Settlement Land parcels in the Cultural Integrity Area.

The overall importance of the Cultural Integrity Area to TH

The Dempster is the modern TH gateway and linkage to both a traditional lifestyle and to 'the way the land used to be' for TH citizens. Crossing over the Klondike River at the Dempster corner is representative of leaving behind the reminders of mining, which are evident everywhere else we look. The Dempster is the one road near Dawson which we can use to get out on the land where we do not see or experience impacts from developments. Travelling the Dempster is a journey for citizens who want to connect with the land, with their ancestors, and with their culture.

What makes the Cultural Integrity Area as a whole so important to TH is the intactness and functionality of the whole landscape. This wholeness provides excellent wildlife habitat, fertile hunting, fishing and berry-picking grounds, and clean water. Until a Plan is in place that takes into account TH rights under the Final Agreement, the Cultural Integrity Area must remain intact in order for land and wildlife to thrive and for traditional pursuits to continue.

Conclusion

There is no doubt that this relatively intact and undisturbed area would be negatively impacted by the scale of this project and associated activities (700 flights/yr, 4800 person days/yr, 95 km trails and winter roads). There is a high risk that these disturbances, as well as changing the accessibility of the area through the construction of seasonal roads and trails, will alter the wilderness character of this area and reduce its ability to support local wildlife populations for years to come.

The Project is located in the Cultural Integrity Area, which is particularly important to TH due to a high concentration of environmental, cultural and economic values and the overall integrity of the landscape. The Project, like any resource development in the Cultural Integrity Area, may therefore have significant negative impacts on TH rights under the TH Final Agreement. Until such time that a Plan is in place, TH opposes this Project, as well as all new land use applications and YESAB applications throughout the Cultural Integrity Area.

⁴ "Forest Resources" are defined in the Final Agreement as "...all flora in a wild state."

Please contact me should you wish to discuss the content of this letter. We reserve our right to take whatever steps we may consider appropriate to ensure that the requirements of the TH Final Agreement are satisfied.

Sincerely,
[signature redacted]

Darren Taylor
Director, Natural Resources
TR'ONDĚK HWĚCH'IN