

NORTHWATCH

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Impact Assessment Agency of Canada
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IAA Reference Number 54755

Re. Northwatch Comments on Potential Conditions for the Marathon Palladium Project

On September 22, 2022 the Impact Assessment Agency of Canada (the Agency) announced a 31 day comment period on potential federal environmental assessment conditions for the Marathon Palladium Project, a proposed open-pit palladium mine about 10 kilometres from Marathon, Ontario, indicating that final federal conditions would become legally-binding for the proponent if the Minister of Environment and Climate Change issues a decision statement indicating the project may proceed. Northwatch is a public interest organization concerned with environmental protection and social development in northeastern Ontario. Founded in 1988 to provide a representative regional voice in environmental decision-making and to address regional concerns with respect to energy, waste, mining and forestry related activities and initiatives, we have a long term and consistent interest in the mining sequence and its social and environmental costs and benefits, including mineral exploration, mine development, operation and closure, and metals processing.

Northwatch has had an active interest in the Marathon PGM project since approximately 2001, when Northwatch first assembled an inventory of mining activities and issues in the Lake Superior basin and has participated in the environmental assessment of the Marathon Platinum Group Metals and Copper Mine Project since its commencement including throughout Phase I and the public review of the conformity of Stillwater's EIS with the EIS guidelines in Phase II, and in "Phase III", the restart of the review in 2021 and the review hearing in 2022, including submitting expert evidence, presenting during the hearing, and submitting final comments.

Northwatch's comments on the potential conditions are based on this extensive experience with the Project, and having reviewed the Joint Review Panel's report issued in August 2022 and the potential conditions issued in August 2022.



General observations

As context and as overarching comment on the Project and the potential conditions, we state the following:

- 1) As Northwatch and other review participants identified throughout the review there were information gaps and missing information items and analysis in advance of the hearing which remained outstanding. As the hearing concluded and as expressed in our final comments, it remains Northwatch assessment that Generation Mining did not present a case which the Joint Review Panel or the Minister can approve.
- 2) The Joint Review Panel concluded that if the Government of Ontario and/or Government of Canada decide to approve the Project, it would be with the understanding that the Project is likely to cause significant adverse effects, which by definition are adverse effects that cannot be fully mitigated.
- 3) Northwatch firmly believes – and Canadians expect – that projects which are likely to cause significant adverse effects should not be approved, and that no set of conditions can save such a Project from it being unacceptable on the basis of those significant adverse effects which cannot be mitigated.

Without prejudice to the above statements, and in full expectation that the Minister will not approve the project given the significant adverse effects, we further wish to state that:

- 4) Should the project move forward – despite the findings of the Joint Review Panel – the oversight committee that has been recommended and requested by many review participants should be a condition
- 5) Northwatch recognizes the authority of Biigtigong Nishnaabeg and strongly calls on the Minister to recognize that authority by establishing through conditions that Biigtigong Nishnaabeg has a decision-making role throughout project planning, implantation, operation and closure.

Comments on Potential Conditions

Without prejudice to statements made in the section titled ‘General observations’, and in full expectation that the Minister will not approve the project given the significant adverse effects, we make the following comments, which are a combination of general comments, general comments with specific examples to illustrate the general observation, and specific comments.

The comments are made in the order which they arose during our review of the Potential conditions; the order does not reflect any ranking of importance among the comments.

Our comments include:

- 6) Throughout the document, many potential conditions are incomplete in that they fail to identify the decision-maker; for example, in many conditions, including the set of conditions (2.6) on the follow-up program, fundamental decisions may be made, but no decision-maker or basis for decisions are identified, despite the significance of the follow-up program with respect to environmental consequences of the project; by default, the failure to clarify decision-making appears to make the proponent the sole decision-maker, even if by default
- 7) Throughout the document the author(s) has used language which cloaks the environmental impact of the activity or action being discussed; for example, the use of the term “overprinting” is not included in the definitions, and is use in place of language which would actually communicate the activity being referred to, i.e. the filling of a natural water body with mining wastes, at the expense of that water body continuing to have the environmental and biological function of a living water body.
- 8) Throughout the document the phrase “technically and economically feasible” is used, and in each case in a context that implies that the proponent is going to be making the judgement call as to whether the particular action or mitigating measure is “economically feasible”; this wholly lacks rigour and leaves the outcome of the condition fully subject to the judgement of the proponent, whose determination of “economically feasible” can be expected to be much more strongly influenced by profit margins than if left to the determination of other parties; the term ‘technically and economically feasible’ should be removed in each instance it appears in the set of Potential conditions
- 9) The set of potential conditions do not identify a path forward where there is no consensus; in most cases the description of how the proponent engages with other parties (including government, Indigenous communities and others) is so ambiguous that not even the expectation of consensus is set out; Condition 2.5 sets out how the proponent is to report on efforts to achieve consensus but does not set out any mechanisms to be employed when consensus is not reached, such as through arbitration or an independent adjudicator; further, there are few instances (3.17, 6.3,6.5, 6.6, 6.7, 11.2) where even the expectation that the proponent will seek consensus is set out, and in each case it is exclusive to the Proponent seeking consensus with Biigtigong Nishnaabeg
- 10) The Potential conditions are overly permissive and lack rigour in their repeated use of the qualifier “take into account” ; for example, rather than be required to adhere to

“applicable provincial and federal guidance on greenhouse gas reduction strategies”
Potential condition 6.2 sets out that “The Proponent shall take into account” the provincial and federal guidance; rather than adhering to the Ontario Ministry of Mines requirements for a closure plan, the Proponent is to take them into account; and so on.

- 11) The Potential conditions do not clearly identify who is to be “consulted”; in many conditions the reference is simply to the “the parties being consulted”, while in some few instances the terminology references “Indigenous groups and relevant authorities” and in fewer the reference is to “with Fisheries and Oceans Canada, Ontario Ministry of Environment, Conservation and Parks, and other relevant authorities”; there are several references to “Biigtigong Nishnaabeg and other Indigenous groups and relevant authorities” and some that reference specific government departments, either solely or in combination with others; it is unclear throughout what is intended by the term “relevant authorities”
- 12) The Potential conditions identify an “Independent expert review committee” and an “Environmental Monitoring Committee” but it is unclear what, if any, relationship exists between these two committees
- 13) Potential condition 13 identifies that an “Independent expert review committee” is to be established but unduly limits its role to “design, construction (including dam raises) and decommissioning of the process solids management facility”
- 14) Potential condition 14 identifies that an “Environmental Monitoring Committee” may be established but this is unduly indefinite; the condition fails to identify the composition of the Committee or the criteria or mechanism for its establishment
- 15) The Potential conditions identify an “Independent expert review committee” and an “Environmental Monitoring Committee” but it is unclear what, if any, relationship either or both of these two committees might have to the oversight committee that has been recommended by many local intervenors; either a third oversight committee should be established, or one or both of these Committee should have a mandate that includes ongoing oversight of the operation through development, operation and closure and whose composition includes representatives of local community groups, at least one regional environmental or conservation group, at least one non-governmental organization whose focus is on the environmental well-being of Lake Superior, as well as representatives from the municipality and “Biigtigong Nishnaabeg and other Indigenous groups and relevant authorities”
- 16) Potential conditions that address the need and protocols for information sharing (2.10 through 2.14) do not identify a requirement or a mechanism for notifying the interested

public – including local community groups, regional environmental and conservation groups and non-governmental organizations with a focus on the environmental well-being of Lake Superior – of document availability, consultations, or other relevant developments with the project; such a requirement should be added to the condition

- 17) The mechanism through which information submitted by the Proponent to the Agency becomes publicly known is unclear; to date, the Agency has – problematically – not maintained the public registry after a review has been completed and the Potential conditions to not make provisions for the information about project implementation and follow-up being available to the public in a convenient and accessible manner; a condition to this effect should be added
- 18) There are instances where the Potential conditions identify half-actions or half-measures; for example, in Potential condition 6.2 the Proponent is required to “identify, prior to construction and in consultation with Biigtigong Nishnaabeg, any groundwater springs used by Biigtigong Nishnaabeg that could be adversely impacted by the Designated Project within the local study area” but does not include any requirements for protective measure with respect to the identified groundwater springs.
- 19) Both Northwatch and Biigtigong Nishnaabeg identified concerns for the safety of women – and particularly Indigenous women – as a result of an influx of a largely male and largely transient worker population. As noted by the Joint Review Panel in their report, Biigtigong Nishnaabeg referenced during the hearing the clear evidence of how resource extraction projects that attract large groups of out-of-town men for employment have contributed to increases in violence, assaults, discrimination, unplanned pregnancies, drug use, and safety concerns for women and children in Indigenous communities. We were extremely disturbed and disappointed to find that there were no corresponding conditions, no reflection of a gender-based analysis having been applied, and no regard shown for the safety of women and children, and especially for women and children in Indigenous communities.
- 20) As noted in the Joint Review Panel report, GenPGM made commitments during the hearing to cultural sensitivity training and the establishment of a code of conduct. There should be corresponding conditions with respect to these commitments.


Overall and in general, we feel that these draft Potential conditions are an abandonment of commitments to Truth and Reconciliation, of environmental protection, and of climate action, and they disregard and so disrespect the good work done by the Joint Review Panel.

We understand the process and accept that the process requires that draft Potential conditions must be released for public comment prior to the Minister making a decision on the project. However, we feel that this set of Potential conditions are a disservice to the Act and to the review process and require significant changes.

In closing, we must re-state that projects which are likely to cause significant adverse effects should not be approved and this is a project which is likely to cause significant adverse effects. No set of conditions can save such a Project from it being unacceptable on the basis of those significant adverse effects which cannot be mitigated.

Thank you for your consideration.

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Brennain Lloyd
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