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File: MVEIRB

Facsimile Cover Sheet

To: Vern Christensen
MVEIRB, Executive Director

Fax Number: (867) 766-7074

From: George Govier

Number of Pages (incl. cover) 10

Date: January 31, 2008

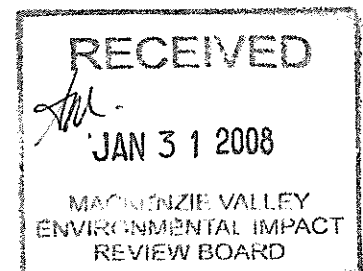
Comments: **MVEIRB Draft Reference Bulletin**
Referring Projects to Environmental Assessment on its Own Motion
Comments from SLWB

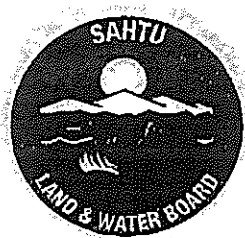
Reference: Your e-mail dated December 28, 2007

1. Please see letter attached.
2. Your thoughts and comments always welcome.

George Govier
Executive Director

copy to: Larry Wallace, Chairman, SLWB Fax : (867) 587-2861





SAHTU Land & Water Board
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January 31, 2008

Vern Christensen
Executive Director
Mackenzie Valley Environmental Impact Review Board
Box 938, Scotia Centre
5120-50th Ave.
Yellowknife, NT
X1A 2N7

Our File: MVEIRB
Your File:

Dear Vern:

**Re: MVEIRB Draft Reference Bulletin
Referring Projects to Environmental Assessment on its Own Motion
Comments from SLWB**

I am replying to your e-mail dated December 28, 2007, regarding the Draft Reference Bulletin to describe the Review Board's approach to exercising its Section 126(3) *Mackenzie Valley Resource Management Act* (MVRMA) discretion to refer a project on its own motion to Environmental Assessment, notwithstanding a Preliminary Screening decision by a Land and Water Board or other regulatory authority.

These comments are provided after years of experience working in co-operation with the MVEIRB to develop the form and content of the Preliminary Screening Form, and attending your Annual Environmental Assessment Practitioners Workshops. More recently, over the last year, the uncertain experiences with Talisman Energy – Great Bear Plains Seismic, Kodiak Petroleum – Gwich'in/Sahtu Seismic, Pacifica Resources – Selwyn Mineral Exploration, Hunter Bay Resources – McTavish Arm Mineral Exploration, and Explor Geophysical – Colville Lake Area Seismic projects have also helped to inform our comments. Another event helpful in forming our comments was the "Preliminary Screening to Environmental Assessment - Process – Procedures – Products Joint Staff Meeting" held in Fort Good Hope September 25 to 27, 2007.

Some of our comments will not be unfamiliar to you. In summary, they cover the following topics;

- MVRMA Section 126(3) eg. Hunter Bay Resources McTavish Arm Mineral Exploration
- MVRMA Section 126(2)(b) eg. Pacifica Resources Selwyn Mineral Exploration
- MVRMA Section 124(1) Notification to the Review Board in Writing
- MVRMA Section 124(3) Co-operation
- MVRMA Section 126(5) Notice
- MVRMA Section 128(3) Copies of Report

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January 31, 2008

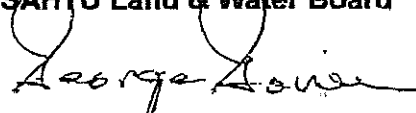
- MVRMA Section 62 Requirements of Part 5
- MVRMA Section 118(1) Implementation of Proposals
- MVRMA Section 115 Guiding Principles
- MVRMA Section 120 Guidelines
- MVLUR Section 22(2) Application for a Permit
- SLWB method & procedure for Preliminary Screening
- SLWB Staff Reports – format and content
- Land Use Permits/Water Licences – Terms & Conditions
- 3 day pause period.

All comments are provided in the attached document, "MVEIRB Draft Reference Bulletin Referring Projects to Environmental Assessment on its Own Motion - Comments from SLWB".

I trust our comments will lead to an integrated and coordinated system of land and water management in the Mackenzie Valley in a timely and expeditious manner.

enclosure: 1

Respectfully yours,
SAHTU Land & Water Board



G.T. Govier
Executive Director

copy to: SLWB Members

January 31, 2008

MVEIRB Draft Reference Bulletin
Referring Projects to Environmental Assessment on its Own Motion
Comments from SLWB

Legislation, Regulations, and Guidelines

- a) MVRMA Sec. 126 (3) – Review Board's Own Motion
- b) MVRMA Sec. 126 (2)(b) – Referral from First Nation
- c) MVRMA Sec. 124 (1) – Notification to Review Board in Writing
 - This was done Apr. 17/07 for Hunter Bay Resources.
 - MVEIRB does have staff designated to handle and monitor Preliminary Screening Reports.
 - MVEIRB receive 100 to 250 Preliminary Screening Reports each year.

 - Recommendation: MVEIRB staff should be familiar with and/or monitor applications when they are received and well before the 3-day pause period after the Preliminary Screen Report is submitted.
- d) MVRMA Sec. 124 (4) – Co-operation
 - Co-operation on Preliminary Screening also implies “Communication” and “Co-ordination”.
 - MVEIRB produces a “Report on Preliminary Screening” from the Draft Preliminary Screening Report and Draft Staff Report, and information is entered on a data base.
 - MVEIRB prefers not to make comments on an application before receiving the Preliminary Screening Report, as it doesn't want to be seen to influence or fetter the Land & Water Board decision.

 - Recommendation: MVEIRB staff should be part of the “Communication”, “Co-operation”, and “Co-ordination” with Preliminary Screeners.
 - Recommendation: MVEIRB staff could telephone SLWB to request information from the Public Registry during the 42-day period. (MVEIRB staff will adopt this practice).
 - Recommendation: SLWB staff could send a copy of Agenda for Board Meeting, and telephone Manager of Environmental Impact Assessment when SLWB Pre-Meeting Package goes out one week in advance of meeting. (SLWB staff will adopt this practice).
- e) MVRMA Sec. 126 (5) – Notice

- The Review Board shall give notice of a referral of a proposal... or of its decision to conduct an Environmental Assessment... to the person or body that proposes to carry out the development.
 - In the case of Pacifica Resources – Selwyn Project we learned about the Environmental Assessment through an advertisement in News/North newspaper.
 - Recommendation: MVEIRB staff should notify Preliminary Screeners directly in writing when applications have been accepted for EA or EIR.
- f) MVRMA Sec. 128 (3) – Copies of Report
- g) MVRMA Sec. 62 – Requirements of Part 5

- A board may not issue a licence, permit or authorization for the carrying out of a proposed development within the meaning of Part 5 unless the requirements of that part have been complied with, and every licence, permit or authorization so issued shall include any conditions that are required to be included in it pursuant to a decision made under that part.
- In the case of the Hunter Bay Resources SLWB staff telephoned MVEIRB staff in the afternoon of June 29, 2007 to alert them about the Preliminary Screening Report, which was submitted by fax following the telephone call. MVEIRB staff were informed that SLWB would issue the permit on July 3rd after waiting the 3-day pause period, if the MVEIRB did not call it up for Environmental Assessment. MVEIRB staff were not familiar with the application, couldn't find the application, and asked if the 3-day pause period was working days or calendar days.

A letter dated June 28, 2007 from MVEIRB Executive Director was received by fax in late afternoon of June 29th. The letter advised that, " It may not be possible for you to issue the permit on July 3rd as we only received the associated preliminary screening report late this afternoon, and the Review Board will need some time to properly review it pursuant to Part 5 of the MVRMA". " Please hold the issuance of this until I can advise you further on our review of the preliminary screening report". The letter also requested " a copy of all correspondence that the SLWB has received containing comments from government or other organizations pertaining to this file".

On June 30th 162 pages of information from this application were transferred in 3 separate faxes to the MVEIRB. On July 1st an additional 9 pages were provided in 1 fax.

In the afternoon of July 3rd SLWB staff telephoned MVEIRB staff to inquire about any decision to call for an Environmental Assessment of the application. At that time there was no decision. SLWB issued the permit in the afternoon of July 4th.

- In the case of Talisman Energy Inc. there was a similar circumstance where MVEIRB failed to make a decision on Environmental Assessment within the 3-day pause period. (see SLWB letter to MVEIRB dated January 17, 2007 file S06B-010 Re: Talisman Energy Inc. Preliminary Screening Report).

The SLWB during its meeting January 16, 2007 received and considered the letter of request from MVEIRB to delay the issuance of the permit. SLWB "gave direction that if there is no formal decision to refer the application to Environmental Assessment, the Land Use Permit will be issued by 5:00 PM Friday January 19, 2007 which is the 42nd day after declaring the application complete. This is in keeping with the *Mackenzie Valley Land Use Regulations* (MVLUR) Section 22 (1)(b) and Section 22 (2)(a). This also includes MVLUR Section 22 (2)(d) which refers to *Mackenzie Valley Resource Management Act* (MVRMA) Section 62. The Board believes that Part 5 of the Act (MVRMA) will be complied with upon expiry of the 42-day period".

- MVEIRB staff believe that Reviewing agencies are depending and waiting on Land Use Permit and/or Water Licence Terms & Conditions to determine if they will refer a development proposal to Environmental Assessment. There should be some time for Reviewing agencies to see Preliminary Screening Reports.
- Other Land & Water Boards did not issue permits within a 42-day period when MVEIRB requested that a permit not be issued. That's why MVEIRB was so surprised with SLWB on the Hunter Bay Resources application.
- MVEIRB has called up only 3 development proposals to EA; one being Hunter Bay Resources, and the other two were located in unsettled claim areas.
- MVEIRB met on July 5, 2007 about the Hunter Bay Resources application.

- Conclusion: SLWB believes that Part 5 of MVRMA will be complied with upon expiry of the 42-day period.
- Recommendation: MVEIRB staff should notify Preliminary Screeners directly in writing if applications have been called up for EA within the 42-day period for deciding about Land Use Permit applications.
- Recommendation: MVEIRB staff will undertake to present to their Board that a letter from MVEIRB requesting any delay to issuing a permit should include a definitive time period for the requested delay.

h) MVRMA sec. 118 (1) – Implementation of Proposals.

- No licence, permit or other authorization required for the carrying out of a development may be issued under any federal, territorial or Tlicho law unless the requirements of this Part have been complied with in relation to the development.
- This clause is intended to ensure that measures and recommendations contained in reports of EA or EIR, and approved by the Federal Minister, are implemented before a permit and/or licence is issued.
- In the case of Hunter Bay Resources the MVEIRB failed to decide within the 42-day period if an Environmental Assessment was required and therefore forfeited any opportunity to identify any measures resulting from an Environmental Assessment.
- MVEIRB staff would like to be better informed about how many "measures" have been implemented and how effective they are.

- MVEIRB staff are therefore interested in what Terms & Conditions are put into Land Use Permits and Water Licences.
 - MVEIRB dialogue with developers sometimes leads to voluntary improvements to environmental practice and procedures.
 - Recommendation: MVEIRB staff suggest that audio-visual presentations made by SLWB staff at this meeting be repeated at a future MVEIRB Meeting as they may enhance the understanding of standard content of a Land Use Permit and Water Licence. This would include reference to the DIAND Land Use Manual, and standard Terms & Conditions.
 - Recommendation: MVEIRB staff should notify Preliminary Screeners directly in writing if applications have been called up for EA within the 42-day period for deciding about Land Use Permit applications.
- i) MVRMA Sec. 115 – Guiding Principles
- The process established by this part shall be carried out in a timely and expeditious manner...'
 - In the case of Hunter Bay Resources the MVEIRB did not decide to call for an Environmental Assessment of the project until August 28, 2007, fully 60 days after first receiving the Preliminary Screening Report on June 29th.
 - Recommendation: MVEIRB staff should notify Preliminary Screeners directly in writing if applications have been called up for EA within the 42-day period for deciding about Land Use Permit applications.
- j) MVRMA Sec. 120 – Guidelines
- Following consultation with first nations, the Tlicho Government and the federal and territorial Ministers and subject to any regulations made under paragraph 143 (1)(a), the Review Board may establish guidelines respecting the process established by this part, including guidelines
 - (a) for the determination of the scope of developments by the Review Board;
 - (b) for the form and content of reports made under this Part; and
 - (c) for the submission and distribution of environmental impact statements...

MVEIRB Environmental Impact Assessment Guidelines, March, 2004

- Page 13, Item 5 - " Developers should expect their application to take more than the 45 days required for an application to be processed, and scheduled accordingly". " Consequently more time than the minimum set out in regulations may be needed before an authorization is issued".
- MVEIRB staff advise that these guidelines are in dire need of revamping.
- Conclusion: These statements are misleading and in contradiction of MVLUR Sec. 22(2).
- Recommendation: These statements should be removed from the MVEIRB published guideline.

- Page 21 – “After the Preliminary Screening report is released, the Review Board requests that regulators not issue permits for three days. This pause period gives the Review Board a chance to consider the exercise of its authority to conduct an Environmental Assessment notwithstanding the results of the Preliminary Screening”.
- MVEIRB staff advise that these guidelines are in dire need of revamping.
- Conclusion: This statement from the MVEIRB's own guideline publication shows clearly the intent and purpose of the 3-day pause period, and that regulators should wait only 3 days to issue permits after release of the Preliminary Screening Report.
- Recommendation: MVEIRB staff should notify Preliminary Screeners directly in writing if applications have been called up for EA within the 42-day period for deciding about Land Use Permit applications.
- Page 26 – “The Review Board begins by giving notice to the developer and potential participants that an Environmental Assessment of the proposed development has started”.
- In the case of Pacifica Resources – Selwyn Project we learned about the Environmental Assessment through an advertisement in News/North newspaper.
- MVEIRB staff advise that these guidelines are in dire need of revamping.
- Recommendation: MVEIRB staff should notify Preliminary Screeners directly in writing when applications have been accepted for EA or EIR.
- Page 55, Item 11 – “Where reference is made in any direction on procedure to a number of days, it shall mean calendar days. Where a time fixed falls on a holiday or a Saturday or a Sunday, the time fixed shall extend to the following business day”.
- MVEIRB staff advise that these guidelines are in dire need of revamping.
- Conclusion: This statement from the MVEIRB's own guideline publication shows clearly the 3-day pause period means calendar days.

MVEIRB Socio-Economic Impact Assessment Guidelines, December, 2006

- Page 47 – “Many preliminary screeners are regulators that lack a mandate to include terms and conditions for minimizing socio-economic or cultural impacts in their respective licenses and permits. Whether the preliminary screener has jurisdiction to mitigate these impacts is irrelevant. Preliminary screening is not part of the regulatory process”.
- MVEIRB staff advise that these guidelines are in dire need of revamping.
- Conclusion: Preliminary screening is a part of the regulatory process, as it is provided for in the MVRMA and *Preliminary Screening Requirement Regulations*. It is also a part of the SLWB Land Use Permit Process, and Water Licences Process.
- Recommendation: The last sentence in the statement should be removed from the MVEIRB published guideline.

- Page 47 – “Regardless of the preliminary screener’s decisions, any referral agencies can refer the proposed development to EA according to section 126 of the MVRMA”.
- MVEIRB staff advise that these guidelines are in dire need of revamping.

- **Conclusion:** This statement is not correct, as any and all referral agencies do not have the authority to refer a proposed development to EA. Examples include land corporations within the Sahtu Settlement Area, the Sahtu Land Use Planning Board, the Sahtu Renewable Resources Board, Renewable Resources Councils, and local governments where the development takes place outside of their municipal boundaries and might not have an adverse impact on the environment within its boundaries.

- **Recommendation:** This statement should be removed from the MVEIRB published guideline.

MVLUR Sec. 22 (2) – Application for a Permit

- In the case of the Hunter Bay Resources, and in the case of Talisman Energy Inc., SLWB believes that if there is no formal decision to refer the application to Environmental Assessment, the Land Use Permit will be issued by the 42nd day after declaring the application complete. This is in keeping with the *Mackenzie Valley Land Use Regulations* (MVLUR) Section 22 (1)(b) and Section 22 (2)(a). This also includes MVLUR Section 22 (2)(d) which refers to *Mackenzie Valley Resource Management Act* (MVRMA) Section 62. The Board believes that Part 5 of the Act (MVRMA) will be complied with upon expiry of the 42-day period.
- The main issue and question from MVEIRB staff is, “How do we make MVRMA Sec. 126 work”?
- MVEIRB staff believe that the word “issue” in MVLUR Sec. 22 (2) (a) is subject to interpretation, and legal counsel for MVEIRB suggests that Land & Water Boards can make decisions on permits within 42 days, but not “issue” a permit until MVEIRB has decided about an EA.
- MVEIRB staff have suggested another alternative would be to amend MVLUR Sec. 22 (2) to alter the reference to 42 days.
(SLWB staff would agree to this approach).

- **Conclusion:** SLWB believes that Part 5 of MVRMA will be complied with upon expiry of the 42-day period.
- **Recommendation:** MVEIRB staff should notify Preliminary Screeners directly in writing if applications have been called up for EA within the 42-day period for deciding about Land Use Permit applications.

Other Concerns

- The term “Referral Agency” has a different meaning for SLWB and MVEIRB staff. For MVEIRB it means agencies with legislative authority to refer a

- proposal to Environmental Assessment. For SLWB it means agencies that must be consulted about a development proposal.
(Agreed that SLWB staff will adopt the term Review Agencies).
- MVLWB and WLWB send a Draft Preliminary Screening Report and Draft Staff Report to MVEIRB one week prior to the Land & Water Board meeting. (SLWB staff will not adopt this practice).
 - MVLWB always provides a "Summary of Comments from Reviewing Agencies" and how they're being addressed. This summary is included in MVLWB Staff Reports and is very helpful to MVEIRB staff. (SLWB staff could provide a summary table of Review Agency Comments and Record of Disposition to MVEIRB staff).
 - On scoping, MVEIRB staff may ask Land & Water Boards to comment on effectiveness of proposed "measures" in EA reports.
 - MVEIRB staff believe the Preliminary Screening Report form is poorly designed for socio-economic impacts and should be revised.
 - MVEIRB staff suggest that the SLWB electronic Public Registry is limited for access.
 - MVEIRB makes a "Public Registry" available on its website. When information is voluntarily provided on a website there is no "request" for information from the Public Registry, therefore no fees are involved. The MVEIRB Public Registry is not required by legislation or regulation, and only EA files are put on its Public Registry. Anyone on MVEIRB staff can post documents to their Public Registry. It is usually the Environmental Assessment Officer for a particular file that has control. One staff person does oversee this practice periodically.
 - MVEIRB maintains a "Public Record" for evidence that the Board considers.
 - "Reference Bulletins" can be found on the MVEIRB website. They are not "guidelines" as per MVRMA Sec. 120.
 - Recommendation: SLWB staff could provide a summary table of Review Agency Comments and Record of Disposition to MVEIRB staff.
 - Recommendation: MVEIRB staff should initiate a committee to review and amend the Preliminary Screening Report form.

G.T. Govier
Executive Director