

David Livingstone  
Director  
Renewable Resource & Environment  
Indian and Northern Affairs Canada  
PO Box 1500  
Yellowknife, NT X1A 2R3

January 27, 2006

Dear Mr. Livingstone:

**Re: "Consult to Modify" on Report of Environmental Assessment on the Imperial Dehcho Geotechnical Program (EA 03-009)**

On January 19, 2006, the Mackenzie Valley Environmental Impact Review Board (the Review Board) met to consider the Responsible Ministers' views and supporting rationale for suggested modifications to measures contained in the Report of Environmental Assessment on the Imperial Dehcho Geotechnical Program (EA 03-009).

The Review Board considered the following information:

- December 23, 2005 letter from yourself to Ms. Gabrielle Mackenzie Scott and all the materials contained within this letter and new information identified by this letter;
- January 6, 2006 correspondence from the Responsible Ministers which added minor changes to some changes proposed by the Responsible Ministers in the December 23, 2005 letter;
- January 11, 2006 letter from the Sambaa K'e First Nation addressed to the Minister of INAC and to the Chair of the Review Board, and
- January 16, 2006 letter from David Livingstone to Vern Christensen identifying the following additional information to assist the Board in consideration of the suggested modifications:
  - News release and backgrounder dated January 14, 2005, entitled "Public private relationship created \$4 million in funding to support preliminary Mackenzie Gas Project planning"
  - News release and backgrounder dated July 11, 2005, entitled "Government of Canada and Dehcho First Nations reach agreement"
  - News release dated July 14, 2005, entitled "\$500 Million Mackenzie Gas Project socio-economic impact fund"

As part of the consultation process, the Review Board is now submitting its proposed changes to its measures for the Responsible Ministers' consideration. The Review Board is confident that its proposed changes will not affect the original intent of the measures and will still meet the requirement to mitigate a potential significant adverse impact on the environment.

Please contact me directly (867-669-7055) if you require further clarification or wish to discuss these proposed changes. I suggest that we have one final meeting where we can finalize any changes. Following that, I will seek final approval from the Review Board for acceptance of any proposed changes to be made to its measures contained within this Report of Environmental Assessment.

Sincerely,



Vern Christensen  
Executive Director

Attachments: (2)



**Attachment 1: Imperial Geotech EA: Revised Measures**

**MEASURE 1**

**Measure 1 Original wording:**

In order to prevent significant adverse environmental impacts from the geotechnical work on the K'eotsee Lake watershed and to prevent significant social and cultural impacts on the people of Trout Lake, community environmental monitors and an Elder, all from Trout Lake (along with translators as needed), must be present for all site investigations in the K'eotsee Lake watershed, to provide guidance in the avoidance of heritage sites and to provide the community with reassurance that Imperial is exercising due diligence regarding environmental precautions in its Deh Cho Geotechnical Program.

**Measure 1 - RMs' Proposed modification Dec 23 2005 (additions in bold, deletions in strike-out)**

*In order to prevent significant adverse environmental impacts from the geotechnical work on the K'eotsee Lake watershed and to prevent significant social and cultural impacts on the people of Trout Lake, **Imperial shall make best efforts every reasonable effort to ensure that** community environmental monitors and an Elder, all from Trout Lake (along with translators as needed), ~~must be~~ **are** present for all site investigations in the K'eotsee Lake watershed, to provide guidance in the avoidance of heritage sites and to provide the community with reassurance that Imperial is exercising due diligence regarding environmental precautions in its Deh Cho Geotechnical Program. **Imperial shall document its efforts and provide that documentation to the regulatory authorities and Trout Lake. The monitors and Elder shall independently report back to Trout Lake.***

**Measure 1 - Review Board's proposed final, January 19, 2006**

In order to prevent significant adverse environmental impacts from the geotechnical work on the K'eotsee Lake watershed and to prevent significant social and cultural impacts on the people of Trout Lake, Imperial must provide opportunities for community environmental monitors and an Elder, all from Trout Lake (along with translators as needed), to be present for all site investigations in the K'eotsee Lake watershed, to provide guidance in the avoidance of heritage sites and to provide the community with reassurance that Imperial is exercising due diligence regarding environmental precautions in its Deh Cho Geotechnical Program.

## MEASURE 4

### **Measure# 4 Original wording:**

In order to prevent a significant adverse social impact on the community of Trout Lake due to traffic safety risks arising from the Imperial Deh Cho Geotechnical Program, Imperial must meet with the SKFN and discuss the specific techniques Imperial will use to inform and warn community road users of industrial traffic. Based on this meeting, Imperial shall implement appropriate methods which will, at a minimum, include small advance vehicles with signage and flags and warning the community road users of the time periods of major industrial road usage. This meeting shall occur prior to work beginning in areas where the Trout Lake winter road is utilized by Imperial employees and/or contractors.

### **Measure 4 - RMs Proposed modification (additions in bold, deletions in strike-out):**

*In order to prevent a significant adverse social impact on the community of Trout Lake due to traffic safety risks arising from the Imperial Deh Cho Geotechnical Program, Imperial must **make best efforts to meet with the SKFN and discuss the specific techniques Imperial will use to inform and warn community road users of industrial traffic.** Based on ~~this meeting~~ **the results of these efforts**, Imperial shall implement appropriate methods which will, at a minimum, include ~~small advance vehicles with signage and flags and warning the community road users of the time periods of major industrial usage.~~ **Imperial may also implement methods exceeding legislated requirements concerning, for example, small advance vehicles with signage and flags. For greater certainty, such methods must not contravene legislated requirements.** ~~This meeting~~ **These best efforts** shall occur prior to work beginning in areas where the Trout Lake winter road is utilized by Imperial employees and/or contractors.*

### **Measure 4 - Review Board's proposed final, January 19, 2006**

In order to prevent a significant adverse social impact on the community of Trout Lake due to traffic safety risks arising from the Imperial Deh Cho Geotechnical Program, Imperial will hold a meeting to provide the Saamba K'e Dene Band with the opportunity to discuss the specific techniques Imperial will use to inform and warn community road users of industrial traffic. Based on this meeting, Imperial shall implement appropriate methods which will, at a minimum, include small advance vehicles with signage and flags (in advance of heavy industrial vehicles) and warning the community road users of the time periods of major industrial road usage, provided that this does not contravene legislated requirements. This meeting shall be held prior to work beginning in areas where the Trout Lake winter road is utilized by Imperial employees and/or contractors.

## MEASURE 5

### **Measure 5 Original wording:**

In order to prevent significant adverse social impact on road users in the Deh Cho region resulting from increased risks when sharing roads with industrial traffic, the MVLWB shall, prior to the issuance of any land use permits for the Imperial Deh Cho Geotechnical Program, require Imperial to submit a detailed policy requiring that heavy vehicles supporting the Imperial Deh Cho Geotechnical Program yield to public traffic, where safe to do so, on Highway 1 and the Highway 1 winter-road. Imperial shall ensure that the terms and conditions in any contracts let for the Imperial Deh Cho Geotechnical Program make compliance with this policy mandatory.

### **RMs Proposed modification: (additions in bold, deletions in strike-out)**

*In order to prevent significant adverse social impact on road users in the Deh Cho region resulting from increased risks when sharing roads with industrial traffic, the MVLWB shall, prior to the issuance of any land use permits for the Imperial Deh Cho Geotechnical Program, require Imperial to submit **Imperial shall, in consultation with the GNWT, develop and adhere to a** detailed policy concerning the safe operation of heavy vehicles supporting the Imperial Deh Cho Geotechnical Program on Highway 1 and the Highway 1 winter-road. Imperial shall ensure that the terms and conditions in any contracts let **by it** for the Imperial Deh Cho Geotechnical Program make compliance with this policy mandatory. **Prior to initiating operations, Imperial will provide copies of the policy to the GNWT and the affected first nation communities.***

### **Measure 5 - Review Board's proposed final, January 19, 2006**

In order to prevent significant adverse social impact on road users in the Deh Cho region resulting from increased risks when sharing roads with industrial traffic, Imperial shall, in consultation with the GNWT, develop and adhere to a detailed policy concerning the safe operation of heavy vehicles supporting the Imperial Deh Cho Geotechnical Program on Highway 1 and the Highway 1 winter-road. Imperial shall ensure that the terms and conditions in any contracts let by it for the Imperial Deh Cho Geotechnical Program make compliance with this policy mandatory. Prior to initiating operations, Imperial will provide copies of the policy to the GNWT and the affected first nation communities.

## MEASURE 6

### **Measure 6 Original wording:**

The MVLWB must not issue permits or licenses for the Imperial Deh Cho Geotechnical Program until receiving a letter from Imperial making a commitment to fund the Pehdzeh Ki First Nation and the Samba K'e First Nation to hire their own Community Environmental Monitors. The letter must also include the following additional commitments:

1. This program will be similar to that conducted by Imperial in the Gwich'in Settlement Area, and set out similar roles, training and involvement for the Community Environmental Monitors; and
2. This program will include funding for a minimum of ten days of field observation by the Community Environmental Monitors, to determine existing biophysical conditions, in advance of the geotechnical program.
3. Any reports of findings from advanced field observations by Community Environmental Monitors will be considered by Imperial in the planning and management of the subsequent geotechnical work.

### **RMs Proposed modification: (additions in bold, deletions in strike-out)**

~~The MVLWB must not issue permits or licenses for the Imperial Deh Cho Geotechnical Program until receiving a letter from Imperial making a commitment to fund the Pehdzeh Ki First Nation and the Samba K'e First Nation to hire their own Community Environmental Monitors.~~ **Prior to initiating operations, Imperial shall provide the parties to the EA with a letter which includes Pedzheh Ki First Nation and the Samba K'e First Nation in Imperial's previous commitments concerning Community Environmental Monitors.** The letter must also include the following additional commitments:

1. This program will use the same approach for the involvement of Local Environmental and Wildlife Monitors in the Program as has been used ~~in the Gwich'in Settlement Area~~ **in other regions**, and will set out similar roles, training and involvement for the Community Environmental Monitors; and
2. This program will include ~~funding for~~ a minimum of ten days of field observation by the Community Environmental Monitors, to determine existing biophysical conditions, in advance of the geotechnical program.
3. Any reports of findings from advanced field observations by Community Environmental Monitors will be considered by Imperial in the planning and management of the subsequent geotechnical work.

### **Measure 6- Review Board's proposed final, January 19, 2006**

Imperial will fund the Pehdzeh Ki First Nation and the Samba K'e First Nation to hire their own Community Environmental Monitors. Imperial will also ensure the following:

1. This program will be similar to that conducted by Imperial in the Gwich'in Settlement Area (as per Exhibit 3 provided by Imperial in the Dec. 2, 2004 hearing), and set out similar roles, training and involvement for the Community Environmental Monitors;
2. This program will include a minimum of ten days of field observation by the Community Environmental Monitors, to determine existing biophysical conditions, in advance of the geotechnical program; and,
3. Any reports of findings from advanced field observations by Community Environmental Monitors will be considered by Imperial in the planning and management of the subsequent geotechnical work.

## MEASURE 9

### Measure 9 Original wording:

In order to prevent significant adverse environmental impacts, the MVLWB shall, prior to the issuance of any land use permits for the Imperial Deh Cho Geotechnical Program, require Imperial to submit a detailed policy requiring its contractors and personnel to minimize disturbance to wildlife from aircraft overflights related to the Imperial Deh Cho Geotechnical Program. This policy shall be developed in consultation with the affected first nation communities, and details of the final policy shall be released to the affected first nation communities. Imperial shall ensure that any contracts let for air transportation include the terms and conditions of this policy.

### RMs Proposed modification: (additions in bold, deletions in strike-out)

~~In order to prevent significant adverse environmental impacts, the MVLWB shall, prior to the issuance of any land use permits for the Imperial Deh Cho Geotechnical Program, require Imperial to submit a detailed policy requiring~~ **in consultation with the Government of the Northwest Territories and Environment Canada, Imperial shall develop a detailed flight impact management plan and require** its contractors and personnel to minimize disturbance to wildlife from aircraft overflights related to the Imperial Deh Cho Geotechnical Program. ~~This policy shall be developed in consultation with the affected first nation communities, and details of the final policy shall be released to the affected first nation communities.~~

**In order to address community concerns relating to wildlife disturbance from aircraft overflights, Imperial shall make best efforts to consult the affected first nation communities while developing this management plan. Prior to initiating aircraft overflights, Imperial will provide copies of the management plan to the GNWT, Environment Canada, and the affected first nation communities. Imperial shall ensure that any contracts let for air transportation include the terms and conditions of this policy.**

### Measure 9- Review Board's proposed final, January 19, 2006

In order to prevent significant adverse environmental impacts, in consultation with the Government of the Northwest Territories and Environment Canada, Imperial shall develop a detailed flight impact management plan and require its contractors and personnel to minimize disturbance to wildlife from aircraft overflights related to the Imperial Deh Cho Geotechnical Program. In order to address community concerns relating to wildlife disturbance from aircraft overflights, Imperial shall organize, advertise and hold a meeting to give the affected first nation communities the opportunity to provide input into this management plan. Prior to initiating aircraft overflights, Imperial will provide copies of the management plan to the GNWT, Environment Canada, and the affected first nation communities.

## MEASURE 10

Measure 10: Propose to remove Measure. See attached "Reasons for Decision"

## MEASURE 12

### **Measure 12 Original wording:**

In order to prevent significant adverse socio-economic and cultural impacts on harvesters due to increased costs resulting from the need to travel further to hunt because of wildlife disturbances caused by the Imperial Deh Cho Geotechnical Program, Imperial's harvester compensation program must also consider compensation claims for increased fuel costs from harvesters displaced from their traditional harvesting areas.

### **RMs Proposed modification (additions in bold, deletions in strike-out):**

*In order to prevent significant adverse socio-economic and cultural impacts on harvesters due to increased costs resulting from the need to travel further to hunt because of wildlife disturbances caused by the Imperial Deh Cho Geotechnical Program, ~~Imperial's harvester compensation program must also~~ **Imperial will reasonably** consider claims for increased fuel costs from harvesters displaced from their traditional harvesting areas.*

### **Measure 12- Review Board's proposed final, January 19, 2006**

In order to prevent significant adverse socio-economic and cultural impacts on harvesters due to increased costs resulting from the need to travel further to hunt because of wildlife disturbances caused by the Imperial Deh Cho Geotechnical Program, Imperial's program for harvester compensation must also consider compensation claims for increased fuel costs from harvesters displaced from their traditional harvesting areas.



## MEASURE 13

### **Measure 13 Original wording:**

In order to prevent significant adverse social and cultural impacts on the people of the Pehdzeh Ki First Nation, no land use activities for geotechnical sites within 3 km of either bank of the Blackwater River and within 15 linear kilometers upstream (east) of where the Blackwater River meets the Highway 1 winter road are to be authorized by the MVLWB. The sole exception to this is the proposed Blackwater River pipeline crossing site, which may only be investigated without new access.

### **RMS Proposed modification January 6 2006 (additions in bold, deletions in strike-out)**

*In order to prevent significant adverse social and cultural impacts on the people of the Pehdzeh Ki First Nation, ~~no land use activities for geotechnical sites within 3 km of either bank of the Blackwater River and within 15 linear kilometers upstream (east) of where the Blackwater River meets the Highway 1 winter road are to be authorized by the MVLWB. The sole exception to this is the proposed Blackwater River pipeline crossing site, which may only be investigated without new access.~~ **Canada shall consider the Blackwater River area in fulfilling its declared intention to negotiate with the Dehcho First Nations pursuant to Article 8 of the Dehcho Settlement Agreement, signed on July 8, 2005. The environmental provisions of any land use permits shall be developed in a manner consistent with Supreme Court of Canada decisions, notably the Haida and Taku decisions, regarding the Crown's obligation to consult with Aboriginal peoples. For greater certainty, any permits issued for such activities must also be compliant with the provisions of existing comprehensive land claims agreements.***

### **Measure 13- Review Board's proposed final, January 19, 2006**

In order to prevent significant adverse social and cultural impacts on the people of the Pehdzeh Ki First Nation, no land use activities for the geotechnical sites within 3 km of either bank of the Blackwater River and within 15 linear kilometers upstream (east) of where the Blackwater River meets the Highway 1 winter road are to be authorized by the MVLWB. The sole exception to this is the proposed Blackwater River pipeline crossing site, which may only be investigated without creating new routes to the site, or for those areas where the creation of new routes is required, where Imperial and Pehdzeh Ki First Nation reach an agreement concerning provisions for creating those routes.

## MEASURE 14

### **Measure 14 Original wording:**

Prior to conducting geotechnical investigations at each of the proposed sites surrounding Ochre River, Willowlake River, River Between Two Mountains, Smith Creek and Wrigley, representatives of Imperial and Colt KBR are to conduct a site visit with representatives of the PKFN Pipeline Working Group and community Elders (along with translators as needed), to identify specific locations of heritage resources within these areas. Imperial must avoid disturbing these heritage resources with its geotechnical activities. For the areas of Willowlake River and River Between Two Mountains, the resident Betsedea, Boots and Yendie families must be invited to participate in the site visit to identify specific locations which must not be disturbed, to suggest timing of activities that would cause the least disruption to harvesting and other traditional activities, and to be alerted of the exact timing of Imperial Deh Cho Geotechnical Program activities in their traditional areas.

### **Proposed Modification January 6, 2006 -.**

*Prior to conducting geotechnical investigations at each of the proposed sites surrounding Ochre River, Willowlake River, River Between Two Mountains, Smith Creek and Wrigley, representatives of Imperial and Colt KBR ~~are~~ **shall make best efforts every reasonable effort** to conduct a site visit with representatives of the PKFN Pipeline Working Group and community Elders (along with translators as needed), to identify specific locations of heritage resources within these areas. Imperial must avoid disturbing these heritage resources with its geotechnical activities. For the areas of Willowlake River and River Between Two Mountains, the resident Betsedea, Boots and Yendie families must be invited to participate in the site visit to identify specific locations which must not be disturbed, to suggest timing of activities that would cause the least disruption to harvesting and other traditional activities, and to be alerted of the exact timing of Imperial Deh Cho Geotechnical Program activities in their traditional areas. **Imperial shall document its efforts and provide that documentation to the regulatory authorities and Wrigley. The monitors and Elder shall independently report back to Wrigley.***

### **Measure 14- Review Board's proposed final, January 19, 2006**

Prior to conducting geotechnical investigations at each of the proposed sites surrounding Ochre River, Willowlake River, River Between Two Mountains, Smith Creek and Wrigley, representatives of Imperial and Colt KBR are to provide opportunities for representatives of the PKFN Pipeline Working Group and community Elders (along with translators as needed), to conduct a site visit with Imperial or its contractors to identify specific locations of heritage resources within these areas. Imperial must avoid disturbing these heritage resources with its geotechnical activities. For the areas of Willowlake River and River Between Two Mountains, the resident Betsedea, Boots and Yendie families must be invited to participate in the site visit to identify specific locations which must not be disturbed, to suggest timing of activities that would cause the least disruption to harvesting and other traditional activities, and to be alerted of the exact timing of Imperial Deh Cho Geotechnical Program activities in their traditional areas.



**Mackenzie Valley  
Environmental Impact  
Review Board**

**MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD**

**In the Matter of:**                    **An application for a land use permit  
MV2002X0080 by Imperial Oil Resources  
Ventures Ltd. for the Deh Cho  
geotechnical program;**

**And in the Matter of:**            **Report of Environmental Assessment  
EA03-009**

**And In the Matter of:**           **A Consult to Modify Process initiated by  
the federal Minister on December 23,  
2005 in respect of the Measures  
Recommended in EA03-009**

**SUPPLEMENTARY REASONS FOR DECISION IN RESPECT OF  
MEASURE 10**

**BACKGROUND:**

The original measure required Imperial Oil Resource Ventures Ltd. (Imperial) to provide the MVLWB with "evidence of progress" towards access and benefits agreements. The intention of this measure was to contribute to the prevention cumulative socio-economic impacts from this program in combination with reasonably foreseeable future projects (eg. the Mackenzie Gas Project). The measure was worded to **ensure that there was evidence of progress towards** Access and Benefit Agreements between Imperial and the five DAS member communities affected by the Imperial Deh Cho Geotechnical Program before the geotechnical work began.

The Public Record for this environmental assessment closed December 14, 2004 and the Report of Environmental Assessment (REA) was sent to the Minister of Indian and Northern Affairs Canada (INAC) on February 18, 2005. It is important to take note of these dates, as the MVEIRB can only consider information that was presented to it and that is filed on the Public Record.

In a June 17, 2005 letter from Minister Scott, INAC indicated that the responsible Ministers wished to engage the Board in a "Consult to Modify" process under section 130 of the MVRMA. Subsequently, a letter was sent to the Board December dated 23, 2005 (approximately 12 months following the closure of the Public Record and 10 months post-REA submission) where the responsible Ministers provided details and substance for their views on the measures including a supporting rationale for the changes suggested.

Section 130(3) of the MVRMA allows the federal and responsible Ministers to identify any additional information that was not before the Review Board in any consultation held with the Board. During the consultation process a January 16, 2006 letter to the Board, identified the following new information for its consideration:

- News release and backgrounder dated January 14, 2005, entitled "Public private relationships creates \$4 million in funding to support preliminary Mackenzie Gas Project planning"
- News release and backgrounder dated July 11, 2005, entitled "Government of Canada and Dehcho First Nations reach agreement"
- News release dated July 14, 2005, entitled "\$500 Million Mackenzie Gas Project socio-economic impact fund"

#### **CONSIDERATION:**

The responsible Ministers have proposed a modification to the original measure in the Board's REA and have suggested it be changed to a suggestion (see Dec 23<sup>rd</sup>, 2005 letter from INAC to the Board).

In a January 11, 2006 letter to the INAC Minister and the Chair of the MVEIRB, the Smbaa K'e Dene Band reiterate they are currently pursuing direct negotiations with Imperial Oil regarding all mitigation and compensation matters. Smbaa K'e Dene Band also states it has always been open to direct negotiations regarding the Geotechnical Program.

#### **BOARD DECISION:**

The Board has considered the new information provided by the responsible Ministers, revisited the evidence and considered the original intent for Measure #10. It is important to note that the intent of this measure was "to ensure that **there was evidence of progress towards** Access and Benefit Agreements between Imperial and the five DAS member communities affected by the Imperial Deh Cho Geotechnical Program."

While this evidence was to have been provided by Imperial Oil and DAS, the relevant information was instead provided by INAC. This information indicates there was desired progress in meeting the original intent of this measure.

The Board believes that the intent of its original measure has now been met by the provision of additional resources to enhance the capacity of those Dehcho First Nations who are tasked by the Aboriginal leadership (which includes representatives from all five communities affected by the program) to represent their interests in all negotiations relating to oil and gas development now taking place in the Deh Cho region.

Therefore the Board concludes that because of the passage of time and in light of the additional information, not available to the Board at the time it was drafting its REA, the intent and substantial requirements of this measure have now been met. In the Board's view, measure 10 is no longer required to prevent significant adverse cumulative socio-economic impacts from this program.

The Board concludes that this measure should be removed from the REA and suggests to the Responsible Ministers that future "consult to modify" processes would be more efficient if conducted in a timely manner.

**DATED:        January 27<sup>th</sup>, 2006**

**For the Mackenzie Valley Environmental Impact Review Board:**

Gabrielle Mackenzie-Scott  
Ms. Gabrielle Mackenzie-Scott  
Chairperson