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February 28, 2007

Martin Haefele
Environmental Assessment Officer
Mackenzie Valley Environmental Impact Review Board
Box 938
YELLOWKNIFE, NT X1A 2N7

File Number: MVEIRB EA 0607-003

Dear Mr. Haefele,

**Re: Responses to Ur-Energy Uranium Exploration Project Screech Lake,
additional Information Requests INAC-IR0607-003-14 and INAC-
IR0607-003-15**

Indian and Northern Affairs Canada (INAC) is pleased to submit the attached responses to the Mackenzie Valley Environmental Impact Review Board's IR-0607-003-14 (Cumulative Effects Study) and IR0607-003-15 (Establishment of Mineral Claims and Consultation), on the Ur-Energy Uranium Exploration Project.

If you have any questions or concerns regarding these responses, please contact Lionel Marcinkoski at 669-2591 or marcinkoskil@inac.gc.ca.

Sincerely,

David Livingstone
Director Renewable Resources and Environment

Encl.: IR0607-003-14
IR0607-003-15

cc. INAC EA Working Group

Canada

Ur-Energy Uranium Exploration – MVEIRB EA 0607-003

IR Number: IR0607-003-14
Source: MVEIRB
To: INAC
Issue: Cumulative Effects Study

Preamble

On several occasions throughout the environmental assessment individuals have made reference to a cumulative effects study initiated, or about to be initiated, jointly by INAC and the NWT Treaty 8 Tribal Corporation. However, there is no information about the scope, objectives, timeframe, etc. of this study on the record. In the Review Board's opinion information about this proposed study may be relevant to this assessment as concern over cumulative effects is one of the issues identified in the work plan.

Request

Please provide a brief description of the proposed cumulative effects study, including its temporal and geographic scope, methodology, objectives, milestones, timelines and contributors, as well as a brief overview of its history, i.e. what caused the initiation of this study.

INAC Response:

Thelon Cumulative Effects Study

INAC Mineral Development Division agreed to fund a cumulative effects study of the Thelon basin as described below and in the attached documents.

History:

In April 2006, INAC Mineral Development Division (MDD) initiated discussions about the study with the Akaitcho Treaty 8 Interim Measures Agreement (IMA) Office. The MDD was responding to concerns expressed by Akaitcho community members and organizations regarding the cumulative effects of mineral exploration and mining in general and uranium exploration and mining in particular within the watershed. MDD and the IMA Office have been discussing the terms of reference for the study for several months. The most recent available draft is dated December 7, 2006, and is attached.

Objectives:

The primary objective of this compilation is to help to identify geographic areas where exploration activities (past or future) may compete/conflict with traditional or wildlife use. This information will serve as a tool to anticipate potential Section 35 assertions of treaty and/or aboriginal rights infringements, and to help Aboriginal peoples, government departments, regulators, and industry identify and address conflicts. The information will further serve as a starting point for undertaking cumulative effects studies in the area.

Methodology:

The study will compile 3 sets of existing data:

1. traditional land use by Akaitcho Dene
2. grazing/calving/migration use by caribou of the Beverly herd
3. nature and footprint of exploration activities by companies exploring for uranium.

The nature of each of these land uses will be described and the data will be compiled in a GIS (map) format so the land uses can be layered in a common view. The three data sets will be reviewed together by Mineral Development Division Staff and AKFN staff including the Akaitcho IMA Coordinator to determine if there are areas where proposed mineral exploration is in conflict with traditional use areas. If any areas of conflicting use are identified they will be reviewed to determine if the traditional use area can reasonably be avoided. If this is not the case, a more detailed site specific review may be required as follow up for specific areas. Further description is provided in the attached draft terms of reference.

Additional analysis and discussion may be conducted following the completion of this study. Such activities would be outside the scope of this particular study.

Geographic scope:

The study will include that portion of the Thelon geological basin which is:

- within the NWT and
- outside the Thelon Game Sanctuary,

and the immediately adjacent area.

General boundaries for the area are between 62° N and 63.5°N; and between 102 ° W and 105 °W.

Temporal scope:

Data for mineral exploration will extend from when uranium exploration was originally undertaken in the region (late 1960's and early 1970's) to the present. The data will include planned activities by current mineral claim holders.

Information about traditional land use by Akaitcho Dene will extend as far back as such information is available from traditional knowledge holders and any other available sources.

Information about grazing/calving/migration use by caribou of the Beverly herd will likely include both scientific and traditional knowledge extending as far back as each is available.

Milestones and Timelines:

Milestone/Activity	Status and next steps
Agreement between INAC and Akaitcho IMA office on final terms of reference for the overall project.	Not complete as of Feb. 28, 2007. Targetting completion by March 31, 2007.
Contract to compile mineral exploration data (Item 3 in draft TOR)	As of Feb. 28, 2007 INAC MDD has issued contract to Aurora Geosciences. Deliverables to be provided by March 30, 2007. Further details of timing are provided in the attached extract from the contract.
Contract to compile traditional land use information (Item 1 in draft TOR)	As of Feb. 28, 2007, INAC and Akaitcho IMA Office are discussing statement of work. Targetting agreement on statement of work by March 30 2007, after which contract will be issued.
Contract to compile caribou information (Item 2 in draft TOR).	As of Feb. 28, 2007, INAC and Akaitcho IMA Office are discussing statement of work. Targetting agreement on statement of work by March 30 2007, after which contract will be issued.
Assessment/analysis of the combined results of the studies by INAC staff and members of AKFN, and follow up for specific areas as required (Items 4 and 5 in draft TOR).	Not initiated as of Feb. 28, 2007. Timelines dependent on completion of above milestones.
Final report (Item 6 in TOR).	Not initiated as of Feb. 28, 2007. Timelines dependent on completion of above milestones.
Updated list of community contacts and guidelines for setting up meetings (Item 7 in TOR).	No target dates set as of Feb. 28, 2007.
Provision of funding to Akaitcho communities to cover participation costs.	Not complete as of Feb. 28, 2007. Timelines dependent on completion of above milestones.

Contributors:

- INAC (Mineral Development Division, Policy & Planning Directorate)
- Akaitcho Interim Measures Agreement Coordinator
- Akaitcho First Nations, as identified by INAC and Akaitcho IMA Office
- Aurora Geosciences (contractor)
- Contractor for compilation of traditional land use information (not yet identified).
- Contractor for compilation of traditional land use information (not yet identified).
- Additional sources of information and potential contributors may be identified as the terms of reference for the traditional land use and caribou data compilation projects are developed.

Attachments:

- 1) Most recent draft of terms of reference for the overall study – December 7, 2006
- 2) Extract from contract to compile mineral exploration information (Item 3 in draft TOR).

Thelon Area Study Terms of Reference
Draft – Dec. 7, 2006

INAC Mineral Development Division will fund the following

- 1) A review of the traditional and current use by Akaitcho Dene First Nations (AKFNs) of the NWT portion of the Thelon Geological Basin and immediately adjacent areas, with a focus on the exercise of aboriginal and treaty rights. MDD will contract a consultant with experience to undertake the work. MDD will consult with AKFNs with respect to the consultant to be selected, and will hire a consultant who is acceptable to the AKFNs. The successful contractor will use any available electronic or hard copy map based data on traditional and current use patterns along with interviews with selected elders and other community members familiar with the area.
- 2) A review of the migratory routes, post-calving areas, and wintering areas used by the Beverly caribou herd in the NWT portion of the Thelon Geological Basin and immediately adjacent areas.
- 3) A review of areas of past usage of the area by the mineral exploration industry. This will largely be limited to the locations of camps and diamond drill holes completed prior to the current work programs. In addition the current holders of mineral exploration prospecting permits/mineral claims and leases will be interviewed to determine the timing and type of exploration activities they envisage conducting in the next five-six years. As with the historic exploration data efforts will concentrate on identifying areas where camps, drilling and geophysical studies will be undertaken.
- 4) Data from the three studies will be compiled and synthesized in a report and onto a common map base so they can be compared. The three data sets will be reviewed together by Mineral Development Division Staff and AKFN staff including the Akaitcho IMA Coordinator to determine if there are areas where proposed mineral exploration is in conflict with traditional use areas. In this review, the cumulative effects of exploration activity in the Thelon Geological basin and adjacent areas will be considered.
- 5) If any areas of conflicting use are identified they will be reviewed to determine if the traditional use area can reasonably be avoided. If this is not the case, a more detailed site specific review may be required as follow up for specific areas. Strategies for dealing with these sites could include working during specific seasons.

- 6) In the process of collecting the data MDD will emphasize in its final report the many sources of information already available to mineral exploration companies on culturally and environmentally sensitive areas in the Thelon and the need to operate in a way that meets the standards in the Prospectors and Developers Association of Canada Environmental Excellence in Exploration best practice guidelines.
- 7) In order to make it easier for the companies to organize productive meetings with the community an updated list of community contacts and guidelines for setting up community meetings should be developed and updated frequently to reflect changes in leadership etc. MDD will then provide this to companies wishing to meet with various community leaders and formalized institutions.
- 8) Funding in amounts to be negotiated will be made available to the AKFNs to cover the costs of their involvement in this process.

Thelon Area Study - Extract from Contract Awarded by INAC to Aurora Geosciences

Survey of Historical Mineral Development in the Thelon Watershed of the NWT

Background

Recent doubling in uranium prices coupled with projected growing demand have created renewed interest in uranium exploration in the Northwest Territories. In the last year, there has been a significant increase in mineral companies planning to explore for uranium in the Thelon Geological Basin. This interest is occurring after a roughly twenty (20)-year hiatus in uranium exploration in the Basin, during which time significant changes to the licensing and regulatory regimes have occurred, particularly with respect to concern with the cumulative effects of mineral development. The Thelon River watershed in particular is considered a sensitive area and overlaps, to a large degree, with the geological basin. Aboriginal communities in the areas affected by this recent wave of exploration have expressed concern regarding the cumulative effects of mineral exploration and mining in general and uranium exploration and mining in particular within the watershed.

The Department of Indian Affairs and Northern Development (DIAND), as part of its role in promoting sustainable mineral development in the Northwest Territories (NWT), provides information on mineral industry practices to the general public. In keeping with this role, this contract will cover the cost of a study of the nature and location of historical mineral exploration programs in the Thelon Geological Basin/Thelon watershed, with a view to future cumulative effects assessment and monitoring.

Objective

To undertake a survey of the existing historical material regarding mineral exploration in an agreed upon project area, covering portions of the Thelon watershed and Geological Basin, which is outside of the Thelon Game Sanctuary and currently the focus of mineral exploration.

Scope of Work

The Contractor shall perform the following to the satisfaction of the Departmental Representative:

1. perform an initial study of the historical material related to the project area to determine the scope of work, including database setup;
2. do research and data entry for historical exploration activity, the project area including scanning of mineral claim maps;
3. use the data collected to create maps of historical exploration activities in the project area in the specified Arc-format GIS compatible with the software currently in use by DIAND and databases compatible with same;
4. produce Arc-format compatible digital data and metadata tables containing, but not limited to, the following:
 - a) an appropriate scale base map showing drainage, territorial boundaries, geological units, watershed boundaries, latitude/longitude and/or NTS grid, existing or proposed parks, protected areas and game sanctuaries;
 - b) Arc-format compatible data tables with point and/or line data showing the physical location of historical claim boundaries, camp locations, geophysical grid locations, areas of physical geological work (soil samples, trenching etc.), drill hole locations and any other data DIAND and the Contractor determine is pertinent to the project scope. The data will be presented as both Latitude/Longitude and UTM Grid Reference using the NAD 83 Datum;
 - c) metadata tables provided with the data giving exploration company name, claim names and/or prospecting permit numbers, type of exploration activity, dates of exploration activity, commodity

type sought, estimated accuracy of coordinate data, and references (assessment report number, other references, etc).

5. produce draft of maps and databases.
6. incorporate feedback from the Departmental Representative and produce final versions of maps/databases.

Output Deliverables

The Contractor shall submit the following to the Departmental Representative:

1. on or before February 8, 2007, submit the following:
 - a) an initial draft of the database tables;
 - b) discuss the project parameters, including the geographic extent of the proposed project area, with the DIAND representative(s).
2. On or before March 20, 2007, present an initial draft of maps and databases for discussion to the DIAND representative(s);
3. On or before March 27, 2007, present a final draft of maps and databases to the DIAND Representative(s) to discuss any deficiencies or changes and to organize project handover; and,
4. On or before March 30, 2007, present a final version of the maps and databases to the DIAND representative.

Departmental Support

The Department will provide the following to the Contractor:

1. arrange to meet with the Contractor for consultation on any problematical aspects of the project;
2. provide access to data on historical claim dispositions held by the Mining Recorders Office; and,
3. review and comment, in a timely manner, on draft documents submitted by the Contractor.

Intellectual property

The Department of Indian Affairs and Northern Development has determined that any Intellectual Property arising from the performance of the work under the contract will vest in Canada for the following reason: the main purpose of the contract, or of the deliverables contracted for is to generate knowledge and information for public dissemination.

Ur-Energy Uranium Exploration – MVEIRB EA 0607-003

IR Number: IR0607-003-15
Source: MVEIRB
To: INAC
Issue: Establishment of Mineral Claims and Consultation

Preamble

During the public hearing of January 16 and 17, 2007 in Lutsel K'e the Review Board heard that the upper Thelon watershed was staked and mineral claims established within a very short period of time. The Review Board further heard that the community of Lutsel K'e refrained from selecting the area for interim land withdrawals because these mineral claims provided their holders with certain rights that effectively made the land no longer available for withdrawal.

The Review Board heard that a conflict may exist between the Canada Mining Regulations, which provide for a "free entry" system, and the crown's duty to consult under section 35 of the Constitution Act. INAC told the Review Board that its interim approach to Crown consultation includes a "consultation gap analysis", part of which involves reviewing the Review Board's process to determine if any additional consultation is required.

For the Review Board to discharge the responsibilities outlined above, it must understand any limits put on potential mitigation measures by existing rights, such as rights conferred to a holder of a mineral claim. The Review Board must further understand the basis and nature of the concerns expressed to it during the public hearing. Consequently, the Review Board must understand how the mineral claim in question, as well as others came into existence and which rights and/or obligations it gives its owner.

Request

1. How are mineral claims established and maintained, particularly those in the vicinity of the proposed development?

All mineral claims must be established and maintained in the same manner pursuant to the Canada Mining Regulations (the "CMRs"). According to ss.11 (1) of the CMRs, a licensed prospector may enter, prospect for minerals and locate (i.e. stake) claims on lands other than lands:

- (a) to which the *National Parks Act* applies;
- (b) used as a cemetery or burial ground;
- (c) in respect of which a claim has been recorded and has not lapsed;
- (d) the minerals in which have been granted or leased by Her Majesty;

(e) set apart and appropriated by the Governor in Council for a purpose set out in section 23 of the Act;

(f) the entry on which for the purpose of prospecting for minerals and locating a claim thereon is prohibited by order of the Governor in Council, subject to the terms and conditions contained in the order;

(g) under the administration and control of the Minister of National Defence, the Minister of Energy, Mines and Resources or the Minister of Transport, unless the consent of that Minister has been obtained in writing; or

(h) the surface of which has been granted or leased by Her Majesty, unless the grantee or lessee consents thereto or an order authorizing entry thereon has been made pursuant to subsection 72(3).

Once a licensed prospector (including prospecting permit holders) properly stakes claims in the field, applications to record the claims must be presented to the Mining Recorders' Office with the appropriate fees, maps, and forms within 60 days of completion of staking. Once recorded, the registered claim holder must then do the amount of work on each claim specified by the CMRs in order to keep the claim in good standing. A claim holder may apply for a lease of a registered claim within 10 years of when the claim was recorded, otherwise the claim lapses. If an application for a lease is properly made then a lease of the registered mineral claim must be issued by the Minister of INAC. Once a mineral lease has been issued, the annual rental must be paid in order to keep the lease in good standing. Each mineral lease is valid for a period of 21 years with the option to renew for a further 21 year period.

2. What rights and/or obligations does a mineral claim confer to the holder/owner of the claim?

Section 27 of the CMRs states that:

(1) Subject to these Regulations and to any other regulations made under section 5 or 23 of the Act, the holder of a recorded claim has the exclusive right to prospect for minerals and to develop any mine on the land within the boundaries of the claim.

(2) No person shall remove, sell or otherwise dispose of minerals or mineral-bearing substances from a recorded claim the gross value of which exceeds \$100,000, other than for assay or testing purposes, before the holder of the claim is granted a lease for the claim.

(3) The holder of a recorded claim who has not been granted a surface lease or grant of the land comprised in the claim is not entitled to erect any building to be used as a dwelling or any mill, concentrator or other mine building or create any tailings or waste disposal area in connection with the commencement of production from a mine on that claim.

Accordingly, besides the mineral lease mentioned above, a registered claim holder will also require a surface lease from the Minister of INAC should a recorded mineral claim eventually develop into an operating mine.

3. What criteria does INAC use when it conducts a “consultation gap analysis” to determine if the s.35 consultation obligations have been met?

To address the statement made by the Lutsel K'e Dene Band as referred to by the Review Board in the preamble to this Information Request, it should be noted that any withdrawal of lands in the interim of settlement of claims negotiations between Canada, the GNWT and the Akaitcho Dene First Nations is explicitly subject to third party interests existing at the time of such withdrawal. Just because there are existing third party interests in lands does not make the lands “unavailable” for withdrawal in the interim of final settlement. Of the mineral claims that may exist at any given point in time, very few claims may result in the actual development of an operating mine. The interim withdrawal of lands during the process of claims negotiations does, however, prevent the establishment of new third party interests in the land as, pursuant to para. 11(1)(e) of the CMRs, a licensed prospector is prohibited from locating claims on lands withdrawn by the Governor in Council.

It is INAC's view that there is no “conflict” between the operation of the CMRs and the Crown's duty to consult as referred to by the Review Board in the preamble to this Information Request. Treaty 8 states, in part, that the signatories to the Treaty such as the Akaitcho Dene First Nations:

...shall have right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.

The CMRs, pursuant to the *Territorial Lands Act*, were enacted to govern mineral rights and mining of minerals in the Northwest Territories.

The Crown's duty to consult arises where the Crown has real or constructive knowledge of the potential existence of an Aboriginal or Treaty right and contemplates conduct that might adversely affect such a right. The Supreme Court of Canada stated that the scope (or extent) of the Crown's duty to consult exists on a spectrum. The scope of Crown consultation is proportionate to the strength of a claim to an Aboriginal right and the seriousness of the potential adverse effect on the right. With respect to established Treaty rights, the scope of Crown consultation is proportionate to the potential adverse effect on the right as described in the particular Treaty.

The MVRMA was enacted pursuant to Canada's obligations under the Gwich'in and Sahtu settled claims agreements. Those two settled claims agreements were a result of the earlier failed Dene-Métis claims settlement negotiations. It should also be noted that the idea for the establishment of the MVRMA boards as institutions of public government and an integrated and coordinated system of land and water management in the Mackenzie Valley came from the Aboriginal parties (including the AKDFN) to the failed Dene-Métis claims settlement negotiations. There were extensive consultations with the Aboriginal groups of the Mackenzie Valley conducted by Canada with respect to

the enactment of the MVRMA. The MVRMA is a piece of legislation unique to the Mackenzie Valley, designed to promote the direct involvement of Aboriginal groups in such institutions of public government as the Review Board. One of the legislative purposes of the Review Board's environmental assessment of the proposed project is to ensure that the concerns of Aboriginal people and the general public are taken into account, s.114(c) MVRMA. Section 115 of the MVRMA explicitly requires the environmental assessment process to have regard to the protection of the social, cultural and economic well-being of Mackenzie Valley residents and communities and to have regard to the importance of conservation to the well-being and way of life of the Aboriginal peoples of the area to whom s.35 of the *Constitution Act, 1982* applies.

The common law indicates that, although the duty to consult remains with the Crown, the procedural aspects of consultation may be delegated. In INAC's view, the Review Board's environmental assessment process is procedural consultation. During an environmental assessment, the developer must provide information about its proposed project and the potential impacts of such development on those matters set out in the Terms of Reference developed by the Board for a particular project assessment and that information is distributed to interested parties, including Aboriginal groups. Aboriginal parties may participate in the environmental assessment process and raise any concerns that they may have about the proposed project. It is the Review Board's job to assess the evidence brought before it by all the parties to the environmental assessment and then make recommendations to the Responsible Ministers with respect to the proposed project as outlined in s.128 of the MVRMA. It is the Responsible Ministers that then make a decision about the Review Board's recommendation and must consider as part of their decision-making whether the Crown's duty to consult has been met in view of any specific Aboriginal or Treaty rights asserted by particular Aboriginal parties to the environmental assessment, the findings of the Review Board with respect to the potential impact of the proposed project and the Review Board's recommendation about the proposed project.

The Crown's duty to consult arises in the context of a specific fact situation and, as the courts have stated, the duty must be considered on a case-by-case basis. Prior to making their decision about any proposed project which has undergone an environmental assessment, INAC and the other Responsible Ministers review:

- the concerns raised by the Aboriginal parties during the environmental assessment consultation process relevant to the proposed project;
- any consultation with Aboriginal groups undertaken by the project proponent;
- the commitments that the project proponent may have made with respect to potential mitigation measures or accommodation of Aboriginal interests;
- the findings of the Review Board with respect to the potential impact of a proposed project, and;
- the Review Board's recommendation, including mitigation measures if the recommendation of the Review Board is for the Responsible Ministers to approve a proposed project subject to mitigation measures.

Aboriginal groups may raise concerns with respect to potential adverse impacts on their asserted/established Aboriginal and/or Treaty rights during an environmental assessment with respect to any particular project proposal that cannot be addressed by the Review Board's processes because of the limits of the Review Board's mandate or the mandates of the regulatory bodies that are bound by the Responsible Ministers' decision on a project proposal. If those concerns are not already addressed by the claims negotiations processes or other ongoing processes involving Aboriginal groups and the Crown then the Responsible Ministers will assess whether further consultation is required with any particular Aboriginal group in view of the scope of consultation that any given situation may require and the balancing of Aboriginal interests with those of the general public.