



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

Environment & Conservation
Box 1500
YELLOWKNIFE NT X1A 2R3

January 29, 2010

MVEIRB File Number: EA0708-007

Alan Ehrlich
Environmental Assessment Officer
Mackenzie Valley Environmental Impact Review Board
P.O. BOX 938
YELLOWKNIFE NT X1A 2N7

VIA EMAIL

**Re: Taltson Hydroelectric Expansion Environmental Assessment –
Public Hearing Undertaking #5**

Dear Mr. Ehrlich:

At the January 14-15, 2010 public hearings for the proposed Dezé Energy Corporation Taltson Hydroelectric Expansion, Indian and Northern Affairs Canada (INAC) undertook the following:

Undertaking #5:

INAC to give an explanation of how the licence of occupation process works under the Federal Real Property Act.

(Public Hearing transcript, January 15, 2010, p. 8.)

Response:

INAC notes that Dezé has not yet made any applications to INAC for a licence or any other regulatory instrument in relation to the Taltson project.

As part of its mandate to manage surface activities on Crown lands in the Northwest Territories, INAC is authorized to issue licences under the *Federal Real Property Regulations* pursuant to the *Federal Real Property and Federal Immovables Act*. Please note that while INAC's earlier communications used the term "licence of occupation," the more appropriate term is "licence." A licence provides non-exclusive use for the licensee, and grants permission to do what would otherwise constitute a trespass. A licence is not an interest in land. It is specific to a particular licensee, usually for a specific purpose.

A description of INAC's process for issuing licences is provided as Attachment 1, "Process for the Review of Licence Applications."

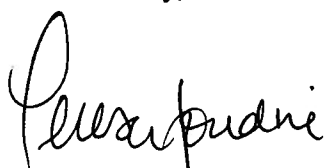
As set out in Attachment 1, Step 4, INAC circulates licence applications to its Land Advisory Committee (LAC), which consists of government, co-management boards, and Aboriginal groups. A sample LAC distribution list is attached (Attachment 2). In the case of the Taltson project, government departments and agencies on the LAC list would include, at a minimum, Environment Canada, Parks Canada, Fisheries and Oceans Canada, Transport Canada,

various Government of the Northwest Territories departments, and the Tlicho Government. With respect to Aboriginal groups, INAC must also comply with the provisions of any applicable land claims agreements and Interim Measures Agreements. In the case of the Taltson project, the issuance of a licence for the transmission line would be subject to the provisions of the Tlicho Agreement and to the processes described in the Akaitcho Interim Measures Agreement, Schedule D, Surface Federal Crown Lands (Attachment 3) and in the Northwest Territory Métis Nation Interim Measures Agreement, Schedule 4.1(c), Surface Federal Crown Lands (Attachment 4).

The processes described above and in the attachments form part of INAC's duty to consult Aboriginal peoples pursuant to section 35 of the *Constitution Act, 1982*.

If you have any questions about the above, please contact Karen Polakoff at 669-2670 or via email at Karen.Polakoff@inac-ainc.gc.ca.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Teresa Joudrie', written in a cursive style.

Teresa Joudrie
Director, Renewable Resources and Environment

cc. INAC EA Working Group

Attachments:

1. Process for the Review of Licence Applications
2. Land Advisory Committee distribution list
3. Akaitcho Interim Measures Agreement - Schedule D, Surface Federal Crown Lands
4. Northwest Territory Métis Nation Interim Measures Agreement - Schedule 4.1(c), Surface Federal Crown Lands

Process for the Review of Licence Applications

1. Applications for Federal Crown Land are received at the Land Administration Office in Yellowknife.
2. An application for a licence is reviewed internally for completeness. Where the proposed activity is a linear development INAC will ensure it terminates at an authorized related end use (such as the Tibbitt road to the mines).
3. INAC determines if the lands are available for the intended purpose.
4. The application package is distributed to the Land Advisory Committee. Where a Final Land Claim Agreement (FA) or Interim Measures Agreement (IMA) is in place the consultation bodies and timeline obligations in the FA or IMA are followed.
5. All comments received are considered and any follow-up carried out. Upon completion of the consultation process the appropriate bodies are advised of the decision. Where the decision does not follow the comments or advice from the Aboriginal group INAC provides reasons for decision.
6. As all of a project's authorizing applications should have been submitted at the same time to all regulators, land use permit(s) and water licence reviews and/or public hearings may have been occurring simultaneously with the LAC review.
7. Land Administration advises the applicant if their application has been approved or denied. If approved, the letter will provide next steps required for issuance of the licence. A project receiving approvals and subsequent issuance of the necessary land use permit(s) and/or water licence plus any other necessary authorization required for construction may proceed.
8. After construction is fully completed and the as-built land description of the lands used and occupied is submitted, Land Administration completes the licence document for signing by the parties. The land description may be in the form of a legal survey, a metes and bounds description, a sketch, or geo-referenced depiction as appropriate for the development.

LAND ADVISORY COMMITTEE (LAC)
DISTRIBUTION LIST

NWT DISTRIBUTION LIST		
Date sent	File no.	No of pages
Contact	Phone	
<input type="checkbox"/> Environmental Protection Services (32)		
<input type="checkbox"/> MACA - GNWT <input type="checkbox"/> Yellowknife (44) <input type="checkbox"/> Inuvik (45) <input type="checkbox"/> Ft. Simpson (46) <input type="checkbox"/> Rae-Edzo (47) <input type="checkbox"/> Fort Smith (48)		
<input type="checkbox"/> Fisheries & Oceans (30)		
<input type="checkbox"/> GNWT/ENR/ITI Policy EA Office (40)		
<input type="checkbox"/> Prince of Wales Northern Heritage Centre (39)		
<input type="checkbox"/> Water Resources - NAP (4)		
OTHER INTERESTED GOVERNMENTS		
<input type="checkbox"/> Indian Affairs Branch (51)	<input type="checkbox"/>	Mining Recorder (Mail)
<input type="checkbox"/> Parks Canada (35)	<input type="checkbox"/>	City of Yellowknife (53)
<input type="checkbox"/> Transport Canada (waterlots) (31)	<input type="checkbox"/>	EMPR - GNWT (38)
<input type="checkbox"/> Dept. Transportation GNWT (43)	<input type="checkbox"/>	Lloyd Binder (Reindeer Reserve) (76)
<input type="checkbox"/> Mine & Safety Div. GNWT (54)	<input type="checkbox"/>	Fort Smith Health and Social Services Authority (33)
	<input type="checkbox"/>	Yellowknife Health and Social Services Authority (41)
	<input type="checkbox"/>	Sahtu Health and Social Services Authority (42)
	<input type="checkbox"/>	Dehcho Health and Social Services Authority (52)
	<input type="checkbox"/>	Beaufort-Delta Health and Social Services Authority (59)
	<input type="checkbox"/>	Tlicho Community Services Agency (63)
DISTRICT OFFICES		
SOUTH MACKENZIE		
<input type="checkbox"/> Yellowknife (6) <input type="checkbox"/> Fort Smith (9) <input type="checkbox"/> Hay River (8) <input type="checkbox"/> Ft Simpson (7)		
NORTH MACKENZIE		
<input type="checkbox"/> Inuvik (10)	<input type="checkbox"/>	Norman Wells (11)
PUBLIC GOVERNMENT INSTITUTIONS		
<input type="checkbox"/> Mackenzie Valley Land and Water Board (21)	<input type="checkbox"/>	Wek'eezhii Land and Water Board Yellowknife (20) FOR BHP and DIAVIK Correspondence only
<input type="checkbox"/> Gwich'in Land Use Planning Board (50)	<input type="checkbox"/>	Wek'eezhii Land and Water Board Wekweeti (18) NON BHP and DIAVIK Correspondence only
<input type="checkbox"/> Gwich'in Land and Water Board (28)	<input type="checkbox"/>	Sahtu Land and Water Board (25)
	<input type="checkbox"/>	ISR - EISC (68)
FIRST NATION AND ABORIGINAL GROUPS		
<input type="checkbox"/> Dene Nation (19)	<input type="checkbox"/>	Tlicho Government (61)
<input type="checkbox"/> Saskatchewan Athabasca Denesuline (16)	<input type="checkbox"/>	Akaiicho (12)
<input type="checkbox"/> Acho Dene Koe First Nation (60)	<input type="checkbox"/>	Manitoba Denesuline (14)
<input type="checkbox"/> Inuvialuit Land Administration (17)	<input type="checkbox"/>	NWT Metis Nation (15)
<input type="checkbox"/> Dene Tha' First Nation (36)	<input type="checkbox"/>	Deh Cho First Nation - Ft Simpson (13)

Akaiicho Pre-Screening Board will further send application to Local Band offices who MAY be affected.

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SCHEDULE D
TO THE
AKAITCHO INTERIM MEASURES AGREEMENT
SURFACE FEDERAL CROWN LANDS

Preamble:

This is a Schedule to the Akaitcho Interim Measures Agreement that was signed by Akaitcho Dene First Nations, Canada and the Government of the Northwest Territories (GNWT) on June 28, 2001. The goal of the Interim Measures Agreement is to allow the Parties to engage in a process of mutual cooperation where certain activities, policies and applications for licences or permits relating to land use, lease and sale are the subject of an Akaitcho Pre-Screening Process. The Interim Measures Agreement, while not a binding contract, is a bridge to the ultimate Akaitcho Agreement. Schedules to the Interim Measures Agreement are without prejudice to the ongoing negotiations and set out the details of what the Akaitcho Pre-Screening Process will be for given activities. Attached as Appendix I to this Schedule is a description of the Akaitcho Pre-Screening Process.

Statutes:

Territorial Lands Act, R.S.C., 1985, T-7 and Regulations
Federal Real Property Act, R.S.C. 1991, C-50 and Regulations

For greater certainty, the listing of the above statute is not intended to preclude the ability of the Akaitcho Dene First Nations to negotiate the subject matters as set out in the Akaitcho Territory Dene First Nations Framework Agreement dated July 25, 2000.

Background:

Territorial Lands Act

The *Territorial Lands Act* and its Regulations provide for the administration and disposal of lands or any interests in land in the Northwest Territories that are vested in the Crown or of which the Government of Canada has power to dispose and administer. The administration of these lands is accomplished through the various regional and departmental land management policies that direct:

- a) disposal of surface rights in the territorial land to meet the legitimate needs of people and institutions living or conducting business in the north;
- b) protection of the environment by controlling and monitoring activities and operations occurring on territorial lands;

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- c) provision of land to territorial governments and other government departments or agencies, to enable them to carry out their legislative mandates; and
- d) consideration, in any lands disposition, of whether the actions affect the fiduciary (trust-based) relationship between government and aboriginal peoples.

Federal Real Property Act

The *Federal Real Property Act* (FRPA) provides for the administration and disposition of federal Crown Lands by all federal Crown agencies where there is no provision to do so in or under any other Act. The Act also allows DIAND to dispose of federal territorial lands to other federal agencies by transferring the "administration and control" of the parcel of land. As well, through the FRPA instruments such as licenses of occupation allow for linear developments previously not contemplated under the *Territorial Lands Act*.

Pre-screening Process:

1. An application refers to an application for Crown Lands under the administration and control of the Minister of Indian Affairs and Northern Development for:
 - a) the sale of surface Crown Lands;
 - b) the lease of surface Crown Lands;
 - c) the lease of surface Crown Lands with an option to purchase at a later date;
 - d) the issuance of Reserves of Crown Lands;
 - e) the transfer of Crown Lands to federal or territorial departments except where infrastructure already exists;
 - f) the establishment of easements for Crown Lands;
 - g) the issuance of licences of occupation for Crown Lands; and
 - h) any other land applications identified in the enabling Federal legislation that is not inconsistent with a) to g) and includes any changes in terms or conditions.

Applicants are required to submit an application form for Crown Land to the Department of Indian Affairs and Northern Development (DIAND).

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2. Copies of applications accepted as complete, and any available supporting information related to applications received by the Manager, Land Administration, for the application of Crown Lands will be forwarded to the Akaitcho DFN Pre-screening Board within five business days of a fully completed application form having been received by DIAND at:

Co-ordinator
Akaitcho DFN Pre-screening Board
Northwest Territories Treaty 8 Tribal Corporation
Box 1768
Yellowknife, NT X1A 2P3

3. The Board will consider the proposal and respond to the,

Manager, Land Administration
Department of Indian Affairs and Northern Development
Box 1500
4914 - 50th Street
Yellowknife, NT X1A 2R3

within forty-five (45) days of the receipt of the material or within such time as otherwise agreed to between Manager, Land Administration and the Board.

4. The term "Manager, Land Administration" shall also include any agent or agents that is delegated to act on behalf of the Manager, Land Administration.
5. The Board's response may include, but is not limited to, the following:
 - a) written submissions;
 - b) oral submissions;
 - c) audio-visual presentations; and/or
 - d) Elders' submission - oral or written.
6. The Manager, Land Administration will notify the Co-ordinator, Akaitcho DFN Pre-screening of the actions the Manager is taking in relation to completed applications. Where the Manager, Land Administration does not follow the decision of the Pre-screening Board on whether or not an application should be accepted or rejected the Manager will provide reasons. If requested, the Manager, Land Administration will meet with the Pre-screening Coordinator and/or the Board to discuss the outcome.
7. When required by legislation or policy, the Manager, Land Administration will conduct further consultations as required, the Federal Government will formally notify the Board of its decision on the proposed application.

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8. The Manager, Land Administration is the federal contact person for inquiries relating to the Pre-Screening Process described above.
9. The Manager, Land Administration will advise the Co-ordinator, Akaitcho DFN Pre-screening Board, once the consultation process has been completed and a decision has been rendered, of the actions taken in relation to the application being considered.

Other Applications for the Disposition of Federal Crown Lands

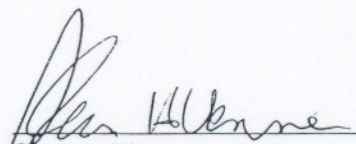
In order to ensure that all Crown Lands are covered, DIAND will undertake to consult with other federal departments responsible for the disposition of surface federal Crown Lands in the Northwest Territories with the view of amending this Schedule to include provisions for the Co-ordinator, Akaitcho DFN Pre-Screening Board, if necessary, in the review of applications received by federal departments other than the DIAND.

Co-existence Issues:

1. When another Aboriginal group or Aboriginal person has demonstrated an interest in the Federal Crown Lands, then the Board's response will be considered in the context of other processes or consultations with the other aboriginal group.
2. In the event that Canada or another Aboriginal group questions the application of this Schedule in a specific geographical area the issue is to be addressed on a priority basis before this Schedule can apply.

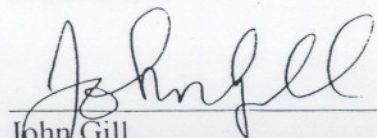
Dated this 13th day of February, 2003.

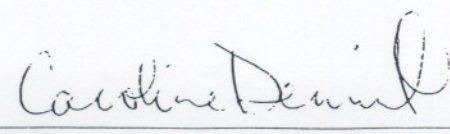
For the Akaitcho Dene First Nations


Sharon Venne
Chief Negotiator


Witness

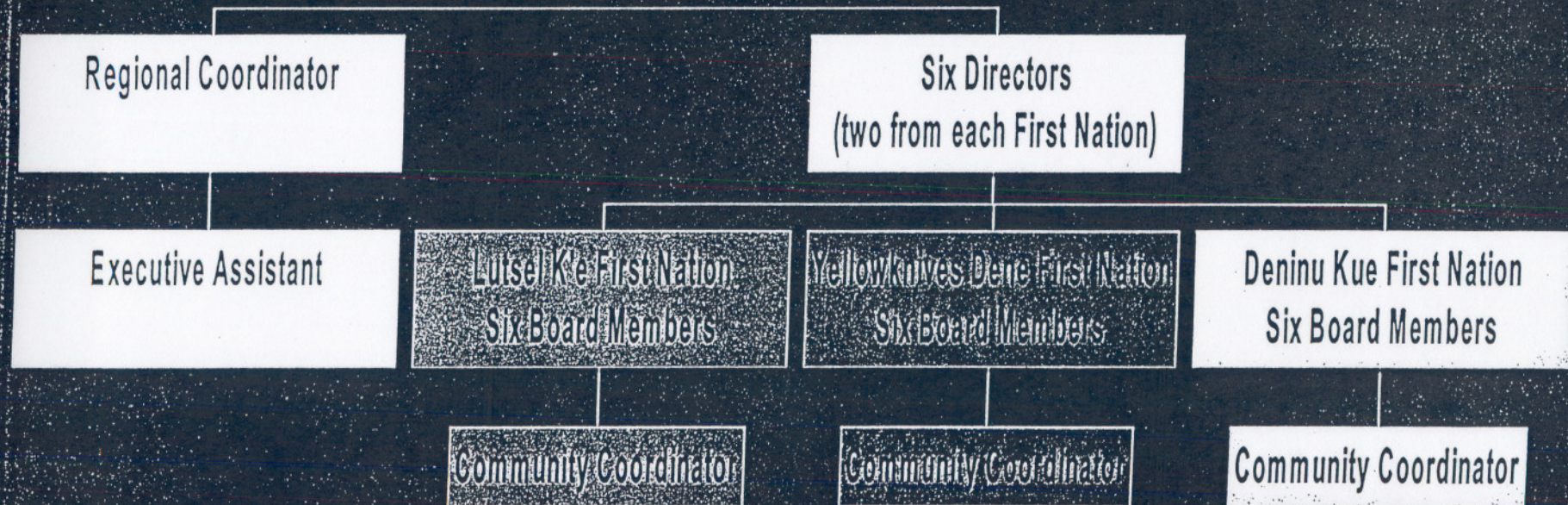
For Canada


John Gill
Chief Negotiator


Witness

NWT Treaty 8 Tribal Corporation

Regional Pre-screening Board



SCHEDULE 4.1(c)

SURFACE FEDERAL CROWN LANDS

Purpose:

This is a Schedule under Section 5 of the *Interim Measures Agreement* ("IMA") that was signed by the Northwest Territory Métis Nation (NWTMN), Canada and the Government of the Northwest Territories ("GNWT") on June 22, 2002.

Scope:

1. Canada shall, at its earliest opportunity, notify the NWTMN in writing when the following applications or renewals as provided for in the *Territorial Lands Act* or the *Federal Real Property Act* are received, without prejudice to the involvement of NWTMN in any other consultative process:
 - a) the sale of surface federal Crown lands;
 - b) the lease of surface Crown lands;
 - c) the lease of surface Crown lands with an option to purchase at a later date;
 - d) the issuance of Reserves of Crown lands;
 - e) the transfer of Crown lands to federal or territorial departments or agencies except where infrastructure already exist;
 - f) the establishment of easements for Crown lands; and
 - g) the issuance of licences of occupation for Crown lands.

Provision of Information:

2. The Manager, Land Administration, Department of Indian Affairs and Northern Development ("DIAND") will, upon acceptance of an application or renewal described in Section 1, deliver a package of materials to the NWTMN containing all information concerning the application or renewal within five business days of acceptance of the application or renewal as complete by DIAND, marking the beginning of the time period for response referred to in Section 7.
3. DIAND shall thereafter release all new relevant information to the NWTMN as soon as it becomes available.
4. DIAND may, upon request by the NWTMN, provide any further information necessary for the NWTMN to inform itself, review, assess and respond to the application or renewal being pre-screened.

5. Where DIAND holds public meetings relating to the proposal, any official records of such meetings will be released to the NWTMN as soon as they are completed.
6. The Parties shall exchange information in the following manner:

to the NWTMN by express to the following address:

Northwest Territory Métis Nation
Box 129
Forth Smith, NT
X0E 0P0

and to Canada at the following address:

Manager, Land Administration
Department of Indian Affairs and Northern Development
Box 1500
4914-50th Street
Yellowknife, NT
X1A 2P3

The NWTMN Response:


7. The NWTMN shall respond to DIAND within 45 days after receipt of the information identified in Section 2 of this Schedule, or within such time as agreed upon between DIAND and the NWTMN.

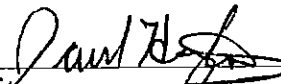
Notification of Decision:

8. DIAND will advise the NWTMN in writing, once the consultation process has been completed and a decision has been rendered, of the action taken in relation to the application or renewal being considered.

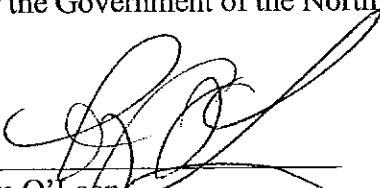
Signed in Ottawa, Ontario, this 27 day of February, 2003.

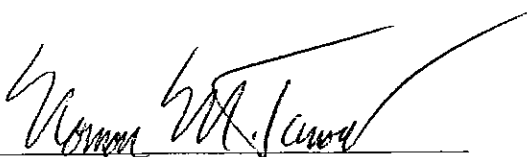
For the Northwest Territory Métis Nation:


George Kurszewski
Chief Negotiator



Witness

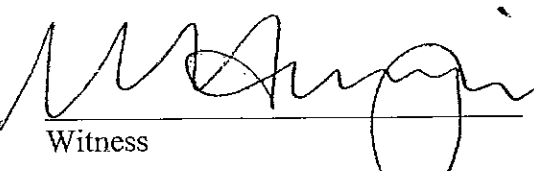
For the Government of the Northwest Territories:


Tim O'Loan
Chief Negotiator


Witness

For Canada:


Eric Maldoff
Chief Negotiator


Witness