

July 21, 2009

Mr. Hugh Wilson  
Vice President, Environment and Community Affairs  
Tyhee NWT Corp  
401, 675 West Hastings St.  
Vancouver, B.C.  
V6B 1N2

Dear Mr. Wilson:

**Re: Tyhee NWT Corp.'s comments on the *Draft Terms of Reference* for the environmental assessment of the Yellowknife Gold Project**

The Mackenzie Valley Environmental Impact Review Board has released the *Final Terms of Reference* for the environmental assessment of Tyhee NWT Corp.'s (Tyhee) proposed Yellowknife Gold Project. This document will guide Tyhee's discussion of various issues in the *Developer's Assessment Report* for the proposed undertaking. The *Terms of Reference* identifies water as the main *key line of inquiry*, meaning that Tyhee must give the most attention to this valued component in its *Developer's Assessment Report*.

Tyhee's February 20, 2009 comments on the Review Board's *Draft Terms of Reference* expressed opinions on the Review Board's role in assessing and mitigating potential adverse impacts to water quality. This letter attempts to address the concerns that Tyhee raised and to clarify these matters for all parties to this environmental assessment.

In its February 20, 2009 comments Tyhee made the following statements:

- "...it appears to Tyhee that certain provisions of the draft Terms of Reference would require Tyhee to undertake studies, make submissions or otherwise respond to issues that are properly considered during the regulatory phase that would follow the minister's acceptance of the Review Board's recommendations. We urge the Review Board to ensure that the Terms of Reference maintain an appropriate distinction between the environmental assessment phase and the regulatory phase in a manner that is consistent with the overall regulatory scheme established under the MVRMA and other relevant laws of general application, notably the *Northwest Territories Waters Act*." [Page 3 of Tyhee's cover letter]



- “In Tyhee’s view, the results of surface and groundwater quality studies ... will provide an adequate basis for the regulatory agencies, particularly the Mackenzie Valley Land and Water Board, to determine the extent, if any, to which the [Yellowknife Gold Project] changes the quality of the aquatic environments that presently exist at the project site.” [Page 8]
- “To the extent deemed appropriate by the Mackenzie Valley Land and Water Board, the mitigation of any adverse impacts on the aquatic environment and aquatic biota will be addressed during the regulatory phase.” [Page 19]

Tyhee also stated, on page 18:

- “In Tyhee’s view, the Terms of Reference should focus on information necessary for the Review Board to form an opinion, as contemplated by section 128(1) of the MVRMA, of the potential of the project to have a significant adverse effect on the environment.” [Page 18]

For the record, the Review Board responds to the issues you have raised in these statements as follows:

### **Evidence for subsection 128(1) determinations**

Since environmental assessments under the *MVRMA* are evidence-based processes and the onus is on the developer to convince the Board that its impact predictions are accurate and its mitigation strategies will work, the Review Board requires sufficient information from Tyhee to form a subsection 128(1) opinion. This includes information relevant to potential adverse impacts to water. Ultimately, the Review Board determines whether the information provided is adequate based on information requirements that are specific to a particular environmental assessment. In the case of the *Yellowknife Gold Project*, the *Terms of Reference* delineates the *additional* information that the Review Board requires in order to make a determination of significance for any potential adverse impacts to the environment with reasonable confidence in the accuracy of the prediction. Understandably, this includes evidence pertaining to the environmental context of proposed project components.

### **Significance determinations**

The Review Board is the only organization empowered under the *MVRMA* to make a determination of the significance of impacts on the environment of a proposed development. It is the Review Board, therefore, that must first make a determination of the extent, if any, to which the Yellowknife Gold Project may change the environment (aquatic or other) in the project area. The Review Board cannot legally defer that determination to regulatory agencies and processes.



### **Consideration of potential significant adverse impacts to water**

Relating to water: under section 62 of the *MVRMA*, no board can fulfill licensing requirements for a proposed development that undergoes an environmental assessment unless and until the Review Board completes its environmental assessment duties under Part 5. These duties include the determination of potential impacts to various aspects of the environment explicitly including water. Section 111 of the *MVRMA* defines an ‘impact on the environment’ as ‘any effect on land, **water**, air or any other component of the environment’ (emphasis added). As a result, the Review Board is required to consider the type, extent and significance of potential impacts to water of the Yellowknife Gold project in its determination of potential significant adverse impacts to the environment.

### **Mitigation of potential significant adverse impacts to water**

Tyhee also stated the following on page 18 of its comments:

- “Tyhee questions whether it is correct for the “Preamble” to assert that the environmental assessment process may *establish* discharge criteria more stringent than those set out in the Metal Mining Effluent Regulations. As outlined in section 128(1) of the *MVRMA*, where the Review Board forms the opinion that the proposed development is likely to have a significant adverse impact on the environment, the Review Board is empowered to **recommend** that ‘...the approval of the proposal be made subject to the imposition of such measures as [the Review Board] considers necessary to prevent the significant adverse impact (emphasis added)’.” [Page 18]

The Review Board appreciates the opportunity to clarify its perspective on this issue. The environmental assessment could indeed result in, if the evidence before the Review Board warrants it, the establishment of discharge criteria more stringent than those set out in the *Metal Mining Effluent Regulations* (*MMERs*). This can happen if the Review Board makes a subsection 128(1)(b)(ii) recommendation which the Minister accepts that requires *site-specific* effluent mitigation measures that turn out to be more stringent than the *MMERs*. In such a scenario, the measures would become minimum requirements as part of the overall project-approval recommendation to the federal Minister. The regulatory agency (i.e. the Mackenzie Valley Land and Water Board) may also choose to make even more stringent requirements in its production water license, but may not reduce the stringency of the effluent quality criteria below the measures that the federal Minister accepts as part of the overall project-approval recommendation from the Review Board.



The developer will find an example of the Review Board's binding measures pertaining to water quality in the *Report of Environmental Assessment and Reasons for Decision on the De Beers Snap Lake Diamond Project*. In this case, the particular measure (R5) dealt with the setting of a maximum concentration of total dissolved solids (TDS) in effluent. This measure was an element underlying the Review Board's overall recommendation for the project to proceed.

Should you have any further questions on the environmental assessment processes please contact Mr. Paul Mercredi, Environmental Assessment Officer, at our Review Board office.

Sincerely,

*Original signed by Renita Jenkins*

Renita Jenkins,  
Acting Executive Director