



Tłı̨chǫ Government

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RE: NICO Project - EA0809-004 [2009]

Mackenzie Valley Environmental Impact Review Board
200 Scotia Centre
Box 938, 5102-50th Ave
Yellowknife, NT X1A 2N7

June 4, 2012

Dear Chuck Hubert:

The Mackenzie Valley Environmental Impact Review Board ("Review Board") has scheduled tentative dates for the Public Hearings for the NICO Project in the summer (July 30-August 4). The Tłı̨chǫ Government has met to consider these dates and the locations of the hearings and we have concluded that the Review Board needs to reconsider both the timing and venue of the Public hearings. Therefore, we respectfully request that the Review Board make those reconsiderations for the following reasons:

Boreal Caribou and Habitat Study

This new study was released and posted to the public record on May 24, 2012. This report, called the *Boreal Caribou Habitat and Habitat Use in Wek'èezhìi*, fundamentally changes the state of knowledge about boreal caribou. In the Technical Sessions, the developer relied on knowledge gained from their own self-asserted traditional knowledge "studies" to assert that there are no todzi (boreal caribou) in the study area. This new study presents data from the elders about the actual presence of todzi in the study area. This finding is significant, and it should fundamentally change the a) predictions made by the developer about impacts, b) the monitoring programs that are designed, and c) the mitigation measures proposed. This knowledge will prove fundamental to assessing the impact predictions, monitoring and mitigation on this one key valued component.

Tłı̨chǫ Government Traditional Knowledge Study ("Tłı̨chǫ TK Study")

The second reason for requesting reconsideration is that the Tłı̨chǫ TK Study is itself not complete. The Tłı̨chǫ Government refers to Section 115.1 of the *MVRMA* which suggests:

In exercising its powers, the Review Board shall consider any traditional knowledge and scientific information that is made available to it (Section 115.1)

As the Review Board has known for a while now, the Tłıchq TK Study has a completion date of September 15. The Tłıchq Government asserts that the Tłıchq Study should be considered fundamental evidence required for making impact predictions, effects pathway analysis, and mitigation. If the hearings are run before the report is made available, the Tłıchq Government believes that all predictions, effects pathways, and mitigation measures discussed may be based entirely on scientific evidence alone. This will not lead to an effective or complete impact assessment process.

We are of the view that when public hearings happen, the public attending those meetings should have all the relevant information before them in order to express their concerns. The inability of the public to make their views known without the information and context of their own governments' TK study is surely going to be a problem. That problem can be met and avoided by ensuring the Tłıchq TK Study is done before the public hearing takes place.

As well, it makes sense for the Tłıchq public, at the public hearing, to be able to consider both the developer and Tłıchq Government studies as a factor in determining their level of concern or anxiety related to the proposed development.

Availability of the Tłıchq Public

Another reason for the request for change of date is that the summer is a very busy time for Tłıchq people. While we appreciate that the Board has made an effort to schedule the hearings at a time that does not conflict with other major events (e.g., Lac Ste. Anne), the Tłıchq Government notes that the week that is currently chosen is generally a time when people are away from the communities, or are out on the land. We note that in order for the Review Board to make a reasonable assessment, the "relevant public" needs to be engaged. Tłıchq people are impacted. The most proximate community to the proposed development is a Tłıchq community. There are proximities to sensitive areas and harvesting areas, including an historic village. This historic village will be examined fully in the context of the Tłıchq Traditional Knowledge Study. It can be considered that, when examining the future public record, the Review Board may ask itself what the participating rates were of public hearings. The current dates will not allow for maximizing the highest potential "relevant public" participation at the public hearing. In fact, the current date will suppress such participation since, as we stated, many Tłıchq people will likely be away from the communities and out on the land. This proposed project is wholly surrounded by Tłıchq Lands, and it is critical that the event be scheduled at a time when the **most** Tłıchq people are able to attend to learn about the proposed development and to share their knowledge. A mid-summer scheduling would not achieve this goal.

Venue and timing

Finally, we also have given strong consideration to the question of location. We recommend the hearings be held entirely in Behchoko with one day meeting in Whatì. We do not suggest that any hearings be held in Yellowknife, as this would foreclose the option of having the most Tłıchq people – the "relevant public" – attend the meetings.

We believe that the developer will need to revise impact predictions based on the Tł̓chq TK Study. This will require a minimum of four weeks, so that Fortune's consultants and technical leads can consider the full weight of the Tł̓chq TK Study and reconsider the predictions and mitigations that are developed through the Tł̓chq TK Study. Therefore, the Tł̓cho Government recommends that the weeks of either October 15- 19 or October 22 -26 be considered for rescheduling the public hearing.

In the interests of perhaps coming to the Review Board with a "common front" on rescheduling the public hearings, the Tł̓chq Government discussed the question of rescheduling the public hearings with the developer. The developer is not in favour of changing the schedule. The Tł̓cho Government examined these timing and venue issues carefully, and we concluded that it will be in the best interests of the process to reschedule the public hearing.

To run a public hearing:

- a) that will not consider developer response to data refuting its assertion that there are no todzi (boreal caribou) in the study area;
- b) before Tł̓chq knowledge is submitted to the public record may serve to alienate the elders and harvesters who are involved in the TK study, given that they will not see any evidence of their own work or knowledge reflected in the public hearings if they are run too early;
- c) on dates that in fact suppress the chances of engaging the most available Tł̓chq people; and
- d) in locations that do not reflect who the "relevant public" actually are

is not in the best interests of the process or a complete environmental assessment.

Thank you in anticipation of your careful review of this correspondence.



Laura Duncan

Tł̓chq Executive Officer