

April 13, 2017

Reasons for Decision

Prairie Creek All Season Road Project, Canadian Zinc Corporation

Re: LKFN request for party status and late submission of technical report

1 Background

On April 4, 2017, Liidlii Kue First Nation (LKFN) submitted a request for party status in environmental assessment (EA) proceeding EA1415-01 and a request to submit a technical report by April 14. The deadline for parties' technical reports was March 10, 2017 and the deadline for Canadian Zinc Corporation (CanZinc) to respond to technical reports was April 7.

The Review Board asked parties to comment on the LKFN's request and received responses from CanZinc, the Government of the Northwest Territories, the Nahanni Butte Dene Band (NBDB), the Northern Projects Management Office of the Canadian Northern Economic Development Agency (NPMO), and the Dehcho First Nations.

2 Decision

The Review Board has decided to grant LKFN party status in the environmental assessment proceeding for EA1415-01. LKFN will have the opportunity to:

- question the developer and other parties at the formal hearing;
- present its views to the Review Board during the community and formal hearings in Fort Simpson; and
- provide written closing arguments to the Review Board, in accordance with the deadline that will be set by the Board.

The Review Board has decided not to grant LKFN's request for late submission of a technical report for this EA proceeding.

3 Reasons for Decision

The Review Board made the decisions set out above in order to fulfill its obligations under the *Mackenzie Valley Resource Management Act* (MVRMA) and to maintain procedural fairness and avoid prejudice in EA1415-01. In making these decisions, the Review Board considered LKFN's request, the responses provided by other parties, and other relevant evidence on the public record.



3.1 Reasons for Granting Party Status

The Review Board's environmental assessment responsibilities under the MVRMA include the consideration of, among other things:

- the concerns of aboriginal people and the general public (paragraph 114(c));
- the protection of the social, cultural and economic well-being of residents and communities in the Mackenzie Valley (paragraph 115(1)(b)); and
- the importance of conservation to the well-being and way of life of aboriginal peoples of Canada to whom section 35 of the *Constitution Act, 1982* applies and who use an area of the Mackenzie Valley (paragraph 115(1)(c)).

In relation to these responsibilities and the Review Board's role in Crown consultation under the MVRMA, the NPMO noted, in its response to the Board's request for comments on LKFN's request for party status, that: "...the Government of Canada will rely on the consultative process of the Board...".

None of the parties which responded to the Review Board, except NBDB, challenged the LKFN assertion that it is a potentially-affected first nation. In order to ensure the Review Board's responsibilities are met, the Board has thus determined that it is appropriate for LKFN to be given the opportunity to set out its views to the Board.

3.2 Reasons for Not Accepting Late Submission of a Technical Report

The Review Board has a statutory responsibility to ensure the EA proceeding is fair for all parties (including the developer), to prevent prejudice, and to operate with reasonable timeliness and efficiency. The extreme lateness of LKFN's request and proposed technical report submission date would, in the Board's opinion, affect other parties' positions and create prejudice.

The Review Board provided many opportunities for LKFN to be involved in this EA proceeding and gave reminders and guidance related to the timing and nature of technical report submissions.¹ Despite these efforts, LKFN's request to submit a technical report was received by the Review Board approximately one month after the deadline for technical reports and only three days prior to the deadline for CanZinc's response. LKFN's proposed submission date (April 14) would be after CanZinc's response to technical reports and only ten days before the public hearings. LKFN did not participate in the Board's pre-hearing conference on April 10, 2017 and their application for party status does not indicate the issues that it wishes to address in its technical report.

¹ Several of these are listed in CanZinc's response (PR#488). Board staff also sent email reminders to LKFN staff about party status (July 2016, November 2016, February 2017) and technical reports (January & February 2017).



The record is currently closed until the hearing of this matter begins.² To accept an LKFN technical report submission, the Review Board would have to re-open the record early. The contents of the LKFN submission could affect other parties' positions and the developer would certainly want to respond to it. Arrangements for such additional submission would crowd into the preparations for the hearing and could lead to requests for adjournment of the hearing. All parties have made arrangements for the hearing and any change in dates would result in thrown away costs and further prejudice. In these circumstances and because LKFN had notice and numerous opportunities to address its role in these proceedings earlier, the Review Board has decided not to allow the filing of an LKFN technical report.

In the Review Board's view, the granting of party status with this single limitation provides LKFN with ample opportunity to present any concerns it may have and set out its views in the hearing process. The Review Board is of the opinion that this compromise will ensure fairness for all participants.

4 Conclusion

The Review Board has decided that Liidlii Kue can participate as a party, but not submit a technical report. The Board views these decisions as a compromise, but a fair and reasonable one considering all the Board's responsibilities and the evidence before it.

JoAnne Deneron, Chairperson

² The record is closed to everything except hearing presentations, which are a summary of technical reports with no new evidence.