

# *Nahanni Butte Dene Band*

•GENERAL DELIVERY • NAHANNI BUTTE, NT • XOE ONO

Phone (867) 602-2900 • Fax (867) 602-2910 • Email: [finance@nahannibuttedb.com](mailto:finance@nahannibuttedb.com)

December 14, 2011

The Honourable John Duncan  
Minister of Aboriginal Affairs and Northern Development  
Ottawa, Ontario

**FAX TO: 819-997-5497 and Email to [Ottawa@johnduncan.com](mailto:Ottawa@johnduncan.com)**

Dear Minister Duncan,

This letter is in response to the December 8<sup>th</sup>, 2011 Reasons for Decision report of the Mackenzie Valley Environmental Impact Review Board regarding the Prairie Creek Mine (EA0809-002). The Naha Dehé Dene Band (NDDB) believes that the Board has made two significant errors in its Decision and asks you, in your role as the Minister responsible for Aboriginal Affairs and for the *Mackenzie Valley Resource Management Act*, to intervene to amend these errors.

First, the Board states in its reason for decision, that “the proposed development as described in this Report of the Environmental Assessment, *including the list of commitments made by the developer during the proceedings*, is not likely to have any significant adverse impacts on the environment or to be a cause for public concern” (p. iii – italics added). In its executive summary, the Board reiterates that “the Prairie Creek Mine is not likely to have significant adverse impacts on the environment or be a cause for significant public concern” (p. iv), but then adds the following: “The Review Board based its decision on the *assumption* that Canadian Zinc Corp. will fulfill its commitments made during the proceedings” (p. iv – italics added).

Throughout the remainder of the report, the Board makes similar comments. For example, on page 34, the Board states that “with the implementation of either the Canadian Zinc Corp. approach or the AANDC approach to deriving site specific water quality objectives, significant adverse impacts to water quality are not likely”. On page 55, the Board states that “provided the developer implements the winter road re-alignments and commitments as proposed, the development is not likely to have significant adverse impacts from spills to the environment”.

In all of these statements, the Board is applying what could be referred to as circular reasoning, which is inconsistent with its obligations under Section 128(1) of the MVRMA. Through all of these statements, the Board is clearly inferring that, without appropriate mitigation measures, the project will, in fact, have significant adverse effects on the environment. If that is the case, the Board must say so and must impose enforceable mitigative measures to manage these impacts.

Section 128 (1) of the *MVRMA* is very clear: “The Review Board *shall*... (b) where the development is likely in its opinion to have a significant adverse impact on the environment... [order an EIA], or (ii) recommend that the approval of the proposal be made subject to the *imposition* of such measures as it considers necessary to prevent the significant adverse impact” (*italics added*).

The wording of this section of the *Act* makes the sequencing of a Decision quite clear. The Board must acknowledge potential adverse impacts where they exist and must then impose measures to reduce or eliminate the impacts. The Board cannot ‘assume’ that non-binding measures (or, in this case, commitments) will be followed and then, based on this assumption, declare that there will be no impacts!

In the case of the Prairie Creek Mine, if there were to be no adverse impacts, then there is no reason to adhere to the commitments. The rationale for the commitments is that, without them, adverse impacts will occur. But if adverse impacts will occur, then mitigation must be imposed and not assumed.

Second, by the fact that the Board has not imposed measures to mitigate acknowledged significant adverse impacts, the Board has failed in its procedural duty to provide for accommodation of potential infringements of NDDDB Aboriginal and Treaty rights.

As the Minister is aware, the Prairie Creek Mine development was referred to EA in 2008 by AANDC upon the request of the Naha Dehé Dene Band. NDDDB was an active participant in the EA process and has raised a number of key environmental and s.35 concerns, a few of which resulted in changes to project design, and others which culminated in NDDDB support for a number of the conditions proposed by responsible government authorities, including those proposed by your own department.

During the EA process, NDDDB made every effort to find accommodative approaches to address its concerns and expected the Board, as a component of an accommodative process, to support the resolution of those concerns by recommending specific and enforceable mitigation measures. By not ‘imposing’ measures to reduce specific project impacts of concern to NDDDB, the Board has essentially dismissed NDDDB rights and interests.

In summary, the Board has failed procedurally on two counts: it has failed to properly adhere to Section 128(1) of the *MVRMA* by not imposing measures to mitigate acknowledged impacts and, by abrogating this responsibility, has failed to impose measures that protect NDDDB s.35 rights.

For this reason, NDDDB is requesting that the Minister send the Reasons for Decision back to the Review Board, asking the Board to clearly state what it has already inferred -- that there is the potential for significant adverse environmental impacts from this development without appropriate mitigative actions being taken -- and rewrite the report such that clear and specific mitigative measures are imposed on this development by the Board. Those imposed measures can be based on existing information and on the major commitments that have already been made, so this process of revision should not unduly affect current timelines. Importantly, this

approach will turn commitments into mandatory measures and will therefore provide greater certainty that potential adverse effects will be mitigated such that the environment and, by extension, NDDB s.35 rights and interests, will be fully and properly protected.

If this approach is taken, NDDB does not believe that the project should be referred to an environmental impact assessment, which is an option the Minister and other departments have at this time. Furthermore, NDDB wants it clearly understood that it supports the mine going forward, with the added certainty of appropriate environmental protection, and, as the most affected community in the Dehcho, does not feel that Dehcho First Nations or any other agencies should be speaking on its behalf. Mahsi.

Yours truly,



Chief Fred Tesou

Cc Richard Edjericon, MVEIRB (via Chuck Hubert); Grand Chief Sam Gargan, Dehcho First Nations; Robert Kent, Parks Canada; Teresa Joudrie, AANDC