



Yellowknives Dene First Nation

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February 7, 2012

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Mackenzie Valley Land and Water Board
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Dear Mr. Morse:

Re: Alex Debogorski – Land Use Permit (MV2011C0002) – Request for Further Study

The Yellowknives Dene First Nation (YKDFN) have reviewed this application and the Review Board's Environmental Assessment decision. We request that the Mackenzie Valley Land and Water Board ("Board") exercise their discretion under Section 22(2)(b) of the *Mackenzie Valley Land Use Regulations* to allow further studies and investigations.

At this stage, this application is subject to considerable legal, regulatory and technical uncertainty:

1. **Legal Uncertainty:** The Review Board's determination under s. 128(1)(a) in the Environmental Assessment ("EA") is under review in the Federal Court. The review puts into question the legal foundation of the proposed land use permit.
2. **Regulatory Uncertainty:** In approving this EA, the Review Board relied on the implementation of the mitigation measures recommended in EA0506-005 (Encore Renaissance Resources Corp., formerly Consolidated Goldwin Ventures Inc.). However, these measures have not yet been approved by the Minister, nor implemented.
3. **Technical Uncertainty:** Several key questions about the project's operations remain outstanding at this point.

Until these questions are answered, issuing a permit would be premature.

1) Legal Uncertainty: Federal Court Review

This application is the subject of an application for judicial review in the Federal Court. A copy of the Notice of Application is attached for the Board's reference.

In this application, the YKDFN challenge the Review Board's determination under s. 128(1)(a) that this application is not likely to have "any significant adverse impact on the environment or to be a cause of significant public concern". The YKDFN argue that this determination was unconstitutional and contrary to law. The Federal Court will examine the legal issues and come to a binding decision.

While the matter is before the courts, it would be inappropriate for the Board to issue a permit. Rather, the Board should use s. 22(2)(b) to allow for the Federal Court's inquiry, and await the results of that process.

2) Regulatory Uncertainty: Encore Measures Not in Place

In approving this EA, the Review Board relied on the measures it recommended in EA0506-005 (Encore, formerly CGV). These measures are integral to the regulatory environment that the Review Board saw as the context in which the Debogorski project would occur.

The Review Board issued its revised measures in EA0506-005 on November 15, 2011. However they are pending approval by the Minister. Without approval and implementation of the Encore measures, this permit would be issued into a regulatory void. Instead, the Board should use s. 22(2)(b) to allow for these measures to be confirmed and put in place.

3) Technical Uncertainty: Unsettled Questions in the Application

There remain unsettled technical questions about various significant elements of this application. In particular:

- The application states that on-ice drilling is anticipated. Indeed, the claim is 90% water. This needs to be treated as an on-water project, and plans should be in place with that context in mind. The Department of Fisheries and Oceans ("DFO") has previously stated that the Drybones Bay area is "significant habitat" for fish.¹ Previous exploration projects have considered how to avoid harm to fish habitat and the event that drilling punctures an aquifer. In previous cases, DFO recommended specific requirements for lake depths, ice depths, proximity to shoals, disposal of water, drill locations, etc. These issues have not been addressed in this application. What guidance is required from DFO? What further information is required on habitat, drilling depths and drill locations?

¹ Hearing transcript, November 25, 2003, joint Environmental Assessment hearing for EA03-002 (Consolidated Goldwin Ventures), EA03-003 (North American General Resources Corp.) and EA03-004 (New Shoshoni), at p. 264.

Is a Type B water licence required in case of aquifer disturbance? How does the proponent intend to plug and seal any wells that have artesian flow if the hole is located within Great Slave Lake?

- The application states that the Snowfield camp will be used. The permit for that camp expired in August 2011. What alternate plans are in place?
- Eight out of ten drill hole sites have not yet been identified. The application contains information on questions of cultural heritage and environment for the first two sites only. What information will be obtained on further sites, and how they be addressed?

Without answers to the above questions, it will not be possible for the Board to reasonably determine appropriate terms and conditions.

Concluding Comments

When the Board referred this project to Environmental Assessment, it cited four reasons:

- a) The contentious history of other applications in the Drybones Bay area from existing EA evidence on the public registry;
- b) The MVEIRB's previous recommendations (Feb 2004) that no new land use permits be issued for proposed developments within the Shoreline Zone and within Drybones Bay and Wool Bay proper... until a plan has been developed;
- c) The MVEIRB's previous and most recent statement that the "cumulative cultural impacts [in the Drybones and Wool Bay areas] are at a critical threshold"; and
- d) Significant public concern regarding the integrity of the cultural and spiritual values associated with the Drybones Bay area with continued development identified through reviewer comments.

The Board's Reasons for Decision in its Preliminary Screening Report also stated that the Board "is of the opinion that the Application cannot proceed through the regulatory process and that the public concerns identified cannot be mitigated through the imposition of the Terms and Conditions in the attached Land Use Permit".

The Board's screening decision was right on the mark, and put this application on the right track. Unfortunately, the Review Board decision did not fulfill their duty – it ignored the evidence before them on cumulative effects, impacts, and the absence of consultation or accommodation, and it failed to ensure the views of the First Nation were taken into account.

Meanwhile, the Responsible Authorities have failed to follow through on previous EAs and allowed the status quo to persist to the detriment of all parties and the environment. The Review Board found in this EA that “despite earlier federal government commitments, there has been no action on the development of a plan for the Drybones Bay area”.²

The consequence is significant, unmitigated impacts. This Board should not become complicit in the Review Board’s failure, nor in the failures of the Responsible Ministers.

Rather, to ensure compliance with the MVRMA , the Board should use s. 22(2)(b) to allow for the study and investigation of the issues identified above.

The significance of the Drybones Bay area to our First Nation should be more than clear, as stated by all our living Chiefs:

*The Drybones Bay area is a special place to the YKDFN. Culturally, this area is without parallel and the highest level of protection is needed. ... The former Chiefs of the YKDFN are asking you ensure that this land can continue [to] support the people who have lived here for generations. There is no other area that we can move to – Drybones Bay is unique and irreplaceable. This area cannot be avoided – it is fundamental to the identity and well being of our First Nation.*³

Sincerely,



Chief Edward Sangris
Yellowknives Dene First Nation (Dettah)

Copy: Chief Ted Tsetta, YKDFN – Chief, N’ dilo, Fax: (867) 873-8545
Todd Slack, YKDFN – Land and Environment, Yellowknife, Fax: (867) 766-3497
Judith Rae, Olthuis Kleer Townshend LLP, Fax: (416) 981-9350
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Matt Spence, Northern Project Management Office - CANNOR, Yellowknife NT, Fax: (867) 766-8469

Encl. Notice of Application (Federal Court)

² EA Report 1112-001, p37.

³ Letter from all living current and former Chiefs of YKDFN to the Mackenzie Valley Environmental Impact Review Board, September 12th 2011.

From: [Julian Morse](#)
To: permits@mvlwb.com
Subject: FW: MV2011C0002 - Request for Further study
Date: Wednesday, February 08, 2012 3:32:56 PM
Attachments: [yk to MVLWB request for further study.PDF](#)

For the registry, MV2011C0002

From: Shannon Gault [mailto:sgault@ykdene.com]
Sent: Wednesday, February 08, 2012 3:02 PM
To: jmorse@mvlwb.com
Cc: Todd Slack
Subject: MV2011C0002 - Request for Further study

Please see attached letter. Should you have questions or comments, please send them to the attention of Todd Slack, 766-3497.

Thanks,

Shannon Gault
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to Chief Edward Sangris
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