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TO: Bord of Directors FROM: Rachel Crapeau.
Sherry Sian / T. Burlingame

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NOTES/COMMENTS:

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MACKENZIE VALLEY
ENVIRONMENTAL IMPACT
REVIEW BOARD

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August 1, 2003

Robert D. Nault
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House of Commons
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Honorable Minister Robert D. Nault;

RE: Environmental Assessment of the New Shoshoni, North American General Resources Corporation, Consolidated Goldwin Ventures Inc., and Snowfield Development Corporation (Assessments) Proposed Developments

Honorable Nault, this letter sums up our procedural and jurisdictional concerns about how the Mackenzie Valley Environmental Impact Review Board (the Board) is receiving and conducting environmental assessments of the proposed developments.

At issue is the Board's disregard of your statement that it is the primary vehicles for effective environmental assessment consultation with First Nations. The Board's inaction is impacting the quality of the environmental assessments, our rights; the quality of the information the Board will provide you, and ultimately, the factual basis and reasonableness of your future assessment decisions.

Fairness

The YKDFN consistently ask the Board to exercise a high standard of procedural fairness. Our repeated requests are particularly relevant given your June 30, 2003 letter to former Chief Richard Edjericon. In that letter you state that "the [Mackenzie Valley Land and Water Board] together with the MVEIRB, are the primary vehicles for effective environmental assessment consultation with First Nations that may be impacted by a proposed development."

Honorable Nault, you will rely on the advice of your Board to determine the impact of the proposed developments on the environment, and to ascertain infringement. Consequently, the Board has to ensure that the highest possible levels of procedural fairness and appropriate incorporation and consideration of First Nation views in the EA process. However, the Board is not acting in a manner consistent with your direction and comprises its ability to serve your

needs and the needs of Aboriginal people. Examples of the Board choosing not adhere to your understanding of their roles include:

1. The Board solicited consultants for a cumulative assessment study (CEA) related to the assessments secretly. When discovered by the YKDFN, the Board acknowledged the existence of the consultant solicitations, of the CEA Terms of Reference, and the Board's intent to use the consultant's results in the assessments. Please note the CEA study is in place of the individual developers preparing their own cumulative effects reports. That is, the cumulative effects work, while independent of the assessments, is materially part of the assessments and should be accorded the same procedural deference.

2. After making the consultant study ToR public, parties to the EA urged the Board to consult before finally issuing them. The Board agreed, and provided an extremely limited amount of time for the YKDFN to respond.

3. The ToR for the CEA was not available until the CEA field work at Drybones and Wool Bay was completed. In other words, the Board's consultant finished the field work before his instructions were available for him to do the work.

4. The Board staff will review and refine the consultant CEA report before putting it into the public domain. The draft report should be placed in the public domain for all parties to consider. To do otherwise is unfair and cast doubt on independence of the consultant's findings.

5. The Board's CEA ToR disregards the valued social, cultural and environmental ecosystem components (VEC) provided by the YKDFN. This is unfair and unreasonable given the YKDFN clearly identified the VECs and made its field camp available at no cost to the Board's consultants to further investigate the VECs.

6. The Board and its consultants failed to consult with the YKDFN. The YKDFN tried from the start of the assessments and the CEA study to have meaningful consultation with the Board, its staff, and consultants. Instead, the Board set unreasonably tight timelines and avoided consulting on the CEA Terms of Reference until it asked to.

7. The YKFN provided a two and a half week field camp free to the Board and its consultants. The Board decided two days of in-field research/consultation was sufficient.

8. The Board is ignoring Traditional Knowledge in the assessments and CEA study, even when it has a TK expert on staff. The YKDFN has repeatedly offered to provide meaningful opportunities for the Board to incorporate TK, but the Board has declined.

9. The YKDFN offered proponents and their consultants the opportunity of meeting with elders and scientists at our sponsored fieldwork at Drybones and Wool Bay. None of the proponents attended.

Thoroughness

The Board is narrowly and incorrectly interpreting the Mackenzie Valley Land and Water Board's (MVLWBs) reasons for referring the developments to environmental assessment. The Board suggests "public concern about potential cumulative effects". This is factually incorrect. The Board narrowly and inappropriately scoped only public concern about cumulative impacts. Therefore, Minister Nault, when you consider the Board's report you will take a decision on the wrong question with limited facts, and possibly take a decision on the assessments that is patently unreasonable. The question is not if there are significant cumulative impacts, but rather, 1) is there is a significant public concern caused by the proposed development? 2) Is there a significant adverse environmental impact caused by the proposed development 3) Is there significant Aboriginal interest that warrants further consideration before further action is taken. That is an impact review.

Scheduling and Hearing

The Board set overly ambitious timelines for the assessments and CEA study. The Prince of Wales Heritage Centre is currently digitizing our historical treaty negotiations map and we are synthesizing this summer's field work. The results of the Traditional Knowledge and computer digitization work will not be completed at until the end of September. The Board's current schedule precludes including this evidence in your ultimate decision.

We are genuinely trying to get the best decision made with the best TK and science information available. We have funded our research camp and taken concrete steps to get credible, factual information to the Minister and the Board. We require the Board to accommodate its process and timing so that we can fit into it. Choosing otherwise in the face of our efforts to meet the Board's schedule is unreasonable.

The Board has not described what procedures it intends to use at the upcoming hearing on the assessments. The YKDFN are concerned that the Board is dominated by legalism to the point that there is an absence of a functional and pragmatic application of the *MVRMA*. We want to work with the Board and other parties to develop a set of workable hearing procedures that fit our collective needs.

The YKDFN will submit its report of facts, findings, and assessment that addresses the Board's key questions. The Board's environmental assessment scheduling and hearing procedures must take this into account.

Jurisdiction

Honorable Nault, we request that you direct the Board to consider the Yellowknives Dene First Nation communities as local governments for the purposes of the *Mackenzie Valley Resource Management Act (MVRMA)*. We are appended materials from recent correspondence to the Board to assist you in your direction to the Board.

The Board is disregarding your authority as it relates to the band councils under the *Indian Act*, and Section 5(1) of the *MVRMA*, which states "Where there is any inconsistency or conflict between this Act and ... the *Indian Act*, ... the *Indian Act* prevails over this Act to the extent of the inconsistency or conflict." You recognize the YKDFN as a Band Council (#763) under the *Indian Act*. The *Indian Act* also seems to grant Band Councils the authority to function as a local government (see Sections 81 and 83). As well, the Government of Canada seems to recognize Band Councils under the *Indian Act* as local governments. There is an inconsistency between the *MVRMA* and the *Indian Act* about what constitutes a Local Government. In light of this inconsistency and given the primacy of the *Indian Act* we request that you to rule the Yellowknives Dene Band Council #763 as a local government for the purposes of the *MVRMA*.

Sincerely,

Chief Peter Liske – Dettah

Cc: Chief Darrell Beaulieu - Ndilo

Todd Burlingame, Chair: Mackenzie Valley Environmental Impact Review Board

Greg Empson, Legal Counsel, Edmonton, Alberta

Bob Overvold: Regional Director General, Indian and Northern Affairs, Yellowknife, Review Board Members: Mr. Charlie Snowshoe, Mr. John Stevens, Mr. Danny Bayha, Gordon Wray, Mr. Frank Pope