

Our File: EA-03-002
EA-03-003
EA-03-004

October 8, 2003

Ms. Rachel Ann Crapeau
Yellowknives Dene First Nation
Box 2514
Yellowknife NT X1A 2P8

Dear Ms. Crapeau;

RE: Conformity, Completeness and Technical Adequacy of Developer's Assessment Reports for Consolidated Goldwin Ventures Inc., North American General Resources Corporation and New Shoshoni Ventures Ltd.

At its last meeting, on September 30, 2003, the Mackenzie Valley Environmental Impact Review Board (Review Board) discussed the Yellowknives Dene First Nation's (YDFN) September 2nd, 2003 request for a ruling on the above captioned matters. More specifically, the YDFN requested a ruling from the Review Board under Rules 44 to 48 of the Review Board's *Rules of Procedure for Environmental Assessment and Environmental Impact Assessment Proceedings* (the Rules) on the following questions:

1. Do the company (CGV, NAGRC, and NSV) DARs conform to the TOR?
2. Are the company DARs of sufficient technical quality?
3. Is there sufficient information?
4. What additional information is needed from the companies?
5. What parts of the companies DARs are quality deficient?

This letter will report on the Review Board's decisions on your request for rulings and will outline the reasons for these decisions.

1. Conformity of the Development Assessment Reports:

The Review Board views a conformity determination as a ruling on whether or not a developer has provided some evidence in response to all the items set out in the Terms of Reference for an Environmental Assessment (EA).

The Review Board makes a conformity determination in the context of its EA process. The threshold for conformity is low. The EA process includes a series of other stages during which the sufficiency or quality of the evidence may be tested and through which additional information may be secured, for example, during the public hearing process. Such hearings are planned for these EAs.

Consequently, in responding to the YDFN request for a ruling on the conformity of the Consolidated Goldwin Ventures Ltd. (CGV), North American General Resources Corporation (NAGRC) and New Shoshoni Ventures Ltd. (NSV) Developer's Assessment Reports (DARs) the Review Board asked the following question:

"Is there enough evidence in the DAR to show that the developer has set its mind to each element of the EA terms of reference?"

If the answer to this question was yes, then the Review Board decided that the DAR was in conformity. This test is not a simple "presence or absence of information" analysis. There may be times, for example when a project concept has changed since a referral to EA and when no evidence is necessary for conformity on one or more items in a set of terms of reference. The key is that the Review Board must be able to determine that a developer has addressed all of the elements of the terms of reference set out by the Board and that some evidence necessary to address all relevant issues in an EA has been filed.

In making its determinations on conformity, the Review Board referred to the DARs filed by each of the developers and to any additional clarification or other evidence related to the respective EA terms of reference up to September 30th, 2003.

Having considered this evidence, the Review Board decided as follows:

1. The Consolidated Goldwin Inc. DAR is in conformity;
2. The North American General Resources Corporation DAR is in conformity; and
3. The New Shoshoni Ventures Ltd. DAR is in conformity.

In each case, there was enough evidence on the public record for the proceeding to indicate that the developer had set its mind to each of the items set out in its respective terms of reference.

2. Questions 2 through 5 of the YDFN Request of September 2nd, 2003:

As indicated above, the YDFN asked four other questions in its letter. These questions appear to the Review Board to be interrelated and to address the technical adequacy or merits of the CGV, NAGR and NSV DARs. These questions were:

- 2) Are the company DARs of sufficient technical quality?
- 3) Is there sufficient information?
- 4) What additional information is needed from the companies?
- 5) What parts of the companies DARs are quality deficient?



It is the Review Board's view that these questions all address the same two issues. They are, first, the sufficiency or amount of information contained in the DARs and second, whether the technical quality or adequacy of the information submitted in the DARs is acceptable to the Review Board.

These YDFN questions go beyond a simple conformity check and strike at the substance of these EA processes. The developer (or any other party) in such a proceeding, of course, always has the onus to prove to the Review Board on a balance of probabilities that any position it advances is correct. Legal consequences flow, for example, if the developer fails to convince the Review Board that there will be no significant adverse environmental impacts resulting from their proposed development. Consequently, questions about the sufficiency and quality of evidence must be addressed at an appropriate time and considered systematically. Questions 2 through 5 raise very broad issues. These questions, in the Board's view are best addressed at the end of an EA process.

To rule on these questions now could eliminate ongoing opportunities for all the parties to these EAs to provide additional information and to improve their cases. Indeed, the Review Board has scheduled public hearings in these EAs and will secure new evidence by hearing from the parties and the public before making its decisions. For these reasons, it appears to the Review Board that it is premature to address questions 2 through 5 set out in the YDFN letter of September 2nd at this time. At the conclusion of these EA processes, the Review Board will answer the questions related to the sufficiency of information and technical adequacy of the developers' cases through its reports of Environmental Assessment.

In considering the YDFN request and the questions set out above, the Review Board reviewed the DARs of CGV, NAGRC and NSV respectively and considered progress to date in these EA proceedings. The Board notes that the YDFN requests were filed early in the process, before the cumulative effects study was even filed.

It is also relevant to note that evidence on the effects of a development is not entirely the responsibility of the developer. Government agencies assist the Review Board, developers and participants by filing their own evidence and are required by section 22 of the *Mackenzie Valley Resource Management Act* to assist the MVEIRB by providing any evidence in their possession. Consequently, the Review Board does not rely exclusively on the DARs to make its final determinations under section 128 of the MVRMA.

In conclusion, the Review Board ruled on the YDFN requests by asking itself the following question:

“Should the CGV, NAGRC and NSV EAs be tested at this time to make a determination about the sufficiency and technical quality of the evidence in the DARs?”

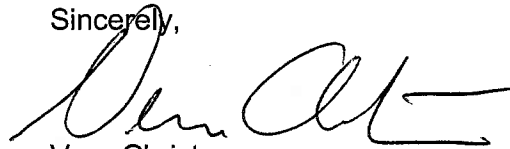
The Review Board has decided that it is not appropriate to answer questions 2 through 5 submitted by the YDFN at this time. The Review Board has also decided that its EA procedures



and the work planned for the CGV, NAGRC and NSV EAs will provide ample opportunity for the parties to address both the sufficiency of the evidence and the adequacy of the of the technical analysis in the three DARs before the public hearing takes place. The questions raised by the YDFN will ultimately be answered in the reports of EA prepared for each of these developments.

I trust that the Review Board's reasoning is clear.

Sincerely,



Vern Christensen
Executive Director

