

June 23, 2005

The Honourable Andy Scott, PC, MP  
Minister of Indian Affairs and Northern Development  
Ottawa, Canada  
K1A 0H4

Dear Minister Scott:

**Re: Report of Environmental Assessment into the Proposed New Shoshoni Ventures Incorporated Preliminary Diamond Exploration in Drybones Bay**

The Mackenzie Valley Environmental Impact Review Board (“Review Board”) received your letter of April 13, 2005, referring the *Report of Environmental Assessment (REA)* on the proposed New Shoshoni Ventures Incorporated’s Preliminary Diamond Exploration in Drybones Bay (“NSV”) back to the Review Board for further consideration, pursuant to section 130(1)(b)(i) of the *Mackenzie Valley Resource Management Act (MVRMA)*. The Review Board has undertaken a thorough further consideration of the evidence on the public record for this environmental assessment in response to your instruction.

Your April 13, 2005 letter stated that the federal and Responsible Ministers “determined that the Review Board did not fully and clearly outline its analysis that led to the recommendation to reject this proposed development”. The letter also posed questions to guide the Review Board in its further consideration.

Attached is a summary of the further consideration undertaken by the Review Board and includes elaboration on the evidence it relied on in making its recommendation to reject the proposed development. This recommendation was based on the Review Board’s decision that the development was likely to cause an adverse impact so significant that it could not be justified (as required by section 128(1)(d) of the *MVRMA*). The questions posed in your letter have been answered to the best of the Review Board’s ability in its further consideration of the NSV *REA*.

The Review Board has confirmed that the evidence on the public record supports its original decision. The Review Board has thus not changed its original recommendation that the project be rejected without an Environmental Impact Review. Further, the Review Board reaffirms its determination that the significant adverse impact caused by the project cannot be mitigated.

At the same time, the Review Board recognizes that certain elements of the NSV reasons for the decision may not have been set out as clearly as they could be in the *REA*. For example, your April 13<sup>th</sup> letter indicates that there may have been confusion related to:

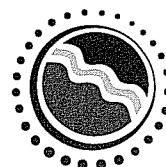
- the use of terminology such as “cumulative” cultural impacts;
- the specifics of the adverse impact identified by the Review Board which was so significant it could not be mitigated;
- how the impacts of the proposed NSV development differed from the three other nearby development proposals which were under environmental assessment at the same time;
- evidence referred to in the NSV *REA* being the same or similar to evidence referred to in the three other environmental assessments; and
- why the development merited rejection outright rather than proceeding to another phase of environmental impact assessment.

Your letter of April 13<sup>th</sup> made three requests for additional information to address these concerns. These requests are addressed in the accompanying attachment.

In summary the Review Board, upon further consideration, has found that:

- The use of the term “cumulative” to refer to the identified significant adverse cultural impact may have inadvertently been misleading to readers of the *REA*. In fact, the significant cultural impacts, while linked to cumulative impacts on Aboriginal culture, were specific to the location of the NSV development in Drybones Bay, including the waters and shoreline of the Bay where NSV proposed to drill.
- The specific factors that distinguish the proposed NSV development from the others considered at the same time by the Review Board include the larger amount of known heritage resources in the NSV area, the fact that the waters of the Bay itself are considered a burial site by the affected communities, and the larger number of stated concerns about cultural impacts from community members in direct reference to Drybones Bay.
- An EIR would not have assisted the Review Board in analyzing the fundamental impact that led to a recommendation to reject the development; that being a cultural impact so significant that mitigation measures could not be found that would lessen that impact on the local community-based culture holders themselves.

We trust that the information conveyed in this further consideration will provide the Ministers with insight into key elements of the evidence relied on in the Review Board’s original deliberations, and revisited in this review. Given that the NSV decision was made some 16 months ago, and that the Review Board’s deliberations are at least partially subjective interpretations of the weight of the available evidence on the Public Record, it is not possible to fully reconstitute the exact context for those deliberations. The Review Board is particularly concerned that one of the guiding principles of Part 5 of the *MVRMA* – “timely and expeditious” conduct of environmental impact assessment in the Mackenzie Valley, is not being currently met. With this concern in mind, the Review Board is offering to meet with representatives of the federal and Responsible Ministers to discuss how such long time lags between the issuance of an *REA* and a response from the Ministers can be avoided in the future.



Your staff may wish to contact Mr. Vern Christensen, Executive Director at the Mackenzie Valley Environmental Impact Review Board, if additional elaboration or clarification is required in regard to this environmental assessment.

Yours sincerely,



Gabrielle Mackenzie-Scott  
Chairperson

Attachment:

c.c: The Honourable Stephane Dion, PC, MP  
The Honourable Geoff Regan, PC, MP  
The Honourable Brendan Bell, MLA



## Attachment:

### Further consideration of the Ministers' Questions

The Ministers asked four questions, three of which were specifically stated, and a fourth which was alluded to. Each are examined here in turn, with further consideration and explanation from the Review Board.

1. *If cumulative cultural impact forms the basis of the Review Board's recommendation, then please provide clear analysis of the cumulative impact that is likely to result from the proposed development in combination with other developments (section 117(2)(a)). In this analysis, it may be helpful if the Review Board can specifically identify and describe what the impact is likely to be and whether the impact relates to the location, operation activities, timing, order of magnitude, footprint impacts, etc.*

By way of introduction to answering this question, a clarification is necessary. The Review Board, upon further consideration, recognizes that the use of the term “cumulative” cultural impact may be confusing to readers. **More accurately, the impact identified by the Review Board relates to the singular cultural importance of the NSV project location and the specific cultural impacts mineral exploration drilling would have on this important cultural location.** While the cumulative impact of developments in and around spiritual sites revered by the Yellowknives Dene First Nation, Lutsel K'e Dene First Nation, North Slave Metis Alliance and Deninu K'ue First Nation add to the significance determined by the Review Board in this case, it is in regard to *this development proposal in this specific location*, that the Review Board found a cultural impact that was likely, significant, adverse and could not be mitigated. This cultural impact cannot be separated from, and is compounded by, the importance of the area as a repository of heritage resources, particularly as a burial ground.

The Review Board, throughout the *Report of Environmental Assessment (REA)*, clearly described the cultural impacts likely to occur if this proposed development was approved. Further evidence is available on the Public Record that was not referred to directly in the *REA*. Factors considered by the Review Board in its determinations included:

- Evidence that the NSV project was proposed in Drybones Bay, a highly significant cultural site for the YKDFN and other aboriginal groups that use the area for traditional activities.
- Evidence that the affected aboriginal communities were overwhelmingly opposed to the development taking place, and want the area to be protected from future development.
- Evidence that there are a large number of burial and other heritage resource sites in the area directly affected by the NSV proposed development<sup>1</sup>;
- Evidence that the imposition of development on known or suspected burial sites is considered by the communities to be tantamount to digging up their ancestors graves<sup>2</sup>, and corresponding

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<sup>1</sup> Additional support for the Review Board's findings that the NSV development would have significantly negatively impacted known and unknown burial sites in the Drybones Bay area is supported by the findings of the YKDFN 2003 summer field study in the area (as identified in footnote 31 on page 44 of the *REA*) and subsequent archaeological work done by YKDFN in concert with Snowfield Development Corporation. The former might be made available to the Minister (under confidential cover) upon request to the YKDFN; portions of the findings of the latter can be accessed by request to the Prince of Wales Northern Heritage Center.



testimony that argued the entire Drybones Bay and its immediate shoreline, the areas proposed for development by NSV, are essentially considered cemeteries. Some places, once violated, can never in the collective memory be pristine again. The dishonoring of a burial ground fits this definition. Section 4.4.3 of the *REA* goes into detail about how the Review Board examined the relationship between this proposed development, previous developments and the cultural impacts of both on this specific location.

The second part of the Minister's first question states "*In this analysis, it may be helpful if the Review Board can specifically identify and describe what the impact is likely to be and whether the impact relates to the location, operation activities, timing, order of magnitude, footprint impacts, etc.*". While the presence of a large number of heritage resources that, in the minds of a people, encompass a greater area than its actual footprint, might alone be enough to find a significant impact on the environment, impact on heritage resources was not the only type of impact found by the Review Board. The Review Board also found the likelihood of significant cultural impacts.

Cultural impacts are recognized in the *MVRMA*, alongside heritage resources, as impacts on the environment which can be identified, assessed and mitigated during the course of an EA by the Review Board. It is not always possible to quantify the cultural "order of magnitude" or "footprint impacts" in the same way as can be done for biophysical impacts. That does not lessen their importance. Pages 40 to 62 of the *REA* identify a variety of tangible and intangible ways in which the cultural impacts and impacts on heritage resources of the NSV proposed development would be felt by the affected cultural communities, including:

- A reduction in the value of place by continued erosion of it, both physically and in the mental valuation of it as a relatively pristine place – i.e. as a burial ground;
- A corresponding reduction in the ability of the affected cultures to replicate and learn from their own histories<sup>3</sup>. The relationship of people to land is central to the maintenance of culture, social structures and language among the affected communities;
- The loss of a place significant to the people as a place of refuge, both in the past and up to the present day. Several Aboriginal groups pointed to the Drybones Bay as being a place to retreat to, both literally in the past and figuratively now. The cumulative impacts of large scale urban and industrial development could be absorbed better when places of refuge, relatively untouched, still existed. The affected communities consider their loss immeasurable;
- Impacts on the heritage resources go well beyond simply destruction of known and unknown heritage resources. Any industrial activity at all would serve to be a sign of disrespect for the dead and their living descendents.
- The opening of Drybones Bay *even more* to external influence than it already is, is cause for significant public concern in itself. For example increasing access routes may result in opening the Bay to potential further disturbance.

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<sup>2</sup> The YKDFN and LKDFN, in particular, argued that ancestors, once buried, were not to be disturbed. This argument was central to the discussion in the Public Hearing (PR#255). The YKDFN 2003 summer field study provided evidence of two burial sites on the Drybones Bay shoreline, but information may be far from complete.

<sup>3</sup> For example: "...[W]e don't want our cultural identity treated like points on a map that can be simply managed and mitigated or made less important. Those places, the cultural representations, the landscape and the information those places contain are not just archaeological sites. They're part of our social, spiritual and cultural identity. [...] Those places out there are how we communicate who we are and [...] pass on our culture to our children." - Chief Darrell Beaulieu, YKDFN (Public Hearing Transcripts (12:12-21), November 26, 2003, PR #255)



2. [Can the Review Board] ...fully consider mitigative measures for this proposed development and provide an explanation as to why such measures will not assist to prevent the significant adverse impact so that a conclusion can be drawn that the impact is unjustifiable (i.e., why would measures for this specific proposed development or measures for the other developments assessed together with this one, not work in this instance)?

The Review Board fully considered the mitigation measures recommended for the other three EA's in the Drybones Bay and Wool Bay areas while deliberating on the NSV EA, and rejected them all as insufficient, given the demonstrated cultural and heritage resources in the areas NSV proposed to develop. The essence of the Review Board's finding of immitigable significance in this case was the high cultural significance of Drybones Bay, which in the Review Board's opinion was notably different from that of the other proposed work locations. At no time did the Review Board state that there were significant biophysical environmental impacts found in association with the NSV EA. Only cultural impacts and impacts on heritage resources were noted, and the cultural impacts could not be mitigated with any of the measures imposed in the other three EAs.

In effect, the Review Board, in its consideration of all the evidence on the Public Record, found that the location of the NSV proposed drilling program had cultural impacts significantly higher than those of the other EAs. Of the four EA's in the area, the NSV location was distinct in the following ways (NOTE: all of this information is available in the Public Record; this is a synopsis):

- It is centrally located in Drybones Bay, while the other three projects are further a field;
- Drybones Bay was consistently noted as the most significant cultural location in the region, and this is true across different aboriginal groups;
- Two people drowned right in Drybones Bay, and only one of the bodies was recovered from the water. In the minds of the communities, the Bay itself is a burial site and requires the same protection as other burial sites. By this definition, of all 4 EAs, only the drilling proposed by NSV was located in an actual identified burial site, thus making any drilling program unjustifiable;
- Archaeological baseline work done in the regions has found that Drybones Bay had the largest concentration of known archaeological items and burial sites in the area<sup>4</sup>; and
- It was also recognized that only a very small number of actual archaeological sites and burial sites have been identified in any of the areas. The precautionary principle holds that this uncertainty, coupled with the *known* rich heritage resource base of the Drybones Bay proper, requires a heightened level of protection against future disruption.

The NSV development, therefore, was sufficiently different from the other developments that the imposition of similar mitigation measures was deemed inadequate and inappropriate. The Review Board did not recommend measures to protect heritage resources (as seen in the other EAs), because the unjustifiable significant cultural impact associated with the proposed NSV development made a rejection of the development the only reasonable recommendation.

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<sup>4</sup> From the *REA*, page 46: "The YKDFN study revealed a total of thirty-five heritage sites, over twenty of which were within a two-kilometer radius of the NSV drill locations (PR #179)." These 35 sites represented over 50% of all sites located by this study, which encompassed Jackfish Cove, Moose Bay, Drybones Bay, Burnt Island, Cabin Islands, the north side of Matonabee Point, Old Fort Providence, and Wool Bay (where, by comparison, only 11 heritage sites were located by the 2003 study).



3. *[Can the Review Board] ...reference and explain how ordering an environmental impact review will serve no further benefit or purpose?*

The Review Board, in its original deliberations, specifically considered the possibility of recommending this development to an environmental impact review (EIR). The Review Board may order an EIR in the following two scenarios:

1. where the development is likely in its opinion to have a significant adverse impact on the environment (section 128(1)(b)(i)); and
2. where the development is likely in its opinion to be a cause of significant public concern (section 128(1)(c)).

The Review Board considered whether either of these two possibilities was the proper decision to make in the case of the NSV Drybones Bay Exploration Program EA. Option 1 (EIR on the basis of a significant adverse impact on the environment) was rejected on the basis that, even though consideration had been given to potential mitigation measures in deliberations, none could be identified that would reduce the likely adverse impact from the development below the level of significance. None of the mitigation measures imposed in the other 3 EAs came close to mitigating the significant adverse cultural impact associated with the proposed NSV development. Therefore, the proper decision was to invoke section 128(1)(d) of the *MVRMA*, which was written expressly to address this type of instance.

Option 2 (EIR on the basis of public concern) was also considered. It was rejected on the basis that, while public concern did exist, it was linked inexorably to an identified impact on the cultural environment – the alteration of the spiritual place that is Drybones Bay.

At no time in the course of the EA, did the developer offer mitigation that would sufficiently reduce the fundamental disapproval of the affected populace, which the Review Board found to be linked directly to this cultural impact so severe it could not be mitigated. In the Review Board's view, there is no evidence that community opposition to the development was linked to a strategy to leverage the government and corporations to process their lands claims quicker<sup>5</sup>. The public hearing transcripts, statements, questions and reports on the public record from community members, give emphatic evidence to the power of this spiritual place in the collective memory of the Yellowknives Dene First Nation, the North Slave Metis Alliance, the Lutsel K'e Dene First Nation and the Deninu K'ue First Nation.

Uncertainty about the potential impacts of a development could make the ordering an EIR a logical choice. However, the EIR phase of Part 5 of the *MVRMA* generally applies to larger and/or more complex proposed developments, ones with greater uncertainties about likely impacts and/or greater public concern related to a series of unanswered questions from the EA phase. In this case, the Review Board was certain about the nature of the impacts likely to result from the proposed NSV development.

The evidence on the public record indicates the cultural groups that have long utilized Drybones Bay consider it to be of utmost importance – as a spiritual place, as a gathering place, as a burial grounds, as a place of rest and respite, as a learning place, and as a harvesting place. It is a place central to the cultural identity of not one, but several, aboriginal groups.

The Review Board relied on the most reliable and accurate experts it could when making its determination about cultural impacts; the aboriginal cultural groups themselves. Cultural impacts are best identified and addressed when relayed by the holders of the cultural knowledge; the community members themselves. In this environmental assessment, the Review Board identified a significant cultural impact

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<sup>5</sup> As implied by NSV in their February 13, 2004 letter to the federal Minister, a letter only received by the Review Board on May 19, 2005, and only then upon request to the federal Minister.



by accepting the testimony of these experts; their calls for rejection of the development, even when potential mitigation measures were described<sup>6</sup>, convinced the Review Board that the cultural impacts and impacts on heritage resources from this project could not be mitigated. This was one of the key elements considered in the decision made by the Review Board to invoke a section 128(d) recommendation.

Summary:

The Review Board has endeavored to answer the Ministers' questions related to further consideration of the NSV Drybones Bay Exploration Drilling Program environmental assessment. The Review Board recognizes that the federal Minister's letter also asked the Review Board a fourth question; to clarify what evidence it relied upon to make its recommendation to reject in this instance. The Review Board recognizes that the joint public hearing for the three similar proposed developments in the Drybones Bay and Wool Bay area may have led to some confusion among readers about which developments were being referred to by certain parties expressing concerns about the different EAs, and will consider these concerns when planning future EAs. Nonetheless, the Review Board found, in its opinion, enough evidence to differentiate the cultural value of place of Drybones Bay from other regional sites, to reject the one project proposed for Drybones Bay proper – that of New Shoshoni Ventures Incorporated.

The Review Board makes its significance determination using all the information sources on the public record to consider whether or not, based on the requirements of the *MVRMA* and the weight of evidence on the public record, the development is likely to cause a significant adverse environmental impact or be a cause of significant public concern. For those impacts that can not be meaningfully described quantitatively, such as those identified in this environmental assessment, the Review Board's uses the assessment of known experts and its own subjective and informed judgment to reach a conclusion on the significance of the predicted impact. In this instance, the Review Board's decision about the cultural impact on the traditional users of the Drybones Bay area of this proposed development was unanimous and unequivocal.

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<sup>6</sup> As seen in the Public Hearing Transcripts (PR#255) and in several excerpts from same on page 59 of the *REA*.

