



## Mackenzie Valley Environmental Impact Review Board

Box 938 , 5102-50th Avenue, Yellowknife, NT X1A 2N7

From: Sherry Sian Fax: (867) 766-7074  
Phone: (867) 766-7063  
Date: June 25, 2003 Pages: 13 including this page  
To: Elaine Blais, DFO Fax: (867) 669-4940  
CC:  
Re: Materials re: Yellowknives  
Dene First Nations Concerns

### NOTES:

Further to your request for materials re: the concerns of the Yellowknives Dene First Nations, please find attached the background correspondence on public registry.

This transmission may contain information that is confidential and privileged. It is intended solely for the use of the addressee and is protected by legislation. If you have received this fax transmission in error, please call (867) 766-7050 (collect) and destroy any pages received. Thank you.

Todd Burlingame	Chair	(867) 766-7059.....TBurlingame@mveirb.nt.ca
Vern Christensen	Executive Director	(867) 766-7055.....VChristensen@mveirb.nt.ca
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URI: [www.mveirb.nt.ca](http://www.mveirb.nt.ca)



Yellowknives Dene First Nation  
Box 2514, Yellowknife, N.W.T. X1A 2P8

Dettah Ph.: (867) 873-4307  
(867) 873-8951  
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MACKENZIE VALLEY  
ENVIRONMENTAL IMPACT  
REVIEW BOARD

May 6, 2003

Todd Burlingame

Chair: Mackenzie Valley Environmental Impact Review Board (MVEIRB)  
Box 938, 200 Scotia Centre, (5102-50<sup>th</sup> Avenue)  
Yellowknife, NT, X1A 2N7  
Fax: 766-7074

Dear Mr. Burlingame,

**RE: Diamonds North Resources Ltd. Referral to Environmental Assessment**

The Yellowknives Dene First Nation (YKDFN) acknowledges receipt of your letter dated April 24, 2003 and will require clarification of several items before responding to your letter.

For the record, the YKDFN want to confirm the acceptance of its evidence provided in the referral to environmental assessment as acceptable and valid for the purpose set out in the letter. The YKDFN also wants to make clear that the referral to environmental assessment of the North American Resources Corporation by the MVLWB corroborates the YKDFNs assertion of the need for an environmental assessment of the Diamonds North Resources Ltd.

In your letter you refer to the recently referred Consolidated Goldwin Ventures Ltd., development and indicate that the MVEIRB will be communicating with the Mackenzie Valley Land and Water Board (MVLWB) in the near future to establish the scope of potential cumulative activities. The MVLWB referred North American Resources Corporation, MV2003C0008 to environmental assessment in a letter dated April 28, 2003. Irrespective, this is an important step in the environmental assessment, and central to determining the scope of the environmental assessment. Therefore, YKDFN requests that communication regarding this environmental assessment with third parties, including the MVLWB, be placed on the public registry. The YKDFN also requests that the MVEIRB provide adequate notice and the opportunity of attending all meetings between MVEIRB management, staff and third parties pertaining to North American Resources Corporation environmental assessment.


Mr. Burlingame, you noted that Dettah does not have the legal authority to refer a development to environmental assessment. The conclusion provided is not supported by

evidence that the YKDFN can examine. The YKDFN will need the relevant Government of the Northwest Territories (GNWT) Territorial legislation that was used to arrive at that decision, and all records of communication with the Department of Municipal and Community Affairs, and any other federal or GNWT department contacted in order to obtain the evidence necessary for your decision.

In your letter dated April 24, 2003 the MVEIRB states it was *informed* the YKDFN "play a role in the government of Dettah on the basis of GNWT policy, not law." The YKDFN would be greatly assisted if you could please provide the source of this information, relevant contact information for the person that provided it, and where it is located on the MVEIRBs public record.

The YKDFN submit these questions without prejudice. The intent of this letter is to obtain relevant evidence considered by the MVEIRB in its decisions before taking any further action. Please contact Rachel Ann Crapeau at (867) 669-9002 if any clarification is required.

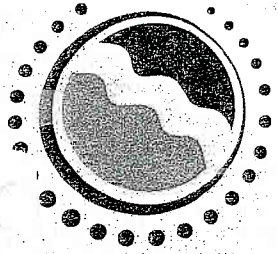
Sincerely,

  
\_\_\_\_\_  
Chief Richard Edjericon  
Dettah, NT  
\_\_\_\_\_  
Chief Darrell Beaulieu  
Ndilo, NT.

cc. YKDFN Legal Counsel, 1750 Sun Life Place, 100123-99 St  
Edmonton, Alberta, T5J 3H1

Mrs. Melody J. McLeod, MVLWB, Yellowknife, NT

file  
copy



May 15<sup>th</sup>, 2003

Chief Richard Edjericon  
and  
Chief Darrell Beaulieu  
Yellowknives Dene First Nation  
Box 2514  
Yellowknife, NT  
X1A 2P8

Dear Chiefs Edjericon and Beaulieu

**RE: Diamonds North Resources Ltd. Referral to Environmental Assessment**

Thank you for your letter of May 6<sup>th</sup>, 2003 in which you request clarification of the Mackenzie Valley Environmental Impact Review Board's (Review Board) decision on the Yellowknives Dene First Nation's (YKDFN) referral of the above captioned development to Environmental Assessment (EA) under subsection 126(2) of the *Mackenzie Valley Resource Management Act* (MVRMA). I will respond in order to the questions listed in your letter.

First, I wish to assure you that the evidence filed in support of the YKDFN referral was reviewed and considered in the course of the Review Board's deliberations. The information included in your letter was sufficient to provide a foundation for a Review Board decision on a referral to EA.

The Review Board's decision did not result from any inadequacies in the information provided by the YKDFN. Rather, the Board's decision was based on its interpretation of the MVRMA, specifically the definition of "local government" and of the application of that interpretation to subsection 126(2) in light of the nature of the community government in Dettah.

The Review Board had recourse to the *Settlements Act* and we contacted officials at the Department of Municipal and Community Affairs (MACA) of the Government of the Northwest Territories to determine whether any orders had been made establishing a local government for Dettah under that statute. In the circumstances, this approach seemed likely to result in a more expeditious response to your referral

than a search of the Territorial Gazette which would have yielded the same information.

We were informed that Dettah was an unincorporated community, a fact corroborated by your letter of referral. MACA officials confirmed that no order establishing a Settlement had been made. The Review Board does not dispute your assertion that the YKDFN play a role in Dettah's community government. We concluded since there is no formal government structure established for Dettah by territorial statute that the YKDFN role was based on MACA policy. We were directed to and reviewed the Settlement Capital Assistance and the Settlement Operating Assistance Policies in this regard.

Subsection 126(2) of the MVRMA requires that a "local government" make the referral. The MVRMA specifies that the local government must be established under the laws of the Northwest Territories, not policy. Consequently, when the Review Board considered the YKDFN's status in Dettah in relation to the definition of "local government" we concluded that your First Nation did not meet the definition. As a result, the Review Board concluded that the YKDFN could not make a referral under subsection 126(2) of the MVRMA. This is a legal conclusion based on statutory review.

You asked as well about the Review Board's communication with the Mackenzie Valley Land and Water Board during the course of our decision making. We did not receive any information from the Land and Water Board during the course of making the decision described above and we did not receive any information from them that is not already on both their public registry and ours.

Finally, the Review Board notes your concerns about the conduct of the North American General Resources Corporation EA. As a directly affected party the YKDFN will be informed and have the opportunity to participate in all steps in that process.

I trust that I have clarified both the nature and rationale for the Review Board's decision. If you have further questions please feel free to contact me.

Yours truly,



Todd Burlingame  
Chairman

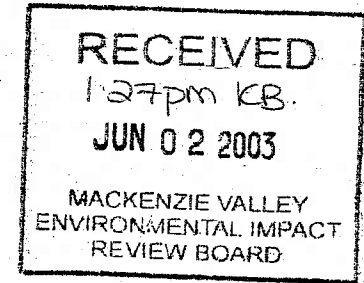
cc. John Donihee  
Board Counsel





Yellowknives Dene First Nation  
Box 2514, Yellowknife, N.W.T. X1A 2P8

Dettah Ph.: (867) 873-4307  
(867) 873-8951  
Fax: (867) 873-5969



May 16, 2003

Todd Burlingame

Chair: Mackenzie Valley Environmental Impact Review Board  
Box 938, 200 Scotia Centre, (5102-50<sup>th</sup> Avenue)  
Yellowknife, NT X1A 2N7  
Fax: (867) 766-7074

Sherry Sian

Environmental Assessment Officer  
Mackenzie Valley Environmental Impact Review Board  
Box 938, 200 Scotia Centre, (5102-50<sup>th</sup> Avenue)  
Yellowknife, NT X1A 2N7  
Fax: (867) 766-7074

**Re: Consolidated Goldwin Ventures Inc. MVEIRB Letter Dated May 8, 2003**

Dear Mr. Burlingame and Ms. Sian,

We have received and considered your letter dated May 8, 2003 and we are requesting that you maintain the Yellowknives Dene First Nation (YKDFN) on your fax and email distribution lists as a directly affected party in this environmental assessment proceeding.


As the Review Board appreciates, Drybones Bay and its surrounding area are of inestimable value to the Treaty 8 First Nation signatories, and to the Yellowknives Dene First Nation in particular. Therefore, the YKDFN will be asking that the Department of Indian and Northern Affairs Canada (INAC) exercise the precautionary principle respecting its fiduciary obligations as the very act of having the YKDFN community in a position of having to justify the spiritual and cultural significance of its spiritual and cultural places is an infringement of Aboriginal and Treaty rights.

The YKDFN accepts *without prejudice* that the Review Board has the legal authority under Part V of the *MVRMA* to establish the Scope of the Development In determining the Scope of the Assessment; however, that *MVRMA* ss.117 (2)(e) burdens the Responsible Ministers with an authority and responsibility equal to that of the Review Board in determining the Scope of the Assessment. The YKDFN believe this obligates the Government of Canada to begin its evidentiary process respecting its fiduciary


obligations. The YKDFN would be more than willing to assist the Responsible Ministers and the Review Board in their Scope of the Assessment efforts.

The YKDFN also offers to prepare a professional EIS suitable for the consideration of the Board, the Responsible Ministers and the Federal Minister conditional upon the company accepting the offer.

Sincerely,



Chief Richard Edjericon  
Dettah, NT



Chief Darrell Beaulieu  
Ndilo, NT

C.c. Yellowknives Dene First Nation Legal Counsel, Edmonton, Alberta

MVEIRB Board Members: Mr. Charlie Snowshoe, Ms. Bertha Rabesca,  
Mr. John Stevenson, Mr. Danny Bayha, Mr. Frank Pope and Mr. Gordon Wray

Mr. Bob Overvold, Regional Director General, INAC, Yellowknife



# GALBRAITH EMPSON

BARRISTERS & SOLICITORS

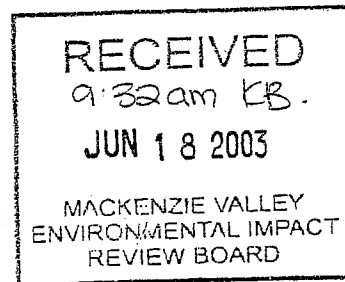
R. D. (Dan) Galbraith • Greg C. Empson

#1750, 10123 - 99 Street  
Edmonton, Alberta, T5J 3H1  
Phone: (780) 424-9558  
Fax: (780) 424-5852  
E Mail: galson@telusplanet.net

OUR FILE: 03.3675 GE

June 17, 2003

MacKenzie Valley Environmental  
Impact Review Board  
Box 938, 200 Scotia Centre  
(5102 - 50<sup>th</sup> Avenue)  
Yellowknife, NT  
X1A 2N7



ATTENTION: Vern Christensen,  
Executive Director

via fax: 1-867-766-7074

Dear Sirs:

RE: DRYBONES BAY/WOOL BAY  
CUMULATIVE EFFECTS TERMS OF REFERENCE

We wish to confirm that we are Counsel for the Yellowknives Dene First Nation and specifically the Land and Environment Department. We have previously received from your offices draft Terms of Reference and a Schedule for the general Cumulative Effects Assessment of the Drybone Bay/Wool Bay area.

Concurrently with the issuance of that document, the Land and Environment Department has engaged a Consultant, to prepare and propose an alternative method of completing the Cumulative Effects Assessment that would involve the full cooperation of the Yellowknives Dene First Nation, with the First Nation Personnel doing much of the work. We have retained Terra Firma Consultants to complete the proposal which we understand will be available the week of June 23<sup>rd</sup>.

As a result we would appreciate your delaying any further work on the process until that proposal has been received.

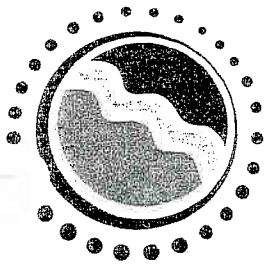
We trust this is satisfactory and thank you for your cooperation herein.

Yours truly,  
GALBRAITH EMPSON

per:   
GREG C. EMPSON

/me





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

June 19, 2003

Mr. Greg C. Empson  
Galbraith Empson Barristers & Solicitors  
#1750, 10123 – 99 Street  
Edmonton, Alberta  
T5J 3H1

Dear Mr. Empson;

**RE: Drybones Bay/Wool Bay Cumulative Effects Terms of Reference**

Ref #39

The Mackenzie Valley Environmental Impact Review Board (Review Board) has carefully considered correspondence from the Yellowknives Dene First Nation dated May 16, 2003, June 2, 2003 and June 17, 2003 regarding scoping of factors and the reasons for referral for all proposed mineral explorations (Consolidated Goldwin Ventures, North American General Resources Corporation and New Shoshoni Ventures) in the Drybones Bay/Wool Bay area. The specific concerns regarding potential cumulative effects expressed by the Yellowknives Dene First Nation in correspondence dated April 15, 2003 and reaffirmed in your letter of June 17, 2003 have been noted by the Review Board.

In order to properly address the concerns in the letter of April 15, 2003, the Review Board has engaged an independent consultant in accordance with Rule 17 of the Board's *Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings*. This consultant will conduct a Cumulative Effects Assessment of the Drybones Bay/Wool Bay area.

The Review Board is unable to contract the Yellowknives Dene First Nation for the Cumulative Effects Assessment. Such a relationship would affect the independence of the Board in the environmental assessment process and could lead to challenges to the process on the basis that this relationship raised an apprehension of bias. For this reason, the Review Board must maintain a position of independence from parties to an environmental assessment.

The Review Board also can not direct the developers to use a particular consultant to assist them in the preparation of their Environmental Impact Statement or Developers Assessment Report as offered in letters dated May 16, 2003 and June 2, 2003. Such action may also lead to the apprehension of bias. The selection of consultants by the developers is at their discretion. These requests should be made to the developers.

Nevertheless, the Review Board is encouraged by the interest of the Yellowknives Dene First Nation to participate in this process. The participation of the Yellowknives Dene First Nation in

the Cumulative Effects Assessment is integral to the quality and success of the environmental assessments in the Drybones Bay/Wool Bay area.

The Review Board recognizes that the Yellowknives Dene First Nation may wish to present the results of its own Cumulative Effects Assessment as evidence. Although the Review Board cannot provide funding for the Cumulative Effects Assessment, you may wish to inquire with Indian and Northern Affairs Canada (INAC) regarding funding that may be available for this purpose under its Interim Resource Management Assistance Program.

The draft Terms of Reference and Workplan for all mineral exploration programs that have been referred in the Drybones Bay/Wool Bay area will be released for comment June 20, 2003. The Review Board welcomes comments from the Yellowknives Dene First Nation on draft Terms of Reference and Workplan to ensure its concerns are fully addressed. Requests for amendments to the schedule should be submitted during the comment period.

If you have any questions, please do not hesitate to contact me. I can be reached at 766-7050 or via fax at 766-7074.

Sincerely,



Vern Christensen  
Executive Director

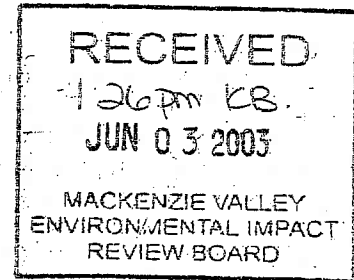
Cc: Chief Peter Liske, Yellowknives Dene First Nation (Dettah)  
Chief Darrell Beaulieu, Yellowknives Dene First Nation (N'dilo)  
Director, Renewable Resources & Environment, INAC





Yellowknives Dene First Nation  
Box 2514, Yellowknife, N.W.T. X1A 2P8

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June 2, 2003

Todd Burlingame  
Chair: Mackenzie Valley Environmental Impact Review Board  
Box 938, 200 Scotia Centre, (5102-50<sup>th</sup> Avenue)  
Yellowknife, NT, X1A 2N7  
Fax: (867) 766-7074

**RE: Referral to Environmental Assessment of North American General Resources**

Dear Mr. Burlingame:

I have received and considered your letter dated May 26, 2003 and am requesting that you maintain the Yellowknives Dene First Nation (YKDFN) on your fax and e-mail distribution lists as a directly affected party in this environmental assessment proceeding.

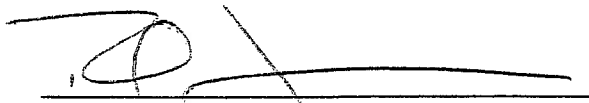
The YKDFN emphasizes to the Review Board that the Drybones Bay and Wool Bay areas of inestimable value to the Akaitcho First Nations. Therefore, the YKDFN will be asking that the Department Indian and Northern Affairs Canada (INAC) exercise the precautionary principle respecting its fiduciary obligations as the very act of having the YKDFN community in a position of having to justify the spiritual and cultural significance of its spiritual and cultural places is an infringement of Aboriginal rights.

The YKDFN accepts *without prejudice* that the Review Board has the legal authority under Part V of the MVRMA to establish the Scope of the Development In determining the Scope of the Assessment; however, the Review Board is obligated to consider comments from the public.

The YKDFN notes, however, that MVRMA ss.117 (2)(e) burdens the Responsible Ministers with an authority and responsibility equal to that of the Review Board in determining the Scope of the Assessment. The YKDFN believe this obligates the Government of Canada to communicate and consult with the YKDFN regarding appropriate scope of assessment factors. The YKDFN is planning a meeting/workshop with the Responsible Ministers to facilitate their scope of the assessment efforts as soon as reasonably possible.

The YKDFN also offers to prepare a professional EIS suitable for the consideration of the Board, the Responsible Ministers and the Federal Minister conditional upon the company accepting the offer.

Sincerely,



Chief Richard Edjericon  
Dettah



Chief Darrell Beaulieu  
Ndilo

c.c. Yellowknives Dene First Nation Legal Counsel, Edmonton, Alberta  
Review Board Members, Mackenzie Valley Impact Review Board:  
Charlie Snowshoe, Frank Pope, Danny Bayha, John Stevenson, Gordon Wray