



**Yellowknives Dene First Nation**  
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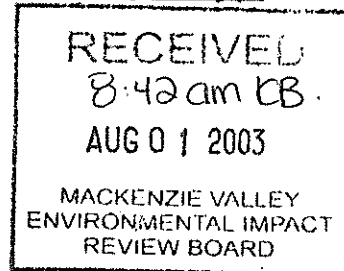
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**FACSIMILE TRANSMITTAL SHEET**

DATE: July 31, 2003 FAX #: 766-7074  
TO: Sian / Burlingame FROM: Rachel  
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☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:



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July 28, 2003

Sherry Sian  
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**RE: Draft Terms of Reference for Environmental Assessment of its Proposed  
Developments at Drybones Bay Snowfield Development Corporation**

Dear Ms. Sian,

The Yellowknives Dene First Nation (YKDFN) does not have the time and human resources to respond to the draft Terms of Reference within the timelines specified (July 24, 2003). The YKDFN will need at least until August 8, 2003. Our ongoing field work at Drybones and Wool Bays, summer staff diminution and internal consultations required simply make it impossible for us to respond at this time. I trust you appreciate our procedural concerns and the need for reasonable flexibility in the advancement of the environmental assessments.

Sincerely,

  
Chief Peter Liske - Dettah

Cc Todd Burlingame, Chair: Mackenzie Valley Environmental Impact Review Board  
Greg Empson, Yellowknives Dene First Nation Legal Counsel  
Bob Overvold, Director General, Indian and Northern Affairs  
Chief Darrell Beaulieu, Ndilo, NT



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July 31, 2003

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Chair: Mackenzie Valley Environmental Impact Review Board (MVEIRB)  
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Yellowknife, NT. X1A 2N7  
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**RE: Authority of Dettah And Ndilo And The MVRMA**

Dear Mr. Burlingame;

The intent of this letter is to outline the Yellowknives Dene First Nation's (YKDFN's) views regarding the environmental assessment (EA) referral authority issue, the Federal Minister's EA position regarding consultation with First Nations, and the importance of maintaining procedurally fair but pragmatically functional environmental assessments.

The YKDFN referred the Diamonds North Resources Ltd. development to EA on April 15<sup>th</sup>. The Review Board refused to consider an EA of the development and in its Reasons for Decision for not accepting the referral concluded that according to the definition of "local government" in the Mackenzie Valley Resource Management Act (MVRMA), the YKDFN did not qualify as a local government and, as such, could not refer Diamonds North, for an environmental assessment.

The Review Board's Reasons for Decision for not accepting the YKDFN's referral of Consolidated to EA is dominated by legalism to the point that there is an absence of a functional and pragmatic application of the MVRMA, and disregard for the MVRMA's formal clause that enables the Review Board to refer developments to EA. Given every development in the Drybones and Wool Bay areas except diamonds north was referred to EA there clearly was public concern regarding this development and it was unreasonable for the Review Board not to exercise its authority to refer Diamonds North to EA.

The YKDFN requested a high standard of procedural fairness at the outset of its communications with the Review Board. This has become increasingly important, especially given the June 30, 2003 letter from the Honourable Robert D. Nault PC, MP, Minister of Indian and Northern Affairs (INAC) to Chief Richard Edjericon. In that letter,

the Federal Minister states Canada's position 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."

If the Government of Canada is going to rely on the Review Board to determine how First Nations are affected by impacts on the environment to ascertain infringement, then there is a burden on the Review Board to ensure that the highest possible levels of procedural fairness and consideration of First Nation views are incorporated into the EA process

Respecting INAC's position regarding consultation with First Nations, the YKDFN again asks that all communications between the Board, Board staff, and Board management, with other parties and interveners be placed on the public registry. It is also reasonable to expect the Review Board to provide the YKDFN with adequate opportunity to attend all meetings between Review Board management, staff and third parties pertaining to environmental assessments.

In conclusion the YKDFN requests the Review Board to rule on the following questions.

- Does the Review Board consider the YKDFN a local government under the Indian Act as they seem to indicate in their previous Reasons?
- If yes, does Section 5(1) of the Indian Act then override the MVRMA definition of local government?
- Why was the YKDFN's written request for an EA, supported by reasons, not enough for the Review Board to conclude that there "might be a cause of public concern"?
- Given that the written request was not enough, what more does the Review Board expect of the YKDFN before the Review Board would use Section 126(3) based on concerns expressed by the YKDFN?

Sincerely,

  
Chief Peter Liske - Dettah

Cc: Yellowknives Dene First Nations Legal Counsel, Edmonton, Alberta  
Bob Overvold, Indian and Northern Affairs, Yellowknife, NT  
Chief Darrell Beaulieu, Ndilo, NT