



Yellowknives Dene First Nation
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July 29, 2005

Vern Christensen
Executive Director
Mackenzie Valley Environmental Impact Review Board
P.O. Box 938, 5102-50th Avenue
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Attention: Vern Christensen, Executive Director,

**RE: COMMENTS ON THE DRAFT TERMS OF REFERENCE AND WORKPLAN
FOR THE ENVIRONMENTAL ASSESSMENT OF THE TYHEE NWT CORP'S
YELLOWKNIFE GOLD PROJECT**

We want to thank the Mackenzie Valley Environmental Impact Review Board ('MVEIRB' or 'Board') for hosting and reporting on the ToR scoping session in Yellowknife, and for responding to our request for a community scoping session in Dettah as well; they were very helpful. The Terms of Reference are well written and capture most of the concerns expressed by the Yellowknives Dene. We do not have many comments, but we believe the ones provided are fundamental to the purpose and quality of the environmental assessment. With that said, we are pleased to provide the following suggestions for the Board's consideration.

A. The Yellowknives Dene First nation recommends including the following statement in the Terms of Reference.

"The Mackenzie Valley Environmental Impact Review Board ('MVEIRB' or 'Board') will gauge and define the extent of the impacts of the Yellowknife Gold project proposal, including a review of the ecosystemic¹ and socio-economic impacts of the proposed Development to determine whether it should proceed, and if so, under what terms and conditions. That is, the Board must be satisfied that the

¹ Interdependency between the different parts of the environment: air, land, water, wildlife and people.

impact assessment for the proposed Development as a whole is complete before the project can be divided into its various components for regulatory approval.”²

- B. With respect to assessing the conformity and technical adequacy of the Developer's Assessment Report (DAR) the Yellowknives Dene recommend adopting NIRB's "outstanding information" test as a guide for this hearing and to have the test included in the Terms of Reference for the environmental assessment.

The MVEIRB will consider the DAR in light of the Terms of Reference and outstanding information needs and issues brought forward to the Hearing by the parties and ask a series of questions, including:

- 1. Did the Proponent's response to the information requirements adhere to the intent of the Interim measures agreement in the preparation of the DAR and related supplementary documents?**
- 2. Did the Proponent respond to the specific information requirements set out in the DAR Guidelines?**
- 3. Did the Proponent develop a reasonable range of alternatives to evaluate and were the appropriate techniques and methodologies used for evaluating alternatives?**
- 4. Did the Proponent show evidence that they considered and responded to environmental assessment concerns of the parties?**
- 5. Is critical technical data which would assist the MVEIRB in the review process missing?³**
- 6. Do the DAR and related supplementary documents serve as a sufficient tool for MVEIRB to make an informed decision?**

- C. The Yellowknives Dene recommends including the following statement in the Terms of Reference.

“Environmental assessment is intended to avoid problems through foresight, not to delegate impact decision making requirements to other agencies.”

- D. The YKDFN sincerely hopes the MVEIRB will not be swayed by inevitable claims “in favour of the proposal on the basis that the terms and conditions of surface leases, land use permits, water licences, fisheries authorizations etc... provide adequate assurance that any issues will be resolved before the mine proceeding. The YKDFN believes the MVEIRB should clarify at the outset of the environmental assessment, by including in its Terms of Reference, the following statement.

MVEIRB “has an obligation to consider a wide range of matters in an integrated fashion and to base its consideration on information brought forward by a broad range of stakeholders and in a manner that is determined by the nature of the project and range of impacts. Only once the determination is made as to whether

² Nunavut Impact Review Board, (2004). Final Hearing Report for the Doris North Gold Mine Project File # 02MN134. Miramar Hope Bay Ltd. Doris North Gold Mine Application.

³ Ibid.

the project as a whole should proceed is it appropriate to divide the various components of the project out for approval by the multitude of regulatory agencies and organizations that will make detailed permitting and other authorizing decisions within the scope of their particular mandate."⁴ The MVEIRB "would fail in its mandate if it chose to delegate a matter that has the potential to significantly effect the ecosystemic integrity and well-being of the Yellowknives Dene to one, or even several, regulatory bodies or organizations on the basis that the organization had sufficient power to "halt" the proposed project."⁵

- E. The following comments are directed to specific parts of the draft Terms of Reference beginning with Section I-4 Wildlife and Wildlife Habitat. Subsection II. Recommended Text is as follows:

"The effects that each YGP component may have on wildlife and wildlife habitat VECs and VEC indicators, which shall include, but not be limited to:"

SS.I-4(V) should read as follows:

- V. **The potential impacts of the YGP operations in attracting wildlife and discussion on how Thyee intends to manage wildlife access on the mine site, with particular emphasis the Tailings Containment Area, waste rock and ore stockpiles, and transportation routes.**
- F. S. J (VI) presupposes the selection of a successful closure and reclamation endpoint of vegetation cover. While this may be what it ends up being, it may be premature to select the preferred closure and reclamation endpoint now. The YKDFN prefer to have the proponent propose and assess several conceptual closure and reclamation options, and leave it to the Board to recommend its preferred option.
- G. Section K Preamble, second bullet reads "Cumulative social, economic and cultural impacts associated with the increasing number of operating mines in the Mackenzie Valley and the ability to maximize benefits remaining in the North; and" [*emphasis added*]. Geographically speaking, the proposed gold mine is not in the Mackenzie Valley. Geographically it is situated in the Slave Geological Province, in the Northwest Territories. Legally speaking the proposed Development falls within the jurisdiction of the Mackenzie Valley Resource Management Act (MVRMA) which is generally understood to apply to the Mackenzie Valley as legally defined in the MVRMA.⁶

⁴ Ibid.

⁵ Ibid.

⁶ "Mackenzie Valley" means that part of the Northwest Territories bounded on the south by the 60th parallel of latitude, on the west by the Yukon Territory, on the north by the Inuvialuit Settlement Region, as defined in the Agreement given effect by the Western Arctic (Inuvialuit) Claims Settlement Act, and on the east by the Nunavut Settlement Area, as defined in the Nunavut Land Claims Agreement Act, but does not include Wood Buffalo National Park. Source: MVRMA.

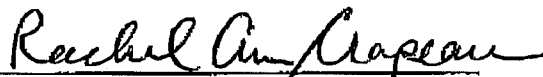
The reason for elaborating on the distinction between the geographic application and legal application of the term "Mackenzie Valley" is that the proposed Development will interact with other Developments not situated in the Mackenzie Valley. For example the proposed project will impact caribou that are also impacted by the various diamond mines in the Slave geological province, Northwest Territories and Nunavut. That is, there are transboundary cumulative impacts associated with the proposed Development which the Terms of Reference are silent on.

- H. S.5.4 Schedule. The Yellowknives Dene noticed that there is no opportunity in the current work plan for a round of Information Requests from parties to the environmental assessment. The Yellowknives Dene would like an opportunity to prepare a round of Information Requests, as might other parties to the Hearing, following the Developers response to the first round of Information Requests issued by the Board.
- I. One last comment concerns the availability of the Developers Assessment Report and supporting materials in a format that enables convenient and effective analysis of the Proponents data, analysis and conclusions. The Yellowknives Dene therefore requests the Board require the following of the Proponent.

"The Proponent will submit digital files of all its maps and figures in a format suitable for importing into an ESRI ArcView Geographic Information System (GIS) version 3 or later. As noted earlier in this letter, if the Proponent does not want to release the information in that format, the burden of proving it is unreasonable or unlawful to do to the Board falls on the Developer, not on the Yellowknives Dene. That is, the Yellowknives should not have the burden of proving the Developer can release the digital information requested. It is the Proponents job to convince the Board it cannot release the data in the requested format.

Thank you for the opportunity of submitting comments on a Terms of Reference we found to be well written and clear.

Sincerely,



Rachel Ann Crapeau - Chair
Land and Environment Committee

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