



IN THE MATTER OF: **A RECONSIDERATION OF REPORT OF EA
0506-005 CONSOLIDATED GOLDWIN
VENTURES (ENCORE RENAISSANCE
RESOURCES CORP) MINERAL
EXPLORATION PROGRAM;**

AND IN THE MATTER OF: **A REQUEST FOR RULING BY THE
YELLOKNIVES DENE FIRST NATION
DATED APRIL 26 2011;**

AND IN THE MATTER OF: **THE NATURE OF THE HEARING FOR THE
FURTHER CONSIDERATION PROCESS:**

REASONS FOR DECISION

INTRODUCTION AND BACKGROUND:

On December 7th, 2004, Consolidated Goldwin ventures Ltd. (now Encore Renaissance Resources Corp. “Encore” below) submitted an amended Land Use Permit Application to the Mackenzie Valley Land and Water Board (MV2004C0038) for a mineral exploration project, in the Drybones Bay area.

The application was referred to the Mackenzie Valley Environmental Impact Review Board (the “Review Board”) which initiated an environmental assessment in September 2005. Following a period where written submissions were received, the Board held a two-day hearing. At that hearing, the Parties made submissions and the Board received traditional knowledge, including oral testimony from Yellowknives Dene First Nation (“YKDFN”) Elders.

The Board deliberated and forwarded its Report of Environmental Assessment and reasons for decision to the federal Minister on November 30th, 2007.

In January 2010 the federal and responsible Ministers sent the 2007 Decision back to the Board for further consideration of Measures #1, 3, 4, 5 and 6.

On 5 April 2011, the Review Board informed the parties that it had lost quorum because of the expiry of the appointments of several members who heard the evidence on this file, and that these members would not be re-appointed. Only two of the members who were present for the original hearings are still members of the Board.

The Review Board's April 5, 2011 work plan did not include a requirement for a public hearing. On April 26, 2011, the Review Board received a Request for a Ruling (Request) from Counsel for the YKDFN. That Request asked for changes to the work plan on the following grounds.

THE YKDFN REQUEST:

1. Relief Requested:

- 1) a formal oral hearing of at least two days with the opportunity for oral submissions and the presentation of oral evidence on the issues under further consideration; and
- 2) the Board extend the time for submissions until such time as a formal hearing on the issues under further consideration can be conducted.

2. YKDFN Grounds for the Request:

Right to an Oral Hearing

The Board has the discretion under Rule 64 to order a formal oral hearing.

Elder oral evidence is required in this case:

to provide evidence about project impacts in this area that have occurred in the last four years and how those impacts have altered the YKDFN's relationship to the land; and

to respond to the Minister's letter of April 2010 and faulty assumptions in the Minister's letter about the scope of cumulative impacts on the traditional values and protected rights of YKDFN in the Drybones Bay area.

YKDFN has serious interests at stake in this proceeding:

At risk to YKDFN is the substantial loss of their constitutionally protected rights, relationship to the land, and way of life in the Drybones Bay area.

The Board has already recognized that this area is of "vital importance" and that the adverse impacts on YKDFN of this development could be significant.

The statutory scheme of the MVRMA and the Board's own procedural rules strongly argue for an oral hearing:

S. 114 (c) requires the concerns of Aboriginal people to be "taken into account in the process", which requires the Board to ensure consultation and accommodation are done properly, but also that the Board's own process is culturally respectful;

S. 115.1 (b) requires traditional knowledge to be considered if made available to the Board;

Rules 32 and 33 of the Board's procedural rules oblige the Board to encourage and consider traditional knowledge — oral testimony from Elders in particular;

The members of the Board who heard the initial oral testimony of YKDFN Elders at the public hearing are not the same as the members who will make a decision about the further consideration, therefore a new oral hearing to allow Elder testimony is necessary to comply with the rules of natural justice.

Extension of Time

The time initially provided by the Board is not sufficient to allow for the gathering and preparation for either an oral hearing or written submissions on the matters returned for further consideration.

A reasonable time frame needs to be provided to allow a response to the Minister's letter and to address concerns about cumulative impacts in the area.

THE REVIEW BOARD PROCESS FOR DECIDING ON THE REQUEST:

The Review Board gave notice of the YKDFN request and provided an opportunity to interested parties to reply.

The developer replied on April 28th, 2011, expressing the view that no hearing was required because the previous (2007) hearings have provided Elders with adequate opportunity to state their views. On May 4th, 2011, the Akaitcho Treaty #8 Interim Measures Implementation Office submitted a letter to the Review Board supporting the YKDFN request on the grounds that 1) a hearing would be an important part of Aboriginal consultation; 2) verbal communication is the Elder's preferred means of communication; and 3) a hearing is required because of the combination of years since the original hearing and the changes in Board member appointments.

DECISION:

The Review Board decided to grant the YKDFN Request for an oral hearing.

Correspondence dated May 10, 2011 set out the general basis for the Review Board's decision and requested that any party concerned about the Board's plan to continue the reconsideration process without the benefit of a quorum of members who participated in the original proceeding should notify the Review Board accordingly. No objections have been brought to the Review Board's attention.

REASONS FOR GRANTING THE YKDFN REQUEST:

Review of the submissions made on the relevant evidence on the Review Board's files made it clear that this area is important to the YKDFN. There have been a number of EAs conducted in response to concerns raised about development in the Drybones Bay area. Not all of the current Board members are familiar with this evidence. Although the Review Board is of the view that

most of the information about the area could be addressed by simple review of the records from these EAs, this is not the case in respect of the traditional knowledge which is uniquely held by Elders which is not available on the record.

The Board's Rules and Guidelines as well as the *Mackenzie Valley Resource Management Act* itself accord special consideration to traditional knowledge. It is essential that the Review Board consider such information, if available. Thus the Board decided to accommodate the Elders and to make arrangements to hear their testimony directly in an oral hearing.

FOR THE MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD:

Dated: 30 August 2011



A handwritten signature in black ink, appearing to read 'Richard Edjericon', is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

Richard Edjericon, Chairperson