



Tłı̨chǫ Government

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RE: NICO Project - EA0809-004 [2009]

Mackenzie Valley Environmental Impact Review Board
200 Scotia Centre
Box 938, 5102-50th Ave
Yellowknife, NT X1A 2N7

June 11, 2012

Dear Chuck Hubert:

The Tłı̨chǫ Government has not previously provided comments on the sufficiency/adequacy of the developer's incorporation of Traditional Knowledge out of respect for the fact the developer, when approached by the Tłı̨chǫ Government, did eventually fund a properly contextualized Tłı̨chǫ TLU/TK study.

It does so now only because the developer's June 8, 2012 letter states that the level of information provided by the developer (in the Developer Assessment Report) was somehow deemed **adequate** by the Review Board with which to complete the EA, rather than merely in **conformity** with the Terms of Reference. We take issue with that interpretation.

The Review Board's TK Guidelines state that:

When a party, other than the traditional knowledge holder is submitting traditional knowledge evidence, the traditional knowledge holders may advise the Review Board on the accuracy and completeness of the information. The traditional knowledge holder may do this through **technical reports**, letters of comment, or verbal presentations at hearings. – pg. 12 (emphasis added)

The Tłı̨chǫ Government feels the developer has erred in equating conformity with the Review Board's Terms of Reference with sufficiency and adequacy, especially in relation to good practice and the expectations of the primarily affected party, the Tłı̨chǫ Government and Tłı̨chǫ citizens.

The developer correctly notes that the Review Board's instructions in Section 3.1.2 of the ToR were to "facilitate collection of TK and to consider that information in preparation of its impact assessment". In addition, the specific terms of 3.1.2 of the ToR state:

"The Review Board values and considers both traditional knowledge and scientific knowledge **in its deliberations**. ...Fortune will make all reasonable efforts to incorporate traditional knowledge from aboriginal culture holders as a tool to collect information on **and evaluate the specific impacts required in this Terms of Reference**" (emphasis added).

It is clear that, despite claims by the developer in both its letter of June 8, 2012, and in statements made at the Technical Sessions in February 4-6, 2012, the purpose of traditional knowledge collection as defined in the Review Board's ToR is to inform the environmental assessment process, not to be used at some later time during project permitting. This argument has been opposed by the Tłıchǵ Government from the outset, as illustrated through statements at the technical sessions.

"The TK study will provide the information not yet collected on key valued components, such as caribou. This new information may change predictions of significance. For example, we believe that Tłıchǵ people are already experiencing impacts from proposed mine." (Henry Zoe, Feb. 9, 2012, Review Board Technical Hearings)

The Review Board's responsibility is to make its decisions with an adequate information base to evaluate all specific impacts defined in the Terms of Reference. The Review Board cannot delegate key aspects of environmental impact assessment to the regulatory process that occurs after a favourable decision on whether the project should proceed is forwarded to the federal minister; it must do so within the confines of the environmental impact assessment process itself. The developer's assertion that review of the results of the Tłıchǵ TK study can await a time after the hearing phase of this assessment, cannot be reconciled either with the Review Board's consistent stance toward the role of TK in the EA process, principles of good practice of EA, including the Review Board's own TK Guidelines, and the expectations of the Tłıchǵ people with whom the developer must eventually negotiate agreeable terms and conditions for the proposed development to proceed.

If the Review Board chooses to accept the developer's contention that the Tłıchǵ TK/TLU study is merely an afterthought, a potentially useful appendage for the purposes of permitting rather than an integral part of the Review Board's decision-making process, as defined by years of practice of the MVRMA, then the consequence of that will mean that the Review Board would be relying on traditional knowledge inputs that are inadequate and flawed by a limited scope, methodological problems, and analytical issues, all identified in the accompanying Technical Report on Inadequacy of Traditional Knowledge. This will be inconsistent with Review Board past practice and its legal duties.

For the developer to insist that the EA continue without these essential inputs, which will be made available by September 15, 2012, as previously noted by the Tłıchǵ Government and agreed to by the developer, is a sign of disrespect to the Tłıchǵ people. The Tłıchǵ Government respects the Review Board's mandate to make recommendations to the

federal and responsible ministers on whether a project should proceed and under what conditions.

The developer, without supporting evidence, states that “a delay of the public hearings until the late [sic] fall could delay project construction by up to a year” (and that this will have material impact). All parties with decisions to make on this file know that even if the Review Board recommends the project proceeds, the questions of water licensing, an access agreement, and an all-season road (which at this point has no proponent), must be managed. All this mitigates against the developer’s statement that a short delay at this stage will delay the end result the developer seeks – an operating mine.

To summarize, the Th̄chō Government returns to the argument made in the letter placed on the public registry last week.

To run a public hearing:

- a) that will not consider developer response to data refuting its assertion that there are no todzi (boreal caribou) in the study area;
- b) before Th̄chō knowledge is submitted to the public record may serve to alienate the elders and harvesters who are involved in the TK study, given that they will not see any evidence of their own work or knowledge reflected in the public hearings if they are run too early;
- c) on dates that in fact suppress the chances of engaging the most available Th̄chō people; and
- d) in locations that do not reflect who the “relevant public” actually are

is not in the best interests of the process or a complete environmental assessment.

Thanks once again for your review of this correspondence.



Laura Duncan
Th̄chō Executive Officer

Enc. “Technical Report on Inadequacy of Traditional Knowledge”