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July 15, 2010

Mackenzie Valley Environmental Impact Review Board,
200 Scotia Centre, P.O. Box 938,
Yellowknife NT X1A 2N7
Attention: Vern Christensen, Executive Director
(by email: <vchristensen@reviewboard.ca>)

Dear Sirs:

**Re EA 0809-004 of Fortune Minerals Ltd. proposed NICO Project -
Tłı̄ch̄o Government Request for Ruling, filed May 28, 2010.**

This is the Tłı̄ch̄o Government's reply to the three submissions filed in response to the Tłı̄ch̄o Government's Request for Ruling ("Tłı̄ch̄o Request") - by Fortune Minerals Ltd. ("Fortune") on June 10, 2010, by the Department of Indian Affairs and Northern Development ("DIAND") on July 8, 2010 and by the North Slave Metis Alliance ("NSMA") on July 8, 2010.

Fortune's Submission:

Fortune's submission did not address the legal arguments on which the Tłı̄ch̄o Request is based.

But it does confirm four important facts: (1) that **two** industrial access roads across Tłı̄ch̄o Lands would be required before its proposed project could be feasible, (2) that it is counting on those being constructed by **two different** proponents – Fortune and the Government of the Northwest Territories – (3) that **both** those roads would require an access agreement with Tłı̄ch̄o Government, and (4) that no discussions are underway or planned regarding such an agreement for either road.

In every sense, therefore, those two roads are hypothetical.

Fortune's submission proposes to defer filing its Development Assessment Report ("DAR") for the EA until December, 2010, and to conduct access and road-related discussions in the interim with the Tłı̄ch̄o Government. It suggests that the Review Board therefore need not decide the Request for Ruling at this time.

With respect, the Request for Ruling needs to be decided because, as made clear in the Request for Ruling, from the Tłı̄ch̄o Government's perspective, it is premature at this time to try to resolve and negotiate all the issues and concerns raised by proposals for two new industrial access roads across Tłı̄ch̄o Lands.

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In addition, it is submitted that the Tłı̄ch̄o Request should be decided because it questions the Review Board's jurisdiction to conduct the EA, in the unique circumstances of this case.

When the Tłı̄ch̄o Request was filed, Tłı̄ch̄o Government representatives asked Fortune to voluntarily agree that the Environmental Assessment be put in abeyance until access issues are resolved. At that time, Fortune declined to agree to that.

If Fortune wishes to avoid a decision by the Review Board on the Tłı̄ch̄o Request, it could achieve that result by now agreeing to the suggestion that is included in the submission by DIAND, and which is further discussed below, that the Review Board make an administrative decision to suspend the EA, until there are agreements in place for the required access roads.

DIAND's Submission:

The Request for Ruling raises several jurisdictional issues, which are discussed in DIAND's submission. (Those legal issues are considered below.)

In addition to legal arguments, DIAND's submission also included a very full explanation and discussion of the many practical problems that would confront any effort to conduct this EA in the present circumstances. Those problems include the uncertainties about the location of access roads, and the resulting difficulties for a proper assessment of the environmental effects of hypothetical roads. Those problems also include the fact that new land use permit applications would eventually be required for such roads, and therefore conflicting terms and conditions could well be required as a result of multiple procedures.

We agree with those parts of the DIAND submission.

DIAND's conclusion, based on that portion of its submission, is that the Review Board has jurisdiction and the discretion to suspend the EA process until it could be done effectively, after the conclusion of the required access agreements for the two new industrial roads across Tłı̄ch̄o Lands.

We agree that the Review Board has jurisdiction to make such an administrative decision, as master of its own procedures, and specifically pursuant to its own Rules of Procedure, including Rules 11 and 15.

Thus, while the Tłı̄ch̄o Government and DIAND may disagree on some legal issues, they clearly agree that there are very real and substantial practical problems with conducting the EA effectively in the present circumstances - in such a way as to achieve

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the purposes of Part 5 of the *Act* - and they also agree that the Board has jurisdiction to suspend the process until these practical matters are resolved.

It is submitted that, unless such an administrative decision is made by the Review Board, with or without the consent of Fortune, the Review Board will need to consider and decide the jurisdictional issues that were raised in the Tłı̄ch̄o Request.

The Tłı̄ch̄o Request argues, first, that Fortune's project is currently hypothetical and speculative, because of its unique legal circumstances respecting access, and therefore it is not a "proposed development" contemplated in Sections 114-115 of the *MVRMA*. That argument is based on a submission that the co-management boards under the *Act* have important functions to perform in the public interest, and those do not include deciding applications for projects that are still at the speculative or hypothetical stage.

DIAND's submission does not specifically address that point.

Second, the Tłı̄ch̄o Request argues that the TOR wrongly **assumed** the construction and operation of the two industrial access roads across Tłı̄ch̄o Lands that Fortune requires for its project, thereby not respecting the Tłı̄ch̄o Government's jurisdiction to enact laws and adopt land use plans respecting Tłı̄ch̄o Lands.

In response, DIAND's submission argues that the *Tłı̄ch̄o Lands Protection Law* cannot act as an absolute bar to Fortune's right of access under chapter 19. The Tłı̄ch̄o Request does not suggest that Fortune's right of access under chapter 19 has been defeated by the *Tłı̄ch̄o Lands Protection Law*, or that this Tłı̄ch̄o law is aimed at Fortune or its right of access. Instead, the point is that the present TOR for the EA virtually ignores the Tłı̄ch̄o Government's powers and the complex legal circumstances that Fortune must deal with before it could exercise its access rights in a practicable way. Until those circumstances have been fully addressed and resolved, so that access has been agreed to by Tłı̄ch̄o Government, the required access roads are hypothetical, and therefore the project is itself hypothetical and speculative.

Furthermore, while DIAND's submission is correct that the Agreement provides specific procedural options for Fortune under Chapter 6 or otherwise, as the potential proponent of the required spur road, those provisions would **not** apply to the GNWT in the same way, which must be the proponent for the larger all-weather industrial highway that must cross Tłı̄ch̄o Lands in order to connect to Highway 3.

DIAND argues strongly that a proper EA of Fortune's NICO proposal could not be conducted without fully considering the environmental impacts of all required access roads. Tłı̄ch̄o Government agrees.

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The question is whether the Review Board has jurisdiction to include the hypothetical roads in the “scope” of the development, in these circumstances. The Tłı́ch̄o Request argues that the Review Board lacks jurisdiction to do so, because the roads are hypothetical at this stage, and especially because Fortune itself withdrew the required roads from its own application. DIAND’s submission disagrees with that argument, on the basis of specific provisions of the *MVRMA*.

It is submitted that these legal issues must be resolved by a purposive analysis of the relevant provisions of the *MVRMA* and the Tłı́ch̄o Agreement, and that such an analysis would support the legal argument on this point in the Tłı́ch̄o Request.

NSMA’s Submission:

With respect, most of NSMA’s submissions are irrelevant to the issues raised in the Tłı́ch̄o Request.

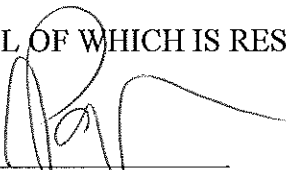
The NSMA does submit that the EA should be cancelled if Fortune’s project could not proceed without a new, all-weather industrial access road. Since Fortune has itself confirmed that requirement in its submission of June 10, the NSMA agrees that the EA should not proceed at this time.

Conclusion:

For all the reasons in the original Request and in this Reply, the Review Board is asked to grant the Ruling applied for in the Tłı́ch̄o Request.

The original Tłı́ch̄o Request asked for an oral hearing of this matter. Based on the positions in the written submissions, it now appears unnecessary to hold a hearing on this matter, unless the Review Board concludes that such an oral hearing would be of assistance.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



Arthur Pape, Counsel for Tłı́ch̄o Government
c.c. The Parties