

Deninu Kue First Nation review of the MVEIRB *Terms of Reference* for the Environmental Assessment regarding the Avalon Project

- Potentially affected communities? How do you determine potentially affected communities? **Deninu Kue First Nation is DIRECTLY IMPACTED.** The description area for both the Thor Lake Plant and the Pine Point Hydromet Plant are directly within ***Traditional Territory of the Akaitcho Dene of Deninu Kue First Nation.***
- The mining site at Thor Lake is in the *Traditional Territory* that is both historically and traditionally used by the *Rocher River Dene* until their removal to and amalgamation with the Fort Resolution Band, which later became the *Deninu Kue First Nation*.
- The Hydrometallurgical plant at the Pine Point site is in the *Traditional Territory* that is both historically and traditionally used by the *Big/Little Buffalo Rivers Dene* until their removal to and amalgamation with the First Resolution Band, which later became the *Deninu Kue First Nation*.
- The Courts of Canada have developed principles to be followed and requirements must be met by the Crown and Industry when they plan and propose development which will or may affect the Aboriginal or Treaty Rights of First Nation in their *Traditional Territory*. The principles developed require that consultation must occur with the First Nation prior to any action is taken or authorized and that in some cases the consent of the First Nation to the development must first be obtained.
- *Deninu Kue First Nation* are presently entitled to the protections of their aboriginal and Treaty Rights as set out by the Canadian Courts, both pursuant to the Constitution Act, 1982 and as part of the Crown's fiduciary obligation to First Nations.
- *Deninu Kue First Nation* wishes to retain the common law protections of their aboriginal and Treaty Rights in relation to consultation and consent which they presently have according to Law.
- *Deninu Kue First Nation* desire that the existing common law principles regarding consultation and consent where aboriginal or treaty rights are affected be recognized and applied by the Government of Canada and the Northwest Territories (The Crown) and Industry prior to any action being taken or authorized by the Crown in *Akaitcho Territory*.
- The opportunity for *Deninu Kue First Nation* to participate in a public consultation process is not adequate consultation. It is not sufficient for the communication to be the same as the communication with other interested parties.
- The duty to consult includes both the duty to inform and to listen and the duty to negotiate prior to any action.

- In this case *Deninu Kue First Nation* believes to be directly impacted and Canadian Courts clearly state that the Crown may require the full consent of Deninu Kue First Nation to a particular Action in this case *Thor Lake Nachalacho Project*.
- The duty to consult and if appropriate, accommodate cannot be discharged by delegation of the duty to industry.
- The Crown may delegate procedural aspects of consultation to industry proponents seeking a particular development in this case Thor Lake Nachalacho Project. However, the ultimate legal responsibility for consultation and accommodation rests with the Crown.
- Incorporating Traditional Knowledge from studies that are specifically used to assist in developing the project to ensure minimal impact to the land, water, animals in which is an impact to our treaty rights to hunt, fish, trap and gather amongst others cannot be used as an assessment of impacts unless the survey's or studies state it's an actual assessment on impacts.
- Since time immemorial the water ways in the *Akai'tcho Territory* have been source of transportation for the Akai'tcho Dene to practice their Treaty Rights which include but are not limited to Hunting, Fishing, Trapping and Gathering. Water is life and as Akai'tcho Dene we survive because of water, water is a big concern. The deliverance, the waste, the quality, the quantity and anything that may involve fresh water must be monitored effectively and efficiently on an annual daily basis. Any activity on the water or with water must be monitored.
- A surveillance network program must be developed with traditional knowledge and best practice must be implemented.
- Aquatics Monitoring Programs need to be developed and Traditional Knowledge needs to be incorporated.
- Avalon Rare Metals must commit to having an *Akai'tcho Dene First Nation* as an Environmental Monitor from the beginning to end of the project and throughout the closure and reclamation.
- All recommendations regarding the *terms of reference* that have been prepared all Government agencies and other parties to the Environmental Assessment for the Nachalacho Project be implemented and seriously measured when completing the developer's assessment report.
- *Deninu Kue First Nation* has reviewed the current *terms of reference* and is submitting our position paper with respect to the land, water, and animals and our traditional lifestyle on which we currently and historically used and depend on.
- The reference to incorporate traditional knowledge under Section 3.1.2, excludes TK for the Pine Point operations but includes TK for Nachalacho. There should TK for both areas and not only for Nachalacho.
- The document is not *site specific* the way it is written. There are references to the Avalon project, the Nachalacho project and the Pine Point project. For greater certainty, the document should be *site specific*.
- The map as shown as figure 1 under Section 2.2.2. (page 5) illustrates Fort Resolution is directly between both proposed mining sites and will be most at risk in the event of an accident, therefore a emergency preparedness and containment plan should be developed.

- Our commissioned research supports our assertions that both proposed sites falls within DKFN asserted traditional area, therefore the DKFN will require consultation and accommodation dialogue as this project proceeds.
- ♦ Section 3.2.6 should be expanded to incorporate the fiduciary responsibility as discharged to INAC relating to the 'duty to consult and accommodate' by industry.

"As long as the Sun Shines, the River Flows, and the Grass Grows"