

## Lutsel K'e Dene First Nation

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August 23, 2013

Hon. Bernard Valcourt  
Minister of Aboriginal Affairs and Northern Development  
Government of Canada, AANDC Executive Offices  
10 Wellington Street  
Gatineau, QC K1A 0H4

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**Re: Comments on EIR Report for EIR1011-001 Avalon Nechalacho Rare Earth Element Project**

Dear Minister Valcourt,

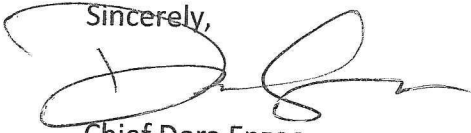
This letter follows on the Report of Environmental Assessment and Reasons for Decision ("Report") on the Nechalacho Rare Earth Element Project proposed by Avalon Rare Metals Inc., released on July 26, 2013 by the Mackenzie Valley Environmental Impact Review Board ("Review Board"). We received the letter of August 2, 2013 from the Northern Projects Management Office ("NPMO") regarding that Report and inviting our comments. This letter and the attached Annex provides those comments.

As described further in the attached Annex, the Report fails to include adequate measures to address almost every concern we expressed about this project. In most cases, it includes no measures at all. Neither has Avalon reached an agreement with our First Nation that would address our concerns through terms that address the anticipated adverse impacts. With neither binding measures nor binding terms of agreement, this project has the potential to result in significant adverse impacts on our First Nation, our environment and the exercise of our rights. It is not sustainable without such measures in place.

Given the failure of the Review Board to include measures to address our concerns, we are requesting that the Minister take further steps to address our concerns. Without further mitigation measures, this project is likely to cause significant adverse impacts and causes significant public concern. We also conclude that the Crown's duty to consult and accommodate LKDFN about this project remains unfulfilled. Our concerns were not meaningfully heard or responded to, and as it stands now our rights would be left at risk of serious infringements.

**We strongly recommend that the Minister refer this project back to the Review Board for further consideration in line with the comments contained in this letter and Annex.**

Sincerely,

A handwritten signature in black ink, appearing to be 'Dora Enzo', written over the word 'Sincerely,'.

Chief Dora Enzo

Lutsel K'e Dene First Nation (LKDFN)

# Annex

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## **Introduction**

The protection of caribou, of water, and the avoidance of contamination of the land are of the utmost importance to LKDFN. We have to ensure the protection and sustainability of the resources that the Lutsel K'e Dene have relied on since time immemorial, and will continue to rely on in future generations.

During this EA, we suggested and supported measures that would limit the impacts to these valued ecosystem components. Unfortunately the Review Board did not meaningfully listen to our concerns. LKDFN has a number of concerns about Avalon's Nechalacho project which have not been addressed.

LKDFN traditional knowledge has not been adequately incorporated, as Avalon did not work us our community to collect and report these perspectives. Without this wisdom from LKDFN members, Avalon has failed to seek out the most relevant and important information on the land they are proposing to exploit. This is unacceptable. The environmental assessment process is supposed to ensure the proponent gains a full and intimate understanding of the land they wish to mine, and to ensure that the Review Board has the information required to fully consider traditional knowledge.

In general, Avalon's engagement with our community has been weak. Avalon has not made a diligent effort to engage with the community members of Lutsel K'e, and has failed to conclude any agreement with our First Nation. The Review Board's EA process has also been lacking. Despite our request, the Review Board refused to hold a community hearing in Lutsel K'e. This means that our community members did not have sufficient opportunities to be heard. Coupled with the failure to do standard work on traditional knowledge, our members and their concerns have been even more excluded.

NWT has a record of establishing oversight bodies for diamond mines. Rare earth elements (REE) mining and processing is new to the NWT and far more risky. It needs a strong oversight body in place, that is more comparable to the mechanisms in place in the nuclear sector. Strong research from the US Government backs this up. It is even more urgent in this territory, because the environment is especially pristine, and people rely strongly on that environment for the exercise of their rights. Effective ongoing oversight is essential. However, the Review Board has not only failed to provide a stronger oversight body, it has not recommended any oversight body. This is a major failing.

The Report also failed to adequately address caribou impacts, barging concerns, and water pollution. All of these matters are discussed further below.

As it stands, this project is not sustainable. We use the word “sustainable” as our Elders used it in the hearings, in that sustainability refers to the ability of members to travel to this site post-closure and practice their traditional way of life without the potential negative human health effects of lasting environmental contamination from the development. It means sustainability in terms of the land being able to continue to support the same ecosystems it once did. It means sustainability in the way of clean and safe water for humans and fish, and sustainability in the ability of the developer to return the site to a state as close as possible to what it was prior to exploration.

### **Lutsel K’e Dene First Nation’s rights are at stake**

This project is located within the Akaitcho Territory, in which LKDFN and other Akaitcho Dene First Nations are in the process of negotiating a land claim. It is part of our traditional territory – our homeland. We are required to make responsible decisions about this area to ensure it is sustainable.

Furthermore, this project is situated on a highly travelled route for the Lutsel K’e Dene. LKDFN has recent documented history in the area of the proposed Avalon Thor Lake mine. The mine site lies on a heavily travelled route in both winter and summer seasons for the Lutsel K’e Dene between Yellowknife and Lutsel K’e. The north shore of Great Slave Lake near the development is a common resting, picnicking and fishing location for the community members before crossing the open water section of the East Arm.

LKDFN engages in these environmental review processes to ensure a sustainable development and the protection of the land within the Akaitcho Territory. The fact that the mine is located in a frequently used area only enhances the desire of our First Nation to ensure that the land, water and wildlife are sustained.

### **1. Poor Consideration of Our Traditional Knowledge**

The simple fact that Avalon submitted a document with “TK Report” in the title should not qualify as the meaningful incorporation of traditional knowledge. Lutsel K’e community members hold valuable information that could be used for improving the understanding of the area, and therefore enhancing the sustainability of the operation. As acknowledged on pg. 44 of the Report, a report on LKDFN’s traditional knowledge was not available. This was because the proponent’s efforts on traditional knowledge were poorly conducted and ineffective. LKDFN’s traditional knowledge could improve the design of this project and the design of programs surrounding its construction, operation and closure. But this has not yet happened.

The measure suggested in the LKDFN presentation at the hearing would have the company come into the community and discuss the knowledge that the elders and community members have of the site, we also hope to continue to improve Avalon's proposed development by contributing TK on an ongoing basis for all aspects of the project moving forward.

The Review Board is required to consider TK as carrying the same weight as scientific knowledge. If that has meaning, the Review Board cannot simply move on when the proponent fails to gather and submit adequate traditional knowledge information. In the result, Traditional Knowledge was not adequately considered throughout this review. ***We recommend that the Minister refer this matter back to the Review Board for further consideration.***

## **2. Inadequate Opportunities for Our Participation in the EA**

We received no participation funding, and therefore were unable to submit a technical report as explained in our letter of November 29, 2012.

We requested to host a community hearing in Lutsel K'e, so that our community members could hear directly about this project, ask questions and make comments. On February 15, 2013, the Review Board refused that request.

We still participated to the best that we could. Among other things, we had a scoping session in our community on September 7-8, 2010, although this is omitted from the chart on pg. 32 of the Report. We participated in the terms of reference, in information requests and the technical sessions (despite our lack of technical support, we did our best), and we participated in the hearing in Yellowknife (although, of course, most of our community members could not attend). We also submitted closing comments on March 17, 2013, although this too was for some reason omitted from the Report in the chart on p. 32.

We did our best, but our community members did not have sufficient opportunities to be heard. Coupled with the failure to do standard work on traditional knowledge, this is a serious problem. ***We recommend that the Minister refer this matter back to the Review Board for further consideration.***

## **3. Inadequate Engagement by Avalon with Our Community**

Avalon's engagement with our community has been insufficient. There are still many outstanding issues that the community members of Lutsel K'e have concerning the project. And as indicated in our closing comments letter of March 17, 2013, there is not yet an agreement between the proponent and our First Nation to mitigate the socio-economic and environmental effects of the project. This remains the case to date, although we are making continued efforts to reach agreement on outstanding issues pertaining to environmental protection with Avalon.

Although the Review Board recommended that Avalon conclude a socio-economic agreement with the GNWT prior to beginning construction (Measure #5) our community is best placed to address socio-economic and environmental mitigation of the impacts of this project with the developer. An agreement with the GNWT alone cannot meaningfully address the needs of our community—we must have our own voice and our own agreement. ***We recommend that the Minister refer this matter to the Review Board for further consideration.***

#### 4. Lack of Oversight

LKDFN requested that the Review Board produce a measure requiring the development of an oversight entity. This body would be responsible for environmental oversight on the project, similar to the operating diamond mines' oversight, but more substantial, to deal with the more substantial environmental concerns generated from this new type of mine.

The rationale for this request is twofold. First, that there are special vulnerabilities in the NWT – we have a very fragile northern environment, with peoples like our ours that have a very close and special relationship with that land.

Second, this is a one-of-a-kind mine in Canada, and therefore it requires a unique oversight entity that addresses the special risks of rare earth element (REE) mining and processing. Along with the expertise required for usual environmental oversight (wildlife, air quality, water, aquatic life, mine engineering, etc), this project demands that further expertise to be able to comprehend and evaluate monitoring and mitigation measures in regards to the radioactive nature of the elements being mined and the waste products being produced. LKDFN believes that this project, more so than the diamond mines, has the potential for substantial and long-term environmental degradation attributed to regular operations and potential accidents and unplanned releases of radioactive by-products into the receiving environment.

In the LKDFN hearing presentation, we raised the concerns held by the United States Environmental Protection Agency (USEPA) regarding REE mining and processing and submitted its report titled *Investigating Rare Earth Element Mine Development in EPA Region 8 and Potential Environmental Impacts* (Paul, 2011). The USEPA recognizes the need for proper oversight, citing above all else that the lack of effective operations monitoring and the lack of the application of best management practices at the mine site on an ongoing basis could result in REE production **posing a significant risk to human and environmental health** (Paul, 2011).

We specifically drew the Review Board's attention to section 6.0, *Potential Risks to Human Health and the Environment*, which cites some of the major areas of concern for contamination with REE mining and processing. We should absolutely avoid repeating mistakes of this industry that the United States has already learned from, and which can result in irreversible environmental effects.

The oversight required has some comparison to the nuclear sector, in light of the radioactivity concerns surrounding REE mining. For comparison, we referred to the Nuclear Regulatory Commission (NRC) which is responsible for nuclear oversight in the United States. We submitted information on this to the registry (United States Nuclear Regulatory Commission, 2002). The NRC's mandate includes:

- full authority to protect public health and safety concerns and may demand immediate actions, up to and including a plant shutdown;
- authority to conduct regular inspections (10-25 times per year) to ensure that the proponent is conducting activities properly and that equipment is well maintained to ensure safety of the operations;
- ability to ensure corrective measures are taken when required, and that proper plans (emergency, radiation protection, environmental monitoring, fire protection, construction activities, etc.) are in place to be prepared for any potential accident or malfunction at the site;
- responding to accidents and malfunctions by sending a team to the site to investigate any incident and may demand prompt corrective action to be taken immediately, to the exclusion of all other activities at site;
- their reports are public, and they seek feedback from various parties where appropriate.



LKDFN strongly believes that an oversight body is required for this project that has independence and oversight authorities similar to the above, and will address the key performance indicators discussed in the USEPA report (Paul, 2011). No other government agency or board will hold this responsibility for this specific site, and production at Thor Lake and Pine Point will be carried out without any consistent monitor other than the limited attempts by Avalon. It is not sufficient to allow the proponent to be their own watchdog, for we have seen time and time again the abilities of profit-driven companies to neglect environmental and human health concerns in the pursuit of a bigger payout. LKDFN recommended a measure in this regard but the Review Board failed to act.

There is no need to 'wait and see' whether the project may jeopardize environmental or human health, when the answer is simply to have an oversight body responsible for this REE mine and processing plants. ***We recommend that the Minister refer this matter to the Review Board for further consideration.***

## 5. Caribou Not Protected

### (a) Inadequate Monitoring

LKDFN relies on abundant caribou as a major food source and in the past two decades the harvesters and elders in the community have been noticing a significant decline in the population of caribou, as well as a decline in the health of the surviving caribou. It is not only traditional knowledge that is noticing the impact development is having on the caribou, as scholars speculate that developments increase competition for foraging, increase the risk of predation, and contribute to low productivity for the affected herds (Nellemann, 1998).

Caribou are sensitive to human disturbances and with the rapid expansion of development across the territories, the herd ranges are drastically becoming unfit for caribou survival and fragmented to the point of forcing the caribou to divert from their historical travel routes. Caribou impacts from human disturbances stretch far beyond the actual footprint of the development (Nellemann, 1998, Dyer, 2001, and Boulanger, 2012).

During the EA, Avalon made a commitment to "...conduct limited wildlife monitoring in the immediate vicinity of the Nechalacho and Hydrometallurgical development area" and to "...record all significant wildlife observations made by site personnel while in the project area, and report any wood bison sightings to GNWT's ENR" grossly ineffective at understanding the true impacts this development will have on the caribou (Avalon Rare Metals Inc, 2013).

This is completely inadequate, as previously submitted by LKDFN. We asked for a binding measure that would ensure monitoring extends beyond the footprint of the project, and especially for caribou the monitoring must meaningfully link in with and contribute to the growing body of knowledge regarding caribou relation to mining activity, as well as monitor the potential long range impacts of their mine on the wildlife.

The Review Board's Measure #3 requires Avalon to develop a Wildlife and Wildlife Habitat Protection Plan. However it does not say anything about the scope of that plan (in terms of the mine footprint or beyond). In general the criteria for the plan are vague and leave pretty much everything up to the proponent. Since the proponent's commitments were inadequate in the first place, that is all the more reason to conclude this vague measure will be insufficient. ***We recommend that the Minister refer this matter to the Review Board for further consideration.***

(c) Cumulative impacts on caribou not adequately addressed

One thing the Review Board did respond to is the need for a measure on the Wildlife Effects Monitoring Program. We had stated that leaving this as a mere "commitment" by Avalon was not enough, and we supported a measure to ensure the WEMP would be implemented.

We also asked for measures that would speak directly to cumulative effects. So far, all we have is monitoring (the Wildlife and Wildlife Habitat Monitoring Plan in Measure #3, and the Wildlife Effects Monitoring Program in Measure #4). There is no action. Just watching and counting cannot be considered adequate.

Avalon stated on day one of the hearings that they believe their project is unlikely to contribute to cumulative impacts on caribou (MVEIRB, 2013). This is simply denial. With the already documented information on caribou sensitivity to human disturbance, every activity on the land contributes to cumulative effects on caribou, and this operation is no different. Though LKDFN accepts that Avalon is entirely responsible for managing cumulative effects, they are responsible to work with industry, government and aboriginal parties to work towards reversing cumulative effects and assist with caribou conservation. The company has committed to participate in cumulative effects workshops, but this commitment weak and in any case unenforceable.

More needs to be done by Avalon (not just Avalon, but including Avalon) to actually address the cumulative impacts occurring to caribou. This needs to be through enforceable, binding measures.

We note the Ni Hadi Yati monitoring program that is being negotiated among the Aboriginal parties and Debeers in respect of the Gahcho Kue project may be an appropriate model in the context of the Nechalacho project, both in respect of cumulative impacts and environmental monitoring.

***We recommend that the Minister refer this matter to the Review Board for further consideration.***

## 6. Risk of Barging Accidents Not Adequately Addressed

The Report takes the position that the mine concentrate that would be shipped by barge is "inert". Therefore, it took the position that the risk of barge accidents is not a significant impact, and made no measures to address it. The Review Board made a non-binding suggestion that Avalon develop a comprehensive spill contingency plan (Suggestion #4), but no binding measures on this point. Suggestions #5 and #6 only address notice and reporting, and provide no substantive protection (even if they were binding, which they are not).



LKDFN believes that even though the material being shipped across the lake is supposedly “inert,” any deposition of a foreign substance into the lake is a source of contamination and it should therefore be mandatory that Avalon be required to remove any deposit of material into Great Slave Lake resulting from barge incidents. This is a serious concern for us. Our concern and perspective on this deserves respect.

The hearings did not provide much confidence to LKDFN that existing measures will ensure the protection of Great Slave Lake water if a barge incident were to occur. The discussion on barge incidents only served to provide further confusion as to who is responsible for cleanup, when and if cleanups are required, and who has the responsibility for the decision of salvaging sunken materials.

In our view, if Avalon and their development is the reason for numerous barge trips across the lake over the next 20 years, then Avalon is responsible for responding to any barge incidents that may occur. If Avalon is so confident that no barge incidents will occur, then it should be simple for them to take on responsibility for cleanup or salvage if any incident should occur.

Leaving these key questions to non-binding suggestions means that there is nothing enforceable. In all likelihood, if Avalon does not act on the non-binding suggestion, there will not even be a contingency plan in place to address the situation of a concentrate spill. It is being left to chance and uncertainty, and after-the-fact scrambling. This is not consistent with the precautionary principle. It is only sensible to have a clear plan in advance about who will clean up. ***We recommend that the Minister refer this matter to the Review Board for further consideration.***

## **7. Water Pollution Not Adequately Addressed**

The Review Board made two measures regarding water pollution, Measure #1 regarding effluent quality criteria, and Measure #2 regarding groundwater monitoring at Pine Point. As we did not have the benefit of technical support for this EA, it is not really possible for us to provide meaningful comments on these measures.

However we note that the Review Board also made three non-binding suggestions about the protection of water (Suggestions #1-3). Ensuring water is fully protected is of utmost importance to LKDFN. At the very least, these suggestions should be binding measures. ***We recommend that the Minister refer this matter to the Review Board for further consideration.***

## **Conclusion**

LKDFN has long maintained that the Nechalacho project has potential for significant and long term adverse environmental impacts. LKDFN looked at REE mining in a global context, and found many reasons to be concerned, and no examples of where REE mining is taking place with adequate environmental protections.

Here in our territory, our environments and ecosystems sustain us, and the land holds value beyond the minerals in the ground. We must take measures to protect this valuable resource, and ensure it is sustainable for future generations. We must act carefully and responsibly. The measures that we believe are necessary can be implemented while still maintaining the commercial viability of this project. We urge the Minister, and all Responsible Ministers, to refer this project back to the Review Board for further consideration and to engage in consultation with LKDFN in accordance with these concerns.