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March 19, 2013

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

Dear Mr. Hubert,

Re: YKDFN Closing Comments on Avalon Environmental Assessment (EA)

YKDFN would like to thank the Review Board for the opportunity to participate in the Hearings for the Avalon Rare Metals EA, and for considering our revised presentation. In these closing comments, we aim to summarize our concerns regarding Avalon's proposed Thor Lake development within the scope of the EA process, and particularly in response to the recent Hearings.

On February 13, 2013, the Chiefs and Council of the YKDFN passed a motion stating: "The YKDFN does not support development of the Thor Lake Project on Chief Drygeese Lands" (Motion #2013-02-13-004). There are many reasons behind Councils' decision, all of them stemming from the Company's failure to ensure that YKDFN's concerns about the project were heard and ultimately addressed.

Failure to consult and accommodate

There is widespread confusion in the YKDFN communities regarding what exactly the Thor Lake project consists of. The Board can deduce the confusion over this project from some of the Elders presentations to the Board, where they drew analogs from other projects. People do not understand the nature of the materials being taken from underground, their potential to be hazardous or toxic, the effects of the tailings on air, water and wildlife, the impacts of barging, or the impacts on traditional land users. Avalon has never offered YKDFN the opportunity to host a community meeting for the purpose of sharing this information, as is customary practice with all other mines.

Following YKDFN's presentation, the Panel heard several of YKDFN's elders share their knowledge of the Thor Lake area. It is important for the Board to put these comments in context

with the project, as each Elder who spoke shared their concerns for how development of a mine will alter their relationship with the land, water, and wildlife around Thor Lake.

From Modeste Sangris, the Board heard an example of how YKDFN members have worked collaboratively with other Northerners promoting sustainable businesses, like Blachford Lake Lodge, that incorporate Traditional Knowledge. This collaboration is in stark contrast to the memories that many YKDFN members have from working at mines like Giant. From their thoughts and stories the Panel heard how lack of communication with YKDFN members about what mining is taking place on their traditional lands is deeply troubling:

“So we are concerned about that water -- the water that is going to be affected. Our beautiful land is being always contaminated. When -- but when you think about it, you almost want to cry about it. If there's something good -- you want to do something good -- you want to do something good, you're going to have talk right -- talk about it right to the end. That is the only way that we can work -- work together to work well together to have a better understanding of each other.” (Hearing Transcript Feb. 19 2013. p.146-147, lines: 22-25,1-6).

YKDFN requires the following measure:

- Avalon to develop a community consultation plan with the YKDFN regarding how best to engage community members on current and future plans associated with Nechalacho development. This should be based on best practices and the principle found in guiding documents developed in the North.

Traditional Knowledge Study

Over the course of the three-day hearings that took place in Yellowknife, the Panel heard numerous officials from the GNWT speak in favour of mining development in the NWT, citing mining industrialism as the founding industry of this Territory. As an organization which represents indigenous peoples of the North and the Chief Drygeese Territory, we disagree with this thinking.

Traditional activities like hunting, trapping, and trading are the oldest and most unique industries of the North. A true Northern economy is one that preserves industries like tourism and traditional lifestyles and should not be degraded in favour of non-renewable industries like mining. YKDFN will not trade their culture and exercise of traditional rights to further subsidize the mineral industry. If they cannot exist in concert, then industry must reconsider their approach.

As part of the first round of information requests (IR), YKDFN questioned Avalon on the due diligence of the TK study conducted in 2010. In the IRs, YKDFN highlighted the inadequacy of information gathered, citing it as “grossly inaccurate and insulting to the Yellowknives Dene First Nation”. The results of the study show that the Company has not thoroughly investigated the potential impacts of the project on traditional use of the area and Dene lifestyle. For their Developers Assessment report Avalon used their studies to make several reductive statements about the YKDFN people and their unique history YKDFN requested this information be removed from the study but this has yet to be done in answer to YKDFNs IR submission #1.

Avalon is making assumptions about what is beneficial to the First Nation by not conducting thorough analysis of historical information, and by not updating the community on plans for the project stemming from feasibility studies and other analysis of information.

- There is a need to remedy the mistakes of the developer which the review Board must require on behalf of the YKDFN. YKDFN is requesting the Board make the following recommendation: The Yellowknives Dene First Nation requests that the Board require Avalon Rare Metals conduct a detailed, properly designed Traditional Knowledge study of the region. The information gathered must guide Avalon in the design, operation, and closure of the mine and must also become part of the long-term evaluation of impacts the mine will have on the surrounding land and water

Economic Benefit Agreement

The lack of agreement is symptomatic of the degrading relationship between YKDFN and the Company. Given the history of poor TK study execution, lack of engagement at the community level, the company was “putting all of their eggs in one basket” with their offer for limited partnerships for the mine. Had the company listened to the concerns of the community, they would have heard that there are serious reservations regarding public will to assume partial ownership of a mine at all. The principle is, for many members, problematic and seemingly contrary to efforts toward environmental stewardship.

Equally troubling is the Company’s attitude toward acknowledging the importance of the Thor Lake area for the YKDFN. YKDFN maintains that without the Thor Lake mine, downstream processes of the Pine Point separation plant would not exist; indeed there would be no product. Despite the naming ceremony that took place at the site, an event which the Company claims has significant meaning to them as it acknowledges the partnership with the YKDFN. Yet, Avalon has entered into agreements with other First Nations before the YKDFN’s terms have been negotiated.

YKDFN understands there is likelihood that this mine will receive its permits. But given the state of relations with the Company, the outcome of negotiations for a satisfactory IBA settlement is much less clear. Therefore, the YKDFN requires a measure that will mandate a final agreement prior to licensing:

- YKDFN request a measure making the signing of an Accommodation Agreement between YKDFN and Avalon a requirement prior to licensing.

Socio Economic Agreements (SEA)

There was a significant amount of discussion on the nature and utility of the Socio-Economic Agreements that GNWT hopes to negotiate with the Project. YKDFN wish to make its position clear: that these agreements, absent the existence of ‘Accommodation Agreements’ provide no real value.

YKDFN sought to establish this on the record, but the GNWT response to questioning was weak and evasive. The fact of the matter is that the mines in the Chief Drygeese Territory have a total of 31 years of which they have been operational. Of those years, they have met the terms of their SEA's 12 times. When these resources are gone, they're gone for good and we insist that there are meaningful benefits for our members and First Nation.

YKDFN believes in the Review Board's aim to establish standards for operation, and that striving to meet set standards is in the best interest of all Northerners. But it can't be ignored that, as evidenced during the Gahcho Kue Review, the limitations of our economy mean that the benefits will flow south and the economic well-being of First Nations like the YKDFN will be compromised. Northern participation in mining is already approaching its maximum – the first two diamond mines had rates in excess of 50% while Snap is under 40% and Gahcho Kue is not setting targets at this point.

The successes that have occurred in the North are significant, but to SEAs can't take all of that credit. The true merit of these agreements is supported by the successful negotiation and implementation of other agreements like IBAs. For this reason, it is in the best interest of all involved to ensure not only SEAs are adhered to, but that Agreements with First Nations are also Negotiated fairly.

Environmental Deficiencies

YKDFN consistently acknowledges the gaps in the lack of statutory ability or willingness to address environmental concerns after permits are issued. These gaps result in ineffective or incomplete monitoring that is troubling to First Nations who question environmental management practices. In these closing comments, the YKDFN seeks several measures that, if implemented by the Board, will fill some of these gaps and address some of YKDFN's concerns about the Thor Lake project.

Barging

The Company has failed to acknowledge the specific impacts barging operations will have on Traditional Use of the waterways near Thor Lake. With increased seasonal traffic, the highly travelled routes between Yellowknife, Dettah, Lutsel Ké, Reliance, and other culturally significant site on the East Arm of Great Slave Lake will be congested, even unsafe. Avalon has failed to understand community concerns relating to barging. This is evident where Elders voiced a commonly held public perception that potential contamination from spills can have arsenic-like impacts on water and people.

The company has stated in the DAR that it examined other options to barging, but ruled them out for reasons of economic impracticality. Engaging the First Nations on this subject would have gone a long way to address YKDFN's concerns about barging. It would have provided an opportunity to better understand the company's rationale, and answer questions that are still outstanding. During the hearings, YKDFN heard a presentation from the Coast Guard on barging practices, past incidents in the NWT, and proper procedures for clean-up in the event of a spill.

YKDFN still requires assurance that, should a spill occur, Avalon will not shirk responsibility of clean-up, relying solely on the operator for spills resulting from barging operations. Understanding how the responsibility is shared between Avalon and a contractor is imperative for YKDFN to be comfortable with the process, as after all, the relationship and any future agreements will be between Avalon and YKDFN.

It is also important for the Board to recall previous hearings where a failure to salvage equipment in Great Slave Lake has resulted in a clear and significant impact from the community viewpoint. Today, in Drybones Bay, there remains a fuel truck sunk through a portion of ice road that, despite multiple requests by YKDFN, has not been removed. During the hearings, Avalon committed to retrieving lost materials should a barging container sink. Learning from the Drybones Bay example, YKDFN requires assurance that appropriate action will be taken upon request by the First Nation.

Given the lack of clarity surrounding spill response and the level of uncertainty for salvaging equipment, YKDFN supports the Board making a measure on barging. YKDFN is aware that LKDFN has requested a measure for barging in their closing comments and YKDFN supports their request.

Cumulative Effects

The Chief Drygeese Territory, traditional territory of the YKDFN, currently encompasses three operating diamond mines, four major, separate mines in various stages of the regulatory process, countless on-going exploration projects, and one of the most contaminated sites in Canada. The cumulative environmental impacts currently affecting the land, water, and wildlife in the Chief Drygeese Territory is devastatingly under-appreciated.

YKDFN and other First Nations are working with Government and industry to better understand the impacts of cumulative effects and making efforts to curb these impacts. More work needs to be done, and recommendations have a long way to go to be filtered to mines in their daily operations. It is therefore crucial that all new mines applying for permits in the NWT be required to join in these efforts to address cumulative effects. YKDFN asks the Review Board for the following measure:

- A measure to require Avalon's participation in Regional Cumulative Effects and management programs

YKDFN believes this measure is necessary because Avalon's verbal commitment made before the hearings was to attend workshops. As these have passed, the company currently is not required to have further involvement in cumulative effects planning. YKDFN is not satisfied with the lack of commitment moving forward and believes failure to participate is not acceptable.

Wildlife

YKDFN members have witnessed a dramatic decline in caribou population herds in recent decades. Compounding the impacts of this reality, YKDFN members have had their Treaty rights infringed upon by government regulation of hunting. Leadership is working diligently with departments like ENR to negotiate fair and sustainable terms for harvesting these fragile herds.

Understanding the challenges that mine development places on wildlife is key to protecting their health and populations. YKDFN requires the project to develop a wildlife effects monitoring program (WEMP), based on best practices developed at industrial sites in the territory. This program must gather data to test three components – the range of natural variability, the validity of the predictions made, and the nature of any impacts observed. Every three years this information should be compiled into a state of the local environment report.

While Avalon has stated that they are skeptical of the effectiveness of programs like WEMP. This opinion is made absent any evidence on the record, is inconsistent with experience in the territory, and most certainly does not represent the view of this community. YKDFN seeks:

- A measure to require the development of a Wildlife Effects Monitoring Program, with clarity on the expectations in terms of types of research, the participants and the implementation period.

Air Quality

YKDFN don't care how the Board, Proponent or Government arrive at a point where there is an enforceable mechanism to require the project to demonstrate that it can (and has been) meet guidelines for persistent organic pollutants, but it is a requirement. Avalon suggested during the Hearings that stack testing is a grossly expensive practice, and that it is simply uneconomical for the Company to commit to undertake regularly. Avalon's assumption of costs is simply not true, as other Companies in the NWT have quoted the same tests for a mere fraction of the costs Avalon cited on the record. To this end, YKDFN contacted a company with experience in the NWT, having recently completed this type of work for other industrial efforts. That company did not support the position of Avalon, indicating that expected costs should be in the \$60-80k range (depending on complexity, range of testing and particular logistics).

As an alternative to testing, the Company offered commitments to ensure their equipment would be installed correctly. Every mine in the territory has had difficulty on-lining and operating their incinerators and to ignore this evidence to believe that Avalon will succeed where corporate giants with projects all over the world have failed is contradictory to YKDFN's experience.

- A measure that requires the submission of an incineration management plan, featuring regular monitoring and testing to demonstrate compliance with Air Quality Guidelines

Independent Environmental Oversight

Oversight, outside of the regulatory system, has been proven to provide the residents of the Mackenzie Valley with mines that can be generally considered as good environmental mineral

operators. In the last month alone, oversight boards were instrumental in critical water licensing processes (Snap Lake AEMP and BHP Water License renewal), ensuring effective management. YKDFN would like to see this practice continue, but recognizes the limitations.

With this in mind, we ask the Board to require the project to participate in any process similar to the Multi Party Environmental Monitoring Agency, which was a multi-disciplinary structure that would provide expert analysis of environmental management plans and actions across multiple industrial developments. This is critical to parties with limited capacity to participate in regulatory processes – it provides a means to prepare informed interventions and submissions that is entirely absent within the current system.

As a suggestion, the YKDFN endorses the model currently being developed jointly by DeBeers Gahcho Kue and multiple First Nations. This example of cooperation and collaboration could serve as the new standard for environmental oversight for this and other future mining projects.

Closure

Improved Closure Planning is required to provide clarity on precisely what the company intends to do with the site after they have finished with it. The promises established at the Review Board stage are the guiding principles for the closure plans that are developed during the permitting phase. As a simple example, the company has indicated that re-vegetation may be required, without providing any information as to what would trigger the requirement.

It has been YKDFN's experience that the lack of precision that emerges out of EA has resulted in a significant gulf between what the community has been told and what the company intends to do before returning the site for community use. YKDFN believe that as part of its decision, the Board should acknowledge that ambiguous closure planning has been a point of failure in optimal closure practices, and require the following:

- Using the full range of their administrative powers, including using the rules of procedure to require fuller information that seeks to establish the collaborative development of closure objectives, options, and where possible, initial criteria. This would provide: a) a means to secure accommodation to the concern and; b) provide clear indication to the Land and Water Boards that there is considerable dissent in the closure planning and that the Review Board has found that the closure section provided to the Review Board is lacking.

Economic Sensitivity Analysis

This is a project which carries additional risk of failure, relative to other mines in the territory. When we consider the relatively strong economic understanding associated with previous mineral developments and the very large number of contaminated sites that we have been left with, the increased risk with a new mineral deposit is conspicuous.

- This is a deposit which has no market pricing – the product produced does not have an effective open traded exchange.

- This is an emerging sector of the economy – predictions of quantity of materials needed by the economy or the value that they will have are based on extremely limited datasets.
- This is a Company with a single real project at this stage – should they encounter economic head winds, there are no other projects to within the corporate structure to help carry them through to more favourable times.
- The Company’s evaluation of the economic benefits provided to the territory is wildly optimistic and does not reflect the evidence provided in other hearings.

Together, the risk for this is higher. In both Fortune and Gahcho Kue there were economic analysis available that considered, respectively, the risk and the benefits to the territory. In this case, neither the GNWT nor the Parties are in a position to provide that information to aid the Board in its decision.


If this project has considerable risk of failure (as seen with Tahera), the potential of creating impacts on the land for little benefit to the Territory or the YKDFN is not acceptable. This is not an issue of security or environmental bonding – despite limitations, the fact is that there will be security here, but YKDFN wish to be clear – a closed mine is not a site with no impacts, it’s a site that continues to have influence on the land and the way that the people can use the land. The lack of a solid TK study, an ambiguous closure plan, along with the increased risk of failure and consequential limited economic benefits means that the YKDFN will see another part of their land alienated without a positive trade off.

In addition to establishing risk of failure, this analysis will provide a tool for parties, regulators and governments to implement better management actions if difficulties are encountered.

Conclusion

YKDFN believes strongly that this Company must do more to satisfy the concerns of its membership. This project does have to potential to cause significant impacts on the environment and traditional lifestyles of Dene people. We hope that the Board will consider the measures being proposed and we thank-you for review our comments.

Mahsi Cho,


for Chief Edward Sangris
YKDFN, Dettah

cc. Shannon Gault, Director Land & Environment, YKDFN