



Akaitcho Interim Measures Agreement Implementation Office

NWT Treaty #8 Tribal Corporation

December 6, 2010

Mackenzie Valley Environmental Impact Review Board
c/o Nicole Spencer – Environmental Assessment Officer

Via Email

nspencer@reviewboard.ca

RE: EA1011-002 Additional Evidence relevant to s.114(c) of the MVRMA.

Good Afternoon,

Regarding the environmental assessment for TNR Gold Corp.'s proposed Moose Project please accept this letter and attachments as additional evidence relevant to s.114(c) of the MVRMA.

Attached please find our final submission to the MVLWB regarding TNR Gold Corp.'s MV2010C0015 land use permit application. I believe that this document clearly outlines the consultation and accommodation that occurred prior to and during TNR Gold Corp.'s endeavour to receive a land use permit from the MVLWB. Since this time it is my experience that neither the company nor the crown has made any significant effort to engage the Akaitcho First Nations regarding the proposed Moose project. However, the MVEIRB, through Akaitcho First Nations and this office's request for rulings, did engage in community information sessions, one day events, in the communities of N'dilo, Fort Resolution and Lutsel K'e. I did attend the information session held in Lutsel K'e and I know that the community members present requested more time and information regarding the proposed project as the time allotted for the information session was not long enough for everyone's concerns, questions and comments to be addressed. I understand that the company has made commitments to the Akaitcho First Nations regarding various things such as site visits, archaeological studies and further community information sessions, etc. but to date these things have not occurred nor are they guaranteed by any formal agreement.

During the public hearing held in Yellowknife on November 19, 2010 it was clear to me that the company was trying to apologize for its inadequacy in consulting and accommodating the Akaitcho First Nations prior to the commencement of the EA process, citing things like 'hindsight' and then making further commitments to build an honest and open relationship with the Akaitcho First Nations and their communities in the future, however it must be said that rebuilding trust where it has been broken in the past is formidable task and without the assurance of a formal agreement outlining commitments made by the developer it is more than difficult to 'take their word for it'.

Also during the public hearing for EA1011-002, for which I was present, I made statements in support of the Akaitcho First Nations requests that the review board utilize s. 123.1(b) to undertake independent evaluation if consultation has occurred, and when found incomplete, allow the crown to undertake their duty to restore their honour.

I will restate those for you now:

- The Akaitcho IMA Implementation Office has an outstanding access to information request regarding the proposed project that may be relevant to s.114(c) to the MVRMA and we require more time to receive a response and that the public record on EA1011-002 must not be closed until such time. For your information the request was sent in mid June 2010 and I have a record/ timeline of correspondence between myself and the access to information and privacy office, this request is ongoing and as of today's date it remains unknown as to when I may receive a response,
- The company, TNR Gold Corp. has made several commitments to the Akaitcho First Nations and due to the poor timing of these commitments and the weather they cannot fulfill these commitments until the late Spring or Summer of 2011 at the earliest and because the company has not guaranteed these commitments through a signed formal agreement the public record must remain open until the commitments of further community information sessions, site visits and archaeological/heritage studies involving Akaitcho First Nations and their members are fulfilled completely,
- The former DeSteffany exploration and exploitation site has not been remediated and in fact is currently only in the second phase of assessment by the crown. In the crown's opinion the second phase study of the site may only become available in early 2011. The public record must remain open in order to allow the crown to fulfill its duty to consult and accommodate the Akaitcho First Nations in regards to the assessment and remediation of this site.

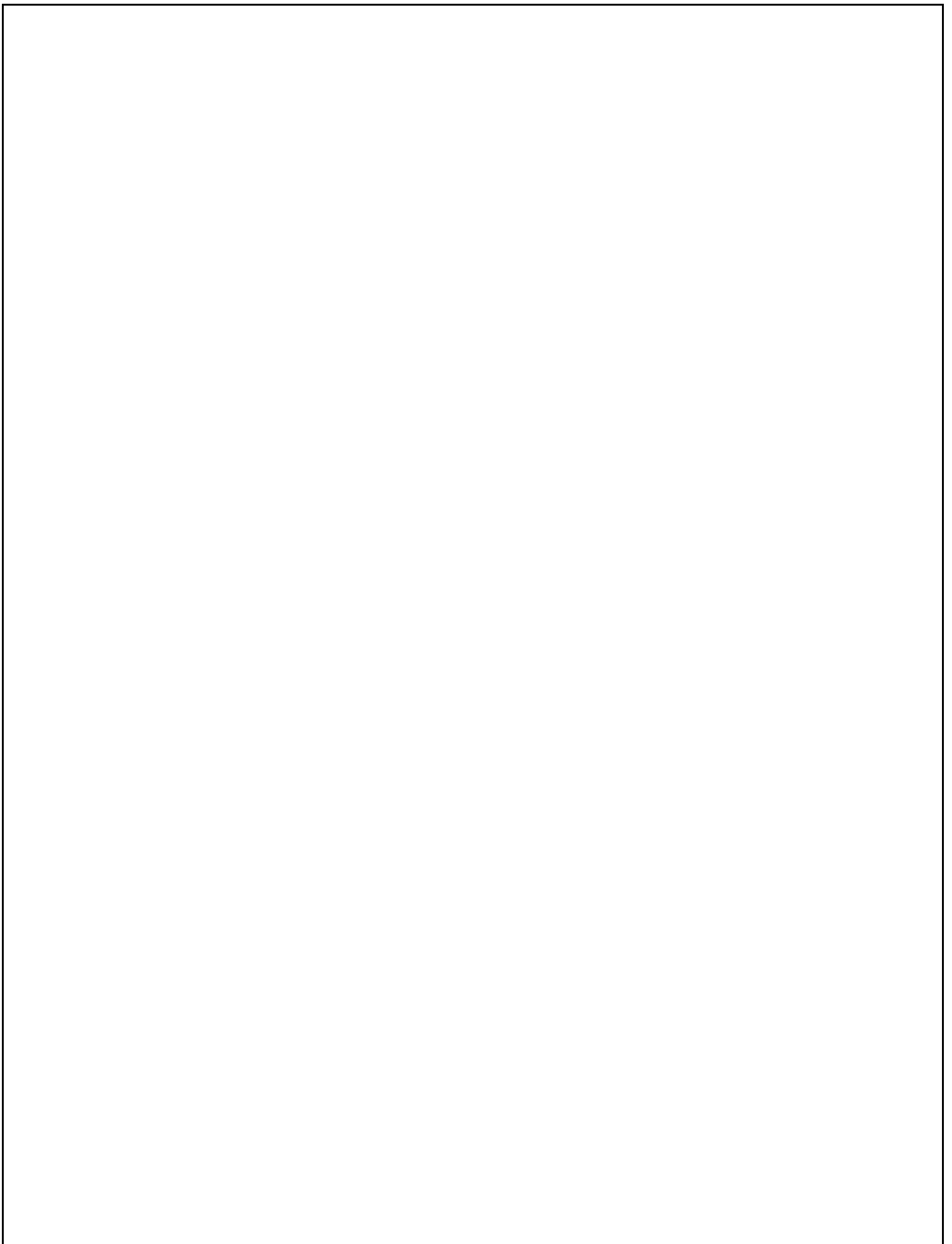
I strongly urge the MVEIRB to uphold the recommendations of the Akaitcho First Nations in regards to EA1011-002. In closing I would like to quote a section of the Federal Court's decision in *Yellowknives Dene First Nation et al.v. Attorney General of Canada and North Arrow Minerals Inc.* which states "the fact that adequate notice of an intended decision may have been given does not mean that the requirement for adequate consultation has also been met."

Marsi Cho,

signed electronically by

Stephanie Poole
Akaitcho IMA Implementation Office
NWT Treaty #8 Tribal Corporation

attachment





Akaitcho Interim Measures Agreement Implementation Office

NWT Treaty #8 Tribal Corporation

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July 12th, 2010

Shannon Hayden – Regulatory Officer
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RE: Clarification of communications between TNR Gold Corp. and the Akaitcho IMA Implementation Office, and concerns with the acceptance of MV2010C0015 as "complete"

Ms. Hayden:

I note that TNR Gold Corp.'s application for mineral exploration activities on the Moose claims has been accepted by the MVLWB as "complete" as of June 18th, 2010. Originally submitted on April 7th, 2010, this application was initially deemed "incomplete" by the MVLWB as the company had not provided details of any engagements with potentially affected aboriginal parties.

On June 15th, 2010, TNR Gold Corp. re-submitted its application, maintaining that it had communicated with some aboriginal parties and addressed some of their concerns. From the perspective of my office, the efforts of the company to meaningfully engage were inadequate, and the MVLWB should never have accepted the June 15th application as "complete".

This letter will serve to clarify the intent, scope, and nature of the communications between TNR Gold Corp. and my office, which represent the greater bulk of the all the company's engagement efforts. This letter will also outline the broader ramifications of the MVLWB's decision to accept MV2010C0015 as "complete", including why the very real concerns of the Akaitcho Dene First

Nations (AKFNs) cannot now be substantively addressed exclusively through the regulatory process.

Consultation Logs

In its June 15th resubmission, TNR Gold provides its version of a “communication log”, outlining some of its communications with aboriginal parties. My office maintains its own communication log, recording all communications with various companies. As TNR Gold's log is not accurate or complete, it is important to submit the Akaitcho IMA Office's log into the public record (See *Appendix A*). My office's log is explained in narrative form below.

2009

Upon learning from a short *News/North* article that TNR Gold had acquired the Moose claims, original contact with TNR Gold Corp. was initiated by my office over a year ago on May 15th, 2009 via email. The content of this email advised the company to follow the attached *Mineral Exploration Guidelines in the Akaitcho Territory*, which outline the AKFNs preferred engagement process (See *Appendix B*). Explicit in the *Guidelines* are the following:

- That my office's role in the engagement process is typically limited to a), making an initial assessment as to whether areas encompassed by claims might be sensitive to the AKFNs, and b), advising companies as to which AKFNs should be engaged and in what manner.
- That engagement must occur directly with the potentially affected AKFNs in a face-to-face manner.

On August 12th, 2009, the President of TNR Gold Corp. contacted me via email. In this email, it is stated that “...a comprehensive exploration plan for summer 2010 will be presented for your approval and comment prior to applying for a Land Use Permit” (emphasis added). The communication also indicated that “Once our program has been designed I will be happy to meet with you and interested members of your community to discuss our activities in your area”.

I responded to this email on August 17th. In my response, I indicate that the company should be aware that the Moose claims will likely contain AKFN heritage sites, given the proximity to Narrow Island to the immediate east (an area of heavy current and traditional use). I also specify that impacts upon AKFN heritage will need to be more thoroughly discussed once the exploration plan is further defined.

After August 17th, 2009, there was no further contact between my office and TNR Gold Corp. until April 14th, 2010.

It is important to note that the “communication log” provided by the company in its June 15, 2010 application to the MVLWB omits any record of the 2009 communications.

2010

On April 7th, 2010, TNR Gold Corp. applied to the MVLWB for a Land-Use Permit. In this application, the company asserts that “...it has consulted with potentially affected aboriginal groups...”, and that “...appended is a summary of communication to date.” However, no summary of communication was in fact appended to the application, nor was any other

evidence that might support the contention that consultation with potentially affected aboriginal groups had occurred.

On April 14th, Aurora Geosciences, on behalf of TNR Gold Corp., initiated contact with my office *after* the company had applied to the MVLWB for a Land-Use Permit. Nowhere in the April 14th form letter and accompanying project description did the company seek to fulfill its 2009 commitment or otherwise engage with the AKFNs. The letter, the same of which was forwarded to the individual AKFNs, served only to “notify” my office and the AKFNs of the proposed upcoming exploration program.

On April 15th, my office contacted Aurora Geosciences to get a better copy of the maps attached to the project description provided the previous day (the faxed copies were not legible). This was provided.

On April 21st, I emailed Aurora Geosciences, again providing the *Mineral Exploration Guidelines in the Akaitcho Territory*. A copy of the *Akaitcho Exploration Agreement*, referenced in the *Guidelines* as the AKFN preferred mechanism for engagement, was also provided. I encouraged TNR Gold Corp. to apply the *Guidelines* and the *Exploration Agreement* in their engagement efforts with the AKFNs. I also repeatedly stated that the AKFNs were flexible, and were amenable to the specific circumstances of the company in the implementation of the *Guidelines* and the *Exploration Agreement*.

In the April 21st email, I also indicated that the Moose claims were located in an area of triple overlap amongst the Lutsel K'e Dene First Nation, the Deninu Kue First Nation, and the Yellowknives Dene First Nation, all who engage in significant activity in the region. I advised that my office would be working directly with the three First Nations to potentially come up with some efficiencies for an engagement process, and that I would provide guidance shortly.

The MVLWB rejected TNR Gold Corp.'s application as “incomplete” on April 23^d, 2010, as the company had not provided any evidence of engagement with a number of aboriginal organizations, including the AKFNs.

On April 28th, I emailed Aurora Geosciences with explicit direction on my specific role in any engagement process between TNR Gold Corp. and the AKFNs. Specifically, the email stated that “*If TNR Gold opts to pursue the Akaitcho Exploration Agreement with the AKFNs (and we strongly encourage this – it makes it less onerous and more certain for us all), I will serve as the one point of contact for TNR Gold on behalf of all three of the First Nations.*” The email also explained “*If TNR Gold is not willing to entertain the Akaitcho Exploration Agreement approach to dispense of consultative obligations, consultation and accommodation as mandated by various Supreme Court cases must occur nonetheless, in some other form. In the case of TNR Gold, it would require the company to engage independently with each of the Akaitcho Dene First Nations, meaning at the very least three separate engagements within the First Nation communities themselves (and the associated expense)*”.

This communication made it abundantly clear that my role was restricted to advancing a dialogue should the company choose to pursue an *Exploration Agreement*. This arrangement was possible as the AKFNs have, with significant investment and effort, undergone an internal process whereby they mutually agreed that the content of the *Exploration Agreement* generally accommodated their concerns and interests in relation to mineral exploration. I therefore did not have to represent or articulate AKFN interests, as they were already explicitly laid out within the

agreement itself. My role was simply to facilitate a process for the execution of the *Exploration Agreement*.

Companies that choose to forego the *Exploration Agreement* are therefore also choosing an engagement approach whereby the AKFNs have not explicitly laid out their concerns. Understanding and considering these concerns in a serious manner therefore requires face-to-face engagement with First Nation leaders and associated resource people.

It is important to note that this key April 28th email is absent from the "communication log" provided by TNR Gold Corp. to the MVLWB (the communication the company has associated with April 28th is actually from April 21st).

On May 21st, Aurora Geosciences emailed a letter to me (the letter is dated May 18th). The associated message indicated that TNR Gold Corp. was considering whether to pursue an *Exploration Agreement* or not, and that they wished to meet with the AKFNs regardless of their decision in this matter. The letter acknowledges that the exploration program may have impacts upon the AKFNs, and states that the company would like to meet with the AKFNs together or separately. In concluding the letter, Aurora Geosciences indicated that it would be in touch within two weeks to discuss when meetings could be arranged. There was no follow-up on this commitment either with my office or with the AKFNs.

On May 28th, I called Aurora Geosciences. I was going to be in Yellowknife on other meetings the next week, and proposed that I drop by to have a conversation about engagement with the AKFNs. Aurora Geosciences confirmed their availability, and I indicated that I would drop by the morning of June 2nd. From my perspective, this meeting was to be a casual, informal discussion about how to best engage with the First Nations, as well as how to best prepare for the concerns that would probably be raised during face-to-face meetings.

The morning of June 2nd, I dropped by the Yellowknife offices of Aurora Geosciences. My role in this meeting was purely to advocate the *Exploration Agreement* as an effective and efficient mechanism for consulting with the AKFNs, and to provide advice to TNR Gold Corp. on the concerns they should be prepared to discuss when they meet with the AKFNs directly.

It is important at this time to offer some clarifications of the conversation that ensued, as the notes provided by Aurora Geosciences in their June 15th application differ from my recollection:

- Initially, Aurora Geosciences characterized their May 18th letter as a request for feedback on their exploration program. In fact, the letter was an expression of interest in meeting with the AKFNs.
- I indicated during the discussion that this was to be an informal dialogue whereby I could potentially help the company better understand the engagement approach of the AKFNs so as to be prepared for eventual meetings. The conversation was never characterized as an engagement meeting between TNR Gold Corp. and the AKFNs, where my role was to communicate the First Nation concerns in lieu of actual face-to-face meetings with the AKFNs themselves.
- Aurora Geosciences indicated that TNR Gold Corp. would like to start its exploration program as soon as possible, and that taking advantage of the open water season was critical to move equipment to the Moose claims.
- When discussing the potential concerns of the AKFNs, my comments were restricted to advising Aurora Geosciences on likely topics to be raised during further engagement. My

advice was given purely to assist the company in properly preparing for their proposed face-to-face meetings.

- At no time did I indicate that the historic impacts of mineral exploration to the area have been small. I did say that the company should be prepared to show the AKFNs pictures of the existing "brownfield" sites on the Moose claims, and explain that the proposed exploration would primarily occur on these "brownfield" sites. This might assuage some concern as the "damage had already been done".
- Aurora Geosciences' notes fail to mention that at this meeting, it was indicated to me for the first time that TNR Gold Corp. did not want to pursue an *Exploration Agreement* with the AKFNs. The rationale given for the rejection of this mechanism was that it was considered by the company to be outside the existing regulatory framework.
- Aurora Geosciences mentioned that the provisions of the *Exploration Agreement* were largely things that the company would be prepared to do anyways.
- I did not state that the *Exploration Agreement* was not accepted by government – I do not know this to be the case or not, as the federal government has not articulated a public position on the approach. Rather, I stated that the agreement is not a legal requirement.
- I also stated that though the *Exploration Agreement* is not a legal requirement, nor are engagement meetings with the AKFNs, which TNR Gold Corp. had indicated it was willing to do.
- Given that TNR Gold Corp. was not interested in the *Exploration Agreement*, I indicated that the company should prepare for upcoming face-to-face engagements by providing a letter that addressed the substantive elements of the agreement nonetheless (as per a recent Diavik application). This letter could serve as a starting point for dialogue with the AKFNs.

Upon leaving the conversation with Aurora Geosciences, I left with the understanding that the company would be following up on its commitment to address the substantive elements of the *Exploration Agreement* in preparation for upcoming face-to-face meetings with the AKFNs.

On June 3^d, I sent an email to Aurora Geosciences as a follow-up to the June 2nd conversation. In this email, I stated that I was concerned that TNR Gold Corp. would have difficulty achieving its tight exploration timelines prior to meeting with the AKFNs. I stressed that the company reconsider its refusal of the *Exploration Agreement*, and I indicated that executing the agreement with the AKFNs would be the surest manner in which to insure that the exploration program proceeded in a timely manner with First Nation concerns being addressed. In this email, I reiterated the message that should the company maintain its position regarding the agreement, it should prepare for upcoming engagements with the AKFNs by addressing the substantive elements of the agreement itself.

On June 15th, Aurora Geosciences forwarded a letter to my office and to the AKFNs. This letter contained some measures proposed by TNR Gold Corp. to address some of the substantive elements of the *Exploration Agreement*, and indicated that they were again interested in meeting with the AKFNs. On the same day, TNR Gold Corp. re-submitted its application to the MVLWB. Neither my office nor the AKFNs were advised of this fact at the time.

On June 17th, I emailed Aurora Geosciences in response to the June 15th letter. I indicated that I did not believe that their proposed accommodation measures would be adequate for the AKFNs. I also indicated that as it was expressly clear at this point that TNR Gold Corp. would not pursue an *Exploration Agreement*, my role in facilitating the execution of an agreement

would now come to a close. I provided contact information for point people with the AKFNs, and indicated that the company should now seek to organize face-to-face meetings with the individual First Nations.

On June 18th, my office and the AKFNs were notified by the MVLWB that the TNR Gold Corp. application had been accepted as “complete”, and that the pre-screening process had commenced.

On June 22nd, I received an email from Aurora Geosciences indicating that they would follow-up with the three point people identified in my June 17th letter, and would seek to have meetings directly with the AKFNs. This is the final communication between TNR Gold Corp. and my office.

From the 2009-2010 communications, the following conclusions can be made:

- TNR Gold Corp. was aware over a year ago that the individual AKFNs required face-to-face community engagements.
- The company committed ten months ago to meet directly with the AKFNs prior to applying for any Land-Use Permit.
- The company was aware ten months ago that the Moose claims are uniquely sensitive as they are in an area of heavy traditional and current use (around Narrow Island).
- The company did not make any attempt to fulfill its commitment to meet with any of the Akaitcho Dene First Nations. In fact, the company:
 - applied to the MVLWB without any communications with my office or the AKFNs (save those from 2010), and initiated “notification” only after they were likely aware that the MVLWB was going to deem their application to be “incomplete”.
 - failed to initiate preparations for meetings with the AKFNs, despite repeated guidance from my office on how to engage effectively.
- The company has characterized the casual June 2nd conversation between myself and Aurora Geosciences as fulfillment of any responsibility that they may have for engagement with the AKFNs.
- The “communication log” and associated documents provided by TNR Gold Corp. to the MVLWB are both incomplete and misleading (wittingly or unwittingly).

Ramifications of MVLWB acceptance of the TNR Gold Corp. application as “complete”

The fact that the MVLWB accepted the TNR Gold Corp. application as “complete” on June 18th, 2010 is troubling for a number of reasons. These are discussed in some detail below.

In its April 23^d, 2010 letter to TNR Gold Corp. indicating that the initial application was “incomplete”, the MVLWB required of the company a community involvement log. It was further expressed that this log should include detailed minutes of all meetings and all other correspondence with sixteen independent aboriginal organizations and communities (my office and the AKFNs were included in this list). Details of the meetings were to include the nature, dates, and locations of meetings held, as well as a discussion on how issues raised by the organizations were considered by the company. The MVLWB also indicated that it required the company to provide information on how traditional knowledge had been considered.

In its resubmitted application of June 15th, TNR Gold Corp. provided the following information in response to the MVLWB requirements:

- Copies of an April 14th form letter that was forwarded to the bulk of the organizations listed by the MVLWB in their letter of April 23^d.
- A “communication log” detailing some communications between the company and some of the listed organizations, the substantive bulk of which consisted of communications between my office and Aurora Geosciences.

The April 14th letter merits some discussion. This letter of “notification” briefly describes TNR Gold Corp.'s proposed exploration program. Nowhere in the letter does the company express an interest in meeting with any of the recipients. The letter cannot be construed as an attempt by the company to engage and dialogue with any of the recipients, as no mention of any potential engagement is made at all. It follows that any lack of indication from the recipients as to whether or not they wish to meet with the company in response to this letter cannot be interpreted as lack of interest in engagement. For their part, the AKFNs and my office have been abundantly clear long before this letter was even received – the AKFNs want to have meetings with TNR Gold Corp for the purpose of mitigating real impacts.

Nonetheless, according to TNR Gold’s “communication log”, the MVLWB specifically advised the company that as long as they forwarded the April 14th form letter to the complete list of required recipients, they would be in compliance. This can only be taken to mean that the MVLWB would then accept the application as “complete”. This is in direct contravention of the requirements outlined in the April 23^d letter, where the MVLWB explicitly outlines that either actual meetings must occur with the listed organizations, or failing that, the company must demonstrate best efforts to engage. Despite doing neither of these things, TNR Gold Corp. still had its application accepted as “complete”.

As a result, the MVLWB has not provided the opportunity for the company or the recipient organizations to dialogue and resolve issues and concerns that cannot be dealt with through the regulatory process. From the AKFN perspective, such items include rights-based concerns, socio-economic interests, and First Nation involvement in wildlife and aquatics monitoring, to name a few. The end result is that the AKFNs are forced to represent these interests through other avenues – either through direct consultation with the Crown, through environmental assessments, or through litigation. None of these options are attractive, but must be employed if the MVLWB is not going to compel companies to engage in a serious manner.

The MVLWB has seriously mismanaged the communication, implementation, and enforcement of its engagement requirements. Expectations seem to be raised and lowered in an ad hoc fashion that smacks of administrative unfairness and outright error. In this case, the end result is that the required “community involvement log” is absolutely devoid of the very thing it is supposed to contain – *demonstration of the meaningful involvement of the communities*.

Another element of administrative unfairness is the MVLWB's full acceptance of TNR Gold Corp.'s “communication log” without question or investigation. This letter has provided ample evidence that the “communication log” is neither a complete nor an accurate representation of the actual dialogue between my office and TNR Gold Corp. It is incumbent upon the MVLWB, as an independent administrative tribunal, to conduct its own investigations in order to evaluate the submissions that it receives. In this instance, such an investigation would at the very least involve some solicitation of comment as to my office's perspective on the nature and substance of our communications with TNR Gold Corp. This information could have been easily provided by my office (it is here attached as *Appendix A*), and perhaps would have informed the MVLWB's consideration as to whether the application was “complete” or not.

AKFN options going forward

In accepting MV2010C0015 as “complete”, the MVLWB has effectively removed the option for TNR Gold Corp. and the AKFNs to mutually and satisfactorily address issues and concerns in a collaborative manner prior to MVLWB decision. These issues and concerns typically fall outside of the narrow regulatory process, but are nonetheless critical to address from a legal and moral perspective. Unfortunately, the “train has now left the building”, and time is ticking on the forty-two days that the MVLWB has to make one of four specific decisions.

The AKFNs will be submitting their independent representations on which of these decisions they believe the MVLWB must make. In considering this question, I expect that the AKFNs will be mindful of the following:

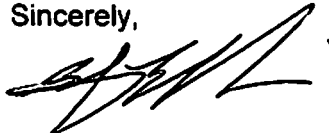
- The Moose claims are in a focal, heavy-use area for all three AKFNs, where treaty and aboriginal rights are practiced, both traditionally and currently.
- All three AKFNs possess oral history and land-use/occupancy studies that detail rights-based usage in the vicinity of the Moose claims, as well as within the claims themselves.
- There has been no heritage or archaeological assessment of the Moose claims, and therefore there are no *known* sites that would be offered protection under the *Territorial Lands Act* and its associated regulations.
- TNR Gold Corp. has not met with any of the AKFNs to discuss the proposed project, listen to concerns, and develop accommodating measures, despite the company's own assertions that it wants to meet with the AKFNs.
- TNR Gold Corp. has repeatedly misrepresented its engagement efforts to the MVLWB.
- The AKFNs did not in any way erect unreasonable barriers that could be construed as “frustrating” attempts by TNR Gold Corp. to meaningfully engage. Meetings did not

happen because the company did not follow-up on explicit directions from both the MVLWB and my office.

- TNR Gold Corp. did the bare minimum that it could to get its application accepted by the MVLWB, and the MVLWB facilitated this process despite its own guidance to the contrary.

If you have any questions on the specifics of my office's communication log or any other matter addressed in this letter, please get in touch.

Sincerely,



Stephen Ellis – Akaitcho IMA Implementation Coordinator
NWT Treaty #8 Tribal Corporation

- c. Chief Antoine Michel – LKDFN
A/Chief Louis Balsillie – DKFN
Chief Edward Sangris – YKDFN (Dettah)
Chief Ted Tsetta – YKDFN (Ndilo)
Todd Slack – Land and Environment, YKDFN
Ray Griffith – Wildlife, Land and Environment Manager, LKDFN
Rosie Bjornson – IMA Community Coordinator, DKFN
Julie Jackson – Manager, Consultation Support Unit, INAC
James Lawrance – Director, Aboriginal and Territorial Relations, INAC
Zabey Nevitt – Executive Director, MVLWB
Marc Cliffe-Phillips – Executive Director, WLWB