



# Yellowknives Dene First Nation

P.O. Box 2514, Yellowknife, NT X1A 2P8

September 17<sup>th</sup>, 2010

Nicole Spencer  
Mackenzie Valley Environmental Impact Review Board  
Box 938  
Yellowknife, Northwest Territories  
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Fax: (867) 766-7074

Dear Ms. Spencer:

## Re: TNR Gold EA Process – Request for Ruling

The Yellowknives Dene First Nation (YKDFN) would like to officially Request a Ruling from the MVEIRB. Following Form 2 of the Mackenzie Valley Environmental Impact Review Board (MVEIRB) Rules of Procedure:

1. Ruling Requested: That the current workplan is unreasonable and does not allow the Yellowknives Dene First Nation sufficient time to meaningfully participate in the process.

### 2. Relevant Facts and Information:

- a. The Board has unilaterally abridged an EA process that communities have become accustomed to. As explained to the YKDFN, this abrogated process was adopted under Paragraph 8 of the Rules of Procedure.
- b. The abridged process meant that there was no scoping session and little lead time for the YKDFN to begin addressing the file. Furthermore, the stages following the scoping have been amalgamated into a broad community information session with unclear and undefined roles and responsibilities. In the Board's *Environmental Impact Assessment Guidelines* Overview, section three (p16-17) identifies and outlines the steps which YKDFN have come to expect an Environmental Assessment to follow. For example, there is no Information Request stage where the Parties can request information, no Developer's Assessment Report where the applicant can modify the project based on concerns, and most importantly, insufficient time to develop information, consult with leadership and communities, and develop appropriate responses.
- c. The available data, required for First Nation's participation in a vaguely defined 'community information session', is insufficient. At this point, there is no more information available to the Parties than there was at the point of the *Mackenzie Valley Land and Water Board's* referral. There is no information as to *how* the

applicant intends to implement the project or what mitigation measures they intend to implement to offset the clear potential of significant effects (if there was no potential then the MVLWB would not have referred the project). In the *EIA Guidelines* the applicant is required to identify issues, assess potential impacts and their significance, address impacts with mitigation or modification and so on. This is subsequently followed by a technical review period where the Parties can evaluate the information submitted.

- d. This project had not been submitted to the Land and Water Board during the preparation of funding proposals (Interim Resource Management Assistance – Resource Pressures Funding), which means that the First Nation did not receive financial resources to facilitate expert preparation or evidence gathering. The preparation of a supplemental application for funding is being prepared but we have no assurance that money will be made available to the YKDFN to gather preliminary Traditional Knowledge data on TNR Gold's project area. Based on what our Elders tell us, this area is similar to Drybones Bay and has significant cultural and heritage resources.
- e. MVEIRB's July 2005 *Guidelines for Incorporating Traditional Knowledge* in Environmental Impact Assessment note:
  - i. "Developers should still engage in discussions with appropriate aboriginal organizations and traditional knowledge holders to determine if there is relevant traditional knowledge available to be considered in its project design and for use in the EIA process"  
- The Guidelines indicate that this should occur prior to the start of an EA so that local concerns can be identified and the design modified. The company has not modified its design, included mitigation measures nor have they attempted to meaningfully collect TK or Archaeological information.

The guidelines further reinforce this notion:

- ii. 7.1 Developer Description: "The Developer shall submit a description that is clear and simple to understand. The developer description shall include a record of traditional knowledge holder involvement in the project design, impact prediction and mitigation." This has not been provided, nor has the applicant attempted to do so for the purposes of advancing this review.
- iii. 7.2 Developer's Assessment Report (DAR): "the Developer's Assessment Report (DAR) shall include, but not be limited to, the following:
  - The steps taken by the developer to work with traditional knowledge holders for incorporating traditional knowledge
  - How traditional knowledge and traditional knowledge holders have influence the developer's project design, impact assessment and mitigation measures; and
  - A plan for future cooperation between the developer and

traditional knowledge holders in order to further incorporate traditional knowledge where applicable, including monitoring and mitigation programs.

The Review Board's unilateral Scope of Assessment notes that this process is primarily about traditional land use activities, heritage sites and unknown archaeological sites. One would assume that at some point there should probably be a dialogue and the submission of evidence on these issues, but it's not clear what form or at what point this should occur. Moreover, it's not clear if this *could* occur given the current timeline.

The current process dispenses with all of the experience and guidance prepared for the inclusion of Traditional Knowledge within EAs, when that very knowledge is fundamental to the issues at hand, without providing any substitute mechanisms, guidance or opportunities.

Most critically, there is no opportunity to see the mitigation of concerns, where appropriate and possible. Part and parcel of the development and submission of TK is the alteration of the design so as to address concerns.

- f. Even though the project extent is small, the impacts are potentially significant. As seen in the series of EAs for Drybones Bay and the Thelon, small programs in sensitive areas can be issues of significant and widespread concern. The unilateral redesign of the EA process limits the ability of the community to research, collect, and submit information that would be critical to the Board making informed decisions. Given that the Board can base their decisions only on the evidence before it, the extremely short time span attached to the preparation of this project unfairly prejudice's the process.
- g. The ability of the community to participate has a direct effect on the Review Board's gauge of public concern related to significance. In the Gahcho Kue Project, the Board used three different indicators, two of which are relevant when discussing the impacts that such a short timeline, in the absence of participant funding or community sessions, would have had on the Board's evaluation of significance:
  - i. Participation rates and level of effort expended by participants to attend workshops and hearing to voice their concerns.
  - ii. Evidence of adverse impacts on the environment that formed the basis of expressed public concern.

This timeline and workplan creates a situation where the communities affected by the development are unable to meaningfully display participation rates *nor* have the time and resources to collect the appropriate information to be submitted into evidence. The current scheme makes it, at best, extremely difficult, but more likely, effectively impossible to meet some of the thresholds attached to significance.

- h. Consultation – YKDFN assert that they still have not been consulted adequately on this project. At no point has the company engaged with the First Nation to understand the concerns or propose mitigation and accommodation measures. While not the YKDFN's impression, the Crown has previously said that the MVEIRB process can amount to the consultation process. Even if accepted at face value (which, for the record, YKDFN do not), in the absence of resources and time to participate in this process, the requirement for the Crown to consult with the affected First Nations has not been dispensed with.

In previous reviews, the MVEIRB has indicated that consultation is beyond their mandate. However, *section 115(c)* of the *MVRMA* notes that any process established by Part 5 shall have regard to 'the importance of conservation to the well-being and way of life of the aboriginal peoples of Canada to whom section 35 of the *Constitution Act, 1982* applies and who use an area of the Mackenzie Valley. The duty to consult has not been dispensed with and this process will clearly not dispense with that duty, under s.62 of the *MVRMA* no license, permit or authorization may be issued until the requirements of Part 5 have been complied with.

3. Authority or grounds for the Ruling:

MVEIRB Guidelines:

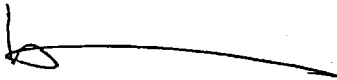
- *Environmental Impact Assessment Guidelines*
- *Guidelines for Incorporating Traditional Knowledge*

Legislation:

- *Mackenzie Valley Resource Management Act*
- *Constitution Act, 1982*

The Yellowknives Dene made their position clear – that this project will have real and significant impacts to the First Nation. This has been borne out in similar Environmental Assessments where the development has destroyed graves, damaged heritage sites and drastically impacted Treaty Rights. This process needs to be fair and even to ensure that these impacts, which can be irreversible, are properly registered and evaluated. Until the MVEIRB reverts to a more conventional process, this EA will be empty.

Sincerely,



Randy Freeman  
Director Lands Management

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Yellowknives Dene First Nation  
Lands Management / Land & Environment Office

FACSIMILE TRANSMITTAL SHEET

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MVEIRB

DATE:

September 17, 2010

FAX NUMBER:

766 7074

TOTAL NO. OF PAGES INCLUDING COVER:

5

RE:

TNR Gold EA Process Correspondence

☐ URGENT

☐ FOR REVIEW

☐ PLEASE COMMENT

☐ PLEASE REPLY

☐ PLEASE RECYCLE

NOTES/COMMENTS:

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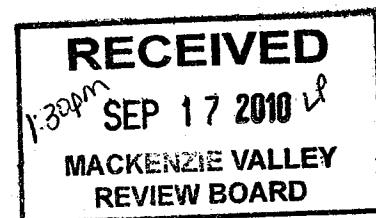
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