



Yellowknives Dene First Nation

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

December 2nd, 2010

Vern Christensen
Mackenzie Valley Environmental Impact Review Board
Box 938
Yellowknife, Northwest Territories
X1A 2N7
Fax: (867) 766-7074

Dear Mr. Christensen:

Re: Section 114(c) and TNR Gold's EA (EA1011-12)

The Yellowknives Dene First Nation (YKDFN) is in receipt of your letter of November 25th, 2010. We believe that we raised all of our relevant concerns in our presentation and in the intervention filed with the Board on November 17th, 2010.

The only point of clarification that we have is with some of the concerns that we addressed to Clint Ambrose, INAC Inspector. During the question period Mr. Ambrose stated (p216 of the transcript):

"With enforceability of terms and conditions, if a term or condition is within the land use permit yes it is enforceable, along with the -- with the archaeological sites there is provisions in the regulations that do speak specifically. As well as conditions of permit section 26(1) of the Regulations do allow various different conditions be put into a land use permit, and once they are in the permit they are enforceable."

This is further clarified with another question.

Todd Slack: "[Mr. Ambrose] said that if a term or condition is in a permit, it is enforceable. Now in the land use regs, wildlife, for instance, are not addressed within the -- the regulations. If the Board puts in a permit condition that says, If caribou are within five hundred (500) metres, is that enforceable?"

Clint Ambrose: "The permit or the reg -- regulations do speak to habitat, wildlife habitat. That is enforced. That's what the permit conditions are allowed by the Board. The problem with the five hundred (500) metre condition, the unenforceability part of that would be that we're not there on site at all times. And also I do agree that it -- the best way to address wildlife is through the NWT Wildlife Act."

YKDFN believe that Mr. Ambrose provided an incomplete answer. While the lack of presence on site is clearly a limiting factor when it comes to enforceability, more directly there is the issue that these types of concerns fall outside of INAC's authority to enforce. The Boards have previously included conditions addressing wildlife and Treaty Rights concerns of the First Nations which are applied to permits yet cannot be addressed by the inspectors.

The YKDFN concern with this is based on a presentation that Darnel McCurdy gave to the Akaitcho First Nations (see *Federal Court File T-1349-09 (Applicants Affidavits, Volume I), Affidavit of Stephen Ellis, Exhibit M. Inspection and Enforcement, presented to: Akaitcho Consultation Working Group, June 25th, 2009 p.254-256.*). This presentation notes:

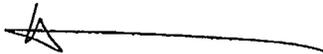
- *"It gives the parties who submitted the comments a false sense that their concerns are being looked after and enforced in the Field by INAC inspectors"*
- *"It perpetuates the practice of creating terms and conditions that are unenforceable and outside the legislated bounds of the INAC legislations"*
- *"In order for a term/condition to be enforced by an INAC inspector it must be enforceable and within the enabling INAC legislation"*

This has not been remedied. There has been a working group on the Terms and Conditions in the NWT, but it is our understanding that its focus was to remove unenforceable terms, not to develop ways to address the First Nations concerns. For instance, in the recent North Arrow Lac de Gras permit, in response to YKDFN and WRRB concerns, the MVLWB included the following clause:

"The Permittee shall shut down operations when groups of caribou (greater than 25 animals) are within one kilometre of any surveyor drilling activity."

As this clause relates to wildlife and not their habitat, it is not enforceable. The inclusion of these types of clauses is an empty measure towards addressing and accommodating First Nation concerns. So were the Crown or the MVLWB to suggest Terms and Conditions attempting to address aboriginal concerns, there is a high probability that they would actually be empty gestures, as their enforceability is, as best, suspect.

Sincerely,



Randy Freeman
Director, Lands Management

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