



Yellowknives Dene First Nation

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

May 27th, 2011

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

Dear Mr. Christensen:

Re: Debegorski EA (EA1112-001) – Request for Ruling

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

1. Ruling Requested: YKDFN ask the Board, pursuant to paragraph 128(1)(d) of the *Mackenzie Valley Resource Management Act* to make a summary decision to reject the proposal without an environmental review.
2. Relevant Facts and Information:
 - a. The previous Review Board decisions should inform this process, especially in regards to the level of significance of the area and the potential for significant, irreparable impacts. YKDFN feel that the Review Board has previously recognized the value of the area and the special connection the YKDFN have with this essential part of their traditional territory. An example (of many) of the Review Board's acknowledgement of the connection and importance:
 - i. *"Drybones Bay is a vitally important cultural and heritage site for YKDFN...It was the site of ongoing year round use by Aboriginal community, holds many burial sites and archaeological sites, and is used extensively today for hunting, trapping and providing youth with cultural exposure to traditional activities and the land."*(EA03-002)
 - b. The Review Board has held six (6) previous EAs for this area (EA03-002, EA03-003, EA03-004, EA03-006, EA0506-005, EA0506-006), producing a significant number of mitigation measures aimed at ensuring the level of impacts would not be significant. For instance, in EA0506-005 decision the MVEIRB stated *"Collectively, these measures will avoid or reduce the otherwise significant impacts that would have occurred."*

There has been little follow up to evaluate these measures, suggestions and recommendations to determine not just if they have been implemented, but also to assess if they have been effective. While this is a question that can be argued (as the YKDFN believe that the measures and mitigations have not protected the area from significant impacts caused by development), what cannot be argued is that many of the mitigations

advanced by the Review Board remain outstanding. Even the Measures required by the Board, the binding mitigations that must be emplaced prior to development to prevent significant impacts, have not fully implemented or enforced. YKDFN ask the Board to review the previous mitigation measures and acknowledge that in the absence of their implementation, the proposed development will continue to result in significant environmental and cultural impacts.

Of the non-binding Suggestions, every one remains outstanding, including the critical suggestion from the Board that *"No new land use permits should be issued for new developments with the Shoreline Zone and within Drybones Bay and Wool Bay proper, until a plan has been developed to identify the vision, objectives and management goals based on the resource and cultural values for the area"* has not been acted upon. YKDFN acknowledge that suggestions are not binding, but we argue that the Review Board is not issuing them without good cause – the implementation of these suggestions would have avoided their restating as measures in the subsequent EAs (CGV and Sidon) and have prevented the same issues from being raised time and time again. This unambiguous failure of implementation tells the parties that the Crown's stance towards the EA decisions will be responded to in only the narrowest of terms, avoiding any proactive activity and effectively limiting any potential accommodations to the YKDFN's concerns.

As mentioned in previous Environmental Assessments, the absence or failure to implement these mitigations suggests that *"Unless the measures recommended in this Report of Environmental Assessment are implemented, the Review Board does not believe the significant adverse environmental impact can be mitigated and the associated public concern can be addressed"*. This begs the question - Unless the outcome of the process is meaningful, what reassurance can the community draw from it?

Section 117(2)(a) of the MVRMA discusses the impact of malfunctions and accidents and cumulative effects, while EA03-004 stated: *"Any activity conducted in the vicinity of burial grounds could have significant adverse impact on the social and cultural environment. The effect of the development is not physical but represents a diminished value of sacred sites because the burial sites are viewed as sacred."* Activities permitted through the Snowfield EA started a large fire which impacted one of the known cemeteries plus an unknown amount of other culturally significant sites. By the Board's words, this obviously had a significant adverse impact, not just on the cultural landscape, but also the environment as a whole. The truck at the bottom of the Bay has also served to create a looming concern for the environment. These are just the easily quantified impacts from development – a thousand acres, a thousand litres – the larger impacts, as heard by the Board in the original hearings have resulted in a real change, a significant change, to the way that the people see and use the land.

Section 114(c) of the MVRMA requires the concerns of Aboriginal people to be addressed in the process. If the Board and the Crown fail to implement prior Recommendations, Measures and Suggestions, then the mitigations that the Board determined were necessary to avoid significant adverse environmental impacts are absent. In their absence, the concerns of the Yellowknives Dene have not been taken into account and the Drybones Bay area has experienced adverse environmental impacts of such significance that further projects cannot be justified.

Thus, the YKDFN are once again forced to trust to a Board that seemingly cannot

provide for effective mitigation to community concerns – either in earlier EAs or in the recommendations and reconsideration of the Measures in the CGV and Sidon files. This, plus the complete failure of the Crown to effectively Consult and Accommodate the concerns raised by the YKDFN means that the process cannot be relied upon to fulfil the guiding principles of the MVRMA and the application must be rejected at this time.

3. Authority or grounds for the Ruling:

- Environmental Assessment Reports EA03-002, EA03-003, EA03-004, EA03-006, EA0506-005, EA0506-006
- Section 114, 115 of the *Mackenzie Valley Resource Management Act*
- Section 117(2)(a) of the *Mackenzie Valley Resource Management Act*
- Section 128(1)(d) of the *Mackenzie Valley Resource Management Act*

The Yellowknives Dene have consistently made their position clear when it comes to developments in Drybones Bay. This project, like the others before it, will have real and significant impacts to the First Nation. This is not news to either the Review Board or the Crown. Previous Environmental Assessments have seen the Review Board accept the critical nature of Drybones Bay to the YKDFN. Since that point in time, development has continued unabated because the Crown has failed to implement appropriate mitigations as required and suggested by the Board. After reviewing previous decisions and the transcripts it is clear that the impacts, be it direct, accidental or cumulative in nature, have exceeded the acceptable threshold for lands fundamental to the wellbeing and identity of the Yellowknives Dene. *Section 115(a) of the MVRMA* lays out the guiding principle that the Board must protect the environment from significant impacts from the proposed developments. Within the present regulatory environment, it is not possible for the Board to create the mechanisms to institute appropriate mitigations or accommodations for future operations, and this project must be rejected.

Sincerely,


Chief Ted Tsetta

Yellowknives Dene First Nation (Ndilo)

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Yellowknives Dene First Nation
Lands Management / Land & Environment Office

FACSIMILE TRANSMITTAL SHEET

TO: Vern Christensen FROM: YKDFN L&E
 COMPANY: MVEIRB DATE: May 27/11
 FAX NUMBER: 766 7074 TOTAL NO. OF PAGES INCLUDING COVER:
 RE: Debogorski EA (EA1112-001) Request for Ruling

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

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