



# Yellowknives Dene First Nation

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

May 20<sup>th</sup>, 2011

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

Dear Ms. Philpot:

## Re: Debogorski Workplan – EA1112-001

The Yellowknives Dene First Nation (YKDFN) has reviewed your Draft Workplan faxed on May 10<sup>th</sup>, 2011. It is absolutely clear that the timelines are unduly restrictive and will mean that the process is prejudiced against the YKDFN. The proposed process deviates significantly from that used in previous Environmental Assessments without providing any rationale. The existing process, as seen in many previous EAs such as (but not limited to) the prior Drybones EAs 03-002, 03-003, 03-004, 03-005, 0506-005, and 0506-006. Most recently, the EAs laid out in the GIANT mine (EA0809-001) and Gahcho Kue EAs (EIR0606-001) used the same mechanisms.

The Board has developed an effective process, as outlined in the Environmental Assessment guidelines. These guidelines outline the steps developed using best practices from jurisdictions outside the NWT and in consultation with the various parties of the Mackenzie Valley. To jettison this hard work is poor judgement and will result in a process that lacks appropriate balance, fairness and justice. There can be no doubt that, at a minimum, this is a project that causes significant concerns, with the potential for significant impacts – the referral alone confirms this. To take assertion and carve this process in a manner inconsistent with the guiding principles of the MVRMA is something that the YKDFN must strongly implore the Board to reconsider. Considering that this area is critical to the wellbeing of the YKDFN (as previously acknowledge in earlier EAs), and a full and thorough process is only appropriate.

The Board has clearly stated the significance of this area and recognized many of the impacts that have already occurred to the landscape. They have previously heard from the elders and the members, yet it seems to have not mattered – the YKDFN are forced to once again start at the beginning. YKDFN require a full and thorough process to make their case to this new Board.

**Abridging the Process:**

The YKDFN strongly objects to the Board unilaterally dispensing with critical steps of the Environmental Assessment. The Board has simply declared what the scope of the process is, without consulting with any of the Parties. Secondly, the Board has removed the submission of a Developer's Assessment Report. Lastly, the Board has deleted the technical session. The former process is the one of the Board's creation, established through research, trial and error, and best practices. Before critical sections are simply omitted, there should be good reason and until there is an accepted rationale, the Board should retain these critical stages.

**Scoping:**

First and foremost, YKDFN objects to the unilateral definition of the Scope of this process. The Scope of Assessment and Scope of Development should be defined in collaboration, not simply by the Board who seems to suggest that they know best. The draft states "The Review Board has considered its past assessments" but the scope of Assessments omits any impacts to the environment and subsequent impacts to Treaty Rights. If one were to review the previous EA transcripts and registry entries, environmental concerns are central to the YKDFN submissions. YKDFN concerns have been further complicated by significant accidents and malfunctions in this critically important area.

Had the Board reviewed the transcripts from these assessments prior to setting the scope, or in consulting with the Parties first, they would have heard about how developments result in the reduction of game, or how the 2007 fire significantly changed the south half of the bay, or the concern for the future as a result of a potential oil spill. To suggest (by omission) that these do not amount to real environmental impacts shows how the Board does not understand the concerns of the Parties.

Recommendation: The Board should reconsider the Scoping of the project and how it was developed, holding a scoping session.

**Community Information Sessions:**

The Board has substituted a "Community Information Session" in the place of several of the steps found in the Environmental Assessment Guidelines, with the nominal goal of allowing "participants to become better informed about the proposed development". This stage is not covered in any guidelines or policies and the YKDFN is unclear what the purpose is – obviously there is opportunity for the company to discuss their proposal, but the draft document suggests that the Parties will be required to "prepare answers to any questions that were asked and remain unanswered at the information session". If this session is indeed for the Parties to submit questions to the developer, what structure is to be used, how are these requests to be recorded, and what compels the developer to respond (and who assesses if the answer was adequate)? Can we expect the proponent to review the Information Requests from the previous EAs and submit

appropriate responses – or should we ask these questions again?

If the Board wishes to hold a Community Information Session, that is fine – it is a good opportunity for the people from the community to hear from the company directly. However, the Board is clearly suggesting that this can fulfill some role that used to occur through several steps – though without providing certainty as to what role that is. In the TNR decision, the Board clearly placed a great deal of emphasis on this session, despite its stated goal at the time that this was an opportunity for the community to “find out more about the project from TNR”, which certainly sounds as though it amounts to a one way information session with no commitment mechanism. Indeed, it seems clear now that the Board intended this to be some sort of opportunity for the community to raise concerns that will be answered by the company.

To simply change the boundaries, allow less time, and impose additional responsibility without providing clear expectations or direction is not a suitable path forward. YKDFN is asking the Board to provide clear information on just what is expected from the Parties at this stage. Recommendation: Before proceeding, the Board should provide clarity on the nature of the Community Information Sessions and the Information Exchange stage. Following that and a clear establishment of the roles description of the steps the workplan can be reconsidered – if its not clear what occurs at each stage, it would be nothing more than guessing on the timeline.

#### **Developers Assessment Report:**

The DAR is a critical step in the process of advancing a development. It allows the developer to refine their proposal and show how they have incorporated and respected Traditional Knowledge – and how it has affected their proposal. Furthermore, the DAR would give the Developer an opportunity to show how they have incorporated the suggestions, recommendations and measures found in other EA Reports for projects immediately adjacent to the proposed area. Recommendation: Before proceeding any further with the workplan, the Board should reinstate the development and submission of a Developer’s Assessment Report.

#### **Information Requests:**

The workplan outlines an “information exchange” stage, which YKDFN are taking to be equivalent to the information request stage in former EAs and in the Guidelines. The draft document suggests that the Review Board may issue information requests – which again, is different than the recent Gahcho Kue and GIANT EAs where the parties submitted the Information Requests to the proponent directly – over the objection of a proponent in that case.

Until the Board can clarify the interaction between the Community Information Stage and the Information Exchange stage, the YKDFN remain confused as to when Land and Environment will/should be submitting the official requests for more information.

On a separate note, it is clear that the Board is not heeding the experience from previous EAs where the IR stage has taken longer than a few weeks. For instance, during the CGV EA in 2005, the IR responses were not provided until a year later. In the GIANT EA, the proponent will require several months to complete the responses. In the Bathurst Port and Road EA, the IR stage has taken years.

Recommendation: The Board should clarify the actions that will occur at the Information Exchange stage as well as the process to be followed. Additionally, the Board should allow Parties and Developer additional time to prepare, submit and respond to IRs.

#### **TK Collection:**

It is at this point that YKDFN will be collecting Traditional Knowledge, so that we can best focus our efforts to keep our costs low. In the absence of adequate funding – there has been no Participant or Resources Pressure Funding for this project we have little choice – while a comprehensive, regional approach would be more efficient and provide further details on the landscape, we must be restricted in our approach.

YKDFN will require time following the 'Information Exchange' to allow for the meaningful internal consultations and the collection of appropriate information/evidence for submission to the Board.

Recommendation: The Board should allow the YKDFN sufficient time to complete a TK study.

#### **Review of Previous Registries**

It is not clear when the Board will more thoroughly review the previous registries – which should be done as soon as possible if they are going to form part of the record on this file. After reviewing this for the CGV file, this is no small undertaking, and we strongly suggest to the Board that they allow themselves a significant amount of time to do so.

Recommendation: The other registries contain thousands of pages of material. The Board should allow sufficient time to allow for adequate review.

#### **Hearing:**

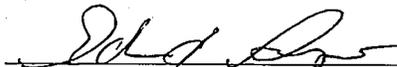
YKDFN have made their position clear on this matter – reviewing the registry is not a substitute for hearing directly from the members and the elders and we want to ensure that the Board will allow sufficient time at the hearing for this (instead of a time period measured in minutes as at the TNR EA). Clearly a multi-day hearing will be needed.

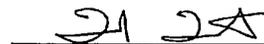
**Final Recommendations:**

YKDFN recommend that the Board review the process and returns to a workplan similar to those used in years past. Part and parcel of this would be an issues scoping session as mentioned in Section 3.9 of the Environmental Impact Guidelines. It is after that (ie Section 3.10) that we should be re-considering the workplan.

All the YKDFN is looking for is a fair hearing in which the community can meaningfully convey its concerns, collect the appropriate evidence and allow our elders to speak to the Board. This was possible in previous hearings and YKDFN are greatly concerned that the Board intends to impose another rapid, TNR-like process. YKDFN felt that the TNR review was not fair -- YKDFN had less than an hour to present and was rushed from the start, there was little opportunity or resources to collect and present evidence, and there was no consultation from either the Crown or the Company at any point in the process. YKDFN ask the Board to ensure that YKDFN can meaningfully raise its concerns in this EA in the same way that they have been able to in the past.

Sincerely,

  
\_\_\_\_\_  
Chief Edward Sangris  
Yellowknives Dene First Nation (Dettah)

  
\_\_\_\_\_  
Chief Ted Tsetta  
Yellowknives Dene First Nation (Ndilo)

Copy: Steve Ellis, Akaitcho IMA Implementation Office, Lutsel K'e NT 1-888-714-3209  
Todd Slack, YKDFN - Land and Environment, Yellowknife, NT (867) 766-3497  
Don Aubrey, Crown Consultation Support Unit - INAC, Yellowknife, NT (867) 669-2540

Box 2514  
Ndilo, NT X1A 2P8  
Ph: 867-873-8951  
Fax: 867-873-8545



# Fax

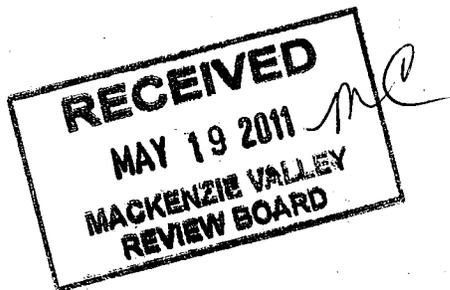
To: Darha Philpot From: YKDFN L&E

Fax: 766 7074 Pages:

Phone: Date:

Re: Debogorski Workplan - EA 1112-001

- Urgent
- For Review
- Please Comment
- Please Reply
- Please Recycle



The document accompanying this fax contains confidential information intended for a specific person or purpose. The information is private and is legally protected by law. If you are not the intended recipient, you are hereby notified that it is illegal to disclose copy, distribute or take any action in reference to the contents of this faxed information. If you have received this fax in error, please call us collect immediately and return the original to us by regular mail