

Darha Phillpot

From: Julie Jackson [Julie.Jackson@aandc-aadnc.gc.ca]
Sent: August 10, 2011 4:51 PM
To: Todd Slack
Cc: Don Aubrey; Darha Phillpot
Subject: Debogorski EA (EA1112-001)

Todd:

I am sending this again with a copy of your July 26th email attached at the bottom. Apologies for not including it in my previous email. Julie

Dear Mr. Slack:

Re: Proposed Debogorski Diamond Drilling Project (EA1112-001)

Don Aubrey has forwarded to me the email that you sent to him on July 26, 2011 for reply. Aboriginal Affairs and Northern Development Canada (AANDC) is of the view that where a reasonable and consultative process already exists, such as that provided for in the Mackenzie Valley Resource Management Act (MVRMA) - i.e. the Mackenzie Valley Environmental Impact Review Board (MVEIRB) and the accompanying regulatory processes - the Crown may take such consultation into account and rely on these processes to fulfill its duty to consult where appropriate.

The environmental assessment (EA) process in question, as set out in the Mackenzie Valley Resource Management Act, has a broad scope to take into account significant adverse impacts on the environment, which includes any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources. This is reflected in the May 27, 2011 work plan established for the Debogorski EA which identifies Social and Cultural Issues as the first two items included within the scope of the EA:

1. Social and Cultural Issues

1.1 Project Specific Impacts to Heritage Resources and Burial Grounds The area surrounding the proposed development is historically important to the Aboriginal people who have used it. Evidence shows that the density of heritage resources along the shoreline where the development is proposed is very high and many heritage resources remain unidentified. The scope of EA includes examination of project specific impacts to heritage resources that may result from the proposed project.

1.2 Cumulative Impacts on Traditional Land Use and Culture Evidence shows that the area surrounding the proposed development is culturally significant to the Aboriginal people who have historically used, and continue to use the land. The landscape is being cumulatively affected by many different human activities. Aboriginal groups have expressed concern about the cumulative impacts from this development on their ability to practice and pass on traditional activities. The scope of EA includes cultural impacts from this development in combination with impacts from all other past, present and reasonably foreseeable future development on the landscape.

I note that on previous occasions the Yellowknives Dene First Nation has raised concerns with the MVEIRB about activities in this area and urge you to do the same in this EA. In particular, in the YKDFN's letter of July 15, 2011, you reiterate that you have concerns

about significant adverse impacts that could result if the Debogorski project is allowed to proceed. You also note that the "YKDFN has already experienced serious impacts from development in the Drybones Bay area." AANDC recommends that you provide the MVEIRB with further explanation of these impacts and explain specifically how the current project under review will impact the YKDFN. This information is essential so that the MVEIRB can conduct a thorough review of the impacts and issue a recommendation pursuant to s.128 of the MVRMA that takes into account all concerns presented to it.

As you are aware, the MVEIRB will take into account the relevant facts presented in previous EAs conducted for the Drybones Bay area. The May 27, 2011 work plan for the Debogorski project EA identifies which previous EAs will be taken into account and it was the findings in these EAs that have led the Board to include the topics of "Social and Cultural Issues" in the scope of this EA. Furthermore, they are the same EAs that the YKDFN identified in its recent letter to the MVEIRB (August 3, 2011).

The YKDFN letters of July 6 and July 15, 2011 indicate that you have already given information about the First Nation's concerns to the MVEIRB in the previous Drybones Bay EAs. The Board has acknowledged this fact in its scoping of the current EA. If the YKDFN has additional issues not raised in the previous EAs, we strongly recommend that it raise these matters with MVEIRB so that it has all relevant information before it. This information will assist the MVEIRB with its impact assessment and its recommendation to the responsible ministers pursuant to s.128 of the MVRMA. For these reasons, I will be copying Ms. Darha Phillpot of the MVEIRB on this email to ensure that she and the MVEIRB are aware of your concerns and that it may form part of the public registry for this EA.

Canada believes that any Aboriginal group who may experience adverse impacts to their established or potential Aboriginal or treaty rights should participate in the consultative processes available to them and will rely (to the extent appropriate) on those processes in considering its duty to consult. Therefore, AANDC urges the YKDFN to avail itself of the consultative processes provided through this MVRMA-mandated EA, especially if you anticipate specific concerns about the proposed Debogorski project that have not been raised in previous EAs in this area.

Yours truly,

Julie Jackson

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>>> Todd Slack <tslack@ykdene.com> 7/26/2011 4:31 PM >>>

Hi Don. I've not prepared this as a comprehensive mail - rather something that I'm hoping you'll flag for the future. As you are no doubt aware (from correspondence that you have been copied on), the YKDFN once again facing an environmental assessment at Drybones Bay. I will take it for granted that INAC is aware of the critical importance of this area to the YKDFN (If you do not concur or are unaware, just have a look at the previous EARs from the first

five EAs). If you need me to provide some pointers that illustrate this, let me know...it won't be hard.

I am aware of the view that INAC/AAND holds - which I'll paraphrase as the EA & regulatory process more or less dispenses with the Crown's obligation to consult. Regardless of YKDFN's disagreement with this sentiment, there are circumstances surrounding this case make it especially untenable:

- 1) Considering the 'spectrum of consultation' example that the professionals with the Crown like to use, I would like to state with no uncertainty that this area falls at the furthest end of the spectrum. On the one hand, this area is of the greatest importance to the YKDFN - the Drybones area is of the highest importance. On the other hand, the level of developments are approaching a level that even the review Board felt that impacts were likely significant in the absence of mitigation measures. Together, these two facts alone mean that the Crown should recognize that this development is at the far end of the Consultation spectrum.
- 2) The abridged EA process that the MVEIRB has once again adopted along with the distinct lack of clarity in their approach means that the consultative duty remains - thus far the Board has dispensed with much of the meat of the EA process, has chosen to ignore the results from previous EAs (not including the EA Reports), and they effectively gave the proponent 'a pass' on the response to the IR they issued.
- 3) Previous EA Reports still have many measures and suggestions outstanding.
- 4) It seems that some previous EA measures were not effectively carried forward through the rest of the regulatory process.
- 5) Projects permitted through previous regulatory measures (2004) have resulted in significant environmental impact despite the mitigations/accommodations, illustrating the risk of undertaking developments in traditional territories of the highest importance.

We look forward to future discussions with the Crown on developing an engagement plan and meaningful accommodations to the continuing infringements in this area.

Regards,

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