



DENINU KUE FIRST NATION
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February 26, 2015

Chairperson JoAnne Deneron,
Mackenzie Valley Environmental Impact Review Board
200 Scotia Centre Box 938, 5102-50th Ave
Yellowknife, NT, X1A 2N7

**Re: Breach of the duty to consult by the Prince of Wales Northern Heritage
Centre - Archaeology Branch**

Dear Ms. Deneron,

I write regarding the treatment of the Deninu K'ue First Nation at the hands of the Archaeology Branch of the Prince of Wales Northern Heritage Centre in Yellowknife. Once again a government organization has taken the position that the DKFN need not be consulted – this time in regard to archaeological sites, the campsites used by our ancestors the original Chipewyan-Yellowknives, in the vicinity of the new new Ekati mine operation proposed by Dominion Diamonds in order to access the diamonds in the “Jay Pipe”.

I reiterate my statements contained in my December 2013 Open Letter:

Our traditional and present hunting, trapping and fishing territory ranges from Yellowknife Bay on the North shore of Great Slave Lake, East around (and across) the lake, then West to Buffalo River. We are Chipewyan – direct descendants of the Chipewyan/Yellowknives. We have never ceased using this expansive area for subsistence purposes. Today it is an easy matter to access the area via road and snowmobile, as we are no longer “nomadic”. We have hunted the Bathurst herd caribou (before the ban), buffalo and muskox, and fished the lakes . . . since before contact with Europeans.

This area was used by our ancestors and continues to be used by my membership. We are more than surprised that the Prince of Wales Heritage Centre staff fails to require that the Deninu K'ue First Nation not only be consulted but also be included in the archaeological surveys conducted for Dominion Diamonds. That requirement that DKFN be consulted should have been included in the permit approvals prior to the archaeologists conducting the surveys in the environs of the Jay Pipe.

History has repeated itself. The Heritage Centre did not include us as a First Nation to be consulted by the archaeologists conducting the archaeological surveys for either the Avalon Rare Earth Elements Nechalacho Mine proposal or the Gah cho K'ue Mine proposal.

Has government (the crown) developed the list of First Nations to be consulted on projects? Or has the Prince of Wales Heritage Centre developed the list of First Nations to be consulted for the government? The Deninu k'ue were clearly not on the list – in spite of the fact that we used and occupied the region where the mines are located at time immemorial and have continued to do so.

The above is a clear breach of the crown's duty to consult, a duty passed down to industry at the behest of the crown and contained in the past, present and future recommendations of the MVEIRB.

I have enclosed a copy of my November 2013 letter entitled "*An open letter to the Mining Industry, Government and the Regulatory Agencies*" and my September 8, 2014 letter to the Minister Bernard Valcourt of the Department of Aboriginal Affairs and Northern Development (a letter to which we have yet to receive a response). Both describe the issue, neither has been responded to.

I invite you to meet with our First Nation regarding this matter in the near future.

Sincerely,



Chief Louis Balsillie

Cc Bob Overvold, Dominion Diamonds

NWT

Cc The Honourable Bob McLeod, Premiere NWT

Cc The Hon. Tom Beaulieu Minister of Health and Social Services
& Minister Responsible for Seniors
& Minister Responsible for Persons with
Disabilities

Aboriginal Affairs and Northern Development Canada (AANDC)

Cc The Honourable Minister Valcourt, AANDC

Cc Colleen Swords, Deputy Minister (819-997-0133; Fax: 819-953-2251)

Cc Helene Laurendeau, Assistant Deputy Minister (819-934-0583; Fax: 819-953-2251)

MVEIRB

Cc: Chuck Hubert, MVEIRB



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November 4, 2013

Richard Edjericon,
Chairperson MVRB [MacKenzie Valley Review Board],
Mackenzie Valley Environmental Impact Review Board
200 Scotia Centre Box 938, 5102-50th Ave
Yellowknife, NT X1A 2N7

An open letter to the Mining Industry, Government and the Regulatory Agencies

I am the Chief of the Deninu K'ue First Nation presently located at Fort Resolution in the Northwest Territories, Canada. Our traditional and present hunting, trapping and fishing territory ranges from Yellowknife Bay on the North shore of Great Slave Lake, East around (and across) the lake, then West to Buffalo River. We are Chipewyan – direct descendants of the Chipewyan/Yellowknives. We have never ceased using this expansive area for subsistence purposes. Today it is an easy matter to access the area via road and snowmobile, as we are no longer “nomadic”. We have hunted the Bathurst herd caribou (before the ban), buffalo and muskox, and fished the lake – the Simpson Island area being a favorite fishing spot (and the birthplace of some of our elders) – since before contact with Europeans. We are told that we have the largest population of active trappers in Canada.

But the world is changing; our young people need education and training, and a legacy fund sufficient to guarantee their future and the future of their children as well. The advent of mining on the north side of the lake, beginning in the 1930s, has had a slow but incremental negative impact upon our most important food source, the caribou. Although my members live on the South shore of the lake (with a small community in Yellowknife), we have never ceased hunting on the North side, nor fishing in the Simpson Islands. In spite of our continuous traditional use and occupation on the North side of Great Slave Lake, the mining industry (save for Avalon Rare Metals) has for the most part ignored us when offering Accommodation and compensation for impacts related to mining and the associated infrastructure – impacts upon wildlife and the environment and therefore our hunting and fishing activities.

The mining companies take their cue from government officials, who are not only responsible for the messy history of Band affiliation in the NWT, but have also directly and indirectly set the stage as to which Band to negotiate

with. DKFN commissioned a comprehensive Ethno-history Report for the Deninu K'ue, one which has 1,100 [one thousand one hundred] quotes from historical records as concrete evidence of continuous use and occupation of the area on the North side of Great Slave Lake. Of course this use predates the relatively recent claim of the "ethno-genesis" (birth) of the Metis as a somewhat "distinct" and somewhat separate society in the NWT.

The details of our negotiations with industry are confidential of course, but, in general, they appear to be hesitant to place us on the same footing as the other [Indian Act] Bands – Bands whose ancestors, over a century ago, came to share with us the area on the North side of the Great Slave Lake for hunting, trapping and fishing purposes. They appear to be erroneously equating us with the Metis in some sense, the aforementioned latecomers to the area. Is industry again taking their cue from government?

Should you wish to read the 400-plus page Ethno-history report documenting our use – *continuous* use – of our lands on the North side of Great Slave Lake, please log on to the MacKenzie Valley Review Board (MVRB) site and type in "Ethno-history of the Deninu K'ue." We are of the belief that this report will stand the tests of time and of the courts.



Chief Louis Balsillie

Cc The Honorable Bernard Valcourt, Minister AANDC
Cc The Honorable Bob McLeod, Premiere NWT
Cc The Honorable David Ramsay Minister of Health and Social Service &
Minister Responsible for Seniors & Minister Responsible for Persons with
Disabilities

Cc MLA Tu Nedhe Tom Beaulieu
Cc Don Balsillie, Chief Negotiator, Akaitcho Tribal Council
Cc CBC North



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September 8, 2014

The Honourable Bernard Valcourt
Minister Aboriginal Affairs
House of Commons
Ottawa, Ontario
Canada
K1A 0A6

Dear Mr. Valcourt:

I write with great regret regarding the treatment of my people at the hands of the Federal Government of Canada. Since the signing of the Treaty 8 adhesion at Fort Resolution in July 1900 we have been denied the recognition of, and respect for, our aboriginal right to hunt, fish and trap in our territory on the North side of Great Slave Lake.

With the advent of the Department of Indian Affairs and the subsequent signing of Treaty 11 on the North side of Great Slave Lake, the Federal Government unilaterally, and on paper, not only denied us the recognition of said rights, but also, in doing so, denied us access to economic opportunities with the mining industry in the area. That mining industry has severely impacted our subsistence activities. It is the reason that the caribou that we hunt has been listed as an endangered species.

The Federal Government, through AANDC, has recommended to the various mining interests that they deal solely with the First Nations residing either in Yellowknife or closer to the potential mines – all located within our Territory. We, the descendants of the original Yellowknives, have not only maintained a continued presence on the north side of the lake in the Yellowknife & barren land areas, we have also continued to hunt trap and fish there since contact. Unfortunately, because our Band was deemed to be located for administrative purposes on the south side of the lake where the trading post and the Indian Agency were, the federal bureaucrats have consistently denied us the economic opportunities we are entitled to under Impact Benefit Agreements for adversely being impacted.

We are the original Chipewyan Yellowknives - our ancestry does not change simply because Indian agents chose to rename us. The Indian Agents also renamed the First Nations who moved into our territory during the HBC fur trade era. We remain the descendants of those



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Copper Indian/Yellowknife Chipewyan people that the explorers consistently encountered on the North side of the Lake from 1767 onward.

Wayne Walsh, AANDC Director General Northern Governance Branch, stated at an Akaitcho Assembly in July 2014 that it was up to the Akaitcho First Nations internally as to whether or not Deninu Kue First Nation would be recommended by AANDC for Impact Agreement Benefit Agreement negotiations (IBA's) with the mining industry. AANDC has never communicated this and has dictated to the mining industry who to consult with and who to negotiate an IBA with intentionally omitting Deninu Kue First Nation as an affected party. For your information, at the 2012 Akaitcho Territory Government Annual General Assembly, a resolution supporting the inclusion of DKFN for IBA's with the mining industry was unanimously passed by all the First Nations affiliated with ATG (resolution attached).

As well the Tlicho have been recipients of an IBA with these mines at the behest of AANDC, even though geographically Wekweti First Nation is further away from the development area than DKFN. The Federal Government, through Aboriginal and Northern Affairs Canada, has clearly failed to comply with the Supreme Court of Canada's rulings including the Tsilhqot'in Decision.

We ask you, Minister Valcourt, to investigate this 100 year plus history of the failure of the government of Canada to deal honourably with our Deninu K'ue people.

I invite you to attend a meeting with our Council. We look forward to meeting with you.

Sincerely,

Chief Louis Balsillie

cc: The Globe and Mail
The National
CBC North



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The Honourable Bernard Valcourt
Minister Aboriginal Affairs
House of Commons
Ottawa, Ontario
Canada
K1A 0A6
December 18, 2014

Dear Mr. Valcourt,

On September 8, 2014, I sent a letter to you regarding Consultation and Accommodation pertaining to major resource development within our territory and the treatment of my people at the hands of the Federal Government. You will have received the letter three months ago. You have added insult to injury by failing to respond.

Treatment of First Nations [Indian Bands]

Your government's treatment of First Nations, as all First Nations in Canada can attest to, has become untenable in the hands of the Harper government. We have received reductions in essential administrative and economic development dollars - dollars that provincial and territorial governments receive to serve the same administrative purposes to support non-Indian citizens. Have those governments received like reductions?

First Nation per-capita transfer dollars are in the process of being substantially reduced to the point that a number of First Nations, that are not located close to urban centres, have been forced to lay-off essential staff. These rural, often isolated First Nations, including ourselves, have few economic resources, no ability to tax, and a much-reduced ability to live off the land due to the impacts of industry – including the mining industry – on the environment and wildlife. As a consequence of the impacts of industry and the actions of government, our people are living in both monetary and spiritual poverty.

Economic Development Cutbacks and Impact Benefit Agreements (IBAs) with Industry

As noted in our September 8, 2014 letter, we have limited Impact Benefit Agreement (IBA) resources as a consequence of your Department's (and the



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GNWT's) recommendations to industry in regard to consultation with my First Nation, the Deninu K'ue, over the past decade or so.

In addition, the substantial cut-backs in economic development dollars have occurred at a time when these dollars are most needed in order to take advantage of opportunities created through Impact Benefit Agreements – agreements entered into with the mining industry as a consequence of the *negative impacts* of that industry on our ability to hunt, fish and trap for food.

Several Impact Benefit Agreements have been signed by First Nations in the Northwest Territories – for example, with Dominion Diamonds' Diavik project, with BHP's Ekati mine, and with De Beers' Snap Lake mine – the latter two which I would like to bring to your attention.

BHP Ekati-IBA

Negotiations on the BHP Impact Benefit Agreement, with the Agreement First Nations in the Akaicho Region, were initiated by Don Balsillie, then Chief of the Deninu K'ue First Nation. Towards the conclusion of the negotiations, BHP refused to allow the DKFN to sign-on to the IBA along with the other beneficiaries, being the Yellowknives and the Lutsel K'e. This refusal was based on advice provided by the Federal Government (and GNWT). The settlement dollars were calculated on a per-capita basis, including the numbers from DKFN's band membership. Ultimately, the DKFN were only to receive 25% of the agreed upon IBA dollars (the annual payment) through a sharing accord with the Lutsel K'e, but were to receive no other benefits, including economic (contracts, jobs, etc.) and educational opportunities. In addition, this year we have not received the 25%.

De Beers Snap Lake-IBA Fiasco

Impact Benefit Agreements between De Beers Canada and the Yellowknives Dene and Lutsel K'e, among other First Nations, were signed in 2005 and 2007, respectively. No Impact Benefit Agreement negotiations were initiated by De Beers Canada with the DKFN based upon the recommendations, or lack thereof, of both the Federal and NWT governments. Chief Robert Sayine had corresponded with the MVRB, and the governments, regarding an IBA. His letters and statements at "engagement" meetings were ignored. The Federal government, the party delegated by the courts as responsible for Consultation and



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Accommodation, had resoundingly failed in its duty – and has continued to do so, preferring to rely upon industry to make the decision as to who to consult with. Industry of course chose the least expensive route – one that has less impact upon profits.

The Deninu K'ue First Nation and the Federal Government

As you are aware there have been a number of Supreme Court of Canada decisions regarding aboriginal and treaty rights held by the descendants of the original people to use and occupy an area. There have also been a number of decisions regarding the duty to Consult and Accommodate these original peoples when a mine or other development has the potential to impact upon those groups who have continued to use the area since contact or time immemorial.

As noted in my September 8th letter, we, the Deninu K'ue, formerly known as the (real) Yellowknives before the Indian Agents re-named us, *are the original people to use and occupy the north side of Great Slave Lake. We have continued to use the area, and never ceased using the area, for hunting, fishing and trapping purposes.*

Breach of Fiduciary Duty

Your government has consistently told the mining industry in the NWT to consult only those First Nations presently located on the north side of the Great Slave Lake, ignoring my memberships' continuous use of – and residency in – the area. This is a clear breach of your fiduciary obligations and a deliberate slighting of the Supreme Court of Canada, which the Harper government has been want to do.

I reiterate, a community of my people has continued to live on the north side of the lake, in and around Yellowknife, since contact/time-immemorial; but your government has consistently ignored this for Band funding and land settlement purposes and have, as well, ignored our continuous use of the area for hunting purposes. The Federal Government has a well-substantiated track record of relocating people both on the ground and on paper over time.

Given the fact that past DKFN Chiefs, Councillors and band members have consistently stated, time and time again, that we were, *and are*, the original people to use and occupy the north side of Great Slave Lake – and that we have not been Consulted nor Accommodated on the impacts by the mines on these lands – we are considering our option to seek legal remedy [we have prepared an extensive



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report replete with supporting documentation]. We do hope that it does not have to come to this.

Meeting with Chief and Council

I have attached a copy of our September 8, 2014 letter. You will note that at the end of said letter we asked that you meet with us.

I again invite you to attend a meeting with our Council. We look forward to meeting with you. We are available the fourth week in January.

Sincerely,

Chief Louis Balsillie

Aboriginal Affairs and Northern Development Canada (AANDC)

- Cc Colleen Swords, Deputy Minister (819-997-0133; Fax: 819-953-2251)
Cc Helene Laurendeau, Assistant Deputy Minister (819-934-0583; Fax: 819-953-2251)
Cc James Lawrence, Director – Governance and Partnerships, NWT Regional Directorate (james.lawrence@aandc.gc.ca)

DKFN Consultant

- Cc Linda Vanden Berg (250-656-1050)

The Press

- Cc CTV National News
Cc CBC: The National
Cc The Globe and Mail
Cc CBC North

Assembly of First Nations

- Cc Perry Bellegarde, National Chief



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Union of BC Indian Chiefs

- Cc Stewart Philip, Grand Chief (president@ubcic.bc.ca)
- Cc Don Bain, Executive Director (donb@ubcic.bc.ca)

First Nation Organizations

- Cc Akaitcho Territory Government
- Cc NWT Treaty 8 Tribal Corporation
- Cc Yellowknives Dene First Nations
- Cc Lutsel Ke Dene First Nations
- Cc Smith Landing First Nations
- Cc Tlicho Government

Government of the Northwest Territories

- Cc Premier Bob McLeod
- Cc Mr. Tom Beaulieu, MLA Tu Nedhe