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June 8/15

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June 8, 2015

Re: EA1415-02 – Chedabucto Mineral Exploration Project – Technical Report

Dear Mr. Toogood,

The Deninu Kue First Nation (DKFN) is pleased to provide the following technical report regarding the Chedabucto Mineral Exploration Project proposed by Husky Oil Operations Limited (Husky). The project area has been used by the Akaitcho Dene since time immemorial for hunting, fishing, trapping and gathering. Great Slave Lake and its surrounding area is home to an abundant amount of wildlife, fish and plants that are of meaningful use to the Akaitcho Dene. The Chedabucto Project is within the current and traditional socio-economic use areas as identified in the Deninu K'ue Ethno-history Report prepared by Vanden Berg and Associates (Vanden Berg 2012). Our primary concerns with the proposed project cover potential impacts to wildlife and aquatic resources. We are also concerned with the potential for cumulative impacts in the area. Finally, we are disappointed with the lack of engagement and consultation with our members and we are concerned that the Treaty and Aboriginal rights of the DKFN have not been considered in the project application. I have provided additional information on our concerns below.

DKFN Aboriginal and Treaty Rights

On July 25, 1900, our Dene forefathers negotiated and concluded a Treaty with the Crown. While the Akaitcho Dene First Nations (herein "ADFNs") consider this a standalone treaty, it is known as an adhesion to Treaty No. 8 by the Crown. Chiefs from four ADFNs signed the Treaty with the Crown at Deninu Kue (also known as Fort Resolution) in the Northwest Territories. These First Nations were the Deninu Kue First Nation, the Yellowknives Dene First Nation - Dettah, the Lutsel K'e First Nation, and the Yellowknives Dene First Nation – Ndilo. The

traditional territories of the four First Nations together comprise Akaitcho Territory, which encompasses an area greater than that covered by Treaty No. 8. The ADFNs occupied and continue to occupy territory to the north, east and south of Great Slave Lake. Some of that territory is outside the boundaries described in the written version of Treaty No. 8.

The ADFNs, including DKFN, assert outstanding aboriginal rights and title in and to their traditional territory. To be considered with this is also their assertion that the Treaty of 1900 was merely a “peace and friendship” treaty, rather than a “land surrender” treaty. These assertions are supported by the decision of Justice Morrow in the case of *Re Paulette and Registrar of Land Titles (No. 2)* (1973) 42 D.L.R. (3rd) 8. This case dealt with the validity of a caveat filed by 16 Chiefs from the Mackenzie Valley on behalf of their First Nations to protect their claim to aboriginal title over their traditional territories. Justice Morrow heard extensive evidence throughout the Mackenzie Valley from the various communities on, among other matters, whether the First Nations had ceded or surrendered their aboriginal title to the lands in issue upon entering into Treaties No. 8 and 11. The Court concluded that the First Nations had an arguable case that the treaties were not effective instruments to terminate their aboriginal rights or title. Although Justice Morrow’s decision was overturned on other grounds dealing with the ability to place a caveat on unpatented Crown land, his findings of fact were not rejected by the higher courts.

Among other rights, the Treaty of 1900 guaranteed the rights to hunt, fish, trap and gather. Furthermore, it was indisputably promised at the time of the signing of the Treaty that the mode of life of the ADFNs would not be interfered with, that they would be able to continue to exercise their harvesting rights to hunt, fish, trap and gather as they had always done and that they would be entitled to maintain their traditional lifestyle and live as before. The evidence of Elders and other DKFN members confirm that in Akaitcho Territory the lands were used by DKFN for hunting, fishing, trapping and gathering on a regular basis. They have been so used for generations. The trapping provided furs to sell and meat to subsist on. The meat obtained from the hunting and trapping fed many community members and not just the trapper or hunter. Many different types of animals were hunted and trapped. Many different types of fish were caught. Many different types of plants are gathered for various purposes. Our First Nation has relied on the lands of our traditional territory for generations to either provide or subsidize our livelihood through the hunting and trapping of wildlife and fishing, in our traditional territory. This reliance continues today. The treaty rights to hunt, fish, trap and gather provided in the Treaty of 1900, in addition to other rights, do not exist only on paper, but are in use, and an integral part of the tradition and existence of DKFN in our traditional territory. These rights have been exercised by DKFN for generations, and continue to be exercised to date.

The DKFN, as part of the ADFNs, is and has been involved in Treaty implementation negotiations with Canada and the GNWT since 1992, involving issues related to land, resources and governance. These negotiations also seek, among other things, to clarify the nature and scope of the harvesting rights of DKFN in Akaitcho Territory. These negotiations are sometimes referred

to as the Akaitcho Process, and are ongoing. The aboriginal and treaty rights which DKFN exercises are part of these continuing negotiations. The treaty rights of DKFN are established rights, and that there is no need to do a strength of claim assessment with respect to these rights.

We have been encouraged by both the Government of Canada's (GoC) Canadian Northern Economic Development Agency and the Government of Northwest Territories (GNWT) Department of Lands to participate in the processes of the Review Board and the Wek'èezhìi Land and Water Board with respect to the Chedabucto Project; however, our financial capacity to do so is limited. The GoC has not offered financial assistance, but we have requested assistance through the GNWT's Interim Resource Management (IRMA) Resource Pressure Funding program. Although, this request was intended to support our participation in the review of the Chedabucto projects as well as the review several other resource development projects that are occurring within our traditional territory.

DKFN has an obligation to its band membership of 830 to ensure that "As long as the sun shines, rivers flow and grass grows" based on our Treaty with the crown, future generations should be also be able to practice their inherent right to hunt, fish, trap and gather in co-existence in our traditional territory, which encompasses the western shore of the north arm of Great Slave Lake. Where there is impact and loss, then we must be given the opportunity for reasonable informed consent, consultation and accommodation benefits. This duty is vested with the crown in their fiduciary obligation to DKFN based on our Treaty and should be addressed within this process.

Wildlife

The project area has been used by DKFN members to primarily hunt moose (*Alces americanus*) and muskrats (*Ondatra zibethicus*), but the habitat supports many other wildlife species. Husky has not characterized the wildlife or wildlife habitat that will be affected by the Chedabucto Project.

Wildlife Habitat

It is unclear how much clearing of vegetation will be conducted for the drill sites. Husky states that minimal slashing will occur at drill locations but it is unclear what practices will be used for this activity, where slashed material will be stored and what the ultimate fate of this material will be. Section 6 of the land use permit application states that drilling operations will be reclaimed to its natural state using CCME and industry best practices, but these are not addressed or identified in the Closure and Reclamation Plan.

Species of Interest

Moose densities are low in the NWT ranging from 1 to 17 moose / 100 km² (Cluff 2005). Moose densities in the proposed project area are likely at the lower end of this range (Bradley and Johnson 1998). Disruption to wildlife habitat resulting in habitat loss and fragmentation has

been shown to further reduce the abundance of moose (Stewart and Komers 2012). Moose are less mobile in the winter and require higher energy requirements making them more susceptible to disturbance (Stenhouse et al 1995). Given that the proposed activities are scheduled during the late winter period, wintering moose in the area would be in direct conflict with the proposed exploration activities and the potential for moose disturbance and reduced occurrences of moose in the area exist, which ultimately effects our Treaty and Aboriginal rights to have access to and hunt moose in our traditional territory.

Species at Risk

At least two wildlife species at risk are known to occur in the area. Both boreal caribou (*Rangifer tarandus caribou*) and wood bison (*Bison bison athabasca*) are listed as threatened under Schedule 1 of the *Species at Risk Act*. Therefore the environmental assessment of the proposed project must consider potential effects to these species and their critical habitat. Critical habitat for wood bison has yet to be officially identified under the *Species at Risk Act*. Critical habitat for boreal caribou is identified as:

- the area within the boundary of each boreal caribou range that provides an overall ecological condition that will allow for an ongoing recruitment and retirement cycle of habitat, which maintains a perpetual state of a minimum of 65% of the area as undisturbed habitat; and
- biophysical attributes required by boreal caribou to carry out life processes (Environment Canada 2012).

The GNWT Environment and Natural Resources is currently undertaking range planning initiatives to identify areas of critical habitat for boreal caribou in the NWT and the latest information available should have been used by Husky to understand the potential effects of the project activities on boreal caribou and its critical habitat. Furthermore, Husky has not identified the biophysical attributes required by boreal caribou that can be summarized as habitat required for calving, post-calving, rutting, wintering and traveling. Without documenting the condition of these habitat attributes in the project area, effects to species at risk may go unchecked.

Disturbance Effects to Wildlife

The project will be supported by helicopter for transporting staff and drill rigs. The drill program is scheduled to operate for up to six weeks – it remains unclear if helicopters will be in operation for 12 hours per day for these six weeks. Regardless, Husky has not assessed the impact of helicopter activity on wildlife species and behavior in the project area. Husky has also not presented clear and effective mitigation to reduce the effects of helicopter activity on wildlife.

Wildlife, Archaeological & Environmental Awareness Plan

There are provisions of this plan that are general in nature and are typically applied to all project developments in the Northwest Territories; however, Husky has identified some provisions that

raise a number of questions. Provision #8 states that activities in proximity to the following den or nesting habitats must adhere to the appropriate buffer distances:

- a. Peregrine Falcon & Short-Eared Owl = 1.5 km
- b. Wolves = 800 m buffer (between May 1 to July 15)
- c. Wolverine = 800 m buffer (between Feb. 1 to July 15)
- d. Barrens Grizzly = 1 km (between Sept. 30 to March 30)

First of all “Barrens Grizzly” are not expected to occur in the project area, but black bear (*Ursus americanus*) may be present. Based on the timing of the proposed activities there is potential for conflicts with wolverine (*Gulo gulo*) and black bear dens. It remains unclear how these potential dens will be identified prior to work activities commencing. Should they be identified as they are encountered, there is a greater risk in disruption of sensitive wildlife activities and measures should be identified to mitigate this risk. Disruption to black bear dens in March has the potential to prematurely cease winter hibernation, which will affect the health and safety of both bears and project staff. Also, at this time of year wolverines are utilizing maternal den sites for the care and maintenance of young and disruption of maternal dens can affect the survival of juvenile wolverines.

Provision #10 states that helicopters must not land in any area where wildlife is present except in documented emergency situations. Similar to the comment above, it is unclear how wildlife will be identified prior to helicopter activity. Again, if documentation of wildlife is on an encounter basis, standard operating procedures for helicopter activity in wildlife habitat must be identified and enforced. This should include limiting helicopter flights, minimum flying height restrictions and reporting protocols.

Provision #14 states all activities must cease when caribou are present and may resume once they have moved on. It is unclear what the protocols are for documenting caribou presence in the project area, who will be responsible for determining that caribou have moved on from the area and at what distance from the area this determination will be made.

We expect that additional details on these and the other provisions will be provided in a Wildlife and Wildlife Habitat Protection Plan (WWHPP). The preparation of a WWHPP should be a condition of the environmental approvals before the project can proceed.

Water

Water is of critical importance to fish and wildlife in the region. Husky has stated that measurement of groundwater will be conducted at each bore hole location. Husky has not presented any baseline groundwater or surface water data for the project area; therefore it will be difficult to determine if the project activities are affecting water quality of the area. The Closure and Reclamation Plan does not address any ongoing monitoring of water quality in the project area; therefore a water quality management and monitoring program should be included as part of the project’s Environmental Management Plan.

Cumulative Effects

Husky has not completed a cumulative effects assessment. It has conducted a qualitative residual effects assessment on valued components and has considered past developments in the area (not present or reasonable foreseeable developments) in this assessment. The consideration of past developments assessed the proposed projects effect on these past developments and not the residual effects of these developments and their interaction with residual effects from the Chedabucto Project. Therefore a proper cumulative effects assessment has not been conducted. This is of particular concern to the DKFN since plans for a much larger development may occur if the exploration results are positive.

Understanding the level of cumulative effects that are affecting the area is important for considering the level of industrial development that should be allowed to occur in the region. Further, a cumulative effects assessment will assist in documenting critical habitat for species at risk, but more importantly, it will help in understanding the effects to Treaty and Aboriginal rights.

Engagement

Based on the engagement plan and log that Husky has provided to date, there have not been any engagement activities with the DKFN. As stated at the beginning of this report members of the DKFN use the proposed project area for traditional use activities. The proponent states that in year 3 of the exploration program, if positive results from the exploration assessment occur, it will at this point conduct an in-depth Traditional Knowledge and Archaeology Study. This work should have happened earlier and could have commenced with effective engagement and consultation of all affected parties.

The GoC and GNWT is relying on the consultative processes of the Review Board as well as the proponents engagement to assist in their respective duties to consult. Again, as presented in the engagement logs this consultation is lacking.

In closing, we look forward to further engagement in the review process of this project. Should you require any clarification on our technical report please contact our technical advisor, Marc d'Entremont, at mdentremont@lgl.com or 250-656-0127.

Sincerely,



Chief Louis Balsillie

cc. Rosy Bjornson, DKFN Resource Management Coordinator
Marc d'Entremont, LGL Limited (DKFN Technical Advisor)

Literature Cited

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