



Canadian Northern Economic  
Development Agency

Agence canadienne de développement  
économique du Nord

Simon Toogood  
Mackenzie Valley Environmental  
Impact Review Board  
P.O. Box 938  
Yellowknife, NT, X1A 2N7

VIA EMAIL

Dear Mr. Toogood:

**RE: Response to IRs – Government of Canada: - Husky Oil Operations Limited – Chedabucto Mineral Exploration Project Environmental Assessment (EA1415-02)**

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Please accept the attached responses to Information Requests #6 and #12 (word document) as directed to Canadian Northern Economic Development Agency (CanNor) and to Aboriginal Affairs and Northern Development Canada (AANDC).

If you have questions regarding this letter, please contact David Alexander, Project Manager (867-669-2595; david.alexander@cannor.gc.ca).

Sincerely,

Matthew Spence  
Director General  
Northern Projects Management Office  
Canadian Northern Economic Development Agency

cc: Mohan Denetto, Regional Director General, Northwest Territories Region,  
Aboriginal Affairs and Northern Development Canada  
Catherine Conrad, Director, Environment and Renewable Resources Directorate,  
Aboriginal Affairs and Northern Development Canada  
Mark Cliffe-Phillips, Executive Director, Mackenzie Valley Environmental  
Impact Review Board  
Ken Hansen, Project Manager NWT, Husky Oil Operations Limited  
Rachel Crapeau, Director, Lands and Environment, Yellowknives Dene  
First Nation.  
Lorraine Seale, A/Director, GNWT Land Use and Sustainability

Canada

## Canada's responses to IR #6 and IR #12 from the Yellowknives Dene First Nation (YKDFN)

### Husky Chedabucto Silica Sands Project

#### YKDFN IR #6 (Word document)– Known Exercise of Aboriginal and Treaty Rights

**To:** Canada (CanNor, AANDC)  
**Reference:** April 2<sup>nd</sup> 2015 letter from Matt Spence  
**Terms of Reference:** N/A

#### Preamble

CANNOR, the department now responsible for coordinating action involving Aboriginal Affairs has asked First Nations to provide information at the hearing related to the exercise of Treaty rights. However, it's not clear what level of understanding that Canada has currently. We are being forced to use the EA process to discharge numerous requirements, without clarity on what needs to be done.

AANDC and its former incarnation INAC, have been in existence for decades. YKDFN cannot believe that they have no information on how First Nations have used this area - if not, they should have to address this failure in front of the Board.

Furthermore, YKDFN wish to see the entirety of the onus on demonstrating impacts moved from the First Nation with extremely limited resources, to a more collaborative relationship with Canada (with much broader resources and a long history of responsibility) that recognizes the fiduciary duty that the latter owes to the YKDFN. Canada continuously pretends that it knows nothing about any First Nation matter, consequently placing all the responsibility on the shoulders of the First Nation. In doing so, it ignores its duty.

#### Request

- 1) Please provide a discussion on how Canada understands that the Yellowknives Dene use the Whitebeach Point, based on their experiences over the 110 years since Treaty was signed.
- 2) Please provide any documentation that advances this effort, particularly related to the development efforts of Gary Jaeb in the early 2000's, the Anglo American development proposal in 2008 (when the Consultation Support Unit existed), and any other information that AANDC or other Federal departments may hold.
- 3) Please provide examples of past developments where First Nations have asserted that their Treaty Rights and indicate:
  - a. What actions Canada undertook to review the matter
  - b. What accommodations Canada sought to ensure that the concerns of the First Nation were addressed.

#### Response

When proposed developments in the Mackenzie Valley are referred to environmental assessment, the Government of Canada relies on the consultative processes of the Mackenzie Valley Environmental

Impact Review Board (MVEIRB), other associated regulators, as well as engagement conducted by the developer as the primary means for discharging any potential Government of Canada consultation obligations.

This approach is premised on active participation by both the Government of Canada and potentially affected Aboriginal groups in those processes. Each has their own distinct roles and responsibilities. Canada's involvement includes notifying and directly encouraging participation by potentially affected Aboriginal groups, closely monitoring and considering the proceedings and in some instances participating as a party or intervener to provide specialist advice where this relates to a department's mandate, and then evaluating at the end of the process whether all concerns raised by Aboriginal groups have been adequately addressed or whether further consultation or accommodation by Canada is required.

Through these processes, Aboriginal groups are best placed and are encouraged by Canada to identify whether they anticipate that the development under consideration will adversely impact their asserted or established rights and if so, how and how in their view, those impacts can be best mitigated. The MVEIRB has a broad mandate to consider any effects on land, water, air or any other component of the environment, as well as on wildlife harvesting, and including any effect on the social and cultural environment or any heritage resources. Thus, Aboriginal groups have a meaningful opportunity to identify any such concerns to the MVEIRB, which then must consider them and formulate recommendations on whether or how they can be mitigated.

In this process, Canada cannot speak for Aboriginal groups in terms of their asserted rights and their views on how they may be impacted, their interests, or their past or present land uses. While Canada has provided financial assistance for the collection of such information in the past, including to the Yellowknives Dene First Nation (YKDFN), contributing that information and their knowledge to regulatory and environmental assessment processes remains their responsibility.

This consultation model, with shared responsibilities, has been proven to work well under the co-management framework in the Mackenzie Valley.

1. Canada understands that the YKDFN assert Aboriginal rights of a broad nature in relation to land title, traditional land and resource use, and self-government throughout its asserted territory, which includes the location of this proposed development. Canada is currently in negotiation with YKDFN regarding these assertions. Beyond that, and as outlined above, Canada cannot speak for the YKDFN in terms of how they use the Whitebeach Point area in particular. As custodians of their own traditional knowledge, they are best placed to do that themselves, and have done so through other environmental assessment and claims negotiation processes.
2. Canada understands that the YKDFN are requesting "any information" and "any documentation" in the possession of Canada that advances the effort to characterize YKDFN use of the Whitebeach Point area. As noted above, the YKDFN are best placed to and responsible for asserting their rights and describing their use of the Whitebeach Point area through this process, and it would not be appropriate for Canada to speak for the YKDFN in that regard. In any event,

Canada submits that this request is excessively broad and general, in that it is not reasonable or possible to accurately determine which records would be responsive. Additionally, Canada acknowledges the GNWT as the land manager on public lands under its authority and will be discussing matters related to lands records management with the GNWT, with regard to these records related to the specific projects identified by the YKDFN in this IR.

3. Canada relied on the consultation model set out above with respect to both the Gahcho Kue Diamond Mine Project (EIR0607-001) and the Nechalacho Rare Earth Element Project (EA1011-001). In both cases, potentially affective Aboriginal groups including the YKDFN, actively participated in the MVEIRB process, from a very early stage. Canada closely monitored and considered the input of these groups, the Aboriginal parties were further consulted after recommendations from MVEIRB were received but before any decisions were taken, and then all representations by Aboriginal groups were carefully considered prior to adopting the mitigative measures recommended by MVEIRB in order to appropriately accommodate Aboriginal interests.

In the IR cover letter dated April 10, 2015, the YKDFN encourage IR recipients to contact them directly for clarification. The MVEIRB Note to File dated April 20, 2015 encourages participants to work outside of the EA process to address questions and concerns. Canada would be pleased to meet with the YKDFN to further explain and discuss Canada's approach to consultation on developments in the Mackenzie Valley, and to encourage their continued participation in the MVEIRB process. Canada will also engage again directly with the YKDFN following the release of the report of EA in order to identify any concerns remaining at that point.

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**YKDFN IR # 12 (Word Document) - Improved Access**

**To:** AANDC  
**Reference:** MVEIRB Submission  
**Terms of Reference:** N/A

**Preamble**

YKDFN are concerned that skidding with heavy loads will create better access and allow for increased squatters and recreational developments

**Request**

- 1) For the period prior to Devolution, can AANDC provide details on the number of inspections done in the Whitebeach Point area over the last 5 years?
- 2) Please provide a list of the any evictions or 'postings'

**Response**

As noted in the previous IR response, Canada acknowledges the GNWT as the land manager on public lands under its authority and will be discussing matters related to lands records management with the GNWT, with regard to the these records related to the specific projects identified by the YKDFN in this IR.