

IN THE MATTER OF: Environmental Assessment EA1415-02: Husky Oil Limited, Chedabucto Mineral Exploration Project pursuant to the *Mackenzie Valley Resource Management Act*.

AND IN THE MATTER OF: A Request for Ruling from the Yellowknives Dene First Nation requiring the Government of Canada to provide “meaningful responses” to information requests #6 and #12.

REASONS FOR DECISION

BACKGROUND:

The Mackenzie Valley Environmental Impact Review Board (the Review Board) met on June 2, 2015 to consider the Request for Ruling filed by the Yellowknives Dene First Nation (YKDFN) in the Husky Oil Limited, Chedabucto Mineral Exploration Project (the project). The YKDFN request was submitted on May 22, 2015 ([PR#47](#)). It concerns the Government of Canada’s (Canada) response to information requests #6 and #12, submitted by the YKDFN on April 10, 2015: The text of the IRs is set out below:

IR #6 (parts 1-3):

- 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*

and IR#12 (parts 1 and 2):

- 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’*

The YKDFN has asked the Review Board to direct Canada to provide meaningful responses to these IRs.



On May 25, 2015 at the pre-hearing conference the Review Board asked intervenors to the EA if they require opportunity to comment on the YKDFN's request. The GNWT, Tlicho Government and Deninu K'ue First Nation indicated that they do not require the opportunity to provide input on the request and did not intend to participate in this matter ([PR#54](#)).

The Review Board has carefully considered the documents related to this request, including:

- April 2, 2015 - letter from Canada to YKDFN regarding consultation ([PR#25](#))
- April 10, 2015 - YKDFN IRs to Canada, #6 (parts 1-3) and 12 (parts 1 and 2) ([PR#62](#))
- May 1, 2015 – Canada's initial responses to IRs ([PR#34](#))
- May 22, 2015 – YKDFN request for ruling ([PR#47](#))
- May 25, 2015 - GNWT Response to YKDFN IR #10 ([PR#50](#))
- May 29, 2015 – Canada's second response to the IRs based on clarification in the request for ruling ([PR#58](#))

ANALYSIS:

The Review Board has examined the YKDFN's request for ruling and the clarifications it provided on IRs #6 and 12. The Review Board is aware that the parties met on Friday May 20, 2015 to discuss their positions. However, the results from this meeting were not made available in time for the Review Board's consideration of this matter.

Two legal factors are important to the decision made by the Review Board and set out below. First, is the IR or part of the IR relevant? Will it generate information which is within the scope already set out for the proceeding by the MVEIRB and will that information assist the Review Board in making its determination at the conclusion of the evidence gathering phase of the EA? Second, in the case of the disputed IRs, the Review Board has considered which party is best positioned to provide the evidence necessary to support their case before the Board. This is a question of both the onus of proof and of efficiency in the evidence gathering process. These factors were considered in relation to each of the contested IRs.

The following provides the Review Board's specific analysis and rulings on the matter (rulings are indicated in bold font):

IR#6 part 1 - Review Board Analysis and Ruling

The Review Board observes that Canada's response acknowledges that the YKDFN have used the project area both now and in past for traditional and cultural purposes. The Review Board is of the view that the YKDFN is in the best position to provide evidence regarding its members' use of the area and also how the proposed development may impact its members. Although YKDFN use of the project area is relevant to the Review Board's determination in this EA, the Review Board does not believe that cataloguing Canada's *understanding* of how the YKDFN use the project area is likely to be relevant or helpful to the Board's evaluation of the significance of potential project impacts and concern. Simply put, evidence about use of the area provided directly by the YKDFN



is preferable. The Review Board therefore rules that **Canada is not required to provide further evidence about Canada's understanding of this subject as requested by IR#6 part 1.**

IR#6 part 2 - Review Board Analysis and Ruling

The Review Board notes that Canada has agreed, in its letter of May 29, 2015, to conduct a search for information about the specific projects referenced by the YKDFN, and to provide the results of the search to the Review Board. In addition to information about these specific projects, the YKDFN IR also asked more generally for, "any other information that AANDC or other Federal departments may hold". The Review Board finds that this second part of the IR is overly broad and vague, and that the level of effort required by Canada to conduct such a search would likely be unreasonable, considering the potential value of such evidence to the Review Board's EA decision.

Accordingly, the Review Board rules that **Canada will conduct a search of its records for the projects specified in the IR and provide its findings to both the Review Board and the YKDFN by Monday June 8, 2015.** With respect to this part of IR#6, the Board further rules that **Canada is not required to submit the "other information" held by Federal departments on this subject for the purposes of this EA.**

IR#6 part 3 Review Board Analysis and Ruling

The Review Board understands that the intent of the IR is to gather information about Canada's past efforts with respect to Consultation with Aboriginal groups. The Review Board does not believe that information about consultation on past developments outside of the vicinity Chedabucto proposed development is likely to be relevant to the Board's decision about the project-specific impacts of the Chedabucto project. The Review Board understands that its proceedings contribute to the process of Crown consultation but the Review Board is not directly responsible for Crown consultation. The Review Board's focus in this and all EAs is on determining environmental impacts and public concern. The Review Board does not see how evidence relating to Canada's consultation efforts on historical projects away from the project site will assist it to make a decision in this EA. The Review Board therefore rules that **Canada is not required to provide further response to IR#6 part 3.**

IR#12 - Review Board analysis and Ruling

Canada has stated that a response to this IR#12 was provided by the GNWT in response to YKDFN IR#10. That response has been reviewed and appears to provide the available information requested by IR#12 sufficiently for the purposes of this EA. Accordingly, the Review Board rules **Canada is not required to produce further information in response to IR#12.**

DECISION:

For the reasons set out above, the Review Board made the following decisions in relation to the YKDFN Request for Ruling:

- **Canada is not required to provide further evidence about Canada's understanding of YKDFN use of the project area as requested by IR#6 part 1.**



- **Canada will conduct a search of its records for the projects specified in IR#6 part 2 and provide its findings to both the Review Board and the YKDFN by Monday June 8, 2015. Canada is not required to submit the “other information” held by Federal departments as requested in this IR.**
- **Canada is not required to provide further response to IR#6 part 3.**
- **Canada is not required to produce further information in response to IR#12.**

DATED: June 4, 2015

For the Mackenzie Valley Environmental Impact Review Board:

Ms. JoAnne Deneron
Chairperson