



# Yellowknives Dene First Nation

P.O. Box 2514, Yellowknife, NT X1A 2P8

May 23<sup>rd</sup>, 2015

Mark Cliffe-Phillips  
Mackenzie Valley Environmental Impact Review Board  
Box 938  
Yellowknife, Northwest Territories  
X1A 2N7  
Fax: (867) 766-7074

Dear Mr. Cliffe-Phillips.:

## **Re: Whitebeach Point EA (EA14152-02) – Request for Ruling**

The Yellowknives Dene First Nation (YKDFN) would like to officially Request a Ruling from the Mackenzie Valley Environmental Impact Review Board (MVEIRB). Following Form 2 of the MVEIRB Rules of Procedure:

1. Ruling Requested: YKDFN ask the Board to direct Canada to provide full and forthright answers to the Information Requests that have been submitted. We request an initial response with a week of the Board decision and a complete answer no less than a week prior to the submission of technical reports/interventions (date to be determined).
2. Relevant Facts and Information:
  - a. On April 2<sup>nd</sup> 2015, Canada indicated that it would rely on the consultative processes of the Review Board and the WLWB.
  - b. In that same letter, they directed YKDFN to provide evidence and clearly indicate how the project will impact the First Nation's rights.
  - c. In our effort to follow this direction, YKDFN sought to gather information through the Information Request stage of the process.
  - d. YKDFN directed two Information Requests (IR) to Canada – one which sought to establish what evidence existed and to discover what Canada had learned about YKDFN landuse based on their previous involvement in past land management (and other) processes. The other IR was to seek information that would allow YKDFN to propose potential mitigations from an informed position – allowing for greater detail - rather than seeking general measures.
  - e. Canada failed to provide meaningful answers on either matter.
  - f. YKDFN sought to work to clarify these 'responses' with Canada in early May, but the Crown was unable to meet to discuss within the timeline laid out by the Review Board. YKDFN acknowledge that CANNOR did offer to discuss general communications, but specifically highlighted how they were unable to discuss any specific project (i.e. Husky).

- g. The purpose of IR #6 is threefold: to establish a baseline founded on the Crown's interaction over the last century; to gather documentation and government opinion to better populate the evidentiary record; and to understand how Canada utilizes the consultative processes they direct us to use. Through this effort YKDFN can develop better submissions, recommendations and work collaboratively with the parties.

In YKDFN IR#6, three requests were asked:

*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:*

- What actions Canada undertook to review the matter*
- What accommodations Canada sought to ensure that the concerns of the First Nation were addressed*

- i. In the first request, YKDFN sought to develop knowledge to establish what level of understanding Canada had regarding use of this area. Canada signed Treaty in 1900, YKDFN believe that they must have gathered information and developed knowledge over that time, particularly for areas of high use and high value. It is not credible or honourable for our government to simply pretend that it knows nothing on an area that they claim to have administered for over a century.

Contrary to the response provided, YKDFN are not seeking for the Crown to state how the Yellowknives use the area, but rather what Canada understands that use to be given their long administration and participation in many regulatory efforts over the years. There have been many efforts to develop this area (recent efforts include Gary Jaeb's development in the late 90s/2000s, Anglo American's application for Uranium Exploration, HTX's acquisition of the mineral rights, AANDC's efforts to provide recreational leases, Canada's participation in the Protected Areas Strategy).

Canada is placing the onus on First Nations to continuously restate what they have already told the Crown in the past. It is disingenuous to force the YKDFN to go back to square one every time – our elders and landusers have previously discussed this area with the Crown. It is not plausible that Canada has learned nothing from those efforts and has no evidence to provide to this process. We do not ask Canada to provide our Traditional Knowledge, we ask Canada to provide only their understanding of what they have heard in the past.

- ii. In the second request, we are simply looking to gather information. YKDFN receive scant resources and the collection of Traditional Knowledge information

is deeply underfunded (particularly in the unsettled claims). Only recently has YKDFN developed a reasonably thorough filing system. Traditional knowledge efforts are haphazard and are difficult to bring forward into a modern archive – there is a strong likelihood that Canada can provide further evidence to allow all parties a greater understanding through what they have heard and learned.

As Canada has asked us to provide evidence, we are asking what evidence that they may have which could contribute to this effort. This is a reasonable request that Canada cannot unilaterally decide to ignore by characterizing as excessively broad. Moreover, as discussed in item *i* (above), YKDFN provided specific examples where Canada was involved in processes that would provide documentation to help understand past submissions and representations that were made (Particularly in cases for elders or landusers who may no longer be with us).

Lastly, Canada seeks to cover itself with the fact that GNWT is now the land manager. In our meeting with GNWT on May 12<sup>th</sup>, their position was that they are only the government of record since April 1<sup>st</sup>, 2014. These positions, taken together, mean that no government has taken responsibility for the period before that date. This is non-sense – we cannot ask GNWT to formally speak for the actions that Canada took – thus Canada must account for itself. Canada has failed to meaningfully respond and has ignored its duty

- iii. The response to the third request fails to provide a meaningful level of detail on the actions that were taken and doesn't mention anything that they have undertaken in response (for instance, Measure 3 in Gahcho Kue, directed at both Canada and GNWT remains outstanding – with Canada doing little to nothing to act in response).

Moreover, communities had residual concerns after the EAs – in response to the Avalon EA, Canada responded that their approval was subject to the implementation of the Developer's commitments – many of which remain outstanding, yet the approval was provided. As far as YKDFN is aware, Canada has done little or nothing to ensure that the commitments it relied on will actually be implemented.

In this request, YKDFN sought to understand the value of providing our concerns to the Crown through the EA process when YKDFN has not seen an appropriate response to previous concerns. Canada has failed to provide a solid answer of their process or their actions, leaving us to continue to wonder. As it stands, all we know is that we are directed to provide our comments to the MVEIRB.

The current process where governments pretend that they have no idea what their citizens have done or how they have used the land is not useful to effective environmental stewardship. YKDFN should not be forced to start at square one every application. A great deal of work has already transpired and we should be building out from that, not seeking to continuously start over. This is particularly true for situations like the Whitebeach Point EA, where the area has been the focus of previous hearings and processes, a nominal 'baseline' can be established, which all parties can then work from.

- h. The purpose of IR #12 is straightforward – YKDFN is concerned the skidding effort will

allow for greater access. The first step to considering whether mitigations are necessary is to understand if the regulatory system has been effective in the past. For this concern, the mitigation is to have a strong system in place to monitor the authorized and unauthorized usage. Secondly, to be effective, that monitoring needs to be linked to management actions. Thus, YKDFN requested information to understand what the monitoring in the area was and whether it triggered actions. This request is specifically for the period pre-devolution, as GNWT is responsible for the period since (a similar IR was directed to them for this period). Canada's response to this request is complete dismissal – they failed to provide the information that we need to prepare an intervention and unilaterally declared that they bear no responsibility for the period where they were they administered the programs we enquired about. This was a simple and straightforward request – asking for a number and a list.

- i. YKDFN have submitted these IRs and they have not been ruled out of the scope of the EA. YKDFN are seeking to gather information to develop their response and propose effective mitigations that can be enacted.
- j. If Canada disagrees and feels that these IRs do not need to be provided with answers, then they should be formally asking the Board to have them ruled out of scope or 'excessively broad' (rather than YKDFN being forced to request answers be compelled). Alternatively, they could have contacted YKDFN for clarification (as directly raised in our cover letter where we specifically raise the concern of poor IR responses in previous Environmental Assessments). Instead they provided a limp response and suggested that YKDFN can contact them, rather than adopting a pro-active approach towards providing better information for the process.

### 3. Authority or grounds for the Ruling:

- MVEIRB Rules of Procedure s.37: *"The Review Board may seek information from any party to a proceeding at any time by way of a written Information Request."*

- Section 22 of the *Mackenzie Valley Resource Management Act*:

*"Subject to any other federal or territorial law and to any Tlicho law, a board may obtain from any department or agency of the federal or territorial government or the Tlicho Government any information in the possession of the department or agency or the Tlicho Government that the board requires for the performance of its functions"*

- Section 25 of the *Mackenzie Valley Resource Management Act*:

*"In proceedings before a board established under Part 3, 4 or 5, the board has the powers, rights and privileges of a superior court with respect to the attendance and examination of witnesses and the production and inspection of documents"*

The Yellowknives Dene have utilized the process, as directed, in good faith. YKDFN is aware of the Board's direction in past cases with regard to consultation (Snap Lake EA, Lynx Water License) and want to comply with the Board's wishes. However, we are left with no choice as the Government continuously directs YKDFN to utilize MVEIRB's process and they now act to frustrate this process. It is a troubling and flippant approach that dishonours the Crown.

YKDFN can hardly believe that we need to ask the Board to direct Canada to answer these questions. In our initial IR submission we sought to ensure that there was the opportunity for the Crown to engage YKDFN if they were unsure on any facet of the request. They chose not to take advantage of that opportunity. We sought to meet with CANNOR to discuss the issue, seeking better answers or providing

additions context to the request. The Crown would not prioritize that meeting over other issues and it could not be done in the available time.

YKDFN has been reasonable, seeking resolution in a situation in which the onus was on Canada to provide answers to the requests that were issued. Instead we received empty responses that provided nothing to the process. Thus, we are *forced* to ask the Board to compel thorough answers from Canada.

Sincerely,



Todd Slack  
Yellowknives Dene First Nation

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