

Ministre des Affaires indiennes et
du Nord canadien et interlocuteur fédéral
auprès des Métis et des Indiens non inscrits

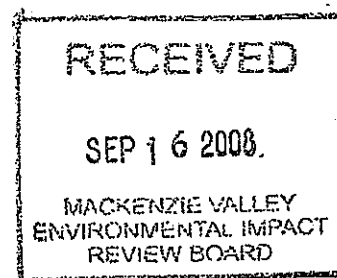


Minister of Indian Affairs and
Northern Development and Federal Interlocutor
for Métis and Non-Status Indians

Ottawa, Canada K1A 0H4

SEP 5 2008

✓ Mr. Richard Edjericon
Chair
Mackenzie Valley Environmental Impact
Review Board
PO Box 938
5102 - 50th Avenue
YELLOWKNIFE NT X1A 2N7



Dear Mr. Edjericon:

Thank you for your letter of June 16, 2008, regarding participant funding for environmental impact assessments conducted under the *Mackenzie Valley Resource Management Act*. I appreciate the interests of the Mackenzie Valley Environmental Impact Review Board in refining processes for environmental impact assessments in the Mackenzie Valley that will lead to more timely and better quality decisions.

As you are aware, departmental officials are working on a pan-northern policy approach to participant funding. One of the major challenges in resolving this issue is that the land claim agreements in the Mackenzie Valley and the Act do not establish a requirement for funding participants in the environmental impact assessment process. This means that Indian and Northern Affairs Canada has no authority to provide funding to the Review Board for this purpose. The Department recognizes, however, that the practice of environmental impact assessments have evolved since completion of the land claim agreements and, in some jurisdictions in Canada, financial assistance is provided to participants to support their involvement in the process. As such, the Department is continuing to look for opportunities to advance this issue and it will merit strong consideration in the development of a long-term strategy for the Department's regulatory improvement initiative.

In the meantime, Indian and Northern Affairs Canada will continue to use various mechanisms to directly support the capacity of participants in resource management processes. These include the Interim Resource Management Assistance Program and funding for projects that have triggered other federal or joint review processes (e.g. the Mackenzie Gas Project joint review panel).

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When these mechanisms are not available or adequate, decisions to provide funding directly to participants will be made on a project-by-project basis. Since 1996, more than \$10 million has been made available to groups in the Mackenzie Valley through these mechanisms.

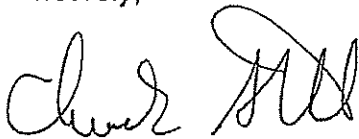
You raised the case of the environmental impact review of the Gahcho Kué project. In this instance, the Department recognized that some participants needed extra support to participate in the review and provided additional funds to supplement existing programming. It is our intention to provide additional funds once the technical review of the project is initiated. Departmental officials would welcome working co-operatively with the Review Board in this process.

Regarding the funding the Department provided to participants in the Bathurst Inlet Port and Road Review, this responds to a Ministerial commitment made in 2004, when a decision on the level of impact review for this project was taken. Certainly the advice provided by the Nunavut Impact Review Board at that time was critical to the Minister's decision.

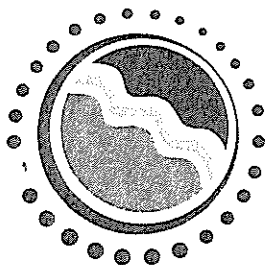
In this respect, I wish to emphasize the important role the Review Board plays in advising the Department of the level of public concern and the interests expressed by potentially affected parties involved in these processes. This advice, coupled with information on the potential extent and magnitude of impacts from a project, contribute to the Department making an informed decision regarding participant funding. Until the policy approach is resolved, this advice is one of the best sources of information the Department has to make project-by-project decisions to provide funding directly to participants. Departmental officials would be pleased to work with the Review Board to determine appropriate opportunities to bring advice on participant funding to the attention of Indian and Northern Affairs Canada.

I appreciate you bringing this matter to my attention and I trust this addresses your concerns.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Chuck Strahl', with a stylized, flowing script.

Chuck Strahl



June 16, 2008

The Honourable Chuck Strahl, P.C., M.P.
Minister, Indian and Northern Affairs Canada
MINISTER'S OFFICE
10 Wellington St. North Tower
Hull, P.Q., K1A 0H4

Dear Minister Strahl:

**Re: Participant funding for environmental impact assessments
conducted under the *Mackenzie Valley Resource Management Act (MVRMA)***

The Mackenzie Valley Environmental Impact Review Board (the "Review Board") would like to raise to your attention its concerns regarding the absence of a participant funding program for environmental impact assessments conducted in the Mackenzie Valley portion of the Northwest Territories. Participant funding programs, such as the one administered by the Canadian Environmental Assessment Agency (CEAA), provide financial resources for individuals and organizations involved in environmental impact assessment proceedings. Depending upon the needs of the participants, this funding can, among other things, cover travel costs and help to hire technical experts. Clearly participant funding facilitates the meaningful involvement of parties in impact assessment proceedings often leading to decisions that are not only better, but also more acceptable to potentially affected communities. The Review Board has investigated these programs and I attach a discussion paper describing our perspective on participant funding for your consideration. It was originally submitted to your Department in November 2005.

It appears to the Review Board that there may be a lack of fairness in the way in which participant funding has been denied to residents of the Mackenzie Valley in comparison with other environmental impact assessment regimes in Canada. For example, since its inception, the CEAA has provided participant funding for its panel and joint-panel reviews, and in more recent years it has extended participant funding to comprehensive studies as well. This has also included participant funding for the Mackenzie Gas Project Joint Review Panel.


A Nunavut case further reinforces the Review Board's concern that participants in environmental impact assessments in the Mackenzie Valley are not being treated equitably in comparison to their neighbours. On May 15, 2008, your department announced that five parties would be eligible to receive a total sum of three hundred and forty thousand dollars (\$340,000.00) to participate in the Nunavut Impact Review Board's review of the Bathurst Inlet Port and Road (BIPAR) project. Noteworthy is that, two of the recipients, the Yellowknives Dene First Nation and the North Slave Métis Alliance, are aboriginal groups based in the Mackenzie Valley. While such groups cannot secure intervener funding for environmental impact assessments in their home territory, they have obtained funding to participate in this review in a neighbouring jurisdiction.

To carry this point a bit further, the Review Board understands that the capital cost for the BIPAR project is in the order of \$270 million. In comparison, DeBeers Canada's Gahcho Kué Diamond Mine Project, which is under environmental impact review by a panel of the Review Board, has a projected capital cost of \$825 million. Despite the significant differences in the scope of these projects there has been no indication that your department intends to implement a participant funding program for this or any other environmental impact assessment conducted in the Mackenzie Valley. Other large, economically significant and technically complicated projects, such as the Taltson Hydroelectric Expansion Project and the Giant Mine Remediation Project, are currently under assessment by the Review Board. There is no question that those projects, had they occurred anywhere else in Canada, would be eligible for participant funding.

The Review Board brings these concerns to your attention and once again to your department's attention because it believes these examples raise issues of fairness and because of the potential legal risk that may arise if the situation is not addressed. A real possibility exists that a party could seek to challenge a Review Board environmental impact assessment proceeding on the basis of this inequity. Such an action would frustrate the Board's ability to deliver a timely environmental impact assessment decision and could reflect badly on Canada's treatment of residents of the Mackenzie Valley.

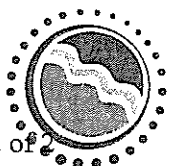
The Review Board is encouraged by the leadership that you and your department have shown in providing participant funding in the case of the BIPAR review. We hope that you recognize that the people of the Mackenzie Valley are equally deserving of assistance when participating in major environmental impact assessment proceedings. We would be pleased to discuss the establishment of a participant funding program for the Mackenzie Valley and suggest that we do so in the near future in relation to the Gahcho Kué Diamond Mine Project..

Sincerely,



Richard Edjericon
Chairperson

Attachment (1)



ATTACHMENT: PARTICIPANT FUNDING PROPOSAL

Issue:

The Mackenzie Valley Environmental Impact Review Board's (MVEIRB or the "Review Board") wishes to secure funding to support the participation of parties potentially impacted by proposed developments referred to the Review Board for environmental assessment. The proposed participant funding initiative would include the review, selection and approval of funding applications in a fair, systematic and impartial manner.

Background

Participant funding is recognized as a well established component of environmental impact assessment in Canada. The Government of Canada has, for many years, provided funding to participants involved in the assessment of projects conducted under the *Canadian Environmental Assessment Act* (CEAA). In comparison, the MVEIRB has never offered participant funding to any parties that have participated in its environmental assessments, as defined by sections 126-131 of the *Mackenzie Valley Resource Management Act* (MVRMA).

The environmental assessment provisions in the MVRMA (sections 126-131) do not provide for the establishment of a participant funding program. In practice this has resulted in parties, who wish to participate in the EA, having to secure very limited funding available from time to time from various government programs. Alternatively they may be able to secure some funding from project proponents or be required to cover the full cost of participation themselves.

Even where some participant funding program exists, they are far from universal in their coverage. For example, the *Interim Resource Management Assistance* (IRMA) program, jointly managed by Indian and Northern Affairs Canada and the Government of the Northwest Territories, is meant to assist First Nation Bands and Métis Locals in unsettled claim areas in their participation in land and resource management activities, including environmental assessments. Organizations representing settled land claim beneficiaries, municipal governments, environmental non-government organizations, as well as other public interest groups do not qualify for this program. Even when IRMA funding is available to a party, the timing of the funding is often not compatible with timelines of an environmental assessment and the funding received may already be split among a number of different projects such as participation in water licensing or land use permitting processes.

The Review Board process for conducting environmental assessments has been consistently criticized by aboriginal organizations and other members of the public for its lack of participant funding. A comment submitted by the Lutsel K'e Dene First Nation during the environmental assessment of a number of projects proposed for the Drybones Bay region, near Yellowknife, is quite typical of the situation that many participants face,

"As with other Aboriginal parties to these EAs, we severely lack the personnel and financial resources to adequately respond to these reports, especially within the unreasonable time limitations imposed. We have had

very little time to gather relevant information and conduct research, especially over the extremely busy summer months when many of our community members are otherwise engaged in cultural and subsistence activities on the land."

Comments submitted by the Canadian Arctic Resources Committee at the Snap Lake Diamond Project public hearing were also critical regarding the lack of participant funding,

"Participant or intervener funding is an important tool in ensuring public participation in environmental assessment and is essential for a rigorous, comprehensive, and fair process. In recognition of the value of participant funding, the federal government has enshrined the right to participant funding in the Canadian Environmental Assessment Act for mediations and panel reviews (s. 58 (1.1)). In Bill C-9, now before the House of Commons, this right to participant funding will be extended to comprehensive studies (very similar to an environmental assessment under the Mackenzie Valley Resource Management Act (MVRMA)) and joint panels. However, there are no provisions for participant funding in the MVRMA leaving NWT residents at a distinct disadvantage compared to most other citizens across the country. "

Clearly the need for participant funding is evident with aboriginal as well as non-aboriginal parties to the Board's EA process.

Discussion:

The following considerations are provided in support of this request to establish a participant funding program.

1. Meeting the requirements of the MVRMA

Ss.114(c) of the MVRMA states that it is a purpose of the Review Board to establish a process which will *"ensure that the concerns of aboriginal people and the general public are taken into account in that process"*. It is the opinion of the Review Board that the concerns of aboriginal people and the general public are best articulated when they speak for themselves through their direct participation in the MVEIRB environmental assessment process. The Review Board recognizes, as have numerous others in the environmental impact assessment field, that participant funding is a crucial factor in encouraging public participation.

2. Tlicho amendments to the MVRMA

The amendments made to the MVRMA, pursuant to the enactment of the *Tlicho Agreement*, require that MVEIRB conduct consultation efforts towards first nations during its environmental assessments. Section 127.1 of the Tlicho amended MVRMA states that, *"Before completing an environmental assessment of a proposal for a development that is to be carried out wholly or partly on first nation lands as defined in section 51 or on Tlicho lands, the Review Board shall consult the first nation on whose lands the development is to be carried out or, if the development is to be carried out on Tlicho lands, the Tlicho Government."*

The Review Board anticipates that the additional consultation duties imposed upon it by the MVRMA amendments may result in a greater requirement for a participant funding in its environmental assessments. While the concept of consultation with aboriginal communities is multi-layered; in the context of an environmental assessment, it most certainly includes improving the capacity of potentially-affected first nations to understand a proposed development and the issues arising from that development which could affect their rights.

3. Equality with CEAA

The Canadian Environmental Assessment Agency (CEAA) provides a participant funding program for panel reviews and comprehensive studies carried out under its jurisdiction. The MVEIRB has undertaken a number of environmental assessments of proposed developments, which, had they been conducted under the *Canadian Environmental Assessment Act*, would have, alternatively, been subject to a "comprehensive study", and as such, would have been eligible for participant funding. Those projects include the Snap Lake Diamond Project, as well as the current Yellowknife Gold Project EA.

The Review Board submits that the participant funding available in EAs undertaken by the Review Board in the Mackenzie Valley should, minimally, be equitable, to that available to participants of CEAA assessments carried out in the rest of Canada.

However, the Review Board does not seek to create an exact replica of the CEAA participant funding program. Environmental impact assessment in the Mackenzie Valley is substantially different than that in CEAA jurisdictions. MVEIRB conducts environmental assessments on the basis of public concern, as well as on the basis of potential impacts on the environment. This difference in approach often results in MVEIRB environmental assessments of smaller, less technically complex projects, which would not trigger a comprehensive study under CEAA let alone a panel review.

It has been the Review Board's experience that the size or technical complexity of a proposed development does not necessarily equate to the efforts devoted by parties to an environmental assessment. Indeed, the Review Board has conducted environmental assessments that, while deceptively minor from the perspective of bio-physical impacts, have generated a tremendous amount of public concern and have correspondingly resulted in a significant expenditure of money and labour on part of concerned parties.

4. Recommendation of the NRTEE

In 2001 the National Round Table on the Environment and Economy (NRTEE), published a report entitled, *Aboriginal Communities and Non-renewable Resource Development*, which was a substantive study of the relationship between Aboriginal communities and non-renewable resource development from the perspective of sustainability. As part of the report, NRTEE presented 15 recommendations aimed at building sustainable Aboriginal communities in Canada's North. Its recommendation #3 was specifically focused upon funding issues for a participant funding program for MVEIRB environmental assessments,

"The Government of Canada should allocate at least \$2.2 million per year (including \$500,000 per year for intervener funding) to enable the Department of Indian Affairs and Northern Development to provide the Mackenzie Valley Environmental Impact Review Board with a secure, multi-year funding commitment that will ensure that the Board can effectively carry out its mandate and can provide intervener funding during environmental assessments and environmental impact reviews. This funding level should be reassessed after five years."

When the NRTEE published its report, it expected that its recommendations would provide an opportunity for government to promote the economic, social, cultural and environmental sustainability of Aboriginal communities in the three northern territories through the prudent use of non-renewable resources. Unfortunately to date, the NRTEE's recommendation regarding the establishment of a participant funding program for environmental assessments has not been adopted by the Government of Canada.

5. Achieving best practices in environmental impact assessment.

The Review Board has, from its inception, strived to be a leader in environmental impact assessment through continual improvement to its processes, procedures and reporting. It has strived to not only meet the best practices of environmental impacts assessment, but also to exceed those practices, particularly as it relates to public participation. As part of its commitment to demonstrate leadership in environmental impact assessment, the Review Board has nurtured close ties with the International Association for Impact Assessment (IAIA), which is the leading global authority on best practices in the field of impact assessment.

The IAIA has noted in its *Public Participation Best Practice Principles* that decision makers, in fulfilling an operating principle of public participation in environmental impact assessment, should,

"Support people in their will to participate through an adequate diffusion of information on the proposal and on the Public Participation process, and a just and equitable access to funding or financial assistance. It should also provide capacity-building, facilitation and assistance, particularly for groups who don't have the capacity to participate, and in regions where there is no culture of Public Participation, or where local culture may inhibit Public Participation."

The Review Board recognizes that, from the perspective of supporting public participation in its environmental assessments, it is not meeting the best practices established by the IAIA, nor is it meeting the best practices already enjoyed by the rest of Canada.

6. Fulfilling Past "Suggestions" of the Review Board

As part of its reports of environmental assessment, the Review Board usually includes "suggestions", which are non-binding measures that are directed to various parties for the purpose encouraging good environmental management. These suggestions are not *ad hoc* creations of the Review Board, but are instead developed according to evidence which has been submitted to MVEIRB over the course of an environmental assessment. The Review Board's suggestions are not simply a wish-list; they are instead measures that deserve the attention of the responsible ministers and they should be implemented wherever practical. The need for participant funding has been advanced as a suggestion in a number of reports of environmental assessments.

In the report for the Snap Lake environmental assessment, the Review Board suggested that,

"The Government of Canada consider the development of a method for providing participant funding at the EA level under the MVRMA. This funding should be primarily targeted at NWT residents and communities, including Aboriginal and non-aboriginal groups. The method should include the establishment of an independent authority to administer the funds that is applicable at both EA and environmental impact review levels. "

The reports of environmental assessment for developments proposed by Snowfield Development Corp, Consolidated GoldWin Ventures, New Shosoni Ventures and North American General Resources Corporation in the Drybones Bay area all contained the following suggestion, *"The Government of Canada should at an early date develop and institute a method to provide participant funding at the EA level under the MVRMA to be equivalent to the Comprehensive Study Review funding practices under CEAA."*

7. Commitments from the Minister of DIAND

The Honourable Andy Scott, Minister of Indian Affairs and Northern Development, has personally recognized the issue of participant funding for environmental assessments in the Northwest Territories. During a recent visit to Yellowknife he made a public commitment to examine the issue in order to enable communities and organizations in the Mackenzie Valley to more effectively engage in the environmental assessment process. In a letter dated May 27, 2005, to Ms. Suzette Monteuil, Co-chair of Alternatives North, Minister Scott affirmed that he would be personally looking into the matter. While the Review Board recognizes that the Minister has not committed his department to providing participant funding for EAs in the Mackenzie Valley, it is clear that the Minister has an expressed interest in the issue.

8. Overcoming obstacles to participation

There are greater challenges to public participation in environmental impact assessment in the Mackenzie Valley than in almost any other region of Canada. Logistical barriers such as the large distances between communities and the high cost of travel and accommodation have inhibited public participation in the MVEIRB's process.

There are also a number of human capacity obstacles unique to the north that can impede participation, such as the lack of formal education among many northerners, lower literacy levels and barriers due to language differences.

Additionally, the increased interest in non-renewable resource development in the Mackenzie Valley over the past decade has strained the ability of many northern organizations to meaningfully participate in a wide range of resource management initiatives, particularly environmental assessments. Given the continued strong emphasis of natural resources in the Canadian economy, it can be expected that the Mackenzie Valley will continue to attract development which in turn will likely result in future environmental assessments.

It cannot be overstated that the large geographical area of the Mackenzie Valley combined with the small population and intense resource development activity severely strains the capacity of residents to effectively participate in resource management decision making processes. Additional resources are urgently required to allow parties to effectively participate in the EA process.

Conclusion:

The more informed the Review Board is regarding the impacts of a proposed development the better the decisions resulting from the EA process. Building in quality in this way will improve the quality of resource management decisions from the EA process.

The greater the effective participation by potentially impacted parties to the EA process; the greater the fairness to all parties regarding the resource management decisions taken as a result.

The Review Board believes that provision of participant funding is an essential component of its environmental assessments, and that such provisions should be given effect through a specific funding process that would be available to a wide range of participants.

The Review Board believes that a participant funding program would:

- allow developers, government, regulatory agencies and the Review Board to better understand and address public concerns and priorities;
- support the inclusion of community knowledge and Aboriginal traditional knowledge into the EA decision-making process, which in turn may reduce the potential for adverse effects;
- help to provide improved opportunities for parties to contribute to the planning of projects that may affect them, and subsequently improve project planning; and
- encourage greater public trust in the EA process and in the Review Board's recommended measures.

More specifically, the provision of a participant funding program will significantly help the Review Board achieve the requirements of Section 114 of the MVRMA.

Further, a participant funding program is essential to increase first nation capacity to effectively participate in EAs undertaken by the Review Board.

Proposal Request(s):

That INAC fund the Review Board in the amount of \$775,000 annually for the next three fiscal years to provide a program of financial to potentially affected parties to environmental assessments undertaken by the Review Board.

\$674,000 of that amount would be distributed as contributions to potentially impacted individuals, community and aboriginal organizations, ENGOs and other organizations requiring financial assistance to effectively participate in the Review Board's EA processes. \$101,000 would be to support the administration of the participant funding program, including the establishment of an "arms length" advisory committee to determine the appropriate allocation of participant funding to applicants in each EA to be undertaken.

The amount of funding required is an estimate only as there is no relevant data to reference in this instance. For comparison purposes, the amount of participant funding allocated to the Mackenzie Gas Project Review is approximately \$2 million.

In the third year of the proposed participant funding program, the amount of funding would be assessed to determine whether or not an adjustment in the level of funding for future years was required.

