



Canadian Northern Economic
Development Agency

Agence canadienne de développement
économique du Nord

5019 – 52nd Street
Yellowknife, NT X1A 1T5



Government of
Northwest Territories
Territoires du Nord-Ouest

October 10, 2018

VIA Email & Fax

Chief Peter Marcellais
Nah?ą Dehé Dene Band
Nahanni Butte, NT
X0E 0N0

VIA EMAIL AND FAX

Decision on Prairie Creek All-Season Road: follow-up letter with Indigenous Governments and Organizations (MVEIRB file number EA1415-01)

Dear Chief Peter Marcellais,

Introduction

On behalf of the Federal Minister and the responsible ministers for the Prairie Creek All-Season Road Project (the Project) we would like to thank you for your participation in the Environmental Assessment (EA) process.

The Mackenzie Valley Environmental Impact Review Board (the Board) released its Report of Environmental Assessment and Reasons for Decision (the Report) on September 12, 2017. The Report recommends the Project be approved with the implementation of measures and Canadian Zinc Corporation's (the Developer) commitments to mitigate potential adverse impacts and ensure appropriate engagement with potentially affected Indigenous Governments and Organizations (IGOs).

The Duty to Consult and Environmental Assessment

As part of the decision making process, the Federal Minister and responsible ministers work together to ensure that potentially affected IGOs are consulted, and where necessary, accommodated. This is done when there is a potential for negative effects on asserted or established Aboriginal and/or Treaty rights.

When considering if Aboriginal consultation was meaningful and complete, we reviewed the following for potential accommodation:



- the Board's Report and its measures;
- correspondence between IGOs and the Developer;
- correspondence between IGOs and both territorial and federal governments;
- the public registry for the environmental assessment;
- applicable government programs, initiatives and policies; and
- any other relevant communications, documents, or agreements.

After considering this information, it is our belief that the Aboriginal consultation was meaningful and complete.

Meaningfulness of Post Report Consultation

As noted, we considered the above factors and additional information provided throughout the environmental assessment in determining if the Duty to Consult and where necessary accommodate was met in the Project's EA. As part of that review, the Northern Projects Management Office and the Government of the Northwest Territories' Department of Lands distributed letters to IGOs on September 12, 2017, following the release of the Board's Report. These letters sought the IGOs' views to determine if the EA process had addressed their concerns. We received responses to the September 12, 2017 letters from:

- Nahʔą Dehé Dene Band (NDDDB) on October 2, 2017; October 5, 2017; and December 7, 2017;
- Łíídlıı Kúé First Nation (LKFN) on October 20, 2017;
- Dehcho First Nations (DFN) on October 20, 2017; and,
- Acho Dene Koe First Nation (ADKFN) on November 7, 2017.

The Developer also sent a letter to the Northern Projects Management Office on November 21, 2017.

After reviewing these letters, it remained unclear to the Federal Minister and responsible ministers how the Developer would meet a number of measures in the Report. In response, the Federal Minister invoked a two month extension to the ministerial decision timeline on January 18, 2018, and sent an information request to the Developer under section 130 (4.06) of the Act on January 19, 2018.

The five information requests set out by the Federal Minister and the responsible ministers addressed the following topic areas:

1. Dene Knowledge,



2. Łíídlıı Kúę First Nation's Indigenous Knowledge Study,
3. Sundog Creek Diversion Plan,
4. Inclusion of all Impacted Indigenous Groups in Project Monitoring Related Activities, and
5. Funding Support for Indigenous Groups' Participation in Implementation of Measures and Monitoring Related to the Project.

The Developer submitted their response on June 8, 2018. The response contained a letter from the Developer, information request responses, a joint letter from Łíídlıı Kúę First Nation and Nah?ą Dehé Dene Band, and a document titled *Draft Implementation Plans Select Measures and Commitments* (Implementation Plan).

The Developer's response described their ongoing engagement with the IGOs and how they intended to implement measures and commitments in the Report. Central to the responses was a process agreement describing the negotiation of an Environmental Management Agreement (EMA) between the Developer and the IGOs. The proposed EMA between Łíídlıı Kúę First Nation, Nah?ą Dehé Dene Band, and the Developer is intended to address the concerns brought forward by Łíídlıı Kúę First Nation and the Dehcho First Nations in their October 20, 2017 letters and by Nah?ą Dehé Dene Band in the post report letters of October 2, 2017; October 5, 2017; and December 7, 2017. The EMA is also intended to clarify how the Developer will include the IGOs in the implementation of the measures and developer's commitments.

The June 8, 2018 joint letter from Łíídlıı Kúę First Nation and Nah?ą Dehé Dene Band stated support for the Developer's responses to information requests four and five. The joint letter also expressed confidence in a negotiated EMA as a way to implement measures and the Developer's commitments set out in the Report and to address the concerns brought forward by the IGOs.

The Northern Projects Management Office received a second set of letters on June 14, 2018 from Łíídlıı Kúę First Nation and Nah?ą Dehé Dene Band clarifying their support for all of the Developer's information request responses.

On July 4, 2018 the Northern Projects Management Office received a letter from the Dehcho First Nations indicating satisfaction with the Developer's responses. The letter also indicated satisfaction with the process agreement to negotiate an EMA with Łíídlıı Kúę First Nation and Nah?ą Dehé Dene Band as a tool to address concerns brought forward by IGOs.



Other Considerations

We would like to take this opportunity to clarify that the Developer's Implementation Plan was not considered when evaluating the meaningfulness or completeness of consultation.

The Implementation Plan falls outside the scope of the Ministers' information request and was not considered. "Implementation Plans" for measures, commitments, authorizations, and management plans are normally assessed in the regulatory and other post environmental assessment processes.

Further, the June 8, 2018 joint letter from Łíídlıı Kúę First Nation and Nahʔą Dehé Dene Band requested that the Minister of Crown-Indigenous Relations and Northern Affairs direct the Mackenzie Valley Land and Water Board and Parks Canada make licensing and permitting of the Project conditional on the conclusion of the EMA between Łíídlıı Kúę First Nation, Nahʔą Dehé Dene Band, and the Developer. Specifically,

"..., the Parties have agreed to propose to you as the Federal Minister of Crown-Indigenous Relations and Northern Affairs that you include in your decision ... a condition, or direction to the Mackenzie Valley Land and Water Board and Parks Canada, that permits for the ASR not be issued before an EMA is negotiated and concluded between the Parties."

The June 22, 2018 letter from the Northern Projects Management Office informed the Parties that,

"the FM [federal Minister] does not have the authority to direct the Board or Parks Canada or indeed any regulator to insert conditions into permits or licenses, or withhold permits or licenses pending negotiation of an agreement between a proponent and a First Nation."

Conclusion

Throughout the environmental assessment of the Project the Federal Minister and the responsible ministers have taken care to ensure that potentially affected IGOs were consulted and that they had the opportunity to meaningfully participate in the environmental assessment process.

The Federal Minister and the responsible ministers evaluated the Report of Environmental Assessment, and took the opportunity in the decision phase to



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continue the Aboriginal consultation discussion. We also worked with IGOs and the Developer to resolve outstanding concerns. Based on this, we believe that IGOs' concerns about potential adverse effects of the Project on asserted or established Aboriginal and/or Treaty rights have been addressed.

The Federal Minister and responsible ministers recognize that Aboriginal consultation is an ongoing process. There will be further opportunities for your participation during the post environment assessment phase, should the Project move forward. We encourage you to actively participate in all processes related to this project and continue to bring forward your concerns.

If you have any questions or concerns, please feel free to contact Adrian Paradis, Senior Project Manager (adrian.paradis@canada.ca).

Sincerely,

Kate Hearn
Assistant Deputy Minister
Planning and Coordination
Department of Lands
Government of the Northwest
Territories

Diane Billingsley
A/ Director-General
Northern Projects Management Office
Canadian Northern Economic
Development Agency
Government of Canada

c: Mr. Gary Bohnet, Principal Secretary, Office of the Premier of the Northwest Territories

Mr. Mike Aumond, Secretary to Cabinet/Deputy Minister, GNWT Executive and Indigenous Affairs

Mr. Willard Hagen, Deputy Minister, GNWT Department of Lands

Dr. Joe Dragon, Deputy Minister, GNWT Department of Environment and Natural Resources



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Mr. Mark Hopkins, Director General, Natural Resources and Environment Branch,
Crown-Indigenous Relations and Northern Affairs Canada

Mr. Patrick O'Neill, Director General, Explosive Safety and Security Branch, Natural
Resources Canada

Mr. Mark Cliffe-Phillips, Executive Director, Mackenzie Valley Environmental Impact
Review Board