



Mackenzie Valley
Environmental Impact
Review Board

- In the Matter of:** **A land use permit application MV2006C0008 made by Uravan Minerals Inc.;**
- And in the Matter of:** **A land use permit MV2006C0008 issued by the Mackenzie Valley Land and Water Board on May 5th, 2006;**
- And In the Matter of:** **A request by the Akaitcho Interim Measures Agreement Implementation Office on behalf of Akaitcho First Nations for the Mackenzie Valley Environmental Impact Review Board to exercise its authority under subsection 126(3) of the MVRMA and refer the development proposed by Uravan Minerals Inc. to Environmental Assessment.**

REASONS FOR DECISION

BACKGROUND:

On March 10th, 2006 Uravan Minerals Inc. (Uravan) applied for a land use permit (MV2006C0008) to explore for uranium in the Boomerang and Disco Lakes area of the Akaitcho region, south of the Thelon Game Sanctuary. The proposed exploration program was short term involving about a month of work in the field by about 13 staff and about 2000 metres of diamond drilling.

On April 20th, the Mackenzie Valley Land and Water Board (MVLWB) met to consider this application. That Board considered the comments received from reviewers regarding the application, including the NWT Treaty #8 Tribal Corporation, several environmental organizations and members of the public before completing a preliminary screening pursuant to section 124 of the *Mackenzie Valley Resource Management Act* (MVRMA). The MVLWB decided that a referral to Environmental Assessment (EA) under the MVRMA was not necessary and, on May 5, 2006, issued a land use permit to Uravan which was subject to a number of terms and conditions aimed at protecting the environment.

On June 1, 2006 the Mackenzie Valley Environmental Impact Review Board (Review Board) received correspondence from the Akaitcho Interim Measures Agreement

Implementation Office (Implementation Office) on behalf of Akaitcho First Nations requesting the Review Board to exercise its authority under subsection 126(3) of the MVRMA and order an EA of the Uravan development.

The Review Board considered the Akaitcho request on June 8th, 2006.

ANALYSIS:

Subsection 126(3) of the MVRMA reads as follows:

(3) Notwithstanding any determination on a preliminary screening, the Review Board may conduct an environmental assessment of a ***proposal for a development*** on its own motion. (emphasis added)

This subsection grants the Review Board the discretion, on its own motion, to “call up” a proposal for a development by ordering an EA even if a preliminary screening which concluded no EA was necessary has been completed by a regulatory authority. In this way the Review Board can exercise supervisory authority over the preliminary screening phase of the environmental impact assessment process set out in part 5 of the MVRMA.

The exercise of this discretion would be problematic, however, once a permit or licence has been issued and development activity has been initiated. If the Review Board could make such orders it would leave developers that had been subject to both preliminary screening and the regulatory process without any certainty that they would not have to begin the process in part 5 of the MVRMA again. Additional questions arise from this scenario. How could measures resulting from such an EA be implemented pursuant to section 62 of the MVRMA when the terms and conditions in a land use permit or licence have already been in place for some time?

Thus, the Review Board and the MVLWB have arranged for a “pause period” after a preliminary screening is completed by the Land and Water Board during which the Review Board may review the preliminary screening file and consider the need to exercise its discretion under subsection 126(3) of the Act.

The Review Board did review the Uravan preliminary screening and did not choose to exercise its section 126(3) authority. Then, well after the permit had been issued, the Implementation Office wrote requesting that the Review Board order an EA of the Uravan development.

The Review Board examined all relevant information on the MVLWB registry in making a decision on this request and reviewed the MVRMA, specifically the language in subsection 126(3) and paragraph 114(b).

It is the Review Board’s view that the words “***proposal for a development***” used in section 126(3) imply that the Board’s discretion must be exercised before a permit licence or authorization is issued to allow the development to take place. This

interpretation is consistent with section 118 of the MVRMA. The term "proposal for a development" is used consistently in part 5 of the Act and its meaning is clear. A proposal for a development is one which has not yet been licensed or permitted.

Moreover, the MVRMA does not include a provision which would allow the Review Board to order a halt to work on a development if it exercises its subsection 126(3) authority after activity has been initiated. Without a means to halt a development, it is possible that development activity could be completed before an environmental assessment process could generate terms and conditions to address the environmental impacts of the development. Such an outcome would be both ineffective and frustrating for all participants. More importantly, it would fail to meet the clearly articulated purpose of part 5 of the MVRMA.

The Review Board notes that paragraph 114(b) of the MVRMA specifies that one of the purposes of the part 5 of the Act is to:

(b) to ensure that the impact on the environment of proposed developments receives careful consideration ***before actions are taken in connection with them;***
(emphasis added)

It therefore appears to the Review Board that the MVRMA does not intend that an EA should take place after a development has been granted a licence permit or other authorization to proceed.

In light of this analysis the Review Board is of the view that it cannot exercise its s.126(3) discretion in response to the Implementation Office's request.

DECISION:

The Mackenzie Valley Environmental Impact Review Board is of the opinion that it cannot order an environmental assessment of the Uravan development.

FOR THE MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD:



Gabrielle Mackenzie Scott, Chairperson

DATED: the 30th of June 2006.