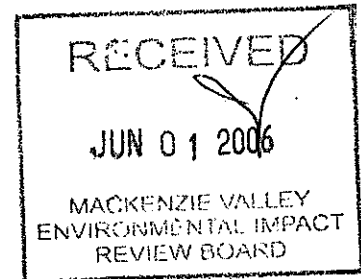




Akaitcho Interim Measures Agreement Implementation Office  
***NWT Treaty #8 Tribal Corporation***

Stephen Ellis – Akaitcho IMA Implementation Coordinator  
 NWT Treaty #8 Tribal Corporation  
 Box 28  
 Lutsel K'e, NT X0E 1A0  
 Ph: (867)-370-3217  
 Fax: (867)-370-3209



May 31, 2006

Willard Hagen – Interim Chair  
 Mackenzie Valley Land and Water Board  
 Box 2130  
 7<sup>th</sup> Floor – 4910 50<sup>th</sup> Avenue  
 Yellowknife, NT X1A 2P6  
 Fax: (867) 873-6610

Gabrielle Mackenzie-Scott – Chair  
 Mackenzie Valley Environmental Impact  
 Review Board  
 200 Scotia Centre  
 Box 938, 5102 – 50<sup>th</sup> Ave  
 Yellowknife, NT X1A 2N7  
 Fax: (867)-766-7074

**RE: Request to refer MV2006C0008 to an environmental assessment**

Mr. Hagen and Ms. Mackenzie-Scott:

The recent decision by the MVLWB to issue a land-use permit to Uravan Minerals Inc. for exploratory drilling in the upper Thelon basin is of significant concern to the Akaitcho Dene First Nations (AKFNs). This concern arises for a number of reasons:

- The February 23, 2004 Ministerial policy direction to the MVLWB explicitly states that the Board must consider the impact of a proposed permit upon the hunting, fishing, and trapping activities of the AKFNs. It further provides that the Board is to consider a request by the AKFNs that the Board make an order that the applicant for a permit conduct further studies respecting use by the AKFNs of the land and water that may be affected by the application.

The AKFNs have and continue to exercise their aboriginal and Treaty rights to hunt, fish, trap, and gather in the upper Thelon basin, the area affected by the application. These concerns were raised with you in a letter of April 6, 2006 from myself. After having agreed with Akaitcho that further study was required, the MVLWB wrote to Uravan on May 5, 2006 to advise them that the Board had ordered that further study needs to be conducted because it felt that the application should be further studied before a decision was made on the application. The purpose of the study, of course, is to determine whether or not, and to what extent if any, the aboriginal and Treaty rights of the AKFNs will or may be infringed by the proposed application. This will not be known until further

study is completed. Nevertheless, the MVLWB issued a permit to Uravan without first conducting the study that was requested. Further, the Board issued a permit without first determining whether the company's activities might infringe upon these aboriginal and Treaty rights, as required by section 6 of the Ministerial policy direction. The MVLWB has misconstrued its obligations under the Ministerial policy direction in that the required study is to be conducted *before* the issuance of a permit. The conduct of a study *after the fact* is of little value to prevent infringements upon aboriginal and treaty rights.

Furthermore, neither the MVLWB nor the Crown sought information from the AKFNs about the practice of their rights in the upper Thelon basin. The use of this area by members of the AKFNs is extensive. An INAC-sponsored study exploring the potential impacts of uranium exploration in the upper Thelon basin upon aboriginal and Treaty rights is only in the initial stages. From the information available on the public record, it is clear that the MVLWB proceeded with permit issuance without adequate knowledge of AKFN hunting, fishing, trapping, and gathering activities in the upper Thelon basin, without ensuring that consultation had occurred, and without following the Ministerial policy direction, all after having full knowledge of the concerns of the AKFNs regarding potential infringements upon the exercise of their aboriginal and Treaty rights. The MVLWB has therefore created a situation where permitted activities will potentially infringe upon constitutionally protected aboriginal and Treaty rights.

- The MVI WR must refer a development application to environmental assessment if it is determined that it *might* be a cause of public concern. In the case of the Uravan application, it is clear that public concern is not only possible, but was explicitly displayed during preliminary screening in the breadth of letters from numerous interests and in a direct request from the Lutsel K'e Dene First Nation to refer the application to an environmental assessment.
- The MVLWB, as an entity responsible for the administration of a federal statute, is bound by the same obligations as the Crown. In this instance, there is a constitutional obligation to insure that aboriginal and Treaty rights are protected. This is reinforced by the February 23, 2004 Ministerial policy direction to the MVLWB. While it may not be the MVLWB's responsibility to engage in the type of consultation mandated by recent Supreme Court decisions, it is simply due diligence to insure that adequate consultation has occurred and to be informed of the substantive issues identified. The MVLWB indeed practiced such due diligence during the preliminary screening of MV2005C0025, where it determined that prior to deciding whether to issue a permit to Kodiak Exploration Ltd., it would seek confirmation from the Crown that adequate consultation had taken place with the AKFNs. The MVLWB should have taken the same action with respect to the Uravan application. Why the MVLWB did not take similar measures in this instance is unclear.

In sum, the AKFNs feel that a land-use permit was issued to Uravan prematurely and without addressing the full scope and depth of concerns raised by the various participants in the preliminary screening. The MVLWB is advised that in advance of any permit issuance in the Akaitcho Territory, it is critical that:

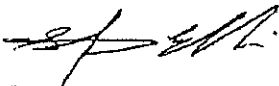
- The MVLWB insure that adequate consultation with the AKFNs has occurred, and that it is aware of the substantive issues identified through the consultation process;

- The MVLWB either determine that the permit will not infringe upon the aboriginal and Treaty rights of the AKFNs, or in instances where there will be infringement, insure that proper accommodation and compensation will occur.

The AKFNs request that pursuant to Section 126 (3) of the MVRMA, the MVEIRB conduct an environmental assessment on MV2006C0008. Such an assessment is essential to fully determine the impacts of Uravan's proposed project in the absence of any clarity with regards to consultation and potential infringements on rights.

Finally, it is critical that both the Crown and the MVLWB develop a plan and come to some mutual understanding regarding their respective roles and responsibilities as they pertain to consultation with the AKFNs. It is clear that there is significant confusion as to what level and type of consultation is required when dealing with potential infringements upon aboriginal and Treaty rights, as well as to whose responsibility it is to consult. It would greatly facilitate future application reviews in the Akaitcho Territory were some clarity achieved on these subjects. The AKFNs and the IMA Implementation Office would be happy assist in defining these roles and responsibilities.

Sincerely,



Stephen Ellis – Akaitcho IMA Implementation Coordinator  
NWT Treaty #8 Tribal Corporation

- c. Chief Adeline Jonasson – LKDFN  
Sharon Venne – Akaitcho Chief Negotiator  
Steven Nitah – LKDFN Negotiator  
Paul Boucher – DKFN Negotiator  
Jonas Sangris – YKDFN Negotiator  
Jim Jodouin and Alan Pratt – Akaitcho Legal Counsel  
Monica Krieger – Manager, LKDFN Wildlife, Lands and Environment Department  
Malcolm Robb – Manager, Mineral Development, INAC