



Yellowknives Dene First Nation

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October 4th, 2012

Alan Ehrlich
Mackenzie Valley Environmental Impact Review Board
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Dear Mr. Ehrlich:

Re: Giant Mine Hearing Closing Comments

The Yellowknives Dene First Nation would like to thank the Board for the opportunity to outline our concerns regarding the future of Giant Mine Remediation. For far too long, this endeavour has been one sided, with the proponent dictating to YKDFN and other parties why the project is good for the people and the land without listening to very real concerns or addressing our needs.

It is clear that the proponent has a handle on the frozen block approach. Equally clear is that they have considered few other aspects of this reclamation; even central issues such as remediating Baker Creek. If other vital components of remediation remain unaddressed, it follows that other issues raised by the YKDFN have not received adequate attention. YKDFN has repeatedly sought discussion of issues such as water quality, ice safety, and meaningful independent oversight which continued to be ignored by the proponent and their limited scope for this project. These issues must all be addressed into the future and to do that, YKDFN need an enforceable framework to require the proponent to adhere to their commitments.

YKDFN has been clear in stating that we do not fully-support the Frozen Block Method into perpetuity. We do however recognize that with appropriate mitigation, trade-offs, and enforceable commitments to future work, the Board can improve this project to a point where it can represent the best road forward. We have a responsibility to the future generations to provide a better world, and while YKDFN didn't create this disaster, we will be part of the solution for our children and our own healing. At the opening of the hearing, Chief Sangris told you:

Listen to the people. Listen to what they want. Listen to how they envision their future. Listen to the people who were born here, who live here, and who use the land traditionally as part of their history and their culture. Listen to the people who will die and be buried here and whose future generations will remain on the land forever.

Procedural:

It must be clear what we are asking for – binding Measures. In the past, suggestions made by the Board to the responsible Ministers have been put forward and subsequently ignored. In the Drybones Bay EAs, this Board issued over 20 suggestions, of which not one has been implemented. YKDFN feels strongly for the need of enforceable Measures -mere suggestions made to the Minister will not be viewed as adequate. If the Review Board cannot develop appropriate Measures to address the needs and concerns of the Yellowknives, only in that case would we ask for this to be referred to an Environmental Impact Review (EIR). In the event of an EIR being called, YKDFN would seek clear Terms, outlined by the Board, to determine the power and discretion of an EIR panel. In addition, in the event of an EIR, it would be necessary for the Board to explain to interested parties *how* an EIR can address matters that an EA process cannot.

Socio-Economic Concerns:

- 1) Stable water prices – one of the early warning signs to the membership of the Yellowknives Dene was that they were not able to drink the water of Great Slave Lake as they had always done. The rationale behind this was poorly explained to the First Nation at the time – but the result is that the elders have been forced to pay for a resource that they otherwise should not have. This project, and their refusal to work with the City to replace the intake pipeline to the Yellowknife River pump house would increase the burden of socio economic impacts that the Yellowknives have been forced to endure for 50 years. To continue this trend and increase the burden would be a significant impact.
 - a. Solution: A Measure must be put in place that protects the Yellowknives Dene from any increases (other than inflationary causes) in the cost of water.
- 2) Economic Benefits – As YKDFN have paid the environmental costs associated with this mine for the last few generations, reversing this trend is an important mitigation for the overall project. The operation of Giant Mine saw the vast majority of the benefits flow south, supported by the proponent. A reversal of this by ensuring that the Yellowknives Dene First Nation have contracting and employment priority represents a useful mitigation towards making the overall project acceptable. Mitigation isn't just cause and effect – that a particular impact can be reduced through a particular action – in this case the proponent has a project that YKDFN have significant concerns with. However, if appropriate opportunity and management is in place, it can be made more acceptable. YKDFN members need to see more benefits for the impacts of this mine, not simply the attempt at reducing the number of impacts. Real economic benefits must be provided to YKDFN members now, and throughout the life of remediation.
 - a. Solution: A Measure that requires the proponent to establish clear hiring and contracting priority as well as negotiated contracts for operations in perpetuity.
- 3) Giant Mine Advisory Committee – YKDFN have recently established the Giant Mine Advisory Committee to help facilitate the engagement between the proponent and the Yellowknives Dene. This avenue is new and has an uncertain future with unclear funding – YKDFN believe that it represents a opportunity to develop an extremely effective bilateral mechanism for back and forth

exchanges. Given the large amount of unknowns associated with the project, including compensation and apology, ongoing discussions are a requirement for a successful reclamation in the future.

- a. Solution: A Measure that requires the project to establish a direct engagement body with the YKDFN with multi-year funding and secure tenure.

Environmental Concerns:

- 1) Water Quality – The project has taken a backwards approach to setting water quality objectives. The project acknowledged this on page 22 of the June Technical Report Workshop. The project looked at what they could easily achieve through their existing treatment plan and then how much dilution would be required to meet a particular ‘guideline’. Thus, you have the mixing zone and a false higher standard, without actually having to meet a higher water quality objective. In the introduction, Mr. Nahir stated that the project was going to meet a higher bar – but in reality it will be more or less the same as today, just measured in a different way. The same Metal Mining Effluent Criteria standards that existed during the mines operation will be the Effluent Quality Criteria – the solution is still dilution
- 2) Earlier this year, Environment Canada released a study that looked at the performance of the MMER’s across the country and found that they were not actually protective of the environment. This study, the *Second National Assessment of Environmental Effects Monitoring Data from Metal Mines Subjected to the Metal Mining Effluent Regulations*, noted that fish showed significantly reduced condition and that the aquatic ecosystem as a whole showed less diversity.

Real water quality standards, representing an actual higher bar should be considered for this project, which will discharge water in perpetuity.

- a. Solution: Already the project has plans for an additional ‘bank’ of reactors within the future water treatment plan. The project could use this to provide additional treatment time or methods to improve water discharge to an acceptable point prior to release.
- 3) In order for the public to feel comfortable with this project, they need to know that the goal is to improve the land to its original state. One benchmark for this is to have safe drinking water, from the shores of Ndilo and across the Bay. This long-term goal must be captured in the Board’s recommendations to ensure the proponent satisfies community needs.
 - a. Solution: A Measure should be developed that requires the project to improve the quality of discharged water to meet drinking water quality guidelines at the last point of compliance. This should be accomplished within 10 years. YKDFN recognize and acknowledge that this is still above background or baseline conditions, but it represents a compromise between what YKDFN want and what the proponent states does not represent a concern.
- 4) Ice Thinning – the project has stated that their modelling has indicated that there won’t be any ice thinning as a result of the project. However, a clear and unambiguous commitment has not been forthcoming. Thus far, the commitment is that they will meet the remediation objectives concerning ice thinning but it is unclear what those objectives are. This type of interaction is not

productive and the recourse is simple – our people use this area, very high intensity, long into the spring and early in the fall. Impacts such as this will have a clear and direct impact on the health of our membership and must be mitigated. The modelling is not enough – especially considering the lack of data that the proponent admits to.

- a. Solution: A Measure that directs the proponent to ensure that there will be no ice thinning, with a focus on the early fall and late spring seasons. Monitoring actions must focus on ensuring safety of people using the area without simply restricting the time periods that they should use the ice.

- 5) Baker Creek – Though the remediation of Baker Creek is one of five goals of this project, how, what, and why the project will undertake any actions is unclear. This is despite years of research and opportunity, suggesting that the project does not intend to undertake any physical works there. Baker Creek is one of the central features of the Giant Site that has been rendered unusable to YKDFN members. This feature must be restored, consistent with long-term goals of restoring the site to its original state.

- a. Solution: A Measure directing the project to develop a remediation plan that is endorsed by all parties. The project has had enough time to develop a plan on their own, but chose not to, and there is nothing for the parties to review. Further regulatory options will not consider the merits of a potential plan, only the details. Thus, if the actual development of the plan is to be delayed, so to must the review and approval – which must exist in an empowered framework.

- 6) Health Analysis – YKDFN have been impacted by this mine for decades, with little outside work undertaken to establish what the likely impacts are. Health Canada and the GNWT have not sought to establish the levels of contamination in our people to date – we don't need more models or risk analyses undertaken. We have an entire community of people who were exposed to unacceptable levels of arsenic for years. There was work undertaken during the 1980's by the Dene Nation and the Steelworkers using hair and fingernails to establish what the levels were in the people. This work should be recovered and extended to today.

- a. Solution: A Measure should be developed that directs Health Canada to repeat the studies previously undertaken and complete a more thorough analysis of the results to understand what the ongoing impacts to the people of Ndilo and Dettah are. In addition, a public apology must be made for the lives lost and continued harm that came to the people of Dettah and Ndilo as a result of mining at Giant.

- 7) Chief Drygeese Territory is not a dump – Every industrial development uses the traditional land that they Yellowknives Dene as a garbage dump – generally because it's 'too expensive' to remove the things they've brought to site. Part of this cost equation is that the land has no intrinsic value, which is insulting to the YKDFN. In this case, the projects close proximity to a permitted, engineered landfill should be considered.

- a. Solution: A Measure is implemented that requires one of two things: that if possible, non-hazardous waste be considered for deposition in the City's new facility or that the City engineers approve the final design of the GIANT landfill. As the City has recently completed a water license, this may provide efficiencies to the project, but it will also

provide assurance to YKDFN that our land and water is being protected in a consistent manner.

- 8) Open Pits – The project stated that the site contained 8 small and medium sized open pits. Having these within the city boundaries and in close proximity to the people is a recipe for tragedy. When you travel to Ottawa or Edmonton or Vancouver you won't find any open pits within 5km of Parliament Hill, the Alberta Leg or City Hall in Vancouver. Our land, because of its remoteness, is being exposed to a double standard. Beyond human health and safety, were these to be filled, the future land use options available increase as the area of contiguous land would be larger. YKDFN are not sympathetic to the proponent's previous approach to this issue – that it's expensive – as that was hardly a consideration when they permitted the creation of the pits.
 - a. Solution: A Measure be developed that established reasonable criteria that requires all pits to be filled

Oversight and Management:

- 1) Independent Oversight – Given the clear direction from all of the interveners and many of the public comments, there seems to be no doubt that an arms-length body is required – it represents the path forward. YKDFN, Alternatives North and the City had completed much of research aimed at establishing best practices and developed a model for the circumstances of this project. Negotiations between the groups failed as the Project chose not to proceed with the model that had been the focus of discussion.
 - a. Solution: A clear Measure from the board requiring the implementation of an independent oversight board, ideally arrived at through negotiation, along the terms established in the discussion paper and during the working group.
- 2) Mixed Mandate – Parties were also very clear that they were not comfortable with the project as both proponent and regulator (amongst additional roles as well). Already, we have two instances in which the inspector's role was compromised for other aspects of the project. Fortunately these were limited to issues with relatively minor impacts, but with this site YKDFN are not content to trust to fortune.
 - a. Solution: A Measure must be established that provides that appropriate policy will be developed that ensures the independence of the different departments of the Federal Government. This includes the divisions of AANDC, isolating the Justice Canada lawyers from the different parts of the proponent, separation of reporting chains and independent communication support. YKDFN recommend that independent outside expertise be brought into the policy development to learn from best practices in which other clear conflict of interest existed and was mitigated through a considered approach.

Additionally, this Measure should include minimum quarterly inspections , with all inspections made publicly available within 45 days – but if there are issues of concern, Canada should notify YKDFN within 15 days.

- 3) Local Project Management – YKDFN remain concerned about the exporting of senior positions with this project to Edmonton, Vancouver and Ottawa. It is not enough to simply drop in and visit – that will not build a successful working relationship. As trust is fundamental to this project being successful, YKDFN want the decision makers to live here, to reside in this community and have vested interests in its success, to be present to address concerns and issues with the project, and to be exposed to the consequences of broken promises and commitments. Building faith in the project is an important mitigation towards reducing the level of public concern.
 - a. Solution: AANDC/PWC must be directed to rebuild their local project staff, demonstrating to the Board and the Parties that they have appropriate decision making authority to address concerns and implement mitigations.
- 4) Information Control - YKDFN have been concerned about the provision of information over the course of this EA process. This includes the responses to the IRs – which could be characterized as weak answers, if at all; the provision of reports – many of which only seem to be available to the proponent; and the development of material in private – such as the Site Stabilization Plan and the Jo-Jo lake response. The best example can be found in the repeated requests for an ‘org chart’ for the project, which they *refused* to provide until the very last moment, and what they did provide is unclear and does not address the positions and structures that we *know* exist – beyond the fact that it doesn’t provide any information for the parties to better understand, the project knows that they are providing misleading information, but chose to file it anyhow.
 - a. Solution: A Measure be developed which requires the project to adopt an open information policy – that specific criteria are developed that would result in the exclusion of information being made public – these exclusions will be noted and included in the yearly audit, with a focus on reports and documents so that the parties may test the exclusion decision through the ATIP process, if so desired.

These criteria should be developed in conjunction with outside expertise with the final endorsement of the EMS working group parties. Secondly, the proponent should create an organized digital registry where all reports, data and information is indexed and kept.

- 5) EMS – YKDFN do not agree with the proponents ‘rosy’ vision of the EMS. YKDFN have been informed that all of the EMS draft plans are ready and were going to be filed to the record but the proponent chose to hold off. These plans were unilaterally developed and the review mechanism is unclear. YKDFN are not certain why they weren’t released for the Board to review, as it would have provided a window into the proponent’s vision and the reality between what these plans deliver and what the proponent stated that they could deliver. Given the nebulous nature and broad uncertainty, it is difficult to create a framework for these moving forward. The EMS system is something that the proponent thinks represents the way forward, but at present, YKDFN are uncomfortable with the approach – the project must make an effort to show how YKDFN concerns can be addressed as part of the solution.
 - a. Solution: That a Measure be created that provides for certainty of the EMS working group, with the goal of reviewing and improving these plans. The project must make a clear effort to show how YKDFN/GMAC concerns can be addressed within any potential EMS products. Furthermore, any plan which does not have the unanimous endorsement

of the group, but the proponent intends to utilize regardless, should include an appendix agreed to by the dissenting members of the group, explaining the differences. Any regulator should be directed to consider this in light that these matters have not been within the review scope of this Board, and consider the residual potential for significant concern on the theme.

Objectives and End Use

- 1) Lack of Objectives – YKDFN have consistently raised concerns about the lack of transparent and precise Closure Objectives and Criteria. The lack of clear Measures of success will prevent any of the parties from understanding when and how the project has succeeded. The proponent will effectively be able to declare success at any point, without intervention or having to justify this success through monitoring data. The continued lack of this information and the project's refusal to develop it, according to guidelines and practices that they themselves apply to other developers, is inexcusable as is the lack of effort towards accomplishing this obvious need.
 - a. Solution: A Measure requiring the project to collaboratively develop component based objectives and criteria prior to engaging in any further regulatory processes.
- 2) End use options – It's clear to YKDFN that this closure/reclamation project was not driven by the end vision for the site as in most closure plans, but rather by the selection of a stabilization method followed by the assembly of remaining elements of a plan around that. Thus, the arsenic stabilization scheme has been thoroughly considered by the proponent but the preparations of plans for the remaining issues have been poorly done. The desired end use(s) should have been the driver of the reclamation rather than the engineering. Because the project implemented the project in the manner it chose to, we're left with the residual end land uses rather than the project working to create successful conditions. The engineering considerations should have been a tool to achieve a particular end use rather than dictating what end uses are possible.
 - a. Solution: A Measure that requires the formation of a land use working group to evaluate the project implementation and the eventual land uses. Part of this process should be to evaluate how the use of alternative objectives for closure components will effect potential land uses. As this process develops results, the proponent should be required to transparently respond to any recommendations from the working group.

Perpetual Care and Research

- 1) Perpetual Care Plan – This is a project that will be managed in perpetuity. Thus, it requires a different way of thinking, a different management approach. The proponent has not completed such a plan, nor have they established the principles that this plan will involve. This isn't surprising considering that many of the plans that would be needed over the 'short term' have not been completed.
 - a. Solution: A Measure be issued that requires the completion of a perpetual care plan based on best practices from other perpetual management scenarios. This must be completed within three years and must be completed collaboratively.

- 2) Language - Part of the perpetual care plan must be considering ways to convey the information to future generations. We heard from Michel Paper during the hearing yesterday and I think that we all forget just how recently this land was just part of the land that YKDFN relied on, not the second worst contaminated site in Canada. Back then, *Weledeh*, Dogrib, and Chipewyan were the dominant languages.
 - a. Solution: The Measure enacting a perpetual care plan should have a special focus on language and communicating with future generations.
- 3) Further Research – YKDFN along with all parties and the developer, acknowledge that this is a management option for reducing risk. It is not solve the problem, it only manages it. Part of this management must include a continuing effort to search for future solutions to the underground and surface issues. This must always remain a focus – once the surface remediation is complete there will be a temptation to ‘ease off’ the search for future solutions, but YKDFN will remain concerned about the site – the visibility of the danger is not linked to the need for a solution.
 - a. Solution: A Measure be created that requires the project, after the short term risk is stabilized, to make yearly seed funding available for research into arsenic related approaches – for example, this could start after 15 years. It is not enough to simply hope that a solution comes along; efforts must be made to drive the state of knowledge. This money should be equal to \$15000 (2012 dollars) and approved by the oversight body. This will allow researchers to initiate projects with an initial fund, which they can use to leverage additional funding sources.

Closing

In their opening statement the YKDFN made it clear what impact this mine has had in the past, the way the mine has impacted them since operations ceased, and how they see the impacts into the future. This is not the solution, but the YKDFN are willing to work with the proponent to help manage the risk – to make things better. The YKDFN have a plan for moving forward, and what we need to make that plan effective are Measures put to the proponent to take real stock of YKDFN concerns and goals. The Measures we are requesting have received careful thought, and if invoked, will push this project to be a meaningful reflection of community participation, human rights realization, environmental protection, and cross-generational planning.

By issuing clear Measures, the Board will allow for YKDFN involvement through Oversight mechanisms. With this tool in place, and additional Measures, YKDFN can work with the proponent toward other key goals, like our water quality objectives, obtaining direct economic benefits through contracts, and cultural healing through forming a more acceptable long-term plan for returning Giant to a more natural state. Seen this way, it is not only the Measures themselves that YKDFN seeks through this EA, but the potential to be part of what comes next in this project that will last forever.

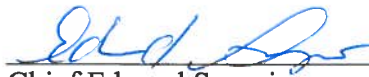
We’re asking for a clear path – strong Measures will lead to the good closure objectives – which will ensure that YKDFN concerns and goals can be addressed, which will result in a clear set of criteria for project to get there. Flexibility, transparency and reasonableness will be required, but absent a strong foundation of actual enforceability through Measures, none of this will matter as

the project will continue to operate as it has – deciding what's best for YKDFN regardless of our goals.

Overall, YKDFN feel that the proponent needs to move away from their inflexible approach and begin to acknowledge that their project has real, significant holes. We began to see recognition of this at the hearing, but it was overdue and provided limited value. Moving forward, the first step the proponent needs to do is acknowledge that there are significant concerns with this project and embrace the Measures. If the project were listening to the people, there would be no need to even state this – the Proponent themselves would be proposing Measures to address the significant concerns. However, they continue to stand still – unmoving in their approach to this reclamation. That must change and they need to start listening to the concerns.

If the project approaches the future operations in the same way – fighting every step, seeking to avoid obligation, failing to meaningfully respond – then this project will never succeed. We encourage the proponent to hear the message – to listen to the people. They must start working with us, in good faith, else the worst case that we all worry about will be at our doors. In our view, nothing can be more effective at achieving this co-management, than the Board stating that such collaboration is indeed necessary. We want to work with the proponent, to say that the Frozen block method will be acceptable for now, our commitment is to making a better plan, a plan that we can live with for now while the solution is found in the future.

Sincerely,



Chief Edward Sangris
Yellowknives Dene First Nation (Dettah)

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