



Katlodeeche First Nation

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January 7, 2010

MacKenzie Valley Review Board
200 Scotia Centre
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Yellowknife, NT
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Fax: (867) 766-7074

Dear Sir/Madam:

**Re: Avalon Rare Metals Nechalacho Rare Earth Element Project, EA 1011-001
Comment on Draft TOR for EA**

Thank you for giving the K'Atlodeeche First Nation ("KFN") the opportunity to provide the Mackenzie Valley Review Board (MVRB) our comments on the Draft Terms of Reference ("Draft TOR") for Avalon's Environmental Assessment with regard to their Nechalacho Project Rare Earth Element Project ("Project"). As set out in section 2.1 of the Draft TOR, the Project includes a mine near Thor Lake and a hydrometallurgical plant at the former Pine Point mine site area.

The KFN's key comments centre on the Draft TOR's oversight in failing to specifically refer to all First Nation communities who will be potentially affected by the Project and, in particular, the Draft TOR's failure to acknowledge that the proposed Project will be situated on the KFN's traditional territory. Second, we are concerned with the lack of specificity of the TOR's with regard to the collection and use of traditional knowledge.

Inclusion of KFN

As the MVRB is no doubt aware, there is often overlap in traditional territories of First Nations. The terms of reference, as drafted, leaves the impression that the Project is located only on Akaitcho traditional territory. For example, the first sentence of the Draft TOR states in part that the proposed mine is to be located in the Akaitcho territory. This characterization is inaccurate insofar as it infers the Project is located exclusively on Akaitcho territory. The Project, including birth of the mine and plant, are also within the KFN's traditional territory.

The KFN understands that it is not the role of this Board to definitively determine the boundaries of each Aboriginal community's territory. However, to properly carry out its mandate, the MRVB must have a complete and accurate picture of all the Project's impacts, including an assessment of all affected s.35 communities (see sections 60.1 and 115 the *Mackenzie Valley Resource Management Act*).

Comment #1: the KFN proposes that this first sentence of the Draft TOR be amended to acknowledge that the mine and plant are also located on KFN territory. Alternatively, the sentence be amended to exclude specific reference to any Aboriginal community, including the Akaitcho, so as not to leave the impression of exclusivity of this traditional territory.

The exclusion of other impacted non-Akaitcho s.35 communities, such as the KFN, runs throughout the Draft TOR. Specific examples include:

- In part 2.2.2, the definition of "potentially-affected communities" leaves the impression that the only affected s.35 Aboriginal peoples are the Akaitcho and the Metis. The reference to the "physical community" of Hay River falls short of recognizing that the KFN have different rights that other affected non-Aboriginal community members.

Comment #2: The KFN is a potentially affected s.35 Aboriginal people and therefore the **K'atodeeche First Nation** must be specifically referenced in the definition of "potentially-affected community" under Part 2.2.2

- Part 3.2.6 – mandates engagement with Akaitcho communities and "other Aboriginal groups."

Comment #3: The KFN should be specifically mentioned along with the Akaitcho as a group to be consulted.

- Appendix K – seeks an assessment "with a focus on the "Akaitcho region generally and each potentially affected community". Again, this impliedly excludes non-Akaitcho s.35 peoples such as the KFN and assumes the Project is located exclusively on Akaitcho territory. As set out above, this project is also located on KFN's traditional territory. To accurately assess this Project the MRVB will also require information on the impacts upon the KFN membership and on its traditional use areas and territory.

Comment #4: In Appendix K:

The K'atodeeche should be specifically included, along with the Akaitcho, under K1-4, K1-9, K2-2(d), K3-3.

Under K4 (cultural impacts), the TOR should specifically mandate consultation with KFN's Traditional Knowledge holders and those KFN members who partake traditional activities (including, but not limited to, harvesting) in determining cultural impacts.

K4a-4 should also reference the K'atodeeche

K4b-1 and K4b-5 should also include potential impacts on the traditional activities of the KFN. Further, in addition to referencing impacts caused by the mine portion of the Project, it should also include impacts on all s.35 Aboriginal peoples caused by the plant portion of the Project.

Traditional Knowledge

3.1.2 Mandates that "Avalon make all reasonable efforts to assist in the collection and consideration of traditional knowledge" relevant to the project". The phrase 'reasonable efforts' is vague and needs to be more specifically defined. Reasonable efforts should include good-faith discussion and negotiating of TK agreements with affected s.35 communities, an understanding that the TK is collectively owned and controlled by the s.35 Aboriginal community, and that Avalon needs to adequately resource the collection of the TK, including the negotiation of any TK agreements.

Comment #5:

"Reasonable efforts" in 3.1.2 should mandate Avalon:

- carry out good-faith discussions and negotiations of TK agreements with affected s.35 communities;
 - acknowledge that TK is collectively owned and controlled by the s.35 Aboriginal community; and
 - to adequately resource the collection and use of the TK, including the negotiation of any TK agreements.
- Appendix K4b concerns impacts on traditional harvesting, but does not specify (unlike K4a) the need to consult and rely on traditional knowledge.

Comment #6: It should be specifically noted in Appendix K4b that Avalon must meaningfully involve and rely on information obtained from Traditional Knowledge holders and those from Aboriginal communities that exercise traditional activities in the affected area.

- Appendix D which specifies terms for the Cumulative Effects assessment, contemplates reliance on "publicly available data" when assessing cultural changes and community well-being.

Comment #7: In addition to publically available data, Traditional knowledge and input obtained from consultations with affected s.35 Aboriginal communities must also inform the cumulative effects assessment.

Development Description

A bulleted list under 3.2.5 sets out specifically what should be included in the development description. The proposed Plant should be specifically included in this list

Again, thank you for giving the KFN the opportunity to comment on the Draft Terms of Reference. We would be please to discuss any of our comments above with the Board or with Avalon further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Roy Fabian', with a stylized flourish at the end.

Chief Roy Fabian