



## **REASONS FOR DECISION**

**IN THE MATTER OF:** Environmental Assessment EA1011- 002 for the TNR Gold Corporation Ltd. Moose Property;

**AND IN THE MATTER OF:** Requests for Rulings made by the Lutselk'e Dene First Nation, dated September 14<sup>th</sup>, 2010; the Akaitcho Interim Measures Agreement Implementation Office, dated September 14<sup>th</sup>, 2010; the Yellowknives Dene First Nation, dated September 17<sup>th</sup>, 2010 ; and the Deninu Kue First Nation, dated September 20<sup>th</sup>, 2010

### **INTRODUCTION:**

In the period between September 14<sup>th</sup> and 20<sup>th</sup>, 2010 the Mackenzie Valley Environmental Impact Review Board (Review Board) received four Requests for a Ruling (Requests) under the MVEIRB Rules of Procedure in relation to the expedited process set out by the Board in its September 10<sup>th</sup>, 2010 work plan for this Environmental Assessment (EA).

These parties raised a variety of concerns about the process for the EA set out in the work plan, but in general their concerns related to the lack of opportunity for direct community engagement in the process before the hearing which was scheduled for October 22<sup>nd</sup>, 2010.

The Requests which are available on the Public Registry asked the Board to reconsider its work plan and to provide for additional community involvement and participation in this EA.

The Review Board notified the parties to the EA of the Requests and set out time lines for parties' responses and a reply by the requesting first nations and the AIMA Office. The only response received was from Indian and Northern Affairs Canada (INAC).

## **AUTHORITIES:**

The Requests were received pursuant to the Review Board's Rules of Procedure made pursuant to s.30 of the *Mackenzie Valley Resource Management Act* (MVRMA). The EA process was established in conformity with the Board's Environmental Impact Assessment Guidelines (2004) made pursuant to s.120 of the MVRMA. As was pointed out by several of the parties, the Review Board is bound by the rules of natural justice.

## **ANALYSIS:**

As was pointed out by INAC in their letter of September 28<sup>th</sup>, 2010:

INAC recognizes that the Review Board has the discretion to define its own process, as per page 25, footnote 63, of the Review Board's Environmental Impact Assessment Guidelines (2004) and that this discretion is bounded by the principles of natural justice and procedural fairness, and the requirement to ensure that the process is thorough enough that the Board can satisfactorily fulfill its statutory duties under the *Mackenzie Valley Resource Management Act*.

In the Review Board's opinion, the scope, timing and content of an EA process reflect the nature of a development referred to EA and the potential significance of the impacts and public concern which may result. Clearly, given the requirements of sections 114 and 115 of the MVRMA, the Review Board must balance these considerations while ensuring a timely and definitive determination under s.128 of the Act.

The Review Board notes that there is no standard form and there are no universal requirements for the work plan to conduct an EA as long as the requirements of the MVRMA are met and the process is fair. Each time a development is referred to EA the Review Board makes decisions on scope of development and scope of assessment as required by s.117 of the MVRMA and in accordance with its own Guidelines. That is the process which was undertaken in this case. In the Review Board's view, the process set down for an EA is a matter for the Board's discretion. The process followed to set out the work plan for the TNR Gold Corporation Ltd. EA was consistent with these authorities and requirements.

## **DECISION:**

The Review Board is required by the MVRMA to conduct environmental assessments in a timely manner and also has the authority under its own guidelines to structure an EA process as it deems appropriate for that particular assessment. It is within the discretion of the Board to decide how to work within its own guidelines and set a procedure that it feels is suitable to this file. The Board is not bound by its own precedent and may change procedures from one assessment to the next.

Notwithstanding the above, the Review Board in this case wishes to ensure that first nations and communities involved in this EA have a fair opportunity to learn about the proposed TNR development and to participate in this EA. It is the Board's view that adjustments to the work plan can be made to accommodate the concerns set out in the Requests while still achieving a timely determination in this EA.

Consequently, the Review Board has decided to amend the TNR work plan to include two more information sessions in the communities. Review Board staff will host a one day information session in this EA in Lutselk'e and Fort Resolution in late October. At these sessions, the developer will give a presentation that describes the proposed development and answer any questions that the participants may have. The hearing for the TNR Gold - Moose Property EA will be re-scheduled to November 19<sup>th</sup>, 2010.

**FOR THE MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD:**

**Dated:** 21 October 2010

  
Richard Edjericon  
Chairperson