



Yellowknives Dene First Nation

P.O. Box 2514, Yellowknife, NT X1A 2P8

September 17th, 2010

Nicole Spencer
Mackenzie Valley Environmental Impact Review Board
Box 938
Yellowknife, Northwest Territories
X1A 2N7
Fax: (867) 766-7074

Dear Ms. Spencer:

Re: TNR Gold EA Process – Request for Ruling – Procedural Fairness

The Yellowknives Dene First Nation (YKDFN) would like to officially Request a Ruling from the MVEIRB. Following Form 2 of the Mackenzie Valley Environmental Impact Review Board (MVEIRB) Rules of Procedure:

1. Ruling Requested: That the current work plan is distinctly unfair, breaching the duty of procedural fairness as well as not conforming to the general principles within Part V of the *Mackenzie Valley Resource Management Act*.
2. Relevant Facts and Information: The work plan developed by the MVEIRB breaches both the principles of Natural Justice and Fairness. Natural justice cannot be properly executed because the timeline is so extreme and the scope of the assessment, particularly concerning Traditional Knowledge, requires time and resources to collect. Given that the Board has expressly indicated that it can only evaluate the impacts of projects based on the evidence before it in the registry, the lack of meaningful opportunity to develop appropriate evidence means that the current scheme will effectively disenfranchise the First Nation from participating in the process. Lacking resources, time, and having only limited opportunity to effectively bring the concerns to the Board, this process is biased against the First Nation. If YKDFN had the opportunity to gather and present evidence on the traditional use of the area and the likely impacts, it would undoubtedly result in a better and fairer outcome.

This workplan also breaches the principle of fairness. By now the MVEIRB should have a very good idea as to timelines and levels of interest for projects that occur within culturally sensitive areas. As the administrative body for many previous EAs, including the Drybones Bay EAs (EA03-002, EA03-004, EA03-006, EA0506-005, EA0506-006) and Thelon EAs (EA0607-003, EA0708-002, EA0708-003, EA0708-004, EA0708-005), the Board should have better understood the needs for an EA of this type. In particular the TNR project area shares many physical and cultural similarities with Drybones Bay and we would expect a

similar scope of assessment. Adopting a review scheme that does not have the standard procedural steps devised and implemented in previous environmental assessments is unreasonable and irresponsible. The *only* result will be a haphazard review with a poor and incomplete assessment.

Finally, in addition to the breach of procedural fairness, the process as currently envisioned would be contrary the principles found in *Part V* of the *MVRMA*. The lack of meaningful opportunity to participate means that the concerns of aboriginal peoples are not properly taken into account within the Environmental Assessment, contravening *s. 114(c)* of the *MVRMA*.

3. Authority or grounds for the Ruling:

- *Mackenzie Valley Resource Management Act*
- No legal opinion has been solicited (because of time and costs) in regards to authorities or grounds supporting the discussion of Procedural Fairness. The authority used for the purpose of this request was *Baker v. Canada (Minister of Citizenship & Immigration)*, highlighted by the passage:

"The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests or privileges made using a fair, impartial and open process, appropriate to the statutory institutional and social context of the decisions."

If you have any questions or concerns, please contact YKDFN Lands and Environment at 766-3496.

Sincerely,



Randy Freeman
Director, Lands Managment
Yellowknives Dene First Nation

Copy: Steve Ellis, Akaitcho IMA Implementation Office, Lutsel K'e NT, 1-888-714-3209
Todd Slack, YKDFN – Land and Environment, Yellowknife, NT (867) 766-3497
Ray Griffiths, LKDFN – Land and Environment, Lutsel K'e, NT (867) 370-3143
Rosie Bjornson, DKFN – Land and Environment, Fort Resolution, NT (867) 394-5122
Don Aubrey, Crown Consultation Support Unit – INAC, Yellowknife, NT (867) 669-2540
Lorraine Seale, Environmental Assessment and Agreements, INAC, Yellowknife NT, Fax: (867) 669-2701



Yellowknives Dene First Nation
Lands Management / Land & Environment Office

FACSIMILE TRANSMITTAL SHEET

TO: Nicole Spencer FROM: YKDFN L&E
COMPANY: MVEIRB DATE: September 17, 2010
FAX NUMBER: 766 7074 TOTAL NO. OF PAGES INCLUDING COVER: 3
RE: TNR Gold EA Process Correspondence

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Copy to:

Steve Ellis @ 1888 714 3209

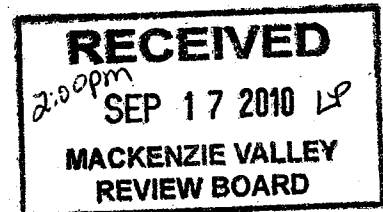
Todd Slack ~ hand deliver

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