



Yellowknives Dene First Nation

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July 9th, 2010

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Mackenzie Valley Land
& Water Board

File

JUL 09 2010

Application # MV2010C0015

Copied To BH 1 Reg

Dear Ms. Hayden:

Re: TNR Gold Corp – MV2010C0015

The Yellowknives Dene First Nation (YKDFN) has been notified that this application has been accepted as complete and have numerous concerns with the environmental and cultural impact of an exploration program at this site as well as the manner in which this application has been pursued.

The guiding principles of a Part 5 review of the *Mackenzie Valley Resource Management Act (MVRMA)* are found in s.115:

- (a) the protection of the environment from the significant adverse impacts of proposed developments; and
- (b) the protection of the social, cultural and economic well-being of residents and communities in the Mackenzie Valley.

Within these principles, the Board is asked to determine if the proposal will cause significant environmental impact or be a cause of significant public concern, questions to which the YKDFN emphatically and without reservation, answer YES. The area around Narrow Island is a significant part of the landbase for the First Nation both in terms of exercising *section 35* rights, as well as being culturally and historically significant.

Application Review - Engagement with YKDFN:

The Yellowknives Dene were contacted twice by the applicant. The first was a phone call from the applicant on June 9th, 2010 asking for archaeological data. YKDFN responded that same day, noting that the archaeology study in question did not visit the area of interest, thus it would not provide any directly applicable information. We found additional resources that may be of interest and mentioned them (please see attached email). The second contact was the applicant's response five days later with the claim block enabling us to produce some preliminary maps.

YKDFN would like to specifically respond to the comments in the consultation log as submitted

with the application, specifically:

- i) Phone Call Notes (application p91) – YKDFN reacted quickly and effectively to the request for information mentioned in paragraph one, much more so than the applicant in paragraph three.

The second paragraph is misleading as Mr. Slack indicated to Mr. Segboer that the response to the Exploration Agreement would dictate the methods of engagement required. If the company chooses the YKDFN's preferred method then that is one path. If they reject that option, then they must meet with the YKDFN Chief and Council.

Furthermore, Mr. Segboer implies that YKDFN were not cooperative with his soliciting concerns – but during the conversation, Mr. Slack indicated that as a staff member he could not be the avenue to present YKDFN's concerns. It has been indicated many times to both Mr. Segboer and INAC's Consultation Support Unit (whom Mr. Segboer contacted according to his log) that consultation occurs with leadership at a face to face level. Mr. Segboer chooses not to relay this part of the conversation.

- ii) Email Notes (application, p87, 2nd entry) – Mr. Segboer badly paraphrases an email that Todd Slack sent him (application, p92). The mention of spatial accuracy limitations is correct, but is meaningless without the context provided in the email. Understanding Mr. Segboer's intent was to use this information as an 'operations-level' planning tool, which the data cannot and should not support. The information was captured on very small scale maps, where the width of lines and symbols represent hundreds of metres of error. Following this, Mr. Slack mentions that there are numerous heritage values known to be in the area including known villages, camps, travel routes and gravesites. Mr. Slack is very clear to indicate the high use of this area and my belief that there are likely heritage resources in and around the claim block, both known and unknown.

In the last paragraph of this email he once again explicitly mentions to Mr. Segboer that this email message is not a substitute for consultation, which must occur directly with the leadership in a face to face manner.

- iii) Final Note - On June 22nd, 2010 the company advised Steve Ellis that they will be following up with the 'three people that you have listed in your email', of which Todd Slack was the contact for the YKDFN. The company did not contact YKDFN at this point either, and we were informed of the company's submission of their Land Use Permit application. Engagement and Consultation *AFTER* a permit's submission is not in good faith and goes against the lessons of the *Huu-Ay-Aht* case, where the decision was clear that consultation must occur prior to the infringement occurring. In *Squamish* the court noted that once the important preliminary decisions have been made and relied on by the proponent and others, there is clear momentum to allow a project. Thus, if the company actually did approach the First Nation directly and in good faith after a permit had been issued, there would be little opportunity to meaningfully see concerns addressed or accommodated.

In the end, the company chose to ignore all the advice and made no effort to engage with the Yellowknives. That the company had been advised multiple times that they will be required to directly engage with the affected First Nations cannot be in doubt – from the initial email of May 15th, 2009 from the IMA office they had been requested to do this. The Exploration Agreement is simply an alternative method to engage with the First Nations. The company was well within their rights in rejecting the Exploration Agreement, but made no attempt to dispense with the remaining need to engage the community to understand the concerns and attempt to address them. This message had been clear throughout the process – if the company did not want to engage through the ExA, then they must hear the concerns of the community in a face to face meeting with Leadership. YKDFN do not believe that this company approached the process in good faith. The advice fell on deaf ears from the start, as evidenced by the companies April 7th assertion that they have “consulted with potentially affected aboriginal groups”, which was utterly ridiculous considering that they had *never contacted the First Nations* until their letter of introduction on April 14th. There is no evidence that this perspective changed and that the company attempted to engage with the First Nations. A reasonable person can look at the evidence and the lack of willingness to accept the advice provided, concluding that the whole engagement process was an empty ploy which allowed the company to “build” a consultation log, creating an appearance of dialogue.

Though the company did exchange e-mails with Mr. Ellis, it was for the sole purpose of advancing the Exploration Agreement. At no point in time did Mr. Ellis represent the leadership of the Yellowknives Dene First Nation or was able to undertake ‘consultation’ on their behalf. Once the Exploration Agreement had been rejected, his involvement facilitating the ExA was complete. There can be no suggestion that the company did not understand this option, as the company meeting notes of June 2nd, 2010 show clear comprehension. However, later in the process, they chose to see Mr. Ellis as a representative of ‘Akaitcho First Nations’ rather than the role which he had previously explained at length to them in his email of April 28th, 2010.

It is troublesome to the YKDFN that this application was accepted as complete. This company chose to ignore all of the advice given to it, did not engage with any of the communities, and presented a misleading consultation log which was blindly accepted by the Board, with no effort to verify or assess the facts. YKDFN have previously noted that practice this goes against the spirit of their own draft Public Involvement Guidelines; and that they must instead, in collaboration with the Crown, evaluate the real progress made by a company to consult with the First Nations, establishing dialogue and potentially leading to accommodations of concerns.

The Crown’s Duty

It is worth noting that in addition to the companies failed effort, at no point in this process did the Crown step in to fulfill the role that it has *de facto* delegated to the companies applying for permits in the North. No reasonable person could possibly conclude that the Crown’s duty and obligations have been properly discharged with.

While in and of itself, this failure is a significant issue, in the bigger picture it also impact the Board process. Under s.62 of the MVRMA the Board may not issue a license, permit or authorization for carrying out a proposed development until Part 5 has been complied with, YKDFN strongly encourage the Board to order the Crown to participate in a Consultation

process with the YKDFN, so as to ensure that concerns of the 'Aboriginal Peoples of Canada to whom section 35 of the *Constitution Act, 1982* applies and who use an area of the Mackenzie Valley' are heard and accommodated.

We ask the Board to ensure that the views of the Yellowknives Dene First Nation are properly heard with consideration of the February 23rd, 2004 Policy direction from the Minister of Indian and Northern Affairs and Northern Development, where the Board is to consider the 'impact of the permit on hunting, fishing, trapping and other traditional natural resources use activities engaged in of [Yellowknives] Dene First Nations and on *heritage resources of which it is informed*' [Italics added]. YKDFN have cleared informed the company, and now the Board, of the very high likelihood that heritage resources will be degraded or destroyed if this company is allowed to proceed, especially given the cavalier manner employed with reporting the facts during the engagement process.

The *Interim Guidelines for Federal Officials to Fulfill the Legal Duty to Consult (February 2008)* offers guidance on the types of things that the Crown should be doing to discharge their responsibilities in this cases such as this. Examples include: "Clearly identify who has the authority to consult on behalf of Canada"

- "Engage the potentially affected Aboriginal group regarding the proposal so that they have an opportunity to articulate concerns regarding its effects"
- "Consider and outline possible measures to prevent or diminish any potential adverse impact"

'At the end of the day', neither INAC nor the Board has made an effort to ascertain the concerns of the First Nation or ensure that TNR engaged in a meaningful process, and as a consequence has placed the Honour of the Crown in doubt.

Concerns:

Not only is this area a significant cultural and heritage site (as already outlined), but this area also contains rich environmental resources, sitting astride an important travel corridor linking the *Weledeh, Lutsel K'e* and *Deninu Kue* communities.

The area encompassed by this claim block remains an active harvesting site, with YKDFN members exercising their s.35 hunting and fishing rights pursuing Moose, Geese, Ducks, and fish, amongst other game. The operation of a drilling program would likely have significant impacts on the membership's ability to both successfully harvest in the area (reduction in game) and exercise their rights (reduction in area desirability).

- Under the MVRMA, an impact is defined as "*any effect on land, water air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources.*"

The threat of the extirpation of hunting and fishing efforts, caused by the operation of a drilling program in the area represents yet another real and significant environmental impact. This risk associated with this threat becomes magnified when other operations and permits in the area are considered in a cumulative manner.

Previous collections of Traditional Knowledge show that this region was subject to very high land use, with many travel routes, historic villages, grave sites and other historic landuses in the

local area. YKDFN have attached a map showing the preliminary data, with the hope that the Board can treat it as confidential information.

Archaeology studies focused on areas adjacent to the are in question found numerous artefacts and heritage resources, and YKDFN strongly believe that the response from Prince of Wales Northern Heritage Centre must be seen in context. The application indicates the PWNHC note that there are no documented archaeological sites known within this claim block, *simply because there has been no archaeology work done in this area!* It would literally be impossible to have any results. Given the intensive landuses in this area, YKDFN are certain that the area contains many heritage resources and permitting this program without addressing this concern is simply irresponsible, with a significant risk that the program will impact resulting in destruction or artefacts and that cannot be healed or remedied after the fact.

Given the clear impacts that this project will have on the environment, wildlife harvesting, the social and cultural environment, and heritage resources, there can be no mistake that this project will have significant impacts and is a source of community concern and the project must be referred to Environmental Assessment.

Conclusion:

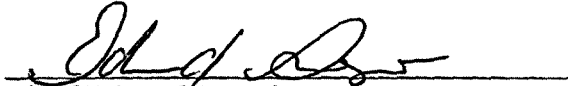
Though YKDFN strongly believe that the concerns and issues associated with this project could possibly have been addressed through dialogue and mitigations prior to the submission of the application, no one attempted to engage with the First Nation and accomplish this. As such, we are faced with no option but to insist that the Land and Water Board refer this to Environmental Assessment under *Section 125(b)* of the *MVRMA*, the Board must refer this project to Mackenzie Valley Environmental Review Board for Environmental Assessment.


Beyond the impacts from the program itself the YKDFN are faced with a situation in which no one has engaged with them to try and understand their concerns and develop accommodations. The YKDFN disagree with this approach, favouring meaningful consultation aimed at modifying the application such that it hopefully addresses the concerns of the First Nations, but in this case, there is no real choice but to insist that an Environmental Assessment is required. If, as in the Giant Mine permit, the Board chooses to recognize YKDFN concerns as below the threshold requiring Environmental Assessment, YKDFN wish to remind the Board that until such time that their responsibilities under *Section 62* have been accomplished, the Board may not issue a licence, permit or authorization. The Federal Court (among others) affirmed this opinion already in *Ka'a'Gee Tu First Nation (#1 & #2)* focusing on the requirements in *section 114(c) and 115(b)* which ensure that the concerns of Aboriginal Peoples are taken into account, including infringements upon *s.35* rights and the need for consultation and that the social, cultural and economic well-being of residents and communities of the Mackenzie Valley are protected.

YKDFN understand and support the engagement process and would have preferred to arrive at a mutually agreed upon resolution of the concerns of the community and desires of the exploration company. However, because of the lack of a meaningful consultation process, the direct and clear impacts to the First Nations *Section 35* rights, and the impacts to the environment as defined under the *MVRMA*, there can be little doubt that this project will result in both significant adverse impacts and is already a cause of public concern.

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

Sincerely,


Chief Edward Sangris
Yellowknives Dene First Nation (Dettah)


Chief Ted Tsetta
Yellowknives Dene First Nation (Ndilo)

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Todd Slack, YKDFN Land and Environment, Yellowknife NT, Fax (867) 766-3497
Steve Ellis, Akaitcho IMA Implementation Office – Lutsel K'e NT, 1-888-714-3209
Julie Jackson, Manager of Consultation Support Unit, INAC, Yellowknife NT, Fax: (867) 669-2540
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Yellowknives Dene First Nation
Lands Management / Land & Environment Office

FACSIMILE TRANSMITTAL SHEET

TO: Shannon Hayden FROM: YKDFN
COMPANY: MVLWB DATE: _____
FAX NUMBER: 873-6610 TOTAL NO. OF PAGES INCLUDING COVER: _____
RE: Correspondence - INR Gold Corp - MV2010C0015

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

NOTES/COMMENTS:

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