



OFFICE OF THE GRAND CHIEF DEHCHO FIRST NATIONS

Box 89, Fort Simpson, N.W.T. X0E 0N0
TEL: (867) 695-2355/2610 FAX: (867) 695-2038
Toll Free: 1-866-995-3748
EMAIL: herb_norwegian@dehcho.org



Sent via email

October 20, 2017

Canadian Northern Economic Development Agency
5019 – 52nd Street
Yellowknife, NT X1A 1T5
Umar.Hasany@cannor.gc.ca

**RE: Report of Environmental Assessment and Reasons for Decision: Canadian Zinc Corp.
Prairie Creek All Season Road Project EA1415-01**

Dear Mr. Hasany,

DFN was an intervener and was involved in all stages of Canadian Zinc Corporation's (CZN) Environmental Assessment (EA) for the Prairie Creek All-Season Project. DFN provided input into the EA process by submitting information requests, attending the technical sessions, presenting at the hearing, and submitting a final report.

DFN's expectation during the course of the EA was that an evidence-based approach be applied to the project; and DFN consistently expressed that cultural resources, fish, water and wildlife should be protected to the greatest extent possible. In practical terms, DFN expressed concerns regarding the following elements of the CZN All-Season Access road:

- Detailed design of the All-Season Road
- Impacts to grayling populations and benthic invertebrates in Sundog Creek from the Sundog Creek realignment
- Impacts to travel along the all-season access road due to avalanches
- Impacts to northern mountain caribou
- Impacts to archaeological resources
- Access Management
- Independent environmental monitoring through DFN's Guardians Program

More detail on DFN's final arguments for CZN's EA can be found on the MVEIRB registry (found here: http://www.reviewboard.ca/upload/project_document/EA1415-01_Dehcho_First_Nations_closing_arguments.PDF).

On September 12, 2017 the Mackenzie Valley Environmental Impact Review Board (the Review Board) released the *Report of Environmental Assessment and Reasons for Decision: Canadian Zinc Corp. Prairie Creek All Season Road Project EA1415-01* (Report of EA).

The Review Board determined that based on the evidence and submissions to the public record, the proposed Prairie Creek All Season Road Project (All Season Road or the Project) is likely to cause significant adverse impacts on the environment and Dene rights. The Review Board recommended a suite of measures and recommendations designed to prevent or minimize impacts on the environment and Dene rights.

In light of this finding, and given the sensitive location of the proposed project that runs through a UNESCO World Heritage Site and a National Park Reserve, the 'precautionary approach' was applied in the Review Board's analysis of the evidence, and in their resulting measures (many of which build on CZN's commitments) to help ensure that the significant adverse impacts could be properly mitigated to enable the Project to proceed to the regulatory phase.

The Review Board incorporated many of DFN concerns and comments into their Report of EA. In general terms, DFN agrees with the final conclusion of the report and the sixteen recommended measures outlined by the Review Board and supports several of its suggestions as well.

However, your office has requested DFN to provide our views on the following:

- Are there any specific activities or components of the Project which, after considering the recommended measures, developer's commitments, and other content in the REA, you may identify as still having the potential to adversely impact your established or asserted Aboriginal and/or Treaty rights?
- If so, please specify the nature of the outstanding potential adverse impacts and what additional steps you would recommend to address the potential adverse impact.

DFN is of the view that in order for the measures outline in the Report of EA to be implemented in a manner that will ensure no impacts to DFN Aboriginal and/or Treaty rights, these measures must be actively enforced by regulators, by ensuring that they are (i) pre-conditions of permitting and licensing requirements before any regulatory approvals associated with the Project are able to proceed; (ii) the measures fully consider Dene knowledge and enable DFN, and other affected First Nations, to act as full decision makers alongside regulators in the approval process that determines when measures have been deemed adequately implemented; and (iii) the full participation of all affected First Nations is fully funded by CZN prior to any work associated with their permits or approvals are granted.

Moving forward, it is DFN's view that it will be fundamental to put in place a process that clearly determines when the measures have been deemed meaningfully met, prior to the permitting of activities for the project. It is imperative that this process includes meaningful engagement by regulatory authorities for all affected First Nations; and that DFN and the other affected First Nations are included in the same ways, and to the same extent as other government regulators, when determining the measures have been met.

It is our view that ensuring measures are meaningfully implemented will require clear understanding by all parties on the full breath of mitigation measures and developer commitments.

DFN is concerned for the potential of significance adverse impacts on the environment due to an incomplete understanding of the mitigation measures mandated by the Review Board and actions stemming from commitments proposed by CZN. CZN has committed to numerous mitigation measures throughout numerous documents and appendices, information request responses and memos. With the volume of documents on the registry, it is unclear to DFN the specifics of all the mitigation measures or commitments made by the proponent over the course of the full project. DFN has concerns that not capturing the specifics of the mitigation measures over the course of the project could lead to significant adverse impacts resulting from poor understandings of the project and relating project mitigations. This concern is highlighted when considering any change of management within CZN, or a buy-out of CZN in the future, any confusion regarding the specifics of the CZN's commitments or project mitigations would be exacerbated.

DFN continues to have outstanding concerns with the high amount of outstanding baseline information that is still required by CZN. Baseline information has the ability to change or

modify the alignment of the All-Season Road and our overall understanding of the project and the resulting impacts. Compounding this situation is the fact that moving forward there will be multiple Regulatory Authorities for the project in the permitting phase. Without a clearly laid-out summary of all the developer commitments alongside the mitigation measures, it will be difficult for future regulators to track what was committed to during the Review Board's process.

As such, DFN requests that the regulators such as Parks Canada, the Department of Fisheries and Oceans Canada, the Government of Northwest Territories, and the Mackenzie Valley Land and Water Board harmonize their regulatory processes moving forward by:

1. Producing a consolidated project description, which identifies all the measures and commitments filed for the project
2. Outlining what Regulatory Authority is responsible for each measure and commitment
3. Outlining the sequential timeline for the project measures and commitments.
4. In the case of overlapping regulatory authority for different measures and commitments, describe how the overlapping regulatory authorities will work together or harmonize their processes
5. In the case of an "orphan" measure(s) (i.e. a measure without a regulatory authority), DFN requests that MVLWB provide a description of how these measures will be addressed in the permitting phase
6. DFN requests that the information above is provided for review by all parties.

The measures must also fully consider Dene knowledge and enable affected First Nations to act as full decision makers alongside regulators in the approval of measures implementation. In particular, DFN would like to highlight Measure 15-4 outlined in *Report of EA and the Reasons for Decisions*, as a clear example of how oversight and engagement by First Nations needs to be explicitly required in all stages moving forward.

Measure 15-4 requires the developer to fully support, to the greatest extent practicable, monitoring initiatives undertaken by the Aboriginal groups that were parties to this EA. The Review Board recognizes that independent monitoring is required, and that such programs must be designed and managed by the affected First Nations themselves to help prevent significant adverse impacts on the environment and to Indigenous rights. The proposed Measure puts the onus on CZN to provide access to the site, and to provide in-kind support for independent community monitors through the use of facilities, transportation, training, etc. In DFN's view, these are necessary but not sufficient to ensure that an independent monitoring program is successful. CZN must be required to enter into legally-binding funding agreements

with all the affected First Nations, either individually, or collectively through Dehcho K'éhodi Stewardship and Guardian Program, before permits are granted. Regulatory agencies must be satisfied that such agreements are provided adequate resources, and that such resources are being advanced to participating affected First Nations before any permitted activities can occur.

A recent inspection report filed by a GNWT inspector demonstrates the necessity of independent community-based monitoring throughout the Dehcho and particularly at the Prairie Creek Mine site (<http://registry.mvlwb.ca/Documents/MV2001L2-0003/MV2001L2-0003%20-%20CZN%20-%20Inspection%20Report%20for%20July%2025%202017%20-%20GNWT-ENR%20-%20Aug22-17.pdf>). The inspection report cited numerous GNWT Waters Act violations including rusted, rotting barrels of contaminants and wildlife eating soda ash at the site. DFN believes that an independent community-based monitoring throughout our region is imperative as it provides greater transparency and accountability. It puts more eyes on the ground to detect changes and environmental impacts resulting from resource development projects.

In addition to a clear commitment to incorporate the measures and suggestions arising from the Review Board's Report of EA into the permitting phase, and ensuring funding arrangements are put into place to allow affected First Nations to fully participate in the process; it is necessary for all affected First Nations to be involved as decision makers in the same way as government regulators. Łídljı́ Kúé First Nation (LKFN) has recommended a suites of ways to enable affected First Nations to act as decisions makers, DFN supports those recommendations. It is our view that this will require full consideration of Dene knowledge and direct involvement in the development and approval of the: Traffic Management Plan, Wildlife Management and Monitoring Plan, Harvesting Monitoring Program, water quality and quantity data collection, mitigation, monitoring and adaptive management, acid rock drainage management, Sundog Creek Diversion Plan, Culture and Heritage (including TK studies and Archaeological Impact Assessment), Rare plant studies and management, invasive species management, permafrost monitoring and management and monitoring. For impacts to Aboriginal and Treat rights be properly mitigated, CZN must be required to allocate sufficient funding to enable all affected First Nations to fully participate in the work before any permits or approvals are granted to enable work any on the Project to proceed.

Furthermore, DFN fully supports the views and positions of Łídljı́ Kúé First Nation that is thoroughly detailed and outlined in their response letter to your office on this matter. LKFN has done an excellent job of briefly summarizing the content of each Measure, LKFN's position on the Measures, and including additional requirements by LKFN that must be attached to each Measure. It is the jointly held perspectives of our offices that the additional requirements put

forward by LKFN must be incorporated within the conditions of any license or permits that are granted. In order to ensure impacts to Dene rights are properly mitigated, it is DFNs position that no licenses or permits should be granted until CZN demonstrates explicitly that they hold sufficient funding to ensure that the measures will in fact be carried out.

Naha?deh is a special sacred area, and DFN remains concerned about potential impacts to heritage resources, the environment, human safety, and the cultural uses of that place. As the traditional stewards of the land, DFN and our member communities assert a responsibility to protect the land, which is – in part – the aim of this written response.

In our view, the Review Board has correctly concluded that the Project is likely to cause significant adverse impact on the environment, on human safety, and on Indigenous rights. It is now essential that the Measures identified by the Review Board and Developer’s Commitments identified by CZN become not only law, but also practice. They must be actively enforced by regulators, by ensuring that they are (i) incorporated as pre-conditions of permitting and licensing requirements enabling the project to proceed, (ii) the measures fully consider Dene knowledge and enable DFN, and other affected First Nations, to act as full decision makers alongside regulators in the approval process that determines when measures have been deemed adequately implemented and (ii) fully funded prior to any work taking place.

The Review Board has also correctly identified a deficiency of baseline information available to enable proper assessment of the appropriate design, mitigation measures, and impacts of this project. For that reason – and to ensure as Dene we uphold our responsibility to protect the land by ensuring Dene values are incorporated in the Project – it is imperative that all affected First Nations are involved at all stages of the study, development, execution, and closure of the Project.

We look forward to having our views fully considered by the responsible Ministers as part of this consultation process, and to hearing back from you as part of that process.

Mahsi,



Grand Chief Herb Norwegian
Dehcho First Nations

cc.

Chief Peter Marsellais, NBDB
Chief Gerald Antoine, LKFN