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MACKENZIE VALLEY
ENVIRONMENTAL IMPACT
REVIEW BOARD

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From:

LAURA PITKANEN, RES. MAN. COORD.

Operator:

DEH CHO FIRST NATIONS

Number of pages including cover sheet:

6

Re: DCFN COMMENTS ON DRAFT TERMS OF REFERENCE
FOR WESTERN GECO 2-D RIVER SEISMIC

CC. LEADERSHIP

NATIONAL ENERGY BOARD

HON. ROBERT NAULT

DENE NATION

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Alan Ehrlich
Mackenzie Valley Environmental Impact Review Board

January 15, 2003

Re: Draft Terms of Reference for Western Geco 2-D River Seismic

I am writing on behalf of the Deh Cho First Nations. Thank you for accepting Deh Cho First Nation comments regarding the Draft Terms of Reference for Western Geco 2-D River Seismic on January 16, 2003. Please note that Deh Cho First Nations were excluded from the technical workshops that Western Geco held in Calgary on December 5, 2002, and in Yellowknife on December 17, 2002. Deh Cho First Nations believe that these workshops on the results of the fish and wildlife studies, undertaken by Western Geco during the summer of 2002, would have aided our understanding of this seismic program, and our ability to respond in a meaningful and timely manner. Deh Cho First Nations firmly believe that the Western Geco 2-D River Seismic program may have significant adverse effects on wildlife, specifically fish and aquatic furbearers in the Mackenzie River.

Deh Cho First Nations have the following comments and request the following additions to the Terms of Reference.

The Mackenzie River (Deh Cho) is integral to the well-being and culture of the Dene and Metis people of the Deh Cho. For the Dene and Metis of the Deh Cho, the whole of the Mackenzie River in the Deh Cho is a traditional fishing river that provides crucial subsistence fishing, wildlife habitat, river transport, and other traditional uses. In addition, the Mackenzie River (Deh Cho) holds spiritual and cultural importance for the Deh Cho. Therefore, any proposed activity on the Mackenzie River affects all Deh Cho communities, not just those communities located directly on the river.

Deh Cho First Nations are wholly unsatisfied with the consultation process undertaken by Western Geco for this 2-D River Seismic program. While Western Geco held brief meetings in a few Deh Cho communities in March 2002, the details of these meetings are absent from the public record.

Furthermore, these community consultations were undertaken in the spring of 2002. These consultations are not representative of all Deh

Cho communities and do not encompass all Deh Cho Leadership, nor do they reflect current negotiations regarding land and waters in the Deh Cho, under the Deh Cho Process.

Deh Cho First Nations request that Western Geco and the Mackenzie Valley Environmental Impact Review Board undertake further consultation with all Deh Cho communities.

Deh Cho leadership work under the "One House" mandate for resource issues that affect all Deh Cho communities. Grand Chief Michael Nadli, in his August 30, 2002 letter to the National Energy Board, states: "We have promoted the concept of "One House", especially at our Leadership meetings and Assemblies. This ensures that all the Deh Cho First Nations, especially the Leadership of those communities that are directly affected by development and land uses, are addressed as a group. In order for consultation to be valid, the protocol of the data collection, the data itself, and its intended uses must have the approval of the Deh Cho First Nations and the Leadership of its affected communities." In other words, the people of the Deh Cho are not merely separate "bands"—we are connected by history, family, and overlapping land use. We are One House.

Deh Cho First Nations request that Western Geco consult with Deh Cho Leadership as a whole, in the early stages of this Environmental Assessment.

Regarding Section 4.7 of the Draft Terms of Reference, the Mackenzie Valley Environmental Impact Review Board only asks for consultation summaries. Deh Cho First Nations find this provision wholly inadequate, as summaries are an interpretation of the consultation process and do not provide evidence of community input. As details of the Western Geco public consultation process are absent from the public record, Deh Cho First Nations request that Western Geco provide details of all previous community consultations, including minutes, lists of people in attendance, and Western Geco responses to community concerns.

As previously noted, the consultation process undertaken by Western Geco is not inclusive of current activities in the Deh Cho. In the Deh Cho Process, under Section 12-14 of the Interim Measures Agreement, signed May 23, 2001, Deh Cho First Nations is currently negotiating with the Government of Canada for Interim land and water withdrawals in Deh Cho Territory.

The Government of Canada and the Deh Cho First Nations have agreed that the Mackenzie River waters, riverbed and a buffer around the river have been included in the Interim Land Withdrawals. The Interim Land Withdrawals are expected to be finalized and given legal effect by Order in Council in March 2003. It seems obvious that approval of 2D seismic on the Mackenzie River is wholly inconsistent with the impending withdrawal.

Regarding the specifics of the Western Geco 2-D Seismic proposal, Deh Cho First Nations have serious concerns. Definitive studies regarding the long-term effects of airguns on the anatomy, physiology and behaviour of river fish are lacking. It is our opinion that the Western Geco studies were limited in duration and scope, and therefore do not provide solid evidence that airguns do not pose long-term damage to Mackenzie River fish. As noted in Arthur N. Popper's comments regarding this study, Western Geco's study was insufficient in length to determine the long-term effects of airguns on fish. Popper also noted that long-term impacts of sound on fish may not show up right away, thus rendering Western Geco's results premature and tenuous. Popper quotes *"the impact may not show up right away (eg., vis a vis the ear, stress, or hearing capabilities) and this could mean that the survival of animals will be decreased days or weeks after the airgun array has gone by...if WGO only looked at animals within a few hours of exposure, I would question the relevance of their results on the impact of fish. Moreover, work done in my lab in 1996 (Hastings et al. 1996) showed that examination of the ear in animals immediately after exposure to intense sounds showed no impact of the sounds, but if the animals were allowed to survive for about 96 hours post exposure, significant damage showed up."*

Given the cultural, spiritual, economic and subsistence value that Mackenzie River fish have for the Dene and Metis of the Deh Cho, we request that the precautionary principle be exercised with regards to this seismic program. We request further study be conducted to determine the long-term effects of seismic airguns on the anatomy, physiology, spawning, stress levels and behaviour of Mackenzie River fish of all species and at all lifestages. These studies should use the exact airgun size that is proposed for the seismic survey.

Deh Cho First Nations request that further studies be conducted to determine the long-term effects of seismic airguns on the anatomy, physiology, breeding, stress levels and behaviour of semi-aquatic furbearers, mammals and birds of the Mackenzie River.

Deh Cho First Nations also request that further study is required to determine the effects of airguns on aquatic invertebrates.

Deh Cho First Nations request that Western Geco provide detailed evidence that the 2-D river seismic program will have no significant adverse effects on aquatic vegetation in the Mackenzie River.

Deh Cho First Nations also request that Western Geco provide detailed evidence that "ramping up" procedures will be an effective means to prevent negative impacts of airguns on fish, semi-aquatic mammals and birds.

While the Mackenzie Valley Environmental Impact Review Board has omitted Visual and Aesthetic Resources from the Draft Terms of Reference, **Deh Cho First Nations request that Western Geco be required to respond to Visual and Aesthetic Resources.** The Mackenzie River is not only an important subsistence river for the Dene and Metis of the Deh Cho, the visual and aesthetic aspects of the river are valued by all residents of the Deh Cho. Visual and Aesthetic Resources are also directly related to tourism. The proposed Western Geco 2-D River Seismic program will have direct negative impacts on the visual and aesthetic aspects of the Mackenzie River during the important tourism season. Western Geco should be required to provide details on how they will mitigate or compensate for the loss of visual and aesthetic resources.

The Mackenzie River is an integral part of Dene and Metis culture and any potential negative effects regarding the Mackenzie River and its environment, fish and wildlife directly affect all Deh Cho communities. **Regarding Section 4.1 of the Draft Terms of Reference, Deh Cho First Nations request that Western Geco provide the Executive Summary and a Non-technical Summary in South Slavey, as well as in English.** This will help to ensure that Deh Cho elders are provided fair access to the information from the Environmental Assessment, and to help ensure that Deh Cho elders have meaningful participation in the Environmental Assessment process.

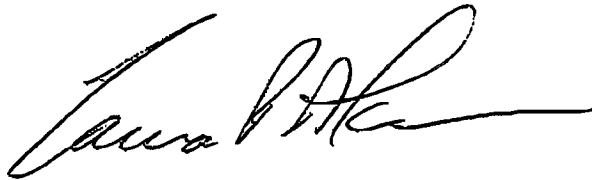
The Mackenzie River is a river of significant traditional use by the Deh Cho. **Regarding Section 4.11, Deh Cho First Nations request that Western Geco provide an in-depth explanation on how they will respond to all other river traffic during operations, including fishing vessels and small fishing boats, canoes and kayaks, and other river traffic.**

Regarding Section 4.11, Deh Cho First Nations request that Western Geco provide a detailed explanation on how they will prevent or mitigate any infringement on Aboriginal harvesting rights,

including but not limited to: Right of Way, damage or disruption to harvesting activities, and damage or disruption to harvesting nets, gear and materials.

Regarding Section 4.14, Deh Cho First Nations request that Western Geco also provide a detailed discussion on cultural impacts and mitigation measures, in addition to social and economic impacts. In order to do this effectively, Western Geco should undertake community consultations with all Deh Cho communities and Leadership as early as possible during the Environmental Assessment.

Regarding Section 4.14, Deh Cho First Nations request that a copy of the proposed Benefits Plan be provided to all Deh Cho Leadership and communities as soon as possible during the Environmental Assessment. Western Geco should also provide evidence of detailed consultations regarding the Benefits Plan to Deh Cho First Nations.



Laura Pitkanen
Resource Management Coordinator
Deh Cho First Nations

CC. Deh Cho Leadership
National Energy Board
Hon. Robert Nault