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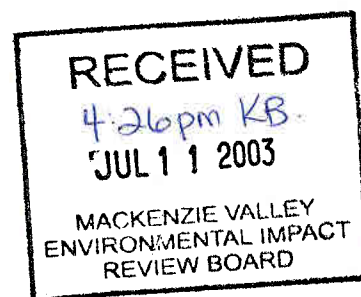
P.R.

National Energy
BoardOffice national
de l'énergie**OUTGOING FACSIMILE – MESSAGE À EXPÉDIER****Message To/
Destinataire :**

Keith Rosindell, WesternGeco

Facsimile Number/**Numéro de télécopieur :** (403) 694-2878 509-4217**Message From/
Expéditeur :**

John Korec

**Number of pages (including cover page)/****Nombre de pages (incluant la page couverture) :** 13**Remarks/Commentaires :****WesternGeco Mackenzie/Liard Rivers Seismic - Request for Comment**

Please find attached NEB's request for WesternGeco's comments in regards to the Review Board's Report of EA, recommended measures and suggestions for the Mackenzie and Liard Rivers 2D Seismic Program.

We request that WesternGeco provide its comments by 16 July 2003.

Please contact Mieke Vander Valk at (403) 292-5048 if you have any questions.

c.c. Mr. Vern Christensen, MVEIRB, fax (867) 766-7074
Mr. Eric Yaxley, INA, fax: (867) 669-2701

If you do not receive this message clearly please call operator at (403) 292-5088

Communiquer avec auteur au (403) 292-5088 si le message reçu n'est pas clair

444 Seventh Avenue SW
Calgary, Alberta T2P 0X8

444, Septième Avenue S.-O.
Calgary (Alberta) T2P 0X8

Canada

Telephone/Téléphone : (403) 292-4800
Facsimile/Télécopieur : (403) 292-5503
<http://www.neb-one.gc.ca>

National Energy
BoardOffice national
de l'énergie

NEB File: 9180-W730-2
MVEIRB File: EA02-002
11 July 2003

Mr. Keith Rosindell
Project Manager
WesternGeco Canada
Suite 2300, 645 - 7th Ave S.W.
Calgary, Alberta T2P 4G8
Facsimile (509) 694-2878
Email: rosindell1@slb.com

Dear Mr. Rosindell:

**WesternGeco Canada Mackenzie/Liard Rivers, NT 2D Seismic Program, 2004
Mackenzie Valley Environmental Impact Review Board Report of Environmental
Assessment - NEB Request for Comment**

Pursuant to our obligations under the *Mackenzie Valley Resources Management Act* (MVRMA), the National Energy Board (NEB) is reviewing the Report of the Environmental Assessment dated 30 June 2003 issued by the Mackenzie Valley Environmental Impact Review Board (Review Board) for the proposal. Pursuant to sub-paragraph 128(2)(b)(ii) of the MVRMA, the Review Board recommended that the approval of the proposal be made subject to the imposition of such measures as it considers necessary to prevent significant adverse impact.

WesternGeco Canada (WesternGeco) is requested to provide its comments on the Review Board's recommended measures and suggestions contained in the Report of Environmental Assessment (Request for Comment attached). A copy of the report is available on the Review Board's web site at: http://www.mveirb.nt.ca/Registry/EAWesternGeco/REA_WesternGeco.pdf

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Canada

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NEB File: 9180-W730-2

WesternGeco Mackenzie/Liard Rivers 2D Seismic Program

NEB Request for Comment

11 July 2003

We request that you provide your response by 16 July 2003 to Mr. Terry Baker, NEB and to the individuals copied below. Should you have any questions or require more time regarding the attached request for information, please contact Mieke Vander Valk at (403) 292-5048 or at <mvandervalk@neb-one.gc.ca>.

Yours truly,

A large, stylized handwritten signature in black ink, appearing to be 'T.M. Baker', written over a horizontal line.

T.M. Baker
Exploration and Production
jek/Attachments

c.c. Mr. Vern Christensen, Mackenzie Valley Environmental Impact Review Board,
fax (867) 766-7074 and email VChristensen@mveirb.nt.ca
Mr. Eric Yaxley, Indian and Northern Affairs Canada, fax: (867) 669-2701, and
email yaxleye@inac-ainc.gc.ca

NEB File: 9180-W730-2

WesternGeco Mackenzie/Liard Rivers 2D Seismic Program

NEB Request for Comment

11 July 2003

National Energy Board Request for Comment

Reference:

- (i) Mackenzie Valley Environmental Impact Review Board: Report of Environmental Assessment on the WesternGeco Mackenzie and Liard Rivers 2D Seismic Program, dated 30 June 2003.
 - Appendix 1 – List of Recommendations (attached)
 - Appendix 2 – List of Suggestions (attached);
- (ii) Chapter 17, Gwich'in Comprehensive Land Claim Agreement, Harvesting Compensation (attached); and
- (iii) Chapter 18, Sahtu Dene and Metis Comprehensive Land Claim Agreement, Harvesting Compensation (attached)

Request:

Please review the above report and attached documents and provide WesternGeco's comments and, where appropriate, measures that WesternGeco would undertake in response to:

- (a) each recommended measure (Appendix 1); and
- (b) each suggestion (Appendix 2).

Mackenzie Valley Environmental Impact Review Board:

**Report of Environmental Assessment on the
WesternGeco Mackenzie and Liard Rivers
2D Seismic Program**

dated 30 June 2003

Appendix 1 – List of [Recommended Measures]

and

Appendix 2 – List of Suggestions

Appendix 1

List of Recommendations

Based on a consideration the information on the Public Registry, makes the following recommendations, as per MVRMA s.128(1)(b)(ii):

1. **The Review Board recommends** that WesternGeco submit a mitigation plan for DFO's approval, in order to prevent significant adverse environmental effects on fish by air guns. This will include unconditional shutdown in all areas of known sensitivity as identified by DFO in its Technical Report of June 9th, 2003, and the submission of June 13th, 2003. This mitigation plan shall be approved by DFO before the NEB issues an authorization for this development.
2. **The Review Board recommends** that WesternGeco proceed with the development with the addition of a program for monitoring, evaluation and management, in order to prevent significant adverse environmental impacts on fish. The Review Board makes this recommendation notwithstanding the inconclusive nature of the recent study, because the evidence on the record suggests that a single pass will result in brief and intermittent exposure to air gun noise, resulting in a risk that is acceptable if well-managed. This monitoring program should allow for adaptive management, and be designed cooperatively between the developer and DFO. If this monitoring identifies acute adverse impacts on fish, the seismic program is to immediately shutdown until DFO has approved its re-starting. The program must include monitoring and related research to develop an understanding of the acute and long-term effects of the development on fish, and should be conducted in conjunction with the development. DFO should provide quality assurance and control, as well as supervise the implementation of the program. DFO and WesternGeco must ensure that the study considers comments raised in this environmental assessment regarding research design and methodology.
3. **The Review Board recommends** that in order to prevent significant adverse impacts on Deh Cho Dene and Metis harvesters the NEB include provisions in its authorizations that provide protection measures similar to those outlined in Section 17 of the Gwich'in Comprehensive Land Claim Agreement, and Section 18 of the Sahtu Dene and Metis Comprehensive Land Claim Agreement, to be applied to the Deh Cho portion of the development.

*Report of Environmental Assessment
WesternGeco Mackenzie and Liard Rivers 2D Seismic Program
June 30th, 2003*

Appendix 2

List of Suggestions

1. **The Review Board suggests** that scout boats look for mammals in the river more than one kilometre before the source vessel, and coordinate with the wildlife monitor on the source vessel for shutdowns as needed.
2. **The Review Board suggests** that WesternGeco talk to RWED about the known crossing points for wood bison before the operation, and notify local RWED personnel when these areas are being approached.
3. **The Review Board suggests** that scout vessels record all wildlife observations, rather than only record wildlife observations when air guns are firing. Wildlife observation records should be shared with the Sahtu and Gwich'in Renewable Resources Boards, Deh Cho First Nations and RWED.
4. **The Review Board suggests** that WesternGeco and DFO consult the Sahtu and Gwich'in Renewable Resources Boards and consider Traditional Knowledge when designing the fish impact monitoring program.
5. **The Review Board suggests** that the research methodology and analysis issues raised by the parties to the EA and Dr. Popper be considered carefully in the design of future research on the effects of air guns on fish.
6. **The Review Board suggests** that Deh Cho First Nations develop a protocol regarding spiritually acceptable activities on the Mackenzie River, to inform land use planners, developers, and environmental impact assessment decision makers in the future.

*Report of Environmental Assessment
WesternGeco Mackenzie and Liard Rivers 2D Seismic Program
June 30th, 2003*

NEB File: 9180-W730-2
WesternGeco Mackenzie/Liard Rivers 2D Seismic Program
NEB Request for Comment

11 July 2003

Gwich'in
Comprehensive Land Claim Agreement
Chapter 17: Harvesting Compensation

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17 HARVESTING COMPENSATION**17.1.1** In this chapter,

"compensation" means a cash payment, either lump sum or a periodic payment, or non-monetary compensation such as replacement or substitution of damaged or lost property or equipment or relocation or transportation of participants or equipment to a different harvesting locale or a combination of such elements;

"development activity" means a development activity in the settlement area, other than individual or commercial wildlife harvesting activities, naturalist activities and commercial guiding and outfitting activities in respect to hunting and sport fishing; and

"wildlife harvesting" means wildlife harvesting pursuant to this agreement and does not include wildlife harvesting permitted pursuant to legislation other than legislation giving effect to this agreement.

17.1.2 (a) A developer is liable absolutely, without proof of fault or negligence, for the following losses and damage suffered by a participant as a result of development activity of that developer:

- (i) loss or damage to property or equipment used in wildlife harvesting or to wildlife harvested;
- (ii) present and future loss of income from wildlife harvesting; and
- (iii) present and future loss of wildlife harvested for personal use or which is provided by the participant to other participants for their personal use; and

(b) notwithstanding (a), a developer shall not be liable for losses suffered by a participant as a result of the establishment of a national park or a protected area, or any lawful activity within a park or protected area, except for direct loss or damage to property or equipment used in wildlife harvesting or to wildlife harvested.

17.1.3 Participants shall make their best efforts to mitigate any losses or damage referred to in 17.1.2.**17.1.4** If agreement has not been reached between a developer and a participant with respect to a claim for compensation within 30 days of the submission of a claim in writing by a participant, either party may refer the matter to arbitration pursuant to chapter 6.**17.1.5** An arbitrator, if a claim is proven, may:

- (a) award compensation to a participant with provision for review of the award, if appropriate;
- (b) recommend that a developer or a participant take or refrain from taking certain action in order to mitigate further loss or damage; and
- (c) on review of a previous award, determine whether the developer or the participant has adopted any mitigative recommendations made under that previous award.

17.1.6 Nothing in this chapter is intended to prejudice the legal rights of participants to sue for damages from any person. However, if a participant elects to refer the dispute to arbitration, the provisions of chapter 6 shall apply.**17.1.7** Nothing in this chapter is intended to prejudice the negotiation of agreements between the Gwich'in and developers with respect to compensation for losses in relation to wildlife harvesting, including the process for settling and resolving claims under this chapter.

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- 17.1.8** Legislation may provide for limits of liability of developers, the burden of proof on claimants, limitation periods for making claims and any other matters not inconsistent with this agreement.

NEB File: 9180-W730-2

WesternGeco Mackenzie/Liard Rivers 2D Seismic Program

NEB Request for Comment

11 July 2003

Sahtu Dene and Metis

Comprehensive Land Claim Agreement

Chapter 18: Harvesting Compensation

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18 HARVESTING COMPENSATION**18.1.1 In this chapter,**

"compensation" means a cash payment, either lump sum or a periodic payment, or non-monetary compensation such as replacement or substitution of damaged or lost property or equipment or relocation or transportation of participants or equipment to a different harvesting locale or a combination of such elements;

"development activity" means a development activity in the settlement area, other than individual or commercial wildlife harvesting activities, naturalist activities and commercial guiding and outfitting activities in respect to hunting and sport fishing; and

"wildlife harvesting" means wildlife harvesting pursuant to this agreement and does not include wildlife harvesting permitted pursuant to legislation other than legislation giving effect to this agreement.

18.1.2 (a) A developer is liable absolutely, without proof of fault or negligence, for the following losses and damage suffered by a participant as a result of development activity of that developer:

- (i) loss or damage to property or equipment used in wildlife harvesting or to wildlife harvested;
- (ii) present and future loss of income from wildlife harvesting; and
- (iii) present and future loss of wildlife harvested for personal use or which is provided by the participants to other participants for their personal use; and

(b) notwithstanding (a), a developer shall not be liable for losses suffered by a participant as a result of the establishment of a national park or a protected area, or any lawful activity within a park or protected area, except for direct loss or damage to property or equipment used in wildlife harvesting or to wildlife harvested.

18.1.3 The participants shall make their best efforts to mitigate any losses or damage referred to in 18.1.2.**18.1.4 If agreement has not been reached between a developer and a participant with respect to a claim for compensation within 30 days of the submission of a claim in writing by a participant, either party may refer the matter to arbitration pursuant to chapter 6.****18.1.5 An arbitrator, if a claim is proven, may:**

- (a) award compensation to a participant with provision for review of the award, if appropriate;
- (b) recommend that a developer or a participant take or refrain from taking certain action in order to mitigate further loss or damage; and
- (c) on review of a previous award, determine whether the developer or the participant has adopted any mitigative recommendations made under that previous award.

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- 18.1.6** Nothing in this chapter is intended to prejudice the legal rights of participants to sue for damages from any person. However, if a participant elects to refer the dispute to arbitration, the provisions of chapter 6 shall apply.
- 18.1.7** Nothing in this chapter is intended to prejudice the negotiation of agreements between participants and developers with respect to compensation for losses in relation to wildlife harvesting, including the process for settling and resolving claims under this chapter.
- 18.1.8** Legislation may provide for limits of liability of developers, the burden of proof on claimants, limitation periods for making claims and any other matters not inconsistent with this agreement.