

**DEH CHO FIRST NATIONS****BOX 89, FORT SIMPSON, N.W.T. X0E 0N0****TEL: (867) 695-2355 FAX: (867) 695-2038**

July 21, 2003

Minister Andy Scott
Indian and Northern Affairs
Terrasses de la Chaudiere, North Tower
Suite 2100-10 Wellington Street
Gatineau, Quebec
K1A 0H4

331660

NEB / ONE

MAIL ROOM
SALE DE COURIER
2003 JUL 21 P 1:21**RE: Post EA consultation process for the WesternGeco river seismic program**

Further to our previous correspondence, in which I expressed dissatisfaction regarding recent post-environmental assessment (EA) consultations, I am writing to express my dismay with the recent consultation process undertaken on the WesternGeco Report of Environmental Assessment, and the subsequent revisions to the Review Board's recommendations for this development.

On June 31, 2003, the Review Board submitted its Report of Environmental Assessment for the WesternGeco project. The EA process, including the recommendations of the Review Board had adopted a precautionary approach, in part, because the results of the scientific studies undertaken by WesternGeco were seriously flawed in methodology, and thus the results of these studies could not be applied to the WesternGeco program with any scientific certainty. In addition, scientific experts, including Dr. Arthur Popper and the Department of Fisheries and Oceans, expressed concern about the potential of this program to result in significant impacts to fish, fish habitat, and semi-aquatic furbearers. After a lengthy, open, and transparent EA process, the Review Board concluded that this project would likely result in significant environmental impacts if very specific mitigation measures were not implemented.

The Dehcho First Nations, as a directly affected party, participated in this EA in good faith, and without prejudice to the Dehcho Process. As a party to the EA, we fully expected to be included in any future consultation process respecting the Report of Environmental Assessment. As noted in my July 7, 2004 letter, we also had reason to expect an open consultation process, as the Review Board had set precedent for this approach in earlier EA's and in Board discussions. Further evidence for these expectations is set out in the Review Board's own meeting summary on WesternGeco. The following notes from the Review Board's agenda summary, Item 5.3, dated November 24, 2003, demonstrate that the Review Board had agreed to an open, transparent, and inclusive consultation process:

The letter from the NEB requested that the Review Board contact it to make arrangements for the consultation process. In previous s. 131 consultations, the NEB and others disagreed about the MVEIRB's procedural approach to the consultation process. The Review Board has taken the position that consultation is still part of a Review Board proceeding, and must be conducted in a fair and open manner, allowing potentially affected parties the opportunity to comment on proposed changes that may affect them. The NEB and others have taken the position that it is no longer the Review Board's process once the Reasons for Decision document is issued, and that Board recommendations could be changed unilaterally following consultations. However, the NEB and others agreed to participate "without prejudice" in the Paramount consultation process as conducted by the Review Board.

At the time of our last s. 131 consultations, Board counsel prepared an outline of the proposed procedure. This included the following steps:

- 1) Have the NEB/Ministers identify and explain their specific concerns with the recommendations to be discussed.
- 2) Parties to the EA are notified of the consultation and of the concerns raised and given the opportunity to submit comments or additional information about the issues under consultation.
- 3) The consultation meeting is open to parties, and is intended to clarify the concerns leading to the demand for consultation.
- 4) The Review Board will have time to consider its response and to work collaboratively on the rewording of recommendations, if any.
- 5) If the revised recommendations are rejected by the NEB, then an Environmental Impact Review must be ordered.

The following timeline is proposed:

STEP	DATE
Notify parties, solicit comments	End of Nov. 2003
Receive and consider comment	End of Dec. 2003
Hold consultation meeting	Jan. 6, 2004
MVEIRB response/revisions	Jan. 13, 2003 (sic)

While the Review Board noted the NEB's potential dissatisfaction with this process, the Review Board also stated that "the last time this approach to consultation was used, after the consultation all parties expressed satisfaction with the process and outcome." Despite this clear process for post-EA consultation, none of the above steps were incorporated into the actual consultation process for WesternGeco. Instead, on June 16, 2004, the Dehcho First Nations were simply notified by the Review Board that the consultation process had already been completed during a closed, private consultation process. It appears that Review Board staff met with the NEB and Indian and Northern Affairs on May 14, 2004. This meeting was followed by a Review Board meeting on May 20, 2004, during which the Review Board approved revised recommendations for the WesternGeco development. While it is not explicitly stated, it does appear that the developer also engaged in a closed, post-EA consultation process with the NEB, and possibly other parties to the EA. The Dehcho First Nations were wholly excluded from the post-EA consultation process.

The Dehcho First Nations take strong exception to the manner in which the EA recommendations have been revised. The closed-door consultation process between the Minister, the NEB, the Review Board, and the developer is completely unacceptable and undermines the open, fair, and transparent intent of EA in Canada. We point out that the opportunity for the developer, and other Parties to the EA to influence the EA process, including project design and mitigation measures, is during the EA itself. Significant post-EA revisions to project design and mitigation measures detracts from the intent and purpose of the EA itself. Furthermore, the omission of the Dehcho First Nations from this post-EA process is a direct violation of our legal right to be consulted as directly affected First Nations.

Furthermore, our concerns are not limited to the lack of an open consultation process, but also extend to the results of this process, which are equally unacceptable. In our opinion, the revised recommendations for the WesternGeco project seriously weaken the mitigation measures originally recommended by the Review Board. While the Review Board claims that the revised recommendations may "increase the potential for involvement" of First Nations, the overall effect of the revised recommendations weaken the EA mitigation measures. Specifically, the original recommendation #1 was designed to "prevent significant adverse environmental effects on fish by air guns."¹ However, the revisions to this recommendation strip the Department of Fisheries and Oceans of the authority to approve the monitoring and mitigation plan and to impose unconditional shutdowns. This revision is significant, as it removes important decision-making and supervisory authority from scientific experts in the Department of Fisheries and Oceans, whose clear mandate is to protect fish and fish habitat.

The revisions to recommendation #2 also weaken the intended mitigation measures and place the onus, including financial obligations, of designing and implementing the research study onto the Department of Fisheries and Oceans, rather than the developer. The Dehcho First Nations find it highly unusual that a department of the Government of Canada, and thus the Canadian taxpayer, must assume the responsibility and costs for designing and implementing a research study that will only benefit private oil and gas exploration companies. It is our opinion that the developer, in this case, WesternGeco, should assume the full costs of researching the suite of potential environmental impacts of their proposed project.

Thirdly, we object to the rewording of recommendation #3, as the Dehcho First Nations have the inherent right to be compensated in an equal manner to the Gwich'in and Sahtu Dene and Metis. We find the rewording of this recommendation, in our absence and without any consultation, only adds further insult to the closed-door manner in which this post-EA consultations took place.

¹ Report of Environmental Assessment: WesternGeco Mackenzie and Liard Rivers 2D Seismic Program. June 30, 2003. MVEIRB.

In summary, the Dehcho First Nations find the post-EA process currently employed by the Minister, the NEB, and the Review Board to be contrary to the purpose and intent of EA as a fair, open and transparent process. The Dehcho First Nations request that you seriously reconsider this closed process, as well as its implications, and take immediate steps to involve First Nations, and other parties to the EA, in a post-EA consultation process that will retain the integrity of the EA itself, as well as meet the legal standards of consultation, natural justice and fairness, and evolving jurisprudence on First Nations rights.



Mahsi Cho

Herb A. Norwegian
Grand Chief

CC:

Dehcho Leadership

Chris Reid, DFN Legal Counsel

Kenneth Volman, Chair, NEB (1-403-292-5503)

Todd Burlingame, Chair, MVEIRB (1-867-766-7074)

National Energy
Board



Office national
de l'énergie

10 August 2004

OUTGOING FACSIMILE – MESSAGE À EXPÉDIER

**Message To/
Destinataire :**

Martin Haefele

**Facsimile Number/
Numéro de télécopieur :**

(867) 766-7074

**Message From/
Expéditeur :**

John Korec



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Remarks/Commentaires : WesternGeco – DCFN Letter

Martin, here is the July 21st letter. I will fax the July 7th letter as soon as I can find or get a copy of it.

Regards

John Korec

If you do not receive this message clearly please call operator at (403) 292-6614

Communiquez avec auteur au (403) 292-6614 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>