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March 22, 2004

Bob Overvold
 Regional Director General
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 Executive Office Directorate
 Bellanca Bldg
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Dear Mr. Overvold:

RE: Federal and Responsible Minister Consideration and Response to the Decision and Reasons for Decision of the Environmental Assessment Reports prepared by the MVEIRB of the North American General Resources Corporation, Consolidated Goldwin Ventures Inc., New Shoshoni Ventures Ltd. in the Drybones and Wool Bay areas.

Background

On June 30, 2003 the Minister of Indian and Northern Affairs (INAC or Federal Minister) informed former Chief Richard Edjericon that "the [Mackenzie Valley Land and Water Board] together and the MVEIRB, [were] the primary vehicles for effective environmental assessment consultation with First Nations... impacted by a proposed development[s]."

The Government of Canada is relying on the MVEIRB and the MVLWB to determine if, and to what extent, the Yellowknives Dene First Nation is impacted by the proposed developments at Drybones and Wool Bays. The Minister of INAC also suggests that the Crown retains responsibility for its consultation responsibilities by virtue of its Treaties and fiduciary obligations.

The MVEIRB reports environmental assessment contain important evidence and findings that has a direct bearing on the future actions of the Minister of INAC and the Responsible Ministers¹ (RM) pursuant to the MVRMA. Of particular importance are the MVEIRB findings that:

¹ "responsible minister", in relation to a proposal for a development, means any minister of the Crown in right of Canada or of the territorial government having jurisdiction in relation to the development under federal or territorial law.

- Drybones and Wool Bays retain current and historical evidence of use and occupancy conveying Aboriginal right.
- That the Canadian Mining Regulations, and in particular the Free Entry System as well as the Prospecting Permit system are enabling the infringement of Aboriginal rights.
- Evidence submitted during the environmental assessment supports the YKDFN assertions that its ancestral traditional practices carried forward and manifested through cultural practices are reflected upon the landscape of Drybones and Wool Bay areas.

The MVEIRB accepted that the Drybones and Wool Bay areas were vitally important for Yellowknives Dene traditional activities and for the capacity of the Yellowknives Dene society to sustain itself.

The *Mackenzie Valley Resource Management Act* (MVRMA) states that:

- S121. The federal Minister, responsible minister and any regulatory authority shall issue and make available to the public written reasons for any decision or recommendation made.
- S130. After considering the report of an environmental assessment, the FM and RMs to whom the report was distributed may agree to order an environmental impact review, adopt the MVEIRB's recommendations, or, refer the report and its recommendations back to the MVEIRB for further consideration. Alternatively, the FM and RM can, after consulting the Review Board, adopt the recommendations with modifications, order an environmental impact review, or, irrespective of the determination in the report, refer the proposals to the Minister of the Environment, following consultation with that Minister, for the purpose of a joint review under the *Canadian environmental Assessment Act*.
- ss130(3) If the FM and RMs consider any new information that was not before the MVEIRB, or any matter of public concern not referred to in the panel's reasons, the new information or the matter shall be identified in the decision made under this section and in their consultations with the MVEIRB.

The YKDFN is concerned that uncertainty over the application of these sections will materially affect its interests.

S.121 and S.130 of the MVRMA

It is important to ensure that the FM and RMs decisions occur in a fair and open manner, and that the FM and RM decision making framework and process is legal. Five factors are used to guide the suggested RM FM decision making process and the suggested involvement of YKDFN as observers in that process.

1. The nature of the decision and the process followed;
2. The nature of the statutory scheme;
3. The importance of the decision to the individual affected;
4. The legitimate expectations of the persons challenging the decision; and
5. The choices of procedures made by the agency itself.

Nature of the Decision and the Process Followed

The YKDFN lack appropriate procedural protection in the current decision-making process because there is insufficient process structure and guidance for the FM and RMs. For example, there are no guidelines in the application of S.130 and there is no public process or record regarding the S.130 proceedings.

The YKDFN requires a high degree of procedural protection in the FM and RMs consideration of the MVEIRB report of EA. INAC has not demonstrated a high degree of procedural protection that usually comes with adequate written notice of the proposed FM and RM consideration processes, reasonable access to relevant files, meetings, and other formal and informal communications between the RMs and FM. The YKDFN are unaware of what the Federal and Territorial governments are doing in regard to the MVEIRB EA reports. There are unanswered questions that could materially affect the YKDFN rights.

Nature of the Statutory Scheme

The MVRMA makes no allowance for the development of guidelines respecting the application of S.130. It only permits the use of regulations with respect to Ministerial authority. Therefore, INAC and the RMs may implement a normative unenforceable, non-public, non-debateable, S.130 processes that substantially infringe on YKDFN rights without the YKDFN even knowing about it.

Importance of the Decision

The importance of any decision depends on how important it is to the lives of those affected by it. The MVEIRB and the YKDFN concur on the value of the Drybones and Wool Bay areas. It is fundamentally important to the maintenance and survival of Yellowknives Dene culture.

The FM and RMs are bound by their fiduciary duty to protect the mechanisms necessary for the preservation of Yellowknives Dene Aboriginal culture. This will require upholding one decision of the Review Board where a development application is refused and requiring the same decision on the three other proposed development projects that received conditional approval.

Legitimate Expectation

The YKDFN have signed an Interim Measures Agreement and is negotiating its Treaty Rights with Canada. Consequently, the YKDFN expects that the research, writing, analysis, and evaluation of the MVEIRB's EA reports to be stringent. The YKDFN requires and expects full access to all information, communications and meetings between the RMs and the FM to facilitate an EA report consideration processes. There is also the legitimate expectation that the FM RM consideration process will be at least as transparent and accountable as the process used by the MVEIRB.

Choice of Procedures

Currently there are not EA report consideration procedures. Therefore it is fair and reasonable to expect at least the same level of procedural and administrative fairness as that provided by the MVEIRB.

Conclusion

The Government of Canada and by extension the Government of the Northwest Territories is relying on the MVEIRB and the MVLWB to determine if, and to what extent the Yellowknives Dene First Nation is impacted by the proposed developments at Drybones and Wool Bays.

The MVEIRB environmental assessment reports contain important evidence and findings that has a direct bearing on the future actions of the Minister of INAC and the Responsible Ministers. Of particular importance are the MVEIRB findings urging Canada to exercise its responsibilities with respect to Aboriginal peoples and to protect the Drybones and Wool Bay areas in order to protect the Aboriginal institutions necessary for the survival of the YKDFN society.


The YKDFN is negotiating its Treaty Rights with Canada while Canada and the GNWT are considering the MVEIRB's reports of environmental assessment. It is important to ensure that the FM and RMs decisions occur in a fair and open manner, and that the process fits the institutional and social context of the YKDFN.

The YKDFN therefore requests full and unhindered access to all communications and discussions between the Responsible Ministers and the Federal Minister, and that four development proposals be rejected because of their unjustified impacts on the culture of the Yellowknives Dene.

Sincerely,



Chief Peter Liske- Dettah



Chief Darrell Beaulieu - Ndilo

c.c. Todd Burlingame, Mackenzie Valley Environmental Impact Review Board (MVEIRB)
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