

**Mackenzie Valley**  
Environmental Impact  
Review Board

**In the Matter of:**                    **A Land Use Permit Application  
MV2003X0045 and a type B Water Licence  
Application MV2003L8-0012 made by  
Imperial Oil Resources Ventures Limited**

**And In the Matter of:**            **A referral of Land Use Application  
MV2003X0045 and Water Licence  
Application MV2003L-0012 for  
Environmental Assessment by the  
Pehdzeh Ki, Jean Marie River Liidlii Kue  
and Sambaa K'e First Nations and the  
Fort Simpson Metis Nation Local 52  
pursuant to ss.126(2)(c) of the MVRMA**

## **REASONS FOR DECISION**

### **BACKGROUND:**

On October 7<sup>th</sup>, 2003, Imperial Oil Resources Ventures Limited (Imperial) applied to the Mackenzie Valley Land and Water Board (MVLWB) for a land use permit (MV2003X0045) and a type B water licence (MV2003L8-0012) to support a program of geotechnical and other investigations to be conducted in the Deh Cho region of the Mackenzie Valley in the Northwest Territories. These activities included studies at 69 sites, including 46 potential granular resource sites, eight water crossing sites, ten frost heave sites and five rig camp sites. The proposed geotechnical program is in support of ongoing work addressed at satisfying the engineering and other design needs for a proposed Mackenzie Gas Project. This project is described in a Preliminary Information Package filed by the project proponents Imperial Oil Resource Ventures Limited, the Mackenzie Valley Aboriginal Pipeline Limited Partnership, ConocoPhillips Canada (North) Limited, Shell Canada Limited and Exxon Mobil Canada Properties in April 2003.

The MVLWB reviewed these applications, sought and received input from affected communities and first nations and made a decision to approve the above referenced

land use permit and water licence (the developments) at its meeting on February 16, 2004. The evidence considered by the MVLWB is available to the public on the Public Registry for the land use permit and the Water Register for the water licence.

Between February 16<sup>th</sup> and 20<sup>th</sup>, 2004 the Mackenzie Valley Environmental Impact Review Board (Review Board or MVEIRB) received correspondence from the Chiefs of the Pehdzeh Ki First nation (February 16<sup>th</sup>), the Sambaa K'e First Nation (February 18<sup>th</sup> and 20<sup>th</sup>), the Jean Marie River First Nation (February 18<sup>th</sup>), Fort Simpson Metis Nation Local 52 (February 18<sup>th</sup>) and the Liidlii Kue First Nation (February 19<sup>th</sup>) (collectively called the Aboriginal Organizations below) addressing these developments. These letters were similar in content and they outlined a number of environmental and other public concerns with respect to the developments.

The letters all purported to refer the developments to environmental assessment (EA) pursuant to paragraph 126(2)(c) of the *Mackenzie Valley Resource Management Act* (MVRMA).

These Reasons for Decision outline the MVEIRB's decision with respect to the capacity of the Aboriginal Organizations to refer the developments to EA pursuant to paragraph 126(2)(c) of the MVRMA.

## **ANALYSIS:**

### **The Referral under Paragraph 126(2)(c):**

In order for the Aboriginal Organizations to have the capacity to make a referral under paragraph 126(2)(c) of the MVRMA, they must qualify as a "local government" under the definition set out in section 2 of the Act. That definition reads as follows:

"local government" means any local government established under the laws of the Northwest Territories, including a city, town, village, hamlet, charter community or settlement, whether incorporated or not, and includes the territorial government acting in the place of a local government pursuant to those laws.

The Liidlii Kue First Nation and Fort Simpson Metis Nation Local 52 are clearly not the local government for the municipality of Fort Simpson. There can be no suggestion that these two Fort Simpson Aboriginal Organizations have the capacity to make a referral to EA under paragraph 126(2)(c) of the MVRMA.

The purported referral may nonetheless be valid depending on the status of the Pehdzeh Ki, Sambaa K'e and Jean Marie River First Nations. Thus, their role and status in relation to the local governments of Wrigley, Trout Lake and Jean Marie River is crucial to their capacity to make a referral.

The Review Board had recourse to Government of the Northwest Territories municipal legislation and to policy and other documents produced by the Department of Municipal and Community Affairs (MACA) to determine whether any orders had

been made establishing a local government for Wrigley, Trout Lake or Jean Marie River under the Government of the Northwest Territories' *Settlements Act*.

The Review Board is of the view that Wrigley, Trout Lake and Jean Marie River are unincorporated communities, a fact corroborated by the MACA Capital and Operating Assistance Policies. The MVEIRB also confirmed that no order establishing any of these communities as a Settlement had been made.

The Review Board does not dispute that each of these first nations play a central role in their community's government. These first nations' bands are, however, established under the federal *Indian Act*. The Review Board has concluded based on its review that there is no formal government structure established for Wrigley, Trout Lake or Jean Marie River by territorial law.

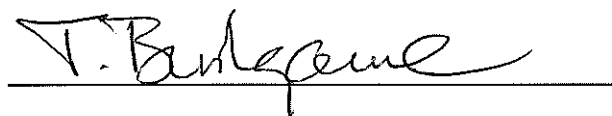
Subsection 126(2) of the MVRMA requires that a "local government" make the referral. The MVRMA also specifies that such a local government must be established under the laws of the Northwest Territories. Consequently, when the Review Board considered the Aboriginal Organizations' status in their communities in relation to the MVRMA definition of "local government" it concluded that they were not the local governments for purposes of the MVRMA.

As a result, the Review Board concluded that none of the Pehdzeh Ki, Sambaa K'e or Jean Marie River First Nations have the status or capacity to make a referral of the developments to EA under subsection 126(2) of the MVRMA.

**DECISION:**

The Review Board has concluded that the Pehdzeh Ki, Liidlii Kue, Sambaa K'e and Jean Marie River First Nations and the Fort Simpson Metis Nation Local 52 do not have the capacity to make a referral pursuant to paragraph 126(2)(c) of the MVRMA.

**For the Mackenzie Valley Environmental Impact Review Board:**



**Todd Burlingame, Chairman**

**DATED: the 2nd of March, 2004.**

NR



# Mackenzie Valley Environmental Impact Review Board

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From: Alan Ehrlich

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Date: March 4, 2004

Pages: 7 including this page

To: Jim Hawkins, Imperial Oil

Fax: (403) 237-2102

CC:

Subject: Reasons for Decision- 126 (2)(c)

**NOTES:**

Hello Mr. Hawkins,

Here is the Reasons for Decision document you requested on my voicemail today, regarding MVRMA s. 126 (2)(c). I have also attached the Reasons for Decision pertaining to the referral under s.126 (3) for your reference.

*See itax #18, #12*

Sincerely,

Alan Ehrlich.

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