

**Ur-Energy, Proposed Uranium Exploration at Screech Lake (EA0607-003)**

**Response to Information Requests**

December 15, 2006

To: Martin Haefele, MVEIRB

From: LKDFN

**Re: Response to Information Request IR0607-003-04: Special Values of Project Area**

On behalf of the LKDFN Chief and Council and the Wildlife, Lands & Environment Committee, please accept the following submission.

It is the position of the Lutsel K'e Dene First Nation (LKDFN) that the upper Thelon basin (the proposed project area) is of vital importance on many scales, which is the reason we are actively working to protect this area in a conservation regime (either as part of the proposed Thaydene Nene National Park or as a Special Management Area annexed to the Thelon Game Sanctuary, as outlined in the TGS Management Plan). Information on the efforts to include the upper Thelon region in a conservation zone was previously submitted by the Akaitcho IMA Implementation Office for EA0506-003, and is on the public record for that proceeding. The project area is clearly within Parks Canada's area of interest for the national park, and the LKDFN and Parks Canada have recently signed a Memorandum of Understanding to proceed with negotiations. Some of the first tasks are to conduct an ecological, cultural, archaeological, and mineral resource inventory for the area of interest and to begin work on establishing the proposed park boundary based on the gathered information.

As well, the recent work towards an Interim Land Withdrawal (ILW) through the Akaitcho main table process involved community meetings with elders and community members, who clearly identified the upper Thelon as an area they wished to have withdrawn from further development. However, each community was restricted to "choose" a certain quota (km<sup>2</sup>) for withdrawal. Areas already staked, claimed, or with existing third party interests were eligible for inclusion in the quota, but communities would be doing so on the assumption that those claims would lapse within the 5-year withdrawal period. Since there was certainly no guarantees for this, communities overwhelmingly chose not to "use up" their quota on areas with existing interests and to instead focus on withdrawing areas not yet claimed. This is important to note, because by looking at the map of the ILW area one might assume that people were not interested in protecting the project area. This would be a false assumption – instead, because it was already staked, this area was effectively made unavailable for withdrawal at this time.

The upper Thelon basin has distinctive and unique environmental, cultural, and heritage values which would be at significant risk should the proposed Ur-Energy project proceed. The integrity of those values would be threatened, and this would negatively impact on the ability to include the upper Thelon in a conservation zone because the undisturbed qualities of the area would no longer be there.

In terms of environmental significance, the Thelon is world-renowned as a unique and pristine ecosystem. It is a boreal forest “oasis” in the middle of the tundra and north of the treeline, a place where hundreds of mammals and birds congregate and pass through at certain times of the year in their great migration movements, including the Beverly caribou herd. It is also a year-round home for numerous species, many of which are at risk or of special conservation interest because of their low population densities and large home ranges. Species which occur in the project area include tundra wolves, black and grizzly bears, wolverines, lynx, muskox, moose, Arctic and red foxes, Arctic hares, other small mammals, gyrfalcons and other raptors, numerous songbirds, geese and ducks, etc. Many of these are animals whose habitat has been severely impacted on other parts of their range by development activities and other human disturbances. The extensive esker systems in the Thelon basin also provide major essential denning habitat for wolves and other animals.

It is important to note that, although use of the Thelon area for harvesting purposes is not as intensive as it was in the past, it remains recognized in the minds and hearts of Dene people as a “birthplace” that is not to be disturbed. It is a place where people can hunt for caribou and muskox and waterfowl, where they can trap for foxes and wolverines, where they can fish in pristine waters, where they can pick berries and medicinal plants, and where they can camp along the routes of their ancestors. In regards to caribou harvesting, the Beverly herd overwinters near the Lutsel K'e area, and hunters often harvest this herd to the east of the community. Our community-based monitoring surveys have clearly shown differences in hunters' perspectives on the overall health and condition of Bathurst vs. Beverly caribou. Bathurst animals are in much poorer condition, their migration routes and timing of movements are changing so that traditional crossing places where Dene people went to intercept them during their for hundreds of years are no longer reliable, and their population numbers are dropping extremely quickly due to low calf survival and low pregnancy rates among cows. This has been deemed by community hunters and elders as primarily due to numerous disturbances along the Bathurst range (particularly mining and exploration developments, roads, aircraft disturbance, and noise associated with those activities). In contrast, Beverly animals are seen to be in very healthy body condition, which is making them more important for subsistence harvesting purposes, although there have not been any extensive population or health surveys on this herd by the GNWT and not many are collared. Any impacts or disturbances on the Beverly herd in any part of their

range which changes their health, movement patterns, etc. will negatively impact on the exercise of Aboriginal and Treaty rights (namely, subsistence harvesting rights) of the LKDFN.

In terms of cultural significance, although there do not appear to be any specific “spiritual sites”, the entire Thelon basin is regarded by the Dene people as “the place where God began”. There is also extensive European history in the Thelon, and numerous written accounts of explorers in the area clearly document the special connection and relationship between the Inuit and Dene people and the Thelon area (Samuel Hearne, JB Tyrrell, George Back, Warburton Pike, David Hanbury, John Hornby, Helge Ingstad, et al.). There are also more recent books and articles by authors such as David Pelly (his *Thelon: A Wildlife Sanctuary* was added to the public registry for EA0506-003 as additional information), James Raffan, and white trappers such as Gus D’Aoust. The concentration of wildlife species in the southern portion of the Thelon clearly influenced human use of the area, as shown by the abundance of archaeological sites. People tended to congregate in the southern portion of the Thelon to access the primary caribou migration route through the area, as well as the myriad of other wildlife species which were plentiful there. There is a long history of Dene trapping in the area for white fox and other species, and many documented traplines, trails, and cabins. Much information on past and recent land use of the Thelon area by Dene peoples has been documented, in the *Dene Mapping Project* and local community projects on Chipewyan place names and traditional land use mapping. This information will be presented at the public hearing in January, in large wall map format.

In terms of heritage/archaeological significance, there are numerous archaeological and historical sites within the Thelon, with new ones being discovered every year by tourism operators and river travelers. Tom Faess, owner/operator of Great Canadian Wilderness Holdings’ camp at Whitefish Lake, has shown us pictures of new archaeological sites he and his guides only recently discovered, despite being in the area and probably walking past the sites dozens of times over the years. The documentation of archaeological sites in the NWT is clearly incomplete, and at the Drybones Bay environmental assessments in 2004 the Prince of Wales Northern Heritage Centre is on the public record as stating that less than 1% of the archaeological sites in the NWT are actually documented and in their database. Dr. Bryan Gordon did an extensive archaeological survey, published as “*The People of Sunlight, The People of Starlight*” in 1996 but much remains to be discovered and documented.

As well, it is important to note that there are definitely information gaps for the Thelon, particularly in regards to burial sites. Some reasons for this include the reluctance of Dene people to share this information with outside researchers, the loss of collective memory caused by the numerous deaths in the flu epidemic of 1928 (some estimates state that up to 15% of the NWT Treaty 8 Dene passed away), and the legacy of negative relationships between government and First

Nations people in relation to the establishment of the Thelon Game Sanctuary and the prohibition of the practice of Aboriginal & Treaty rights. This is very important – Trevor Teed’s work for the NWT Treaty 8 Mapping Project in 2000-2002 (*“This Land is Really the Land of Drygeese”*, October 2002) clearly states that during the time when the Nunavut boundary was being negotiated, *“the Dene/Metis Negotiations Secretariat noticed no land use in the Thelon Game Sanctuary had ever been recorded. Yellowknife B Band and Lutsel K’e elders were contacted and asked if they ever used those areas. They responded positively and each community declared they never mentioned land use in that area for fear of prosecution”* (p.12). The same document also identifies this as a major flaw in the Dene Mapping Project in the early 1980’s, that *“all land use of each of the Akaitcho Territory participants stopped at the Thelon Game Sanctuary. Dene elders were reluctant to provide any information of that area because they feared legal prosecution (this was learned long after completion of the project)”* (pp. 7-8). There are also likely many traditional villages, camp sites, etc. that were never recorded due to the loss of many people who would have remembered the sites. Pierre Catholique, a Lutsel K’e elder still living today, is quoted in the same document as saying that *“all possessions of a deceased person, including his home, were burned immediately following death. Such activity ensured no souls were trapped and all would be well. This may have been practiced until the 1960’s. Another consideration was many houses were burned during the 1928 flu epidemic and during the sickness of the 1890’s.”* (p.53).

The Thelon area was not used as frequently from the 1970’s to present day, except for some like recently deceased elder Noel Drybones who traveled in the Thelon area his entire life, and the Michel family who lived at Whitefish Lake for many years. However, the decreased use of the area in recent times has not diminished its importance and people’s desire to ensure it remains protected. The entire Thelon area remains a special place even for the youth who have not yet traveled there, as a place to connect with their cultural heritage and history. The Thelon basin is known around the world as a prime wilderness tourism destination, for its pristine untouched nature and uniqueness.

The physical, emotional, cultural and spiritual connection between Aboriginal people and the land cannot be underestimated. The recent Ontario Supreme Court of Justice ruling on *Platinex vs. Kitchenuhmaykoosib Inninuwug (KI) First Nation* is extremely relevant to the proposed Ur-Energy development. The KI First Nation is in a similar situation to the LKDFN, in the midst of Treaty Land Entitlement negotiations and with exploration and resource development proceeding in their traditional territory despite their clear objections. We will be bringing forth numerous aspects of this case and others in our intervention at the public hearings. However, for the purposes of this IR response, we are including the following relevant quotes from the ruling:

[78] KI's primary concern is that development and exploration on land that is potentially within the scope of its land claim may have a negative results and cause irreparable harm.

[79] Irreparable harm may be caused to KI not only because it may lose a valuable tract of land in the resolution of its TLE Claim, but also, and more importantly, because it may lose land that is important from a cultural and spiritual perspective. No award of damages could possibly compensate KI for this loss.

[80] It is critical to consider the nature of the potential loss from an Aboriginal perspective. From that perspective, the relationship that Aboriginal peoples have with the land cannot be understated. The land is the very essence of their being. It is their very heart and soul. No amount of money can compensate for its loss. Aboriginal identity, spirituality, laws, traditions, culture, and rights are connected to and arise from this relationship to the land. This is a perspective that is foreign to and often difficult to understand from a non-Aboriginal viewpoint.

[87] In applying the principle of the honour of the Crown to the facts in *Haida Nation*, McLachlin C.J. held that:

The Crown, acting honourably, cannot cavalierly run roughshod over Aboriginal interests where claims affecting these interests are being seriously pursued in the process of treaty negotiation and proof. It must respect these potential, but yet unproven, interests. ... *To unilaterally exploit a claimed resource during the process of proving and resolving the Aboriginal claim to that resource, may be to deprive the Aboriginal claimants of some or all of the benefit of the resource. That is not honourable.*[\[17\]](#)

[88] McLachlin C.J. then went on to explain what triggers the Crown's duty to consult:

The foundation of the duty in the Crown's honour and the goal of reconciliation suggest that *the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.*[\[18\]](#)

[89] The objective of the consultation process is to foster negotiated settlements and avoid litigation. For this process to have any real meaning it must occur before any activity begins and not afterwards or at a stage where it is rendered meaningless.

[106] On the other hand, it is conceivable that, if exploration continues, KI's TLE Claim may be adversely affected and the development will negatively impact the social and spiritual heart of the community.

In conclusion, the proposed development is in an area that is a prime candidate for a conservation area because of its unique ecological characteristics and the fact that it provides essential habitat for numerous wildlife species; that is within lands claimed by the Akaitcho Dene First Nations as their traditional territory and subject to ongoing Treaty Land Entitlement negotiations with the Crown; that is vitally important to the culture, history, and spirituality of the Dene people; and that has been clearly identified by the LKDFN as an area they wish to keep off limits to resource development of any kind. The proposed project is extremely likely to cause significant adverse impacts on these environmental, cultural, spiritual, and heritage values. Mitigation measures imposed as conditions of the land use permit would not be sufficient to prevent these adverse impacts from occurring.

We look forward to presenting additional information in January, and feel free to contact me if you have any additional questions.

Sincerely,

Monica Krieger  
Manager  
LKDFN Wildlife, Lands & Environment Department