



**Mackenzie Valley Land and Water Board**

7th Floor - 4910 50th Avenue • P.O. Box 2130  
YELLOWKNIFE, NT X1A 2P6  
Phone (867) 669-0506 • FAX (867) 873-6610

April 24, 2007

File: MV2003F0028

Mr. Alan Taylor  
COO and VP Exploration  
Canadian Zinc Corporation  
Suite 1760-650 West Georgia Street  
VANCOUVER BC V6B 4N9

Fax (604) 688-2001

Dear Mr. Taylor:

**RE: Reasons for Decision**

The Mackenzie Valley Land and Water Board (the Board) issued Land Use Permit MV2003F0028 on April 11, 2007. The Board indicated at that time that separate Reasons for Decision would be issued and they are enclosed with this letter.

If you have any questions please contact Peter Lennie-Misgeld, Senior Regulatory Officer at 669-0506 or email [peter@mvlwb.com](mailto:peter@mvlwb.com).

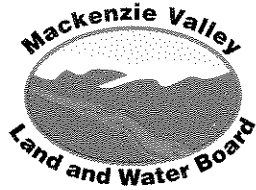
Yours sincerely,

A handwritten signature in cursive script that reads "Wanda Anderson".

Wanda Anderson  
Acting Executive Director

Attachments

Copied to: Distribution List



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**IN THE MATTER OF:**

**An Application by Canadian Zinc Corporation  
for Land Use Permit MV2003F0028 for the  
Operation, Maintenance and Use of a Winter  
Road from the Canadian Zinc Corporation  
Prairie Creek Mine Site to the Liard Highway.**

## **REASONS FOR DECISION OF THE MACKENZIE VALLEY LAND AND WATER BOARD**

### **Background:**

On June 15, 2003, Canadian Zinc Corporation ('the Applicant') applied to the Mackenzie Valley Land and Water Board (MVLWB or the Board) for a five year land use permit (MV2003F0028) pursuant to the *Mackenzie Valley Land Use Regulations* (MVLUR) for a winter road to connect its Prairie Creek Mine Site (the Mine) with the Liard Highway near Lindberg's Landing, just east of the Blackstone River in the Northwest Territories. The application indicated that repair of the all weather portion of the existing alignment would take place between August and September 2003 and that use of the winter road would thereafter take place between December 15<sup>th</sup> and March 31<sup>st</sup> of each year.

The letter of application indicated that in the Applicant's view, the application was exempt from environmental impact assessment under Part 5 of the *Mackenzie Valley Resource Management Act* (MVRMA) because of Section 157.1 of the MVRMA and the decision of the Northwest Territories Court of Appeal in *North American Tungsten v. Mackenzie Valley Land and Water Board*.<sup>1</sup> The Applicant set out its views on the legal issues in a letter dated September 23, 2003.<sup>2</sup>

The Board decided to seek input on the environmental assessment exemption question from interested parties by way of a hearing called pursuant to Section 24 of the MVRMA.

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<sup>1</sup> 2003, NWTCA 5.

<sup>2</sup> Letter from David H. Searle, C.M., Q.C. to Mr. John F. Kearney, of Canadian Zinc Corporation dated September 23, 2003.

Submissions from interested parties were received December 12, 2003. The following parties participated:

- Dehcho First Nations;
- Parks Canada Agency;
- Liidlii Kue First Nation;
- Department of Fisheries and Oceans; and
- Canadian Parks and Wilderness Society (NWT Chapter).

No submission was received from the Department of Indian Affairs and Northern Development (DIAND). Consequently, in early February, the Board corresponded with that department seeking their assistance. On March 15, 2004, DIAND submitted a letter which took no position on the legal issues but which clarified some of the facts relied upon by various parties.

On April 15, 2004 the Board met to consider the submissions from the written hearing as well as DIAND's clarification. The Board determined that the winter road application was subject to Part 5 of the MVRMA and that the exemption provided by Section 157.1 of the MVRMA did not apply to land use permit application MV2003F0028. Reasons for that decision were issued at the time.

On June 30, 2004 the Applicant filed an application for judicial review challenging the Board's decision that Land Use Permit MV2003F0028 was subject to Part 5 of the MVRMA and not exempt from preliminary screening. The judicial review was heard in Northwest Territories Supreme Court on December 6, 2004. Reasons for Judgement were released by the Honorable Justice V. A. Schuler on May 6, 2005. The application for judicial review was granted and the Court quashed the Board's decision to apply Part 5 of the MVRMA to the land use application.

On June 3, 2005 Chief Eric Betsaka of the Nahanni Butte Dene Band (NBDB) advised the Board that the issuance of a Land Use Permit based upon application MV2003F0028 would result in a serious infringement of the aboriginal and treaty rights of the NBDB which are protected by section 35 of the *Constitution Act, 1982*.

The Board made DIAND aware of these issues in a letter dated June 23, 2005. In response, DIAND stated they would begin an investigation of the alleged infringements and that this would take some time to complete. The Board then halted the permitting process so that DIAND could provide advice on the outcome of their consultation efforts.

The Board determined that it could not proceed with the application until DIAND had completed its consultation investigations. However, based on the comments the Board had received at that time, draft Land Use Permit terms and conditions were prepared and sent out to interested parties on June 27, 2005 for review with an extension granted to August 5, 2005.

The Board received comments on the draft permit from the following parties;

- Dehcho First Nations;
- Parks Canada Agency;
- Liidlil Kue First Nation;
- Department of Fisheries and Oceans;
- Canadian Parks and Wilderness Society (NWT Chapter);
- Department of Indian and Northern Affairs (DIAND);
- Government of the Northwest Territories (GNWT);
- Dene Nation;
- Environment Canada; and
- Nahanni Butte Dene Band (NBDB).

On August 3, 2005 Chief Eric Betsaka submitted further comments which reinforced his assertion that the issuance of Land Use Permit MV2003F0028 would result in a serious infringement of NBDB's aboriginal and treaty rights. The NBDB also requested that the Board stop the process for solicitation of Land Use Permit terms and conditions until the NBDB had been consulted by the Crown and their interests accommodated.

On February 14, 2007 the Board received DIAND's consultation report regarding the application for the winter road. The letter of transmittal states that DIAND is of the view that the Crown consultation conducted is adequate in the circumstances and that the process of consultation and accommodation with the NBDB will be an ongoing process. The Board reviewed DIAND's consultation report and determined that in combination with the other information on the public registry it had the necessary information to make a decision on the Land Use Permit application.

The DIAND report highlighted the following concerns expressed by NBDB:

- Increased access into the area and increased hunting pressure;
- Area is ecologically sensitive and important for wildlife and community traditional land use;
- Construction and rehabilitation required to use the road will result in detrimental impacts to wildlife, land, waters and traditional land use and occupancy;
- Compensation for trappers;
- Cyanide removal; and
- Development of terms and conditions should be through a process of consultation and accommodation.

DIAND recommended that the MVLWB impose strict LUP conditions on this project and highlighted the fact that the lower portion of the road is an area of intensive traditional use and occupancy. DIAND also recommended that conditions be included for the protection of wildlife habitat in the area, especially moose and fur-bearers.

DIAND stated that the NBDB is very concerned about increased access into the area via the winter road corridor. Restriction of road access could be an effective measure to minimize impacts to wildlife and to the NBDB that might result from increased access to the area. However, the Board does not have the authority to restrict road access under Land Use Permit terms and conditions as outlined under the MVLUR and consequently has not included such conditions in the Land Use Permit. The Board notes that the Applicant has committed to implementing a manned check-point on the road at a location satisfactory to both the NBDB and the Applicant to monitor winter road access. The Board expects the Applicant to implement this commitment.

The GNWT submitted comments regarding Land Use Permit terms and conditions but provided no specific information to assist the Board in setting conditions for the protection of wildlife habitat. On February 28, 2007 the Board met to review the application, the DIAND consultation report as well as reviewer comments and recommendations for Land Use Permit conditions. At that time, the Board requested additional information from both the Applicant and the Government of the Northwest Territories. More specifically, the Board requested that the GNWT provide the following information:

- Could a 'no-hunting' corridor be established for the winter road? If so, what would be the process and timeframe to establish such a corridor?
- What other strategies could the GNWT employ to mitigate potential impacts to wildlife along the winter road?
- Does the GNWT have any specific recommendations regarding protection of wildlife habitat that could be relevant in setting Land Use Permit Conditions?

The GNWT responded to the Board's request on March 21, 2007. The letter submitted by the GNWT stated that the process for establishment of a 'no-hunting' zone is a complex and intensive process that could take months or years and that depending on the issues raised during consultations, still might not result in the creation of a 'no-hunting' corridor or special management area. While the Board believes that the creation of a special management area would address some of the concerns expressed by the NBDB, the timeline proposed to work through a process to establish a special management area along the road is too lengthy. Further delay in the issuance of this Land Use Permit to complete this work is not in the Board's view warranted. The Board strongly encourages the GNWT to work with the Applicant, DIAND and the NBDB to investigate options on how a special management area or 'no-hunting' corridor could be established along the winter road. Such a corridor could be implemented independent of the land use permitting process at a later date.

The GNWT provided further recommendations regarding implementation of a controlled road use plan, controlling access to the road and maintaining a record of all wildlife sightings along the road. The Land Use Permit conditions include a requirement for a Controlled Road Use Plan.

The GNWT highlights that winter road activities could disturb wildlife, specifically Dall sheep and Mountain caribou and that a reconnaissance of the area should be conducted before commencement of road operations. The GNWT also requests that the Applicant conduct wildlife baseline studies in the winter road corridor. These requests fall outside the scope of conditions that can be included in a Land Use Permit, but the Board encourages the Applicant and the GNWT to work together to ensure that wildlife issues are adequately addressed.

The Board notes the lack of specific wildlife habitat information that is currently available and due to this lack of information is unable to set specific terms and conditions for protection of specific wildlife habitats. However, the Board understands the importance of wildlife habitat protection in relation to this development and has required that the Applicant provide a Controlled Road Use Plan which will outline the methods and techniques to be used during operation of the road to minimize impacts to wildlife and wildlife habitat.

To further address potential impacts to wildlife, the Board has also included conditions in the Land Use Permit specifying that damage to wildlife and fisheries habitat should be minimized, water intakes should be screened to prevent entrainment of fish, activities should be minimized when Species and Risk are encountered and wildlife should not be harassed.

As a regulatory authority that is responsible for issuing Land Use Permits and Water Licenses, the Board does not have a role in determining compensation for trappers. The Board hopes that the Applicant and NBDB can work together to ensure that impacts to trappers are minimal and that any compensation claims are addressed in good faith. The Board has required the Applicant to give notice to the NBDB before it initiates construction or operation of the road so that the Band can notify trappers in the community of the activity.

The Board understands that the NBDB and other reviewers are concerned about Cyanide removal from the Prairie Creek mine site. To ensure that any Cyanide removal is conducted in a manner that is protective of the environment, the Board has included a Land Use Permit condition that requires the Applicant to submit an emergency and spill response plan to the Board for the removal of any hazardous materials from the Prairie Creek mine site. No removal of hazardous materials shall occur until the plan is approved by the Board.

On March 1, 2007 the Board also requested the Applicant to submit the following information:

- A detailed description of all work required to rehabilitate and construct the winter road in order to make the road operational, including but not limited to:
  - Methods to be utilized for construction and rehabilitation of the road, including specific areas where wash-outs or erosion has occurred and associated engineering design documents;

- Methods to be utilized for culvert upgrades and construction; including associated engineering design documents;
- Locations and aerial extent of all staging and lay-down areas to be used;
- Descriptions and locations of any quarry sites or other associated land use activities that may be required to assist in road rehabilitation.

The Applicant submitted the requested information to the Board on March 8, 2007. In the Board's view, the information submitted by the Applicant was helpful to clarify the scope of operations for the rehabilitation, construction and operation of the winter road. To ensure that Developer commitments are implemented, the Board has included a Land Use Permit condition stating that the Applicant shall adhere to all Developer and engineering commitments for rehabilitation, construction and operation of the winter road. Inclusion of this Land Use Permit condition gives assurance to the Board that winter road operations will adhere to applicable environmental and engineering standards.

It is the Board's expectation that appropriate Crown authorities will continue their efforts to address those recommendations in the DIAND report of consultation that fall outside of the Boards authority under the MVLURs. This ongoing effort should be of assistance in order to accommodate the NBDB's concerns.

**Conclusion:**

After considering all the information and submissions made, the Board has decided to issue a Land Use Permit to Canadian Zinc Corporation for a period of five (5) years.

**SIGNED on behalf of the Mackenzie Valley Land and Water Board**



**April 20, 2007**

**Willard Hagen  
Interim Chair**