Yellowknives Dene First Nation
Land and Environment

2010 TNR Environmental Assessment

From Yellowknives Dene First Nation
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November 17th, 2010

Yellowknives Dene First Nation

P.O. Box 2514, Yellowknife, NT X1A 2P8

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Nicole Spencer
Mackenzie Valley Environmental Impact Review Board
Yellowknife, NT
X1A 2R3
Fax: (867) 766-7074

Dear Ms. Spencer:

RE: YKDFN Presentation for the TNR Environmental Assessment Hearing

Please accept the attached as the Yellowknives Dene First Nation's submission for presentation at TNR Gold/International Lithium's Environmental Assessment hearing.

Given the short period of time made available to us at this hearing I would like to point out that there are a number of issues of concern within our submission that will not be raised at the hearing itself. We hope the Board understands that we have been forced to prioritize what issues we raise at the hearing and that therefore our written submission should be considered the more complete. The rapid pace of the EA, and the lack of resources made available to the YKDFN, have placed real constraints on our ability to prepare this submission.

We would like to thank the Review Board for the opportunity to participate. If there are any additional questions or concerns, please don't hesitate to contact us at (867) 766-3496.

Sincerely,

Randy Freeman
Director, Land Management
Yellowknives Dene First Nation
P.O. Box 2514
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Part 1: Historical and Current Landuse

My name is Randy Freeman and I am the Director of Land and Environment. I've lived in Yellowknife for the past twenty five years, was employed by the GNWT for the first sixteen of those and for the nine years prior to accepting the position with the YKDFN I worked as a consultant. My background is in archaeology, toponymy, history, and traditional knowledge studies. Over the years I've worked extensively with NWT First Nations on a variety of projects including one very relevant to this hearing, a 2003 archaeological and traditional knowledge research study for the Drybones Bay area.

I'm here today to impress upon this Board the historical and cultural importance of the north shore of Great Slave Lake and the East Arm and why TNR/International Lithium's proposed exploration work has raised considerable concerns among both Yellowknives Dene Elders and those who continue to use the land in both a traditional and modern context.

Many of these concerns arise from a traditional pattern of land use followed by the Yellowknives Dene for thousands of years. It's possible to see evidence of this traditional pattern of life in every bay from Trout Rock to the west to beyond Narrow Islands to the east. These bays were not only where travelers found shelter but it's where they built their communities, where they fished, hunted, and trapped; it's where they raised their families and buried their dead. It was in and around these villages where fish were netted and dried, a durable food supply that enabled travel on innumerable trails north to hunt caribou.

When the first fur traders established their trading post in the late 1780s not far from here the traditional pattern of life for the Yellowknives Dene began to change, they adopted a trapping-based economy which tended to entrench and stabilize these villages scattered along the north shore.

We have evidence of hundreds of years of intense activity along this shore and along the numerous trails that led inland to the fishing lakes, the trap lines and the hunting areas. Everywhere you go you will find archaeological sites reflecting this traditional land use and I think, more importantly, you will find the graves of those who died.

1.1 Preliminary Cultural Background & Traditional Knowledge Findings

On November 3rd I was able to bring together a number of Yellowknives Dene Elders to discuss TNR/International Lithium's proposed work. Concerns were raised about the proximity of this activity to a traditional village near the southwest end of Narrow Islands. The people who lived at this village used the entire area and in particular the coastal regions and inland lakes in the area between Narrow Island and Francois River. Their descendents still use it today.

As you can see from the map, there are traditional trails that not only follow the shore line but also go through the TNR property. The likelihood of finding archaeological sites in this area is, in my opinion, very high.

Our most elderly Elder also raised a concern about the burial sites for the victims of the 1928 influenza epidemic that may be in this area. I've studied this particular epidemic extensively, in a contract with the GNWT's Department of Health and Social Services, and can, without fear of contradiction, state that this was the most devastating single event in the history of the Yellowknives Dene. Estimates vary from a third to seventy or even eighty percent of the Yellowknives Dene died in this epidemic. Entire families, entire communities were wiped out as the influenza spread. The dead are buried around these villages, along the shore and along the trails. We have no idea how many died or even where all their graves are. I believe there is potential for graves on the TNR property.

This is a concern from the Elders who lost family members. They do not want to see these graves disturbed nor do they want to see traditional and current camps, hunting areas, trapping areas, or fishing places disturbed or damaged.

Part 2: Archaeology and Heritage Resources

It's encouraging to see, posted November 10th on the Mackenzie Valley Review Board web site, commitments by TNR to bring Elders from affected communities, along with an archaeologist, to their property to look for unrecorded archaeological and heritage sites. It's a step towards what we wanted in the first place but we would like to see a stronger commitment.

> (1) Our concerns is that this is an empty commitment given that there is no instrument to enforce it. This is a promise that is based on the company's good word and unfortunately, the mining industry has a long history of broken promises. The YKDFN have long experience with hearing promises made so that a permit can be issued then seeing companies not following through once the permit is issues. This is one of the reasons that the Exploration Agreement was developed – a signed contract with clear terms and obligations that is signed by both parties and is a much easier enforced mechanism.

2.1 Archaeology Study Design

Our concerns are also with the way in which archaeological studies, at least those controlled by resource companies, are undertaken in the Northwest Territories. We have concerns:

(1) that the commitment is too general, that in the end only proposed drill sites will be examined. We would like to see a much wider area examined by an archaeologist, by Elders, by hunters and trappers who use the area and by a representative of the YKDFN's Land and Environment. The area of study needs to be defined not just by the current proposed activities but must also include areas where activities other than drilling will take place and also where future activities within the TNR's claim block may occur.

(2) that the decision on which archaeological consulting firm is hired to do the work rests solely with TNR. We're concerned this may result in sub-standard archaeological work on the property. The consulting firm and the archaeologist hired must first be mutually agreed upon by all parties and they must have proven experience with both the type of terrain found on the north side of Great Slave Lake and with the variety of types of archaeological sites that may be encountered.

(3) that any report produced by TNR and/or an archaeologist hired by TNR for this study be co-authored by YKDFN's Land and Environment. Our concern is that any study done for this area be as complete and thorough as is possible under the circumstances and that the report, because it contains confidential First Nations information, receive limited and restricted circulation.

2.2 Instruments to Enforce Commitments

Starting with the consultation associated with the 2008 City of Yellowknife River Lake (MV2008Q0032) Quarry application, YKDFN have raised concerns that the accommodations and mitigation measures are, by and large, unenforceable. These concerns have gone without response until a recent consultation regarding a different permit, where the Crown confirmed that these promises are dependant entirely on the company's good behaviour.

Until such time that there is an instrument in place, other than costly litigation, to enforce or guarantee these commitments, the Yellowknives Dene feel that they should be seen in their true light – promises made late in the process by a company that has steadfastly refused to engage in good faith.

Part 3: The Board Must Ensure that Consultation Occurs

The Yellowknives Dene want to be clear to the Board, the Company, and the Crown that consultation has not occurred.

3.1 Chronology of Events

Stage 1: Introductions

- In May, 2009 Steve Ellis contacted TNR Gold after reading, in News North, of their acquisition of several leases. Attached were the Mineral Exploration Guidelines in the Akaitcho Territory.
- In August 2009, Gary Schelenberg, President of TNR Gold replied indicating their desire to *"building a strong mutually beneficial relationship"* and that *"a comprehensive exploration plan for summer 2010 will be presented for your approval and comment prior to applying for a land use permit"*. Following this *"Once our program has been designed I will be happy to meet with you and interested members of your community to discuss our activities in your area"*
- No contact for the next 8 months. On April 7th the company applied for a land use permit. Mr. Segboer wrote on the cover letter *"When we spoke in early April you indicated that TNR should consult with potentially affected aboriginal groups and First Nations. TNR Gold Corp has consulted with potentially affected aboriginal groups."* It goes on to state that *"TNR Gold Corp has communicated with potentially affected stakeholders, appended is a summary of communication to date."*

Not only did the permit application come as a surprise given the statements from the company president in 2009, but the assertion that they had consulted with the potentially affected aboriginal groups was, well, a rather shocking conclusion since they had not contacted either the IMA office or the YKDFN prior to the submission of the application. It is not clear to YKDFN just what the company was saying at this point, who they consulted with, or how they could possibly justify this statement.

- On April 14th 2010, TNR Gold notified the IMA Office that they are intending to apply for a MVLWB permit. This letter of notification does not indicate any desire or willingness to meet with the affected parties.
- After reviewing the initial information, on April 21st, the YKDFN indicate to the IMA office that the potential impacts associated with the program can be best accommodated through an Exploration Agreement. This is the preferred tool for consultation and accommodation.

Stage 2: The Exploration Agreement and Interaction with TNR

- As the Moose 2 claim lies in an overlap area but each community wanted to have their own Exploration Agreement, the decision was made to allow Steve Ellis at the IMA office act as a single point of contact for advancing the Exploration Agreement. This was done to simplify a potentially overwhelming situation, while the substance of the agreements is much the same and the First Nations agree to streamline the implementation.
- On April 28th, 2010 the IMA office emailed Corey Segboer at Aurora Geosciences, who are the local company acting on behalf of TNR Gold. Steve Ellis presents two scenarios for the company – if they wish to pursue the ExA and if they are not willing to entertain it. It was clear that Steve Ellis was acting only for the purposes of the exploration agreement. If the company chooses a different route *"it will require the company to engage independently*

with each of the Akaitcho Dene First Nations, meaning that at the very least three separate engagements within the First Nation communities themselves".

- On May 18th, the Company replies, indicating that they wish to meet with the communities to present their program. This was premature, as the types of meetings are dictated by if they have entered into an agreement where accommodations exist or if the meeting(s) are for the purposed of consultation and potential accommodation.
- On June 2nd, 2010, the Company and Steve Ellis held a meeting where they discuss the Exploration Agreement. The next day Mr. Ellis follows up with an email making it clear to the company that if they do not wish to pursue the exploration agreement they are still expected to engage in consultation with each community as there has not been meaningful consultation up to that point. Included in this email is another reminder that, should the company choose to pursue an alternate route, they must be prepared to engage with the communities and address the initial concerns that form the substance of the ExA, which are concerns and accommodation measures that the community has with *every* exploration project.
- On June 9th (not June 7th as indicated in the registry) the company contacts the YKDFN to ask if there are concerns with the project as well as solicit information on heritage resources. YKDFN reply that it is difficult to evaluate the request for heritage information until additional data is provided (not received until June 14th, 2010). However, general information on the available data and its limitations was provided.

  Asking if there were concerns with the project was still premature as the types and nature of any meetings or consultation varies based on whether the mitigations and commitments provided by the exploration agreement is in place. Lastly, there is clarification provided that the raising of concerns must come directly from YKDFN leadership, not from staff.

Stage 3: Rejection of the Exploration Agreement

- On June 15th, 2010 the company rejects the exploration Agreement. They note that they will make themselves available for community presentations and meetings – but this is empty as the proposal was already submitted. This is contrary to the principles set forth in *Haida Nation and Huu-Ay-Aht First Nation* as the consultation cannot be meaningful if the proposal is already fully developed, submitted and is subject to permitting. The consultation must occur before any infringement occurs.
- It is at this point that the company or the Crown should be coming to the First Nation to engage in an alternative consultation process. Instead, that same day, the company submits their application for a land use permit to the MVLWB, which is somehow accepted as complete.

  To be clear, the company did not engage in any consultation scheme following their rejection of the exploration agreement, despite the clear and unfulfilled duty. Alternatively, the Crown did not engage in any process either.

- On June 22nd, the company advised that they would be following up directly with the First Nations. YKDFN did not hear from the proponent until October 12th, which we would suggest is influenced not by their desire to engage and commence consultation, but rather by the scheduling of this hearing which was originally supposed to occur October 22nd, 2010.

3.2 Ignored Guidelines and Rejected Advice

Advice was given throughout the process on the mechanisms available to the company in terms of proceeding with the engagement and consultation of communities. The response from the First Nations and the IMA office was rapid and timely, providing clear direction and expectations. All options were placed before the company – there can be no impression of sharp dealing. The company was provided with the Public Engagement Guidelines from the MVLWB as well as Guidelines for Mineral Exploration Guidelines in Akaitcho Territory. Meanwhile, the company accepted this information, and in the end either ignored or rejected it. This company has clearly and wilfully not engaged in good faith with the First Nations.

In the almost identical *North Arrow* case, where the company ignored the guidelines on engagement, the Federal Court of Canada noted:

> *"It is only the guidelines which give specifics on consultation and even those were not followed. It is not sufficient, even if it occurred in this case, to have a process, framework or some other system to facilitate negotiations. It is still necessary to evaluate the actual implementation and processes specific to the case. It is not sufficient to set up some form of elaborate system and then put it on auto-pilot and hope for success"*

Consider, at the end of the day, the company did not meet any of the communities in the Land and Water Board screening. They did not address any of the initial concerns that form the substance of the Exploration Agreement – in the June 15th letter TNR commits to only providing what information is required by INAC, they will not undertake any additional heritage resources work, and their idea of monitoring is being open to inspection to INAC inspectors and a single site visit from one member of the three Akaitcho Communities. Even at this late date, despite repeated mentions, the company does not understand that they are dealing with three different and independent Nations, not one regional group. That the company will not commit to even providing adequate information to the First Nation should be telling of how they approached the process and viewed the concerns of the YKDFN. There can be no mistake that, at no time did the company dispense with the obligations of consultation and accommodation either through an Exploration Agreement or direct engagement with the Yellowknives Dene First Nation – because neither happened.

However, the duty to consult and accommodate does not fall on the company, it is the Crown's. In the YKDFN letter to the MVLWB of July 9th, the YKDFN's assertion that the duty to consult was not dispensed with was raised for both the Board's and the INAC's consideration. On September 17th, 2010 another letter was sent to the Crown, indicating the YKDFN's position that the consultation duty remained outstanding – nor would the proposed EA structure meet that test. So, here we have the company who

did not accomplish the duty, INAC which has done nothing to meet the duty, and the MVLWB which referred the matter to Mackenzie Valley Environmental Impact Review Board who radically and unilaterally altered the structures that had been in place for all previous EAs, including analogous situations at Drybones Bay and in the Thelon. Considering these facts, there can be little doubt that the duty has not been met.

Prior to the *North Arrow case*, INAC's Consultation Support Unit had advised the YKDFN if they believed that their section 35 rights were at risk of being infringed, they only had to provide what was called "an assertion letter" to trigger a consultation process. During the legal proceedings, The Crown suggested that this hadn't actually occurred and took the position was that if First Nations really want to be consulted, they should ask for an Environmental Assessment. YKDFN have once again followed their guidance, only to receive no meaningful consultation – despite asking plainly. The Crown finally responded to the September letter on November 12th, 2010 indicating that these concerns were a matter for the Review Board.

Given that the Crown has not discharged their duty to consult and accommodate, it is important to review the *Mackenzie Valley Resource Management Act (MVRMA)* as we proceed through the Environmental Assessment portion of the regulatory regime. It is necessary to highlight passages from the *MVRMA* considering the critical importance of consultation.

The first passage to consider is section 62 of the *MVRMA:*

> **"62.** A board may not issue a licence, permit or authorization for the carrying out of a proposed development within the meaning of Part 5 unless the requirements of that Part have been complied with, and every licence, permit or authorization so issued shall include any conditions that are required to be included in it pursuant to a decision made under that Part."

So the Board may not issue a license, permit, or authorization for a proposed development until the requirements of Part 5 have been complied with, which brings us to the second set of passages to consider. The relevant Part 5 requirements focus on *s.114(c) and s. 115*:

> ***s.114 (c)*** - to ensure that the concerns of aboriginal people and the general public are taken into account in that process.
>
> ***s.115:***
>
> (a) the protection of the environment from the significant adverse impacts of proposed developments; and
> (b) the protection of the social, cultural and economic well-being of residents and communities in the Mackenzie Valley.
> (c) the importance of conservation to the well-being and way of life of the aboriginal peoples of Canada to whom section 35 of the *Constitution Act, 1982* applies and who use an area of the Mackenzie Valley.

If there has been no meaningful consultation, the concerns of aboriginal people cannot be adequately taken into account and there is considerable risk of significant impacts to the environment; the social, cultural and economic well-being and the *s. 35* rights of the Yellowknives Dene First Nation.

3.3 The Board's Constitutional Duty

This tribunal has generally steered clear of the consultation issue in recent years, but the recent Supreme Court decision in *Carrier Sekani* has made it plain that the Board must consider whether the duty has been met. The Court's decision notes that tribunals which have constitutional character arising from a link to *s.35* of the Constitution must consider this question, which the Review Board clearly does. The previous stance of the Board with respect to consultation is no longer valid. This begs the question - has consultation occurred? We clearly and without hesitation say that it has not. The community information session was just that – where the community could "find out more about the project from TNR" (Board staff). Consultation is a dialogue – a two way street where information is exchanged. This was simply another venue for the company to describe a project, which the YKDFN has previously raised concerns with – both in terms of process and impacts – at the Land and Water Board stage.

Case law has previously shown that the regulatory regime can form part of the consultation process, including previous EAs here in the NWT. It was found in the *Ka'a'Gee Tu First Nation vs. Canada* and other cases that the Environmental Assessment process did indeed form part of the engagement process. But those were much more significant processes than this environmental assessment, with traditional stages as outlined in section three of the Board's *Environmental Impact Assessment Guidelines*. For example, this EA has no Information Request stage where the Parties can request information, no Developer's Assessment Report where the applicant can modify the project based on concerns, and most importantly, insufficient time to develop information, consult with leadership and communities, and develop appropriate responses. The Board's unilateral abridging of the process invalidates their own *Guidelines for Incorporating Traditional Knowledge in Environmental Impact Assessment*. These Guidelines were developed with considerable effort and extensive consultation, while this new, unilaterally abridged process provides no subsequent guidance on how Parties are supposed to meaningfully gather or submit their information given the drastic changes.

The YKDFN contend that in the absence of critical stages of Environmental Assessment, which we argue represent the 'meat' of the process, then the Environmental Assessment process does not amount to consultation by any standard. As such, the Crown has manifestly failed to meet the minimum requirements of its duty either on its own initiative, via the actions of the proponent or through the regulatory permitting process. At a minimum, the legal standard for the Board's obligation is clear – they must make a determinations if consultation has occurred. To make decisions without ensuring that it has occurred would amount to exercising their duty on a constitutionally inconsistent and procedurally unfair foundation. To modify a question in the Carrier Sekani Case - How can the Tribunals established under the *MVRMA* consider the issuance of a Land Use Permit in breach of a constitutional duty, yet still ensure that the concerns of aboriginal people and the general public are being taken into account?

In *Carrier Sekani*, the Supreme Court spoke to the impact that the failure of the duty can have on the process. *"The Lack of consultation amounts to a constitutional vice that vitiates the tribunal's jurisdiction and in the case before us, makes it inconsistent with the public interest. In order to perform its duty, it must rectify the vice by itself engaging in the missing consultation"*. The court clarifies that this applies to Tribunals with the express or impliedly authorization to do so. We contend that *section 114 and 115(c) of the MVRMA* represents just such an express charge of responsibility and *section 123.1(b)* provides the mechanism to do so.

Recommendation:

We recommend that the Board recognize the breach of the Constitutional Duty and either undertake consultation efforts themselves or instruct the Crown to remedy this breach. The Land and Water Board erred when they accepted this permit as complete and the Crown ignored the YKDFN notice during that process that Consultation was incomplete. The Review Board is ideally suited, with recent guidance from two critical court cases, to identify this and take measures to remedy it. Once this has been completed, the Environmental Assessment Report can be completed. To do otherwise would ignore the Federal (*Ka'a'Gee Tu #2 para 66 & 67, North Arrow para 78)* and Supreme Court's guidance (*Carrier Sekani para 59 & 60)*, with the Board taking actions which would be contrary to the obligations and principles that the Tribunal is guided by. The Board's decisions are dependant on whether the Crown's duty to consult has been adequately discharged.

YKDFN would prefer that the Board utilize *s.123.1(b)* under the MVRMA to undertake independent evaluation if consultation has occurred, and when found incomplete, allow the Crown to undertake their duty. . This section allows notes the Review Board:

> ***s.123.1(b):*** "may carry out other consultations with any persons who use an area where the development might have an impact".

What process occurs during these consultations we leave to the discretion of the Board, but we request that no decision or determination in the form of an Environmental Assessment Report be prepared until the Consultative duty has been discharged. The 2010 Supreme Court *Conway* case suggests that this may be the most appropriate type of mechanism to achieve this: *"Specialized tribunals with both the expertise and authority to decide questions of law are in the best position to hear and decide constitutional questions related to their statutory mandates".*

Really, the YKDFN are left with no choice on this matter, as over the last two years, YKDFN has routinely followed INAC's advice on how to trigger consultations on *MVLWB* applications, to little response from the Crown. Indeed, despite notifying them of the Constitutional Breach several times on this file alone, save for the letter indicating that raising our concerns with them was misplaced; no one from INAC has contacted the YKDFN following the submission of the LUP application.

Part 4: A Fundamentally Unsound EA Process

The YKDFN do not dispute the ability of the Board to alter the process to meet the responsibility which they are charged with under the MVRMA. Indeed, this level of flexibility is usually a good thing, as it allows the process to be designed to meet the needs of each unique situation. However, this process has seen the removal of:

- Scoping session
- Development of Terms of Reference for a Developer's Assessment Report
- Submission of a Developer's Assessment Report by the company
- Information Requests
- Technical sessions

These significant and critical steps were unilaterally replaced with a poorly defined community information session. All of the tie-ins, policies and guidelines that have been developed over the Board's existence were similarly removed or at a minimum, made impotent. Never before has the MVEIRB abbreviated an EA to the degree to which it is doing with TNR Gold.

In exercising its discretion and flexibility, the MVEIRB cannot unilaterally establish the level of concern or impacts of a project. The YKDFN are concerned that these actions risk the creation of a process that effectively so predetermines the outcome, as the review scheme employed is so constrained that it no longer serves the public interest.

We wish the Board to fully understand the impossible position that they have placed the First Nation in. The YKDFN are required to present their concerns to an evidence based tribunal, yet have had little time or resources to gather and prepare that evidence.

4.1 Rendering Guidelines Impotent and Ineffective

On September 17th, 2010, the YKDFN filed two requests for ruling. The first centred on the timeline of the current process as it would not allow the First Nation to gather appropriate evidence for the Tribunal process. The Yellowknives Dene have captured very little of the traditional knowledge and history held by the Elders and Landusers. The state of available landuse data is little better, as there has been little in the way of resources to fulfill either of these objectives, meaning that the knowledge resides in the people.

Beyond engagement as obligated with the duty of Consultation, the developer has not met the responsibilities set out in the MVEIRB's *Guidelines for Incorporating Traditional Knowledge*. "Developers should still engage in discussions with appropriate aboriginal organizations and traditional knowledge holders to determine if there is relevant traditional knowledge available to be considered in its project design and for use in the EIA process". We believe that there is relevant Traditional Knowledge available, but this company or the First Nation has not had adequate time to gather it. The guidelines also note that the "the developer description shall include a record of traditional knowledge holder involvement in the project design, impact prediction and mitigation". There has been no attempt to document or include traditional knowledge, nor has the project design been altered from its initial proposal. YKDFN believe that these guidelines have been developed in a collaborative and cooperative manner between

many parties and should be recognized and respected, else they only represent empty statements and the effort and good intentions of those involved have resulted in nothing more than a misleading husk.

Recommendation: We recommend that the Board halt the EA process until the developer complies with the guidelines and provides documents that comply with the guidance previously made available to the company in the Review Board's publications.

4.2 Evidence Based Tribunal, but no Opportunity to Gather Evidence

The second request for Ruling focused on the 'tilted' field that the process created from an administrative principle. The Tribunal is established such to evaluate claims and adjudicate an adversarial, quasi-judicial process. This process must allow all Parties to meaningfully participate such that the process itself does not create a situation where the decisions affecting them are effected by the shape of the process. Procedural Fairness in this Environmental Assessment would have meant that the Yellowknives Dene would not just have had appropriate time and resources to gather evidence for their case, but that the steps within that Environmental Assessment would have conformed to the MVEIRB's previously established, publicly reviewed guidelines, especially for incorporating Traditional Knowledge. The fact that the Board can set out its own process and unilaterally alter the steps is undeniable, but the resulting EA must still provide an opportunity for the case to properly made. The experience in analogous EAs at Drybones Bay and the Thelon should have informed the Board's decision. No reasonable person would arrive at the conclusion that a comprehensive process that required in excess of a year could be compressed to a schedule of less than three months while maintaining fairness and opportunity. The YKDFN remain deeply concerned that the thoroughness of this process is being sacrificed for the Board's stated desire of timeliness

Recommendation: We recommend that the Board commission an independent review of the current structure, soliciting a legal opinion as to whether this meets the test of procedural fairness and natural justice. The YKDFN believe that this represents an incorrect standard in regards to the Board's exercise discretion to set out their process and consequently acts to the detriment of the ability of the parties to participate. This is especially important given that the Crown (and case law) insists that this review forms part of the consultative process and thus is a Constitutional obligation, consistent with the honour of the Crown and the fundamental objective of reconciliation.

4. 3 Incomplete Information

The alteration of the Environmental Assessment from the process outlined in the guidelines has limited the amount of time in terms of the YKDFN's ability to not only gather TK from its members, but also to collect information from the Crown. On June 23rd, 2010, the Akaitcho Interim Measures office submitted an *Access to Information and Privacy* request which we strongly believe will provide information relevant to the issues in front of the Board. Despite the statutory thirty day time limit, the results of this request asking for copies of the communication between INAC's Consultation Support Unit and the proponent have not yet been provided to the First Nations. Repeated requests for information on the delivery has not yielded results.

Recommendation: We recommend that the Board write to the ATIP coordinator asking them to prioritize the delivery of this file – prior to the issuance of any Report of Environmental Assessment.

Part 5: Resources & Capacity

The YKDFN would like to note that they have been denied resource material for participation in this process. On September 13th, 2010 the YKDFN notified the Board by email that they would like to access participant funding after Board staff had previously notes that "support may be available to those communities who are interested in attending". However, YKDFN was subsequently notified that this funding was only available for Lutsel K'e and Deninu Kue First Nations. Furthermore, as this environmental assessment was not foreseeable in March of 2010, it did not form part of the *Interim Resource Management Assistance - Resources Pressure Funding* application for this year. On that same day that we were rejected for participant funding, On September 13th, 2010, YKDFN submitted a supplemental funding application to INAC, which we have not received a response to, but we have received informal notice that we have been rejected. INAC has only just responded on November 17th, 2010, denying our request for resources.

The culmination of this was that the YKDFN did not have adequate financial resources to fully respond to the demands of this environmental assessment. Even if adequate time had been devoted to this Assessment to properly gather the evidence required for the Board to make an informed decision, we would not have had the resources to facilitate an in depth report on the traditional knowledge held by the YKDFN of this area.

Recommendation: We recommend that the Board should write to INAC suggesting additional monies be set aside for these projects referred and reviewed within a single fiscal year. Should the Board choose to adopt a similar structure for a review in the future, despite all of the issues that registered parties have already noted, at least the provision of some fiscal resources means that the parties do not have to resort to poaching from other projects in the rush to prepare their positions.