

Tłıchq Government

Intervention

on the proposed
Husky Oil Operations Limited – Chebaducto
Mineral Exploration Project Environmental
Assessment (EA1415-02)

Submitted to the Review Board

June 8, 2015



Tłı̨chq̨ Government Intervention

Re: Husky Oil Operations Limited – Chebaducto Mineral Exploration Project Environmental Assessment (EA1415-02).

The Tłı̨chq̨ Government offers comments on the EA from Husky on the following issues:

- Consultation on the issuance of mineral claims
- Land withdrawal
- Potential for mining activity
- Co-location with significant areas
- Impacts of the activity

In summary, the Tłı̨chq̨ Government recommends the rejection of this mineral exploration activity, given that there is not broad based acceptance of exploration or mining in the area.

However the Tłı̨chq̨ Government acknowledges that the Review Board has a duty to consider broad objectives. To this end, measures if the project is recommended forward are considered.

Consultation on mineral claims

Tłı̨chq̨ Government has no record of having been consulted when the Husky Oil mineral claims were issued. The proposed exploration activities are in Wek' èezhii, the environmental management zone created by the Tłı̨chq̨ Agreement. Tłı̨chq̨ harvesting and other rights are set out in this s. 35 protected agreement. The area is within both Wek' èezhii and Mq̨whì Gogha Dè Nı̨łtłèè. The location of the mineral claims is near the largest Tłı̨chq̨ community of Behchokq̨ and in part, located in the Dinàgà Wek'èhodì Wilderness Area. Our view is that this failure to consult on the part of the Crown informs this process as well.

The determination of the sensitivity of this area such as key migratory bird habitat issues and inclusion for the Dinàgà Wek'èhodì Wilderness Area would likely have surfaced very early if there had been consultation and then a review with Tłı̨chq̨ of the cultural, environmental and economic importance of this area. It may be that the failure of the Government of Canada to withdraw the lands required for the Dinàgà Wek'èhodì Wilderness Area may have been discovered in time to deal with the mineral claims that are in the Dinàgà Wek'èhodì Wilderness Area.

Land Withdrawal

The Government of Canada failed to withdraw, within a reasonable time, the lands required for the Dinàgà Wek'èhodì Wilderness Area. Here is the sequence of events described by Canada in its response to Tłı̨chq̨ Government IR #7:

1. On June 20, 2010, the Canadian Wildlife Service of Environment Canada agreed to sponsor Dinàgà Wek'èhodì as a candidate for a National Wildlife area and as part of the NWT Protected Areas Strategy (PAS);

2. Canada **started** the process for interim land withdrawal for Dinàgà Wek'èhodì (but did not complete the and withdrawal); and 19 months later
3. Mineral claims were submitted by Husky Oil on December 21, 2011

Because the lands required for the Dinàgà Wek'èhodì Wilderness Area were not withdrawn, Canada says Husky Oil met the requirements for the recording of the claims within Dinàgà Wek'èhodì. Tłıchq Government says that those minerals claims within Dinàgà Wek'èhodì should never have been issued. If Canada had done its job by withdrawing the land required for the Dinàgà Wek'èhodì Wilderness Area, certain minerals claims would not have been recorded. Alternatively, if Canada had set up proper internal mechanisms for informing the mining recorder about the intended land withdrawal, the issue could have been dealt with then.

It appears to Tłıchq Government that if the lands had been withdrawn in time, Husky Oil would NOT have met all of the Mining Regulation requirements. If Environment Canada had informed the mining recorder of the proposed withdrawal, the issue could have arisen at that time. If Canada had consulted Tłıchq on the fact of the mineral claim applications, the land withdrawal issue could have arisen.

It should be noted that the Tłıchq Government supported the PAS strategy and Dinàgà Wek'èhodì by creating a special zone on the Tłıchq Wenek'e (Land Use Plan) – the plan that governs over Tłıchq lands. Section 5.4.2 of the Tłıchq Wenek'e restricts activities on Tłıchq lands in the Dèk'èasiìpedaà wèhqqdia zone (see page 39 of the Tłıchq Wenek'e) and in order to protect areas of ecologically significant wildlife habitat, the only activities that will be considered are:

- a) camp or cabin;
- b) non-exploitive scientific research;
- c) transportation corridor; and
- d) eco/cultural tourism.

The fact that the proposed land withdrawal by Canada did not take place and then Tłıchq Government was not consulted on the issuance of mineral claims cannot be interpreted as any lack of interest on the part of Tłıchq. Tłıchq Government thought that all of Dinàgà Wek'èhodì was going to be withdrawn. The Board needs to take all this into consideration in its decision.

This point is reinforced in the PAS specific Traditional Knowledge research (Legat et al. 2012), in which the elders interviewed recommend that the boundaries for protection are expanded to include boreal caribou and barren ground caribou habitat, and the ancestral trails that lead into the area.

Potential for mining activity

Tłıchq Government understands that the Review Board has excluded consideration of the potential for silica mining due to the linkage and dependency tests used in environmental assessment. Furthermore, we understand that development after the completion of exploration would require new consideration under Part 5 of the MVRMA and therefore that a proposed mining project would potentially undergo a preliminary screening that would determine whether a development is referred to the Review Board (Scoping Document, p. 7).

While we understand and respect the tests that have been applied, we consider it the duty of the Tłıchq Government to consider the longer term implications of development decisions, mineral claims, and

activity in the Wek' èezhìi region. Therefore, the Tłıchq Government are making specific comment on the potential long term use of this area.

The Tłıchq Government notes that there are concerns with any potential mining activity.

Resulting from the Northwest Territories Land and Resources Devolution Agreement, Crown lands are now Commissioner's lands. GNWT can consider options in response to the utter lack of consultation about the mineral claims in general and the failure to protect Dinàgà Wek'èhodì from the issuance of mineral claims. In BC, recently, when a specific area that was considered for exploration and mining was identified as not suitable for mining (to the nation in question), the province bought the mining claims back from the company for \$18.3 million. The province compensated the Proponent for the minerals leases held, and the parties all agreed that should agreement be reached between the parties, that the Proponent could buy the property back at the same price.

It is notable that the Dinàgà Wek'èhodì Working Group is seeking protections available in law and policy to include:

- Protection of both cultural and ecological values in the area
- Access for recreational use to the area
- Traditional use to occur
- No commercial development in the area (e.g., mines, etc.)
- Active management of the area, including a management committee of some type and a management plan which could be modified as time went on; the management committee would use this plan to make decisions
- Written goals and objectives to help direct the management committee and plan
- Some sort of mechanism (e.g., permits) to allow certain activities to occur under conditions determined out by the management committee (May 2014 Working Group Meeting Minutes).

This area is of great significance to the Tłıchq people. It is for this reason that the area has been protected. It is also notable that the Tłıchq Elders have consistently sought a boundary that is much larger for the Dinàgà Wek'èhodì National Wildlife Area (See Map of Proposed Protected Area).

Although the Tłıchq Government TK study (2015) was intended to address the exploration phase conducted by Husky Oil, the traditional knowledge of elders extends to predicting how future events will unfold if the test drilling results are positive and the company decides to proceed with further development and mining of the silica deposits. The development would require a road to be constructed, either a temporary ice road or a permanent road, connecting to Highway 3, south of the community of Behchokò. Any type of road would increase activity and noise in the area. The elders have personally observed how the ndè (The Land) changed after Highway 3 from Fort Providence to Yellowknife was built. Prior to construction of Highway 3, the habitat contained an abundant animal population. After construction, certain animal species disappeared and discontinued their migration to the area. Harry Apples, who has lived part of the year inland from the shores of Tideè at Whòsìwekòò (Blackduck Camp), shares his knowledge of animal availability:

The development will chase away all wildlife if a mine was made there. Like the Yellowknife mine [Giant mine], for example. Before there was a road to Yellowknife, the [barren-ground] caribou used to migrate there, but since the road was built the

caribou don't go there. It will be the same with this [proposed development] area.
(Harry Apples, December 3, 2014)

The Tłıchq Government considers it appropriate to inform Husky Oil at this early stage of the option to disinvest of this property, and of the option to disinvest from these claims that are of key interest for protection given that there is not broadly held consent for the pursuit of mineral exploration in this area.

Co-location of the claims with the Dinàgà Wek'èhodì National Wildlife Area

The Dinàgà Wek'èhodì National Wildlife Area is attempting to achieve protection for culture, and for migratory bird species. The four claims held by Husky in the North Arm represent just over 4200 hectares of land, inclusive of many shoreline areas. The protruding land areas are extremely important for migratory species. It is also important as a cultural area to Tłıchq families, as indicated in the recently submitted Tłıchq Government Traditional Knowledge report (Legat 2012 and Tłıchq Research and Training Institute, 2015).

This area is significant to elders, and recommendations have been made in the past to expand the protected area including the Dinàgà Wek'èhodì National Wildlife Area, as indicated in Legat (2012, 39), when Elders recommended that parties:

- Expand the protected area boundary to include both boreal and barren ground caribou.
- Expand the boundary of the proposed protected area to include the ancestral (heritage) trails leading into the area.

In summary, the Tłıchq Government has noted that mineral claims have been awarded to Husky Oil, and that these mineral claims are co-located in an area of high importance to the Tłıchq. What follows is a review of the importance of the area to the Tłıchq, as defined through a limited review of the traditional use in the region in Legat 2012 and Tłıchq Research and Training Institute 2015.

Summary of Land Use and Predicted Impacts: Habitat, Animals, Harvesting.

Two studies have been conducted for this area, including Legat (2012) and Tłıchq Research and Training Institute (2015). The 2012 study documents the importance of the area to Tłıchq people, and illustrates:

- Families travel through the area for recreation, harvesting, and to teach their children. In particular, the 2012 study indicates that Agnes Apple and Dora Migwi explained that the area between (between and Tlikeedaa and Njshìi) always had a lot of people living around it because it was such a good area.
- There are sacred areas associated in particular with the culture hero Beaver, and particular sites that are important for continuity of culture;
- There are grave sites through the area, and in particular the grave sites of several leaders and citizens at Njshìi (See Map 6 of Legat 2012);
- Animals and plants are harvested throughout the region, and

- There are a range of concerns that have been identified through Traditional Knowledge and Use studies.

It should be emphasized that the stories and locations discussed in Legat (2012) included areas north of the claims held by Husky and this is so because the study area defined for the purposes of the Dinàgà Wek'èhodi Wilderness Area was defined as a particular geographic area and that studies followed this delineation. As Legat stated (2012), this is a vast area, with Tłıchq presence through time and space (21). Absence of use should not be interpreted to mean absence of interest.

The proposed project area is characterised by its unique habitat primarily identified by its large quantities of fine sand.

This particular habitat serves particular purposes for certain animal species.

The 2015 study reviews predicted impacts from the perspective of traditional users to local animals, habitat and harvesting are based on (1) deterioration of habitat, (2) possible pollution, (3) unfamiliar noise and traffic, and (4) the establishment of a dead zone around the proposed exploration/development area, with combined effects on the harvesting economy and culture.

The TK study documented cultural importance of land use practices of hunting, fishing and trapping in and surrounding the proposed project area. The land use activity of hunting is especially important, particularly for moose, woodland caribou and, in earlier times, barren-ground caribou. The shoreline of K'ichì [White beach Point] provides easily accessible campsites and harvesting sites for harvesters and travellers on Tideè [Great Slave Lake].

Hunting: the proposed development area is a year-round hunting ground for Tłıchq. Travel routes extend from Behchokq or from cabins alongside Highway 3 to track and hunt animals, as moose, woodland caribou and in earlier times barren-ground caribou. Tłıchq hunt there during all seasons.

Trapping: mainly conducted in the proposed development area during the winter months. The harvesters trap furbearing animals, such as martens, mink, otters, lynx, wolverines, foxes and wolves, although marten is the most sought after animal. Most trappers enter the K'ichì area from Tideè but one can also enter the trapping area via trails from Highway 3, south of Edzo. From Tideè, trails extend from the northern and eastern shores into the inland of K'ichì. Trappers follow these trails and set traps at various distances from the trail.

Fishing: Most points of land into Tideè is regarded as a fishing location. The waters along the northern shore of the proposed development area and around the tip of K'ichì are considered good fishing spots, and hold large quantities of fish. Fishing is a highly-valued activity, as it is a relatively easy and secure way to supply food for one's family and community.

Habitat

K'ichì and the proposed development area are especially valuable to the local animal species due to its soil conditions. The area's fine sand deposits give it a unique ecology. The particular ecosystem exists because of the special ground conditions, which provides a prime habitat for animals, such as bears, wolves, foxes, wolverines, and rodents. Animals favour the soft soil for digging holes and creating dens

in. The sand deposits itself provides viable habitat for certain animals, and at K'ichì, animals build dens either to raise their families in or to hibernate in during the long winter.

Thus, for many local animal species, the sand itself is vitally important for breeding populations and their ability to raise their families, ultimately leading to the continuation of healthy populations. The test drilling, and possible excavation of sand, could alter these particular animal habitats, and consequently, the ability for animal species such as bears, wolves, foxes, wolverines, and rodents to establish dens and securely raise their families.

Pollution

The potential for oil or other chemical spills during drilling operations is a concern to the elders and harvesters. Spills pollute the surrounding environment and have both short- and long-term effects on the habitat and animals. The effects of spills on local animals, both on the land and in the water, can have effects on animals as oil saturation leaves their fur incapable of providing insulation. Thereby, the animals become vulnerable to the fluctuating temperature in the north. This denotes particular concern for waterfowl and furbearing animals, such as beavers, muskrat, otters, marten and mink.

Noise and Traffic

The animals are sensitive to noise and foreign activity. The harvesters say the animals are “living free right now” (Harvester, December 4, 2014) and they are healthy as there are no disturbances and no noise that cause stress to the animals. The land is a healthy environment where the balance of the ndè [The Land] can continue. The elders are concerned that noise and activities from operational machinery and human camps will scare the animal populations away from the proposed development area.

The population of the animals...like I said, if a caribou hears anything he runs away from it until he doesn't hear it, until he doesn't smell it, and that's how far. I say it's like twenty-five or thirty kilometers. In the center of the construction or whatever that's going on, it's a dead zone, twenty-five kilometers around, it's a dead zone, no animals, no caribou, no nothing....these caribou are going to move on. They'll move somewhere else where there's no smell, where they can't hear it, can't see it.
(Harvester, December 3, 2014)

The noise from this exploration may come from several sources including the helicopters, used daily to haul drilling equipment, fuel, camp gear and personnel; the drilling operations; and from human camps. The unfamiliar noise is easily carried throughout the forest environment, especially during colder temperatures. As the harvester explained, the noise will force animals, such as woodland caribou, to stay approximately 25 to 30 km away from such noise disturbances.

Establishment of a Dead Zone

The concern is the cumulative effects of habitat deterioration, oil and/or chemical spills, and unfamiliar noise and traffic in the natural habitat, will lead to the establishment of a dead zone around the development. Local animals, as woodland caribou and barren-ground caribou, are sensitive and easily sense movement and noise within their surroundings; their heightened sensitivity serves as a natural defence mechanism against predators. Consequently, unfamiliar noises, movements and activities will be regarded as a danger and therefore avoided. As the harvester explained above, animals such as caribou will move away until they cannot hear, smell or see the intrusion.

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As a hunter I am always trained not to make noise, keep my mouth shut, watch where I am stepping, to be ready to hunt to kill whatever I am hunting for, like I said no noise. You always travel up wind to keep the smell away, that's how we hunt so we don't scare the animals away.

If you make noises and you smell, the twenty-five kilometer dead zone is created. I am probably not the only one against it. There are people out there who are going green, they don't want stuff like this to go up. (Harvester, December 3, 2014)

The caribou is not the only animal species that will avoid the proposed development area. Since each part of the ndè (The Land) is connected, if some elements disappear or change behaviour, other parts will inevitably be affected too. While caribou and other large and smaller animals rely on vegetation for forage, these animals are an essential food item for predators such as wolves, wolverines, lynx, foxes and martens. Each of the predator species has their own hunting grounds to track, hunt and obtain its food, for itself and its offspring.

The dead zone will impact my trap line, my animals. I can't say it won't, but I can say what animals doesn't stay in one spot, they travel twenty-five ...like I said he travels twenty-five kilometres... [the predator] got his own zone, his hunting zone. If you take his hunting zone away [the predator] is going to move someplace else. That's the dead zone I am talking about. (Harvester, December 3, 2014)

As the harvester emphasized, each animal has its own hunting zone, and the consequences of fewer available animals, such as ungulates, means less accessible food for predators who rely on these animals. The movement away from development will create a dead zone where few animals can live.

Impacts for Harvesting

A healthy ecosystem is important to the successful harvester. As mentioned above, the health and growth of vegetation is important for rodents, such as mice, which are important for the marten population in an area. The marten population directly affects the success of a trapper during the short harvesting season. The establishment of a dead zone around the proposed exploration area will directly impact the success rate for both trappers and hunters.

I'm a hunter and a trapper, I speak from what I know of these animals that I know that I trap, and I eat. Half of my diet is on the land and the other half is in the store, so whatever is out there, that's the other half of my store. (Harvester, December 3, 2014)

The harvester emphasizes the importance of the availability of animals, as it comprises approximately half of his food consumption. If the hunter is unsuccessful, he needs to support himself and his family through other means and obtain food from the community store. A dead zone will thus mean less income from trapping and less available country food for himself and his family. Most likely, he will need to establish traplines in a new area—areas that no other trappers have claimed. Similar situations are predicted for hunters.

Summary of Potential Impacts

The elders want others to think holistically about the ndè, which means considering all factors, elements and uncertainties, where balance and long-term sustainability for future generations is the goal. Proposed development on the ndè is a risk factor; it could disturb the balance of the ecosystem, and therefore the sustainability of local hunting, trapping and fishing for future generations of Tł̨ch̨q̨. An elder from Behchokò, reminds us to think long-term when considering important issues related to development.

I believe that all of those impacts are coming up here from the south. Those effects will cause problems for us in the future; the pollution of the land and water will cause us problems. They also cause us to disagree with each other and not work together as a team. I don't want that to happen.

If these changes continue to happen, things will not return to the conditions they used to be in. This won't happen right away but in less than ten to twenty-five years, when the sand is extracted, it will have important results. When the project begins, it will become a big undertaking to manage the project and control its damage. Elders should be involved in those kinds of things. (Elder, December 4, 2014)

The elder connects the destruction of the environment with less social and cultural resilience. He stated that “pollution of the land will ... cause us to disagree with each other and not work together as a team”. Environment and people are intrinsically connected, as the concept of ndè illustrates, and the economy of harvesting demonstrates every day, as hunters, fishermen and trappers harvest animals to sustain their livelihood from the land. Thus, environment and people are connected as behaviour of one affects the other. Possible pollution of the land will almost inevitably lead to abandonment of the land, which, in turn, will lead to changes in social behaviour.

In the past, when there was no mine development and when the land was very beautiful, the people were healthy living off the land. Our generation was raised on fish, caribou meat and all kinds of wildlife food. We were healthy and strong living on all those kinds of foods. Today we are not like that. What we didn't eat then, we are eating more of it now. In the past we were not like that. (Elder, December 3, 2014)

Recommendations

The elders note the connection between the health of the land and the health of the people. The connection is an important factor when considering long term effects for future generations.

The cultural activities on the land indicate a use of the land that follows the traditions of the Tłıchq cultural practices: hunting, fishing and trapping. These activities hold an important value for the Tłıchq harvesters and their families, in terms of providing a local economy of harvesting and bringing bush resources into the communities. Harvesting also holds the cultural value of being on the land; learning about the elements and natural features; adding knowledge and stories to the traditional knowledge the harvesters have learned from their ancestors; and developing and maintaining one relationship with the animals and spirits within the ndè.

Harvesting, travelling and being on a healthy land is a central arena for Tłıchq cultural reproduction. Among other things, this cultural reproduction involves language revitalization, spiritual connection to the land, and increased knowledge of the ndè - the ecosystem, land, spirit beings and animals. The land is thus a strong facilitator for the reproduction of culture, and on a personal level, a strong culture is manifested by strong personal groundedness, self-confidence and identity to one's culture.

The area of the proposed exploration is characterized by harvesting activities, such as fishing, trapping and hunting. The shoreline of K'ichì has many campsites where harvesters and travellers take shelter from the winds and waves on the large lake, Tideè. The proposed development is predicted to impact the ndè, through habitat deterioration, possible spills, and unfamiliar noise and traffic from operations, which may consequently lead to the establishment of a 25 to 30 km impacted zone around the proposed development area. Such an impacted zone would directly impact the success of harvesting activities. In addition to reduced availability of animals to maintain the local harvesting culture and economy, is the combination of these effects - the decreased practice of culture on the land.

The Tłıchq Government therefore recommends that the applications for Land Use Permits for exploration be denied, based on the significance of the area culturally and recreationally, and that there be a structured land use planning process set for the area that has not been included in the Dinàgà Wek'èhodì Wilderness Area outside of Tłıchq lands.

If it is the decision of the Review Board that effects can be mitigated by the imposition of measures, the following measures are considered vital to the continuance of rights and uses in the region.

Claims and co-location of the claims with significant areas

- At a minimum, the four claims that were excluded from the Dinàgà Wek'èhodì Wilderness Area not be permitted for exploration purposes;

Significant sites

- The Tłıchq have identified a range of significant sites in the area, including Old Fort Island (Kòk'èhdì), Wrigley Point (Kwehàgeet'aa) and the area surrounding the lakes (Chebaducto) (Łıeti). The company has committed to further discussion regarding these areas (See IR Response #5). The Tłıchq would like to see commitments to not explore in the areas identified as significant, as has been done by Husky Oil with respect to significant archeological sites. There may be other significant sites noted during the hearings, or throughout the EA process that should also be so included.

Wildlife monitors

The Tłıchq Government would like to see measures requiring wildlife monitors employed through the Aboriginal parties.

Caribou

That all the best practices identified in Husky IR Response #6 become a part of the permit conditions issued for the proponent.

Conclusion

All of this respectfully submitted on June 8, 2015 and filed with the Review Board.

In Tłıchq Unity,

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References

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Map: Proposed Protected Area (Tłıchų Government)

