



May 7, 2007

Stephen Ellis – Akaitcho IMA Implementation Coordinator
NWT Treaty #8 Tribal Corporation
Box 28
Lutsel K'e, NT X0E 1A0

Dear Mr. Ellis:

RE: Comments on the Gahcho Kue Panel (the Panel) Terms of Reference

Thank you for your letter of May 4, 2007 in which you express concern about the appointment of members of the Panel in relation to the recently released draft Gahcho Kue Panel Terms of Reference (ToR). Upon review of the ToR it seems to the Mackenzie Valley Environmental Impact Review Board (the Review Board) that some components of the ToR may have created confusion.

The Review Board has the authority to appoint members to a panel under s. 132 of the Mackenzie Valley Resource Management Act (MVRMA). This authority is not subject to the requirement for consultation set out in section 134 of the MVRMA. When making panel appointments, the Review Board is required to exercise its decision-making in accordance with subsection 132(3) of the Act. The Review Board took special care to ensure that its Panel appointments met this requirement. The Review Board used a public process to seek expressions of interest for panel membership and all Akaitcho residents who expressed interest were duly and fairly considered.

Section 134(1) of the MVRMA requires consultation on the terms of reference for a review panel. The ToR speak to the establishment of the Panel as the institution which will be responsible for the Gahcho Kue Environmental Impact Review. Consequently, they address matters such as membership, conflicts, quorum and other matters related to Panel governance.

Upon review of the draft ToR it appears that they may unfortunately have given the impression that the Review Board was also consulting on appointments to

the Panel. The ToR do not deal with appointments because that authority is governed by s. 132 and because the Review Board exercised its authority to make appointments separately from the ToR consultation process, as is permitted by the MVRMA.

We appreciate you bringing your concern to our attention. The Review Board will issue a letter to all parties to clarify this matter. We look forward to receiving any comments that Akaitcho First Nations may have on the Terms of Reference by May 18, 2007.

Sincerely,



Vern Christensen
Executive Director

- c. Akaitcho Dene First Nation Chiefs
Zoe Raemer, A/Regional Director General, INAC





Akaitcho Interim Measures Agreement Implementation Office

NWT Treaty #8 Tribal Corporation

Stephen Ellis – Akaitcho IMA Implementation Coordinator
NWT Treaty #8 Tribal Corporation
Box 28
Lutsel K'e, NT X0E 1A0
Ph: (867)-370-3217
Fax: (867)-370-3209

May 4, 2007

Vern Christensen – Executive Director
Mackenzie Valley Environmental Impact Review Board
200 Scotia Centre
Box 938, 5102 – 50th Ave
Yellowknife, NT X1A 2N7
Fax: (867)-766-7074

RE: Comments on the Gahcho Kue EIR Terms of Reference and the appointment of the Review Panel members

Mr. Christensen:

In your letters of April 25th, 2007, addressed to the Akaitcho Chiefs, you indicate that the MVEIRB wishes to consult with the Akaitcho Dene First Nations (AKFNs) on the draft Gahcho Kue EIR Terms of Reference (pursuant to section 134(1)(a) of the MVRMA). In the same letters, you indicate that the deadline for comment submission by the First Nations is May 18th, 2007.

On May 2nd, 2007, the MVEIRB issued a news release indicating that panel members for the Gahcho Kue EIR had been appointed. These appointments were made well in advance of the May 18th deadline for comment, thereby rendering irrelevant any comments received pertaining to that portion of the Terms of Reference dealing with review panel membership. This EIR seems to have already stumbled before even getting started.

Section 134(1)(a) of the MVRMA reads as follows:

134. (1) An environmental impact review of a proposal for a development includes:

- (a) *the preparation by the Review Board of terms of reference for the review panel, after consultation with responsible Ministers and any First Nations affected by the proposal;*

Clearly this EIR requirement has not been met in this instance. Meaningful consultation with the affected First Nations on the terms of reference for the review panel has not occurred, and indeed has been pre-empted and rendered moot by MVEIRB actions. The MVEIRB is in serious breach of the *MVRMA* through its failure to fulfill its consultative obligations.

The AKFNs must be provided with an opportunity to comment on the expertise and regional representation that should be demonstrated by the review panel members. As it stands, the current review panel lacks any traditional knowledge or scientific expertise pertaining to the Gahcho Kue region, demonstrates a definitive bias towards Yellowknife residents with business or government backgrounds, and is clearly in contravention of section 132(3) of the *MVRMA*.

In order to rectify this situation, the MVEIRB must dissolve the review panel as currently constituted and proceed with due process as outlined in the *MVRMA*. The review panel must only be appointed after meaningful consultation on the draft Terms of Reference has occurred (including on those provisions whereby the review panel will be constituted).

The AKFNs expect immediate MVEIRB action on this matter, and will not hesitate to explore legal options if no action is taken. The AKFNs will refrain from providing substantive comment on the draft Terms of Reference until such a time as this matter is dealt with.

Sincerely,



Stephen Ellis – Akaitcho IMA Implementation Coordinator
NWT Treaty #8 Tribal Corporation

- c. Akaitcho Dene First Nation Chiefs
Monica Krieger – Manager, LKDFN Wildlife, Lands and Environment Department
Rosie Bjornson – IMA Coordinator, DKFN
Phil Moonson – Lands Department Director, YKDFN
Rachel Crapeau – Lands and Environment Manager, YKDFN
Jim Jodouin – Akaitcho Legal Counsel
Robert Overvold – Regional Director General, INAC
Gabrielle Mackenzie-Scott – Chair, MVEIRB