



JAN 19 2018

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Via e-mail: [david@canadianzinc.com](mailto:david@canadianzinc.com)

Dear David,

I, on behalf of the Minister of Crown-Indigenous Relations and Northern Affairs Canada, and along with the responsible ministers with jurisdiction for this project, would like to advise you that we have carefully reviewed the Mackenzie Valley Environmental Impact Review Board's (Review Board) September 12, 2017, Report of Environmental Assessment and Reasons for Decision (Report), as well as the public record for the Canadian Zinc Corporation's Prairie Creek All-Season Road (Project) environmental assessment. Furthermore, the responsible ministers have carefully reviewed the post-Report responses to the September 12, 2017, letter from the Canadian Northern Economic Development Agency's Northern Projects Management Office to potentially impacted Indigenous groups, including letters from:

- Nahanni Butte Dene Band on October 2, 2017, October 5, 2017 and December 7, 2017;
- Łíídlı́ Kúę First Nation on October 20, 2017;
- Dehcho First Nations on October 20, 2017; and
- Acho Dene Koe First Nation on November 7, 2017.

The responsible ministers have also considered the Canadian Zinc Corporation's November 21, 2017 letter to the Northern Projects Management Office. All of the above noted letters can be viewed on the Review Board's [public registry](#).

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Before the responsible ministers can make a decision on the Report pursuant to subsection 130(1) of the *Mackenzie Valley Resource Management Act* (Act), we must be confident that all of the recommended measures, as written, and the Canadian Zinc Corporation's commitments, as set out in the Appendix C of the Report, will be implemented. We must also be confident that the Crown has discharged its legal duty to consult by meaningfully and completely consulting with impacted Indigenous groups.

After having reviewed the Łíídlı́ Kúę First Nation and Dehcho First Nations' October 20, 2017 letters, as well as the Canadian Zinc Corporation's November 21, 2017 letter, the responsible ministers are unclear as to how the Canadian Zinc Corporation will implement the Report's measures and commitments. Specifically, we are concerned that, although the Report's measures are inclusive of the participation of potentially impacted Indigenous groups, the Canadian Zinc Corporation is taking an exclusive approach (i.e. proposing working with select individual bands on the implementation of measures). This exclusive approach is not consistent with the Report's measures and the Minister of Crown-Indigenous Relations and Northern Affairs, on behalf of the responsible ministers, is therefore not currently in a position to be able to make a decision under subsection 130(1) of the Act. Furthermore, contrary to the Canadian Zinc Corporation's position, these issues cannot be deferred to post-environmental assessment processes, nor can measures directed to the Canadian Zinc Corporation be re-directed to third parties.

To better inform the responsible ministers' decision on the Report under subsection 130(1) of the Act, along with the responsible ministers, I am issuing the specific information request in the enclosure. The information request is pursuant to subsection 130(4.06) of the Act and has the effect of pausing the five month time limit to distribute a decision on the Report provided under subsection 130(4.02) of the Act. The time limit will resume only after the Canadian Zinc Corporation has provided an adequate response to the responsible ministers for all of the information sought through in the enclosure.

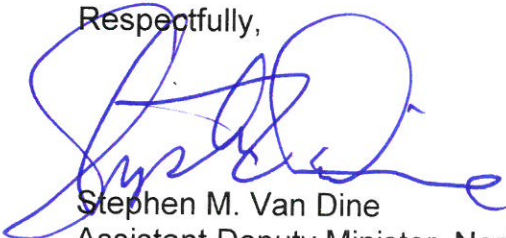
In this information request, the responsible ministers identify specific issues raised by the Indigenous groups that need further clarity through proponent engagement. The responsible ministers require the Canadian Zinc Corporation to engage the Nahanni Butte Dene Band, Łíídlı́ Kúę First Nation, and the Dehcho First Nations. The Canadian Zinc Corporation is

required to provide the records and results of those engagements, the agreed upon actions and the implementation plans for the relevant measures and commitments. We will evaluate the Canadian Zinc Corporation's response to the information request prior to a decision under subsection 130(1) of the Act. Should the responsible ministers determine that the Canadian Zinc Corporation's response to the information request is inadequate, we will issue a further information request pursuant to subsection 130(4.06) of the Act until the responsible ministers are satisfied that the response is sufficient to make a decision on the Report under subsection 130(1) of the Act.

Please note that the information request focuses on information required for the responsible ministers, to make a decision under subsection 130(1) of the Act and does not include additional information that will be required in subsequent regulatory processes should the Project proceed to that phase. Furthermore, the responsible ministers remain cognizant of the issues raised by Indigenous groups that are better addressed during the regulatory phase of the Project and will turn our attention to such issues at the appropriate time should the Project be approved to proceed.

As the Northern Projects Management Office co-ordinates project reviews and Crown consultation on behalf of the responsible ministers, please provide your written response directly to the Northern Projects Management Office's Project Officer Umar Hasany ([umar.hasany2@canada.ca](mailto:umar.hasany2@canada.ca)). If the Canadian Zinc Corporation has questions about the contents of this letter and the enclosure, please contact Umar Hasany. The responsible ministers and I look forward to your response.

Respectfully,



Stephen M. Van Dine  
Assistant Deputy Minister, Northern Affairs Organization

Encl. Information Requests

Enclosure

**EA1415-01 – Canadian Zinc Corporation’s Prairie Creek All-Season Road – Information Requests from Federal and Territorial Responsible Ministers**

**Topic Area: Dene Knowledge**

The responsible ministers and the federal Minister note that the Mackenzie Valley Resource Management Act requires the Review Board and the land and water boards of the Mackenzie Valley to consider both traditional knowledge and western scientific knowledge that is made available to them. The October 20, 2017 letters to the Northern Projects Management Office from the Łíídlı Kúę First Nation and the Dehcho First Nations have indicated that Dene knowledge and values must be fully considered in the implementation of the measures and must be acquired through the development of protocols and processes with the Nahanni Butte Dene Band, Łíídlı Kúę First Nation and the Dehcho First Nations. Specifically, the Łíídlı Kúę First Nation makes such a request for measures 6-1, 6-2, 6-3, 8-1, 9-1, 11-1, 11-2, 12-1 and 15-1. Furthermore, the Report’s measure 10-1 would require the Canadian Zinc Corporation to incorporate traditional knowledge in a "culturally-appropriate way that respects applicable traditional knowledge policies and protocols."<sup>1</sup>

The Canadian Zinc Corporation’s November 21, 2017 letter makes it apparent to the responsible ministers and the federal Minister that the Canadian Zinc Corporation is aware of the existence of traditional knowledge that would have direct bearing on the Project and has not identified how the traditional knowledge will be incorporated into the implementation of the Report’s measures and the Canadian Zinc Corporation’s commitments. Thus, the responsible ministers and the federal Minister make the following information request:

**Information Request #1**

**The responsible ministers and the federal Minister require that the Canadian Zinc Corporation engage with the Nahanni Butte Dene Band, Łíídlı Kúę First Nation and the Dehcho First Nations, to gain an understanding of each Indigenous group’s protocols and policies related to the sharing and inclusion of Dene knowledge and values and determine how such protocols and policies may apply to measures 6-1, 6-2, 6-3, 8-1, 9-1, 11-1, 11-2, 12-1 and 15-1. Following the engagements, the Canadian Zinc Corporation is required to provide the record and results of those engagements, the agreed**

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<sup>1</sup> EA1415-01 PR 556, September 12, 2017, Mackenzie Valley Environmental Impact Review Board. Report of Environmental Assessment and Reasons for Decision. Page 269.



upon actions, which may include the collaborative development of policies and protocols related to the incorporation of Dene knowledge in all areas of the Project, and the implementation plans for the relevant measures and commitments.

### **Topic Area: Łíídlı Kúé First Nation's Indigenous Knowledge Study**

The Łíídlı Kúé First Nation indicates in their October 20, 2017 letter to the Northern Projects Management Office that the Canadian Zinc Corporation previously committed to conducting an Indigenous Knowledge Study and that the Canadian Zinc Corporation has not yet fulfilled this commitment. In the Canadian Zinc Corporation's November 21, 2017 letter, the Canadian Zinc Corporation highlights Łíídlı Kúé First Nation's existing Indigenous knowledge studies and is of the view "that significant traditional knowledge information is already available and could be provided, and extensive further studies should not be considered necessary."<sup>2</sup>

In its letter, the Canadian Zinc Corporation also identifies that the traditional knowledge study for the Nahanni Butte Dene Band was funded by government financial assistance. The responsible ministers and the federal Minister note that while Indigenous and Northern Affairs Canada did fund the initial traditional knowledge study, that the study was deemed to be incomplete by the Nahanni Butte Dene Band and that the Canadian Zinc Corporation and the Nahanni Butte Dene Band subsequently agreed that the Canadian Zinc Corporation would provide funding to complete the study as well as undertake various other steps.<sup>3</sup> Generally, Federal and territorial government practices in the Northwest Territories defer to project proponents to fund any traditional knowledge studies that need to be undertaken in regards to project environmental assessments and regulatory processes in the jurisdiction, and that government funding for portions of the Nahanni Butte Dene Band's traditional knowledge study was an exception to such practices. Thus, the responsible ministers and the federal Minister make the following information request:

#### **Information Request #2**

**The responsible ministers and the federal Minister require that the Canadian Zinc Corporation engage with the Łíídlı Kúé First Nation to clarify the Indigenous group's understanding of the Canadian Zinc Corporation's commitment to fund an Indigenous Knowledge Study. Following the engagements, the Canadian Zinc Corporation is**

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<sup>2</sup> EA1415-01 PR 581, November 21, 2017, Canadian Zinc Corporation. Letter to the Northern Projects Management Office. Page 3.

<sup>3</sup> EA0809-002 PR 245, August 2009, Crosscurrent Associates Inc. on behalf of the Nahanni Butte Dene Band. Page 1-2.

**required to provide the record and results of those engagements, the agreed upon actions and the implementation plans for the relevant measures and commitments.**

### **Topic Area: Sundog Creek Diversion Plan**

Specific to measure 9-1, Łíídlı Kúę First Nation requests in their October 20, 2017 letter to the Northern Projects Management Office that the Sundog Creek Diversion Plan be provided to an independent third party with relevant expertise prior to approval by regulators and that the independent third party must be in part chosen by the Nahanni Butte Dene Band, Łíídlı Kúę First Nation and the Dehcho First Nations.

The responsible ministers and the federal Minister note that the independent technical review panel for the Project that is recommended under measure 5-1 may consider any relevant information through the implementation of the Report's measures and commitments, including hydrological investigations that may result from measure 9-1. To gain further clarity, the responsible ministers and the federal Minister make the following information request:

#### **Information Request #3**

**The responsible ministers and the federal Minister require that the Canadian Zinc Corporation engage with the Nahanni Butte Dene Band, Łíídlı Kúę First Nation and the Dehcho First Nations, to gain an understanding of the Indigenous groups' request for an independent third party to review the Sundog Creek Diversion Plan. Following the engagements, the Canadian Zinc Corporation is required to provide the record and results of those engagements, the agreed upon actions and the implementation plans for the relevant measures and commitments.**

### **Topic Area: Inclusion of all Impacted Indigenous Groups in Project Monitoring Related Activities**

It is apparent from the Canadian Zinc Corporation's November 21, 2017 letter that the Canadian Zinc Corporation's position on engagement with certain Indigenous groups would be inconsistent with the Report's measures. In particular, measures 5-1 (parts 3 and 4), 6-1 (part 2 and 3), 10-1, 10-2, 15-1 (part 2), 15-2 and 15-4 would require the Canadian Zinc Corporation to engage with the Nahanni Butte Dene Band, Łíídlı Kúę First Nation and the Dehcho First Nations with respect to a variety of issues.

In their November 21, 2017 letter, the Canadian Zinc Corporation justifies its approach with reference to post-Report verbal discussions with the Review Board staff regarding measure 15-4, and the Review Board's intention to include or exclude Indigenous groups in community monitoring based on the interpretation of "and".<sup>4</sup> The responsible ministers and the federal Minister note that in making their decision on the Report under subsection 130 (1) of the Act, the responsible ministers and the federal Minister must rely on the text of the Report instead of the reported verbal discussions. The responsible ministers and the federal Minister understand the Report to require an inclusive approach for participation of Indigenous groups.

Specific to monitoring of the Project, the Canadian Zinc Corporation identifies in their November 21, 2017 letter that "the IBA [Impacts Benefits Agreement] agreements include commitments by Canadian Zinc to provide for monitoring of the mine access road by NBDB [Nahanni Butte Dene Band] members and monitoring of the mine site by LKFN [Łíídlı Kúę First Nation] members. Each Band was and is aware of the other's area of responsibility and, in this way, there is a clear division of tasks and responsibilities."<sup>5</sup> While the Canadian Zinc Corporation's November 21, 2017 letter acknowledges the Nahanni Butte Dene Band's desire to be the only Indigenous group responsible for monitoring the Project, they also recognize that the "responses by LKFN [Łíídlı Kúę First Nation] and DFN [Dehcho First Nations] indicate that those groups expect to be involved in the monitoring."<sup>6</sup> Notwithstanding the Impacts Benefits Agreements with the Nahanni Butte Dene Band and Łíídlı Kúę First Nation, those Indigenous groups continue to state concerns with the Canadian Zinc Corporation's approach to meaningful engagement with the Nahanni Butte Dene Band, Łíídlı Kúę First Nation and the Dehcho First Nations. The responsible ministers and the federal Minister acknowledge the confidentiality of the agreements that the Canadian Zinc Corporation has entered into with the Indigenous groups and are only commenting on information disclosed in the Canadian Zinc Corporation's November 21, 2017 letter. Furthermore, the responsible ministers and the federal Minister emphasize that they, along with any other government representative, cannot direct the Canadian Zinc Corporation, or any other project proponent, to modify or enter into impact-benefit type agreements that are between the proponent and non-government third parties, such as Indigenous groups.

Furthermore, the responsible ministers and the federal Minister note that the Impacts Benefits Agreements signed to date with the Nahanni Butte Dene Band and Łíídlı Kúę First Nation were negotiated for the mine and

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<sup>4</sup> EA1415-01 PR 581, November 21, 2017, Canadian Zinc Corporation. Letter to the Northern Projects Management Office. Page 2.

<sup>5</sup> Ibid. Page 2.

<sup>6</sup> Ibid. Page 2.

winter road project and to the knowledge of the responsible ministers and the federal Minister, those agreements have not been updated or no new agreements entered into with those Indigenous groups for the Prairie Creek All-Season Road project.

Finally, the responsible ministers and the federal Minister note that the Canadian Zinc Corporation has made a number of commitments relating to environmental monitoring, including commitments 43, 96, 167, 198, 207 and 208 as listed in Appendix C of the Report. The commitments are vague and fail to specify whether all affected Indigenous groups will be included in activities related to the commitments, or if they only include the Nahanni Butte Dene Band.

To address the above, the responsible ministers and the federal Minister make the following information request:

#### **Information Request #4**

**The responsible ministers and the federal Minister require that the Canadian Zinc Corporation engage with the Nahanni Butte Dene Band, Łı́ıdlı́ Kúę First Nation and the Dehcho First Nations, to discuss and determine how the Indigenous groups will be included in monitoring the Project, particularly in regards to the implementation of measures 5-1 (parts 3 and 4), 6-1 (part 2 and 3), 10-1, 10-2, 15-1 (part 2), 15-2 and 15-4, as well as any related Canadian Zinc Corporation's commitments. Following the engagements, the Canadian Zinc Corporation is required to provide the record and results of those engagements, agreed upon actions and the implementation plans for the relevant measures and commitments.**

#### **Topic Area: Funding Support for Indigenous Groups' Participation in Implementation of Measures and Monitoring related to the Project**

The Report includes extensive discussion of Indigenous groups' involvement during the implementation of several measures, including activities related to monitoring. The Report states that the "Review Board is not setting specific monitoring requirements or requiring any particular program," but that the developer must "support, to the greatest extent practicable monitoring initiatives undertaken by the Aboriginal groups that were parties to this EA."<sup>7</sup> The Report's measure 15-4 recommends that "to help prevent significant adverse impacts on the environment and on Indigenous rights, the Canadian Zinc Corporation will support, to the greatest extent practicable, independent monitoring of the Project area

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<sup>7</sup> EA1415-01 PR 556, September 12, 2017, Mackenzie Valley Environmental Impact Review Board. Report of Environmental Assessment and Reasons for Decision. Page 346.



through monitoring initiatives undertaken by the Nahanni Butte Dene Band, The Łíídlı Kúę First Nation, and Dehcho First Nations.<sup>8</sup>

In the Łíídlı Kúę First Nation and the Dehcho First Nations' October 20, 2017 letters to the Northern Projects Management Office, the Indigenous groups raise concerns that they may not be supported in their independent monitoring. In addition, the Łíídlı Kúę First Nation makes requests for support for the Indigenous groups to participate in the implementation of measures, including for measures 6-1, 6-2, 8-1, 11-1, 11-2, 12-1, 15-1 and 15-4.

Finally, the responsible ministers and the federal Minister note that measure 10-1 recommends that the Canadian Zinc Corporation support the traditional knowledge requirements for relevant measures, in part through considering "and where applicable, incorporating Traditional Knowledge into Project design, mitigation, monitoring and adaptive management."<sup>9</sup> To address the issues under this topic, the responsible ministers and the federal Minister make the following information request:

#### **Information Request #5**

**The responsible ministers and the federal Minister require that the Canadian Zinc Corporation engage with the Nahanni Butte Dene Band, Łíídlı Kúę First Nation and the Dehcho First Nations:**

- **to discuss support for those Indigenous groups' independent monitoring that would be practicable for the Canadian Zinc Corporation and consistent with the intent of measure 15-4 and other relevant measures and commitments and;**
- **to discuss the Indigenous groups' request for support to participate in the implementation of measures 6-1, 6-2, 8-1, 10-1, 11-1, 11-2, 12-1, 15-1 and 15-4.**

**Following the engagements, the Canadian Zinc Corporation is required to provide the record and results of those engagements, agreed upon actions and the implementation plans for the relevant measures and commitments.**

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<sup>8</sup> Ibid, Page 347.

<sup>9</sup> Ibid. Page 371.