

**TAB B**



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August 22, 2007

*Your file - Votre référence*

[Distribution List]

*Our file - Notre référence*

Dear Chief/President

I'm writing this letter with respect to Canada's ongoing efforts to consult you and your community on the potential adverse impacts of the Mackenzie Gas Project (MGP) on your established or potential Aboriginal and treaty rights.

As you may be aware, the Government of Canada has established a Crown Consultation Unit (CCU) to provide Aboriginal groups, who believe that their Aboriginal rights, as protected by section 35 of the *Constitution Act, 1982*, may be adversely impacted by the MGP, with a means to communicate these concerns to the federal government.

Since its establishment, the CCU has coordinated numerous meetings between federal government departments and several Deh Cho communities. These meetings have been very helpful in informing the Government of Canada of your concerns and recommendations. The Government of Canada takes its duty to consult seriously and appreciates your time and efforts in bringing this information to our attention.

As you may be aware the environmental assessment phase being conducted by the Joint Review Panel (JRP) is nearing conclusion. It is of particular importance to note that the JRP has now scheduled November 6 & 8, 2007 for hearings on Topic 17 during which intervenors will be presenting their final recommendations for addressing the potential socio-economic and environmental impacts associated with the MGP. The JRP Hearings will then conclude with its final public meeting scheduled for Inuvik on November 29 & 30, 2007 after which the JRP will write its Final Report and submit its recommendations to the federal government.

The Topic 17 Hearings on recommendations represents the final opportunity for intervenors (including federal government departments) to present recommendations for consideration by the JRP in advance of its Final Report. Should the MGP be approved for construction and operation, Canada will continue to consult with Aboriginal groups with respect to specific permits and applications.

As the JRP hearings draw to a conclusion, I am concerned that there still remain some Deh Cho communities who have not actively/fully participated in the MGP environmental assessment and regulatory hearings and have not accepted invitations to be consulted by federal departments. Therefore, information on

**Canada**

their concerns and recommendations related to potential impacts from the proposed MGP are unclear or unknown at this point.

Federal government departments are in the process of reviewing and finalizing their recommendations for submission to the JRP. The deadline for this submission is October 12, 2007. In the following week, representatives from the CCU will be contacting you in order to arrange consultation meetings. The purpose of these meetings will be to provide you with an opportunity to clarify information on concerns and recommendations you may have already shared with federal departments or the JRP. The meetings will also provide an opportunity for federal department to share information related to your concerns, as well as the recommendations they've put forward to the JRP to date. For those communities which have not yet met with federal departments, this represents a final opportunity to share your concerns and recommendations with respect to any potential adverse impact of the MGP on your established or potential Aboriginal and treaty rights directly with the federal government before they finalize their recommendations for the JRP.

While additional consultations will follow should the MGP be approved, I would like to emphasize the importance of your role in the review process and urge you to take advantage of this opportunity to inform the Government of Canada of your concerns and recommendations.

If you have any questions please do not hesitate to contact Chris Loewen, Project Leader, Crown Consultation Unit at (403) 299-3323 or toll free at 1-888-688-4228.

Sincerely,



Randall Meades  
Executive Director  
Federal Project Coordination Secretariat

Cc: Grand Chief Herb Norwegian, Dehcho First Nations  
Chris Loewen, Crown Consultation Unit  
Chuck Brumwell, Environment Canada  
Matthew Spence, Indian and Northern Affairs Canada  
Briar Young, Fisheries and Oceans Canada  
Christine Wan, Transport Canada

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<b>West Point First Nation</b> #1-47031 Mackenzie Highway Hay River, NT X0E 0R9 Tel: (867) 874-6677 Fax: (867) 874-2486	<b>President Marie Lafferty</b> <b>Fort Simpson Metis</b> <b>Local 52</b> PO Box 408 Fort Simpson, NT X0E 0N0 Tel: (867) 695-2431 Fax: (867) 695-2040	<b>President Ernie McLeod</b> <b>Fort Liard Metis</b> <b>Local 67</b> General Delivery Fort Liard, NT X0E 0A0 Ph: (867) 770-3265/3025 Fax: (867) 770-3266
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**Federal Responses to Questions (30 October 2009)**  
**DehCho Regulatory Workshop**  
**March 10, 2009**

***1. Will the consult to modify process (after the Joint Review Panel report) and the Mackenzie Valley Land and Water Board (MVLWB) process take place under the current version of the Mackenzie Valley Resource Management Act (MVRMA) or the version that was in place when the original MGP applications were filed? What about the Canadian Environmental Assessment Act (CEAA)?***

Response: The response is outlined in the Joint Review Panel Agreement (JRP public registry). It will meet the legislative requirements of the MVRMA and the CEAA. The JRP website is located at: <http://www.jointreviewpanel.ca/>

***2. Will the Joint Review Panel (JRP) recommendations be publicly split into the Canada and National Energy Board (NEB) streams so that interveners know which of them will respond to and address which JRP recommendations?***

Response: At this time it is not known if the JRP will present its report in a format that separates out an NEB stream for approval. Note that the NEB is a 'Designated Regulatory Agency' under the *Mackenzie Valley Resource Management Act* (MVRMA) and therefore has certain 'independent' responsibilities under the MVRMA to discharge.

***3. Will Canada run an open consult-to-modify process? [Canada is aware that it has to abide by the Chicot decision, but no further details are available now on how this process might unfold.]***

Response: In accordance with the Joint Review Panel Agreement, Responsible Ministers under the *Mackenzie Valley Resource Management Act* must consult with the Joint Review Panel on clarifications, proposed modifications to, and rejections of, JRP recommendations/ project measures.

Canada is aware of the Chicot decision. It will be assessing the Joint Review Panel report against the consultation record for the MGP to determine the need for further consultation with Aboriginal groups. The process for responding to the JRP report by government is currently being developed.

***4. A National Energy Board (NEB) response to the Joint Review Panel (JRP) report is required under Section 137 of the Mackenzie Valley Resource Management Act (MVRMA) but no response is identified on the timeline. Does this mean that the Certificate of Public Convenience and Necessity (CPCN) is to also serve as the NEB's response to the JRP's report?***

Response: Note that the CPCN is a separate regulatory issuance that will be issued in the regulatory stage of the project following the EA decision under section 137.

**5. Will Canada consult on all of the JRP's recommendations regardless of whether or not they decide to accept, reject, or modify, or will they just consult on the ones they want to modify? [ie. Will they consult on those recommendations that they reject?]**

Response: Canada considers a rejection of a recommendation to be a modification. In the context of the 'Consult to Modify' process; consultations with the Panel will occur as set out under the *Mackenzie Valley Resource Management Act*. In the context of Aboriginal consultation; whether or not further Crown consultation is required will depend upon a review of the Crown consultation record while concurrently upholding the Honour of the Crown.

**6. Is Canada fully aware of the Mackenzie Valley Environmental Impact Review Board (MVEIRB) reference bulletin interpretation of the consult to modify process that could require the Joint Review Panel (JRP) to meet with and seek the views of the interveners when it is responding to the Government Response to the JRP report? How has that been worked into the process and how will the government support the communities and JRP in this process?**

Response: Yes, we are aware of the MVEIRB reference bulletin and it does not apply to the JRP which was created under ss. 141(2)(b) of the *Mackenzie Valley Resource Management Act*, and is governed by the requirements of section 141 and the Agreement establishing the JRP.

**7. Will Canada be providing, either directly or through the Mackenzie Valley Land and Water Board (MVLWB), intervener funding for the MVLWB public hearings processes?**

Response: Currently, there is no legislated process to provide public intervener funding during the regulatory phase of this project.

**8. Given that the proponent does not have to release its Environmental Protection Plans (likely required in the CPCN) until 60-90 days before commencing construction, how will potential Section 35 infringements arising from inadequate planning be addressed in this short a time frame?**

Response: Prior to the filing of the Environmental Protection Plans, there will be considerable communications between the communities and the Proponent; an iterative process where exchanges of information contribute to a final plan which considers and addresses community concerns.

However, should consultation be required, it is expected that an appropriate department / agency will respond to these questions as joint discussions continue. Regulatory departments are communicating with the Proponent to seek information on a number of management plans that would be included in a National Energy Board approved Environmental Protection Plan. The community may wish to identify its own needs to the Proponent for such information in advance of the start of formal regulatory processes.

**9. Will Canada support, in writing to the National Energy Board (NEB), the Dehcho communities obtaining an advance ruling from the NEB to be accepted as “land owners” for the purpose of the detailed route hearings? Failing the receipt of a favourable ruling, would Canada agree to file detailed route hearings objections on behalf of the Dehcho and then support Dehcho requests to become interveners and make their own cases before the NEB?**

Response: No; however communities can raise these matters directly with the NEB.

**10. Does Canada expect to receive and keep the payments from the Mackenzie Gas Project (MGP) for quarry material or will Canada allow that money, either directly or on a flow-through basis, to go to the nearby affected Dehcho communities?**

Response: Payments for quarry material in the Dehcho region are made to Canada.

**11. Does the Fisheries Act allow for the filing of confidential traditional knowledge information from the communities? To what extent can this type of information inform HADD decisions?**

Response: The Department of Fisheries and Ocean's responded under separate cover (dated April 17 2009 and attached for your convenience).

**12. Is the use of a fish habitat compensation fund being considered as an option in some instances rather than requiring the MGP to directly create new habitat? [For example, where habitat destruction creates a Section 35 infringement but created habitat, due to location or species, will not offset loss harvesting opportunities.]**

Response: The Department of Fisheries and Ocean's responded under separate cover (attached for your convenience).

**13. Will the Regulatory Implementation Plan currently being developed by regulators be made public? If yes, when?... and will there be a draft circulated for comments before being finalized?**

Response: Regulators are currently reviewing the Regulatory Implementation Plan. No determination has been made as yet as to whether the Plan will be publicly released.



Room 928D, East Tower  
235 Queen Street  
Ottawa, ON K1A 0H3

January 8, 2010

## **DISTRIBUTION LIST**

### **RE:    Canada's Approach to Responding to the Joint Review Panel Report on the proposed Mackenzie Gas Project, including conducting Aboriginal Consultations**

As you know, the Joint Review Panel (JRP) for the Mackenzie Gas Project released its report entitled *Foundation for a Sustainable Northern Future* on December 30, 2009. The Governments of Canada and of the Northwest Territories have begun a coordinated review and analysis of the report in order to guide the preparation of their collective response.

- The Government of Canada has requested that the National Energy Board's (NEB) intervenor comment period be expanded to include comments on all recommendations in the JRP report. The intervenor comment period will provide the proponents and interveners, who are participants to the JRP process, with an opportunity to comment on the JRP recommendations. This process will start shortly after the release of the report, and is expected to last approximately six weeks.
- If you intervened in the JRP hearing process, you may want to take advantage of this comment period and provide your views on the recommendations contained in the JRP report via the NEB as per the attachment to this letter.
- Intervenors, including Aboriginal groups who participated in the JRP hearing process, will be asked to send their comments on the JRP Report in writing to the NEB. The NEB will post these comments on its public registry and these comments will be considered by the federal and territorial governments as they prepare the Governments' response to the JRP report.

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As Aboriginal consultations are an important part of the Governments' review, Governments will consider potential impacts of their response on Aboriginal and/or Treaty rights and the need for any additional consultation. Consultation procedures and schedules will be developed over the coming weeks in light of the detailed analysis of the JRP report which is currently underway. In the meantime, on behalf of Canada, I can provide the following general process information:

- After Governments' analysis of the JRP report, and review of any comments submitted by Aboriginal groups who intervened in the JRP hearings, Governments may consider modifying or rejecting some of the recommended mitigation measures pursuant to the *Mackenzie Valley Resource Management Act (MVRMA)* and the *Canadian Environmental Assessment Act (CEAA)*. If further consultation is required with respect to any of the proposed modifications, or accepted or rejected recommendations that may potentially impact Aboriginal and/or Treaty rights, then potentially affected Aboriginal groups will be contacted to arrange further consultations.
- Once all required review, analysis, and consultations have taken place, the Governments of Canada and the Northwest Territories will make their decision in accordance with the *MVRMA* and the Government of Canada will submit a full response to the Federal Cabinet for a decision in accordance with the *CEAA*. The joint response will be made public and will be filed with the National Energy Board as part of its hearing process.

The Government Response process steps are detailed in the attached. Additional information on this process will be communicated to you and your community as the Governments' review process evolves. If you have any comments or questions, please contact Ms. Lorraine Clayton, Project Manager, Aboriginal Consultations via phone (613-933-9314) or email ([lorraine.clayton@ic.gc.ca](mailto:lorraine.clayton@ic.gc.ca)).

Sincerely,

Éric Dagenais  
Director General  
Mackenzie Gas Project Office

Attachments:

- January 6, 2010 NEB: Mackenzie Gas Project – Hearing Order GH-1-2004, Procedural Update No. 15
- Distribution List



Files: PA-IOR 2004-001  
FacPipe IRL MGS-4  
FieldOp IRL Taglu-07  
FieldOp CPN Parsons-07  
FieldOp SCL Niglintgak-07

6 January 2010

To: Parties to the GH-1-2004 Hearing and Parties to the Joint Review Panel Hearing for the Mackenzie Gas Project

**Mackenzie Gas Project – Hearing Order GH-1-2004  
Procedural Update No. 14  
National Energy Board Consult to Modify Process and Government of Canada  
Comment Period for the Recommendations identified in the Joint Review Panel  
Report on the Environmental Impact Review of the Mackenzie Gas Project**

The National Energy Board (NEB) announced on 7 October 2009 that it would conduct a Consult to Modify Process regarding the Joint Review Panel for the Mackenzie Gas Project (JRP) Report. At the request of the Government of Canada, and for the convenience of all parties, the NEB is also providing a repository for comments on the JRP recommendations directed to other federal and territorial government departments and agencies. This Procedural Update addresses both the NEB Consult to Modify Process and comments directed to other government departments and agencies.

The JRP released its Report (JRP Report) on 30 December 2009. The JRP Report and Mr. Harrison's section 15 report, also released on 30 December 2009, are part of the record for the GH-1-2004 hearing. The National Energy Board (NEB) will take these reports into account when it decides whether, and if so, on what conditions, to approve the five applications submitted to the NEB for the Mackenzie Gas Project.

The JRP's overall recommendation is that the Mackenzie Gas Project may proceed subject to the full implementation of its recommendations, which are based on the evidence in the Joint Review Panel Hearing. The NEB will consider the recommendations that are directed at the NEB. Recommendations within the NEB's mandate may be included as conditions in any approvals the NEB may grant. Other government departments and agencies will consider the recommendations that are directed to them, as appropriate, in preparing the Governments' response.

As part of reaching its decision on the Mackenzie Gas Project, the NEB will decide to do one of the following:

- i. adopt the JRP's overall recommendation;
- ii. adopt the overall recommendation with modifications; or,
- iii. reject the overall recommendation.

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The NEB will consult the JRP on any potential modifications to the JRP's overall recommendation or if it decides to reject that recommendation.

Parties to the NEB's GH-1-2004 Hearing and parties to the JRP Hearing are invited to provide comments on the JRP recommendations that are within the NEB's mandate. Comments must be filed with the NEB, and served on the Applicants and all other parties by the deadlines in the attached schedule. This may be accomplished by e-filing on the Board's website at [www.neb-one.gc.ca](http://www.neb-one.gc.ca), then click on "Submit" Regulatory Documents and follow the steps. Alternatively, comments may be filed by mail or fax to:

Anne-Marie Erickson  
Acting Secretary of the Board  
National Energy Board  
444 Seventh Avenue SW  
Calgary, AB T2P 0X8

Facsimile: 403-292-5503  
Facsimile (toll free): 1-877-288-8803

The Board does not accept emails for the filing of evidence in its hearings.

Parties to the JRP hearings are also invited to provide comments on the JRP recommendations that fall outside the NEB's mandate. This may be accomplished as above, but in a separate submission, clearly identifying the federal and territorial government departments or agencies to which the comments are directed. Questions regarding the process for the Government of Canada Comment Period should be directed to Éric Dagenais, Director General, Mackenzie Gas Project Office at 613-944-9318.

Please clearly identify the NEB's "GH-1-2004 Hearing" in your submission and indicate whether the comments are for the NEB or other federal and territorial government departments and agencies. General information on hearing procedures and the filing and serving of documents can be found under [Hearing Order GH-1-2004](#) on the Board's website at [neb-one.gc.ca](http://neb-one.gc.ca).

If you have any questions about the hearing procedures please contact Andrew Hudson, Legal Counsel, at 403-299-2708 or toll-free at 1-800-899-1265.

Yours truly,



Anne-Marie Erickson  
Acting Secretary of the Board

Attachment

## Attachment 1

### Schedule for Comments on the Joint Review Panel Recommendations

Action	Deadline
<p>Proponents send comments on JRP recommendations within the NEB's mandate to NEB and parties to NEB and JRP hearings.</p> <p>Proponents send separate comments on JRP recommendations directed to other federal and territorial government departments and agencies via NEB.</p>	28 January 2010
<p>Parties to NEB and JRP hearings send comments on recommendations within the NEB's mandate to NEB, Proponents and other parties.</p> <p>Parties to JRP hearings send separate comments on JRP recommendations directed to other federal and territorial government departments and agencies via NEB.</p>	11 February 2010
<p>Proponents send reply comments on recommendations within the NEB's mandate to NEB and parties to NEB and JRP hearings.</p> <p>Proponents send separate reply comments on JRP recommendations directed to other federal and territorial government departments and agencies via NEB, after which other government departments and agencies continue on independently from the NEB process, to prepare the Government's response.</p>	18 February 2010
<p>After considering all comments within its mandate, NEB drafts proposed modifications related to the JRP recommendations.</p> <p>NEB consults with JRP by sending proposed modifications to JRP and requesting a written response.</p>	10 March 2010
JRP responds to NEB proposed modifications.	31 March 2010

## **DISTRIBUTION LIST**

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### **Inuvialuit Regional Corporation**

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Ms. Carol D. Arey, Aklavik Community Corporation	Fax: 1-867-978-2815
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