

NC/10-114-650
December 1, 2010

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

Dear Ms. Erickson,

Mackenzie Gas Project – Hearing Order GH-1-2004 -Governments of Canada and the Northwest Territories Final Response to the Joint Review Panel Report for the Proposed Mackenzie Gas Project

Nature Canada appreciates the National Energy Board's acceptance of our letter of November 22, 2010 regarding the Final Response by the Governments of Canada and the Northwest Territories to the Joint Review Panel Report for the Proposed Mackenzie Gas Project (Governments' Response) released on November 15, 2010. We commend the NEB for providing interveners with an opportunity to comment on the Governments' Response. We take this opportunity to reiterate the comments provided therein, urging the NEB to reject the MGP in the context of the governments' refusal to ensure that the MGP, if approved, is implemented within a sustainability framework.

In addition, we would like to bring to the attention of the NEB a development which reveals the ominous practical meaning of the Government of Canada's claims to accept "the intent" of a recommendation. On October 28, 2010, the federal government failed to renew crucial interim subsurface protections which had been in place for over eight years on the land beneath Edézhíe (Horn Plateau). Edézhíe is one of the most revered sites of the Dehcho and Tłı̄cho Dene communities around western Great Slave Lake, and a candidate National Wildlife Area identified through the NWT Protected Areas Strategy (Step 5) and sponsored by the Canadian Wildlife Service. This decision opens Edézhíe to active mineral claim staking and resource extraction before it is permanently protected as a National Wildlife Area (NWA).

JRP Recommendation 11-2 states:

The Panel recommends that, within one year of the date of the Government Response to the Panel's Report, the Governor-in-Council formally withdraw from disposition the following lands for the purpose of achieving interim protection of conservation values:

- all identified candidate protected areas awaiting interim protection;
- all identified areas of interest awaiting further study and assessment; and

- *all identified Northwest Territories Protected Areas Strategy Goal 2 areas that may be required to complete a network of core representative areas in each of the 16 ecoregions in the Mackenzie Valley.*

The Panel recommends that these lands be withdrawn until such time as permanent protection is achieved for these areas as modified through final boundary determination.

The Governments' Response states:

The Governments of Canada and the Northwest Territories accept the intent of this recommendation.

The Government will secure interim protection for sites identified through the Northwest Territories Protected Areas Strategy process.

The Protected Areas Strategy is based on an eight step process that all regions follow to advance their protected areas in the most orderly and efficient way possible. The job of initially planning protected areas lies primarily with communities, regional organizations and/or land claim bodies. In more advanced stages, where legislation is considered, the federal and territorial governments play a greater role.

Currently, all but one identified candidate protected area within the vicinity of the Project has been provided interim protection.

It is important to understand that consistent with the Protected Areas Strategy process, applications for interim land withdrawals are only completed once an area of interest has a) regional support and b) a government sponsoring agency. If these two conditions are in place, an area of interest becomes a candidate protected area and can then be considered for interim protection under step four of the process. The analysis for identifying ecologically representative areas is not a static process and is ongoing to determine which protected areas, candidate protected areas and areas of interest could meet representation goals in each ecoregion. In addition, not all identified areas of interest are located within the sixteen ecoregions identified in the Mackenzie Valley Five Year Action Plan.

There are several planning initiatives underway through which interim protection may be secured for candidate protected areas, identified areas of interest and potential Goal 2 areas. The Protected Area Strategy, land-use planning and land claims negotiations all include options for securing protection of conservation values. These processes will not be complete within one year of the date of the Governments' Response to the Panel's Report, however, the Government expects to complete interim protection for existing candidate protected areas in the Mackenzie Valley within five years.

For clarity, the Governments note that all potential protected area designations are implemented through legislation.

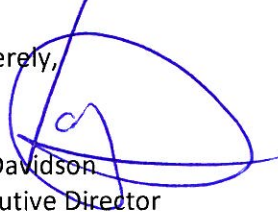
The Government of Canada's surprising decision on October 28 overturns a formal request by the Grand Chiefs of the Dehcho First Nations and Tłı̄cho Government that Environment Minister Jim Prentice designate the Edézhíe NWA and permanently protect the subsurface lands beneath it. The decision also ignores recommendations for the same surface/subsurface protections made in a 2009 report by the Edézhíe Candidate Protected Area Working Group. That Working Group consulted widely with stakeholders on options for the area, as part of the multi-stakeholder NWT Protected Areas Strategy. The 2009 report was submitted to the Dehcho First Nations, the Tłı̄cho Government and Environment Canada, and subsequently presented to Environment Canada in June 2010 with endorsement by the Grand Chiefs.

The federal government's decision on Edézhíe was made just two days before interim government protections on both the surface and subsurface lands of Edézhíe were about to expire. Interim protection of Edézhíe's surface lands has been renewed until October 31, 2012, but the area's subsurface is open to mining activity. Finally, this decision was made just days before the Government of Canada submitted its final response to the JRP Report, claiming that it accepts the great majority of the recommendations and specifically claiming that: "The Government will secure interim protection for sites identified through the Northwest Territories Protected Areas Strategy process." And that: "Currently, all but one identified candidate protected area within the vicinity of the Project has been provided interim protection."

The case of Edézhíe illustrates how the governments' response to the JRP, through the equivocal term "accept the intent" accompanied by ambiguous rationale, does not convey the governments' actual intent with regards to an issue of great importance to a key segment of the public. As such the project cannot be considered to be in the public interest until the public is provided with an unequivocal statement of the governments' intent regarding the mitigation measures identified by the JRP.

Under the circumstances we respectfully urge the National Energy Board to reject the project.

Sincerely,



Ian Davidson
Executive Director

