

From: [Stephanie Poole](#)
To: angela.love@mvlwb.com
Cc: [rebecca chouinard](#)
Subject: MV2005C0032 & MV2005L2-0015 NWTT8TC AIMA Comments Jan 16 14
Date: January-17-14 12:06:38 PM
Attachments: [MV2005C0032 & MV2005L20015 AIMA Comment Jan 16 14.docx](#)

Good Afternoon,

Attached please find our NWT Treaty #8 Tribal Corporation Akaitcho IMA Implementation Office comments for MV2005C0032 & MV2005L2-0015, as per your request...

Marsi Cho :)

--

Stephanie Poole
Akaitcho IMA Implementation Office
Phone: 867-370-3217
Fax: 888-714-3209

The Akaitcho Dene First Nations object to the issuance of any permit, license or other authorization for land and water use for the proposed Gahcho Kue diamond exploitation project, including this application for a land use permit and water license. The Akaitcho Dene First Nations have not given their consent for this proposed project to proceed within Akaitcho Territory.

The Akaitcho Dene First Nations object to the issuance of this permit as the requirements of the *Mackenzie Valley Resource Management Act* have not been complied with.

62. A board may not issue a licence, permit or authorization for the carrying out of a proposed development within the meaning of Part 5 unless the requirements of that Part have been complied with, and every licence, permit or authorization so issued shall include any conditions that are required to be included in it pursuant to a decision made under that Part.

136 (2) The federal Minister and responsible ministers shall carry out a decision made under section 135 to the extent of their respective authorities.

Simply put, the Measures required for this project to proceed are not in place. The failure to implement Measures arising out of the *Mackenzie Valley Environmental Impact Review Board's (MVEIRB) Report of Environment Impact Review (REIR)* means that the requirements of Part 5 have not been complied with. Thus, under s.62 of the *Mackenzie Valley Resource Management Act (MVRMA)*, no licence, permit or authorization may be issued. Should the *Mackenzie Valley Land and Water Board* choose to disregard this issue, then they will be breaching the purpose and guiding principles that form the basis of their creation.

Until the Measures have been complied with, the MVLWB may not issue this permit as the requirements of part 5 have not been complied with. For example:

- On October 22nd, 2013 Minister Valcourt accepted the Panel's decision with the following comments:

"We have concluded that all points raised relating to asserted or established Aboriginal and Treaty Rights have been or will be fully addressed through the implementation of measures, developer commitments and follow-up programs"

The failure to establish the Measures means that the concerns raised by the Akaitcho Dene are not being addressed. The clear reference to the measures shows that the Ministers placed a significant reliance on the existence of this to address the accommodation of Aboriginal concerns. The failure to develop and implement the measures means that s.114 of the *MVRMA* has not been complied with – ensuring that the concerns of

aboriginal people were taken into account. It is not acceptable to hear the concerns, propose an accommodation, provide a decision and then fail to deliver on this matter. Secondly, the failure to complete the measures breaches s.115 which recognizes the importance of conservation to Akaitcho Dene First Nations.

- Also, both the Panel and the Ministers placed significant amount of faith in the creation of the Ni Hadi Yati process:
“The Panel has not issued a measure for Ni Hadi Yati because Aboriginal parties and the developer have made a commitment to negotiate a contract for its implementation and government agencies have committed to contributing technical expertise on an as-needed and as-available basis.”

“...the Responsible Ministers and I have agreed to adopt the recommendation of the Panel that the Project be approved subject to the implementation of the measures, developer commitments and follow-up programs contained in the Report”.

The failure of the project to complete their commitment to develop and implement the Ni Hadi Yati body, given the reliance that the Panel and the Ministers placed on the matter, means that a determination cannot yet be made until this is complete.

Akaitcho Dene First Nations believe that the fact remains that the issue is outstanding and the commitment which was explicitly relied upon as part of the decision, has not been fulfilled. The company must be held to account for those commitments that they made and the decision makers relied upon.

In regards to the contents of the MV2005C0032 and MV2005L20015 applications, there are still many concerns that must be addressed: the MVEIRP’s Measures from EIR0607001, the MVLWB’s Engagement Policy and the MVLWB’s Closure Guidelines must all be conformed and complied with by the developer/proponent, this is not evident in these applications. Also, more detailed information is required regarding proposed monitoring plans, generalities are not useful.

In closing, we must reiterate the fact that the Akaitcho Dene First Nations have not given their consent for the proposed Gahcho Kue diamond exploitation project to proceed. Without their consent this proposed land use cannot proceed. We fully expect the Mackenzie Valley Land and Water Board to uphold the Mackenzie Valley Resource Management Act and the honour of the Crown.